



# E-News from KPMG's EU Tax Centre



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## **E-News from the EU Tax Centre**

Issue 73 – January 17, 2017

KPMG's EU Tax Centre helps you understand the complexities of EU tax law and how this can impact your business, enabling you to better predict how rules will develop and how to leverage opportunities and minimize risks arising from EU tax law.

E-News provides you with EU tax news that is current and relevant to your business. KPMG's EU Tax Centre compiles a regular update of EU tax developments that can have both a domestic and a cross-border impact. CJEU cases can have implications for your country.

## **Latest CJEU, EFTA and ECHR**

[EFTA amends procedural and substantive rules in the field of State aid](#)

On December 21, 2017, the EFTA Surveillance Authority Decision No. 3/17/COL of January 18, 2017, was published in the Official Journal of the European Union. The Decision amends the procedural and substantive rules in the field of State aid by introducing new Guidelines on the notion of State aid as referred to in Article 61(1) of the EEA Agreement.

[The Guidelines](#) provide clarification on key concepts relating to the notion of State aid with a view to contributing to an easier, more transparent, and more consistent application of the notion across the EEA.

#### CJEU decision in the *Deister Holding* Case ([C-504/16](#)) on German Anti-Treaty Shopping Provisions

On December 20, 2017, the CJEU rendered its decision in the joined cases *Deister Holding* ([C-504/16](#)) and *Juhler Holding* ([C-613/16](#)) concerning the German Anti-Treaty shopping provisions. The cases were dealt with jointly as they both concern foreign parent companies that are exposed to the negative effects of the German Anti-Treaty Shopping rule as it relates to dividends received from German subsidiaries. The CJEU ruled that the German provisions in question constitute an infringement of the EU freedom of establishment.

For more information, please refer to [Euro Tax Flash 350](#).

#### Advocate General's Opinion on Denmark's withholding tax on dividends paid to foreign investment funds in *Fidelity Funds* Case ([C-480/16](#))

On December 20, 2017, Advocate General (AG) Mengozzi of the CJEU rendered his Opinion in the *Fidelity Funds* case ([C-480/16](#)), concerning the compatibility with EU law of the Danish withholding tax on dividends distributed to non-resident investment funds. The AG concluded that the Danish legislation at issue constitutes an infringement of the free movement of capital.

For more information, please refer to [Euro Tax Flash 349](#).

#### Advocate General's Opinion on German transfer pricing adjustment provisions in *Hornbach-Baumarkt* (Case - [C 382/16](#))

On December 14, 2017, Advocate General (AG) Bobek of the CJEU rendered his Opinion in the *Hornbach-Baumarkt* case ([C-382/16](#)). The case deals with German legislation, under which a German taxpayer's income from its business relationships with non-resident related companies was adjusted so that it was in line with the arm's length principle, whereas such adjustment is not made in the case of business relationships between German-related companies. According to the AG, the German rules in question do not constitute an infringement of the freedom of establishment.

For more information, please refer to [Euro Tax Flash 347](#).



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## Infringement procedures & referrals to CJEU

### Infringement procedure

#### France

On December 7, 2017, the European Commission sent a letter of formal notice to France for limiting the right to deduct capital losses to subscribers of bonds issued by resident entities, as

well as for the unfavorable treatment of non-resident taxpayers. Under the current rules, resident taxpayers can fully deduct costs and expenses related to the participation from the tax base, whereas these costs are only partially deductible for non-resident taxpayers.

#### Norway

On December 18, 2017, the EFTA Surveillance Authority sent Norway a reasoned opinion regarding its tax system for pensions paid to non-residents. Under Norwegian legislation, certain non-resident pensioners do not benefit from the same tax deductions as residents, because the modest amount of their pensions means they are not taxable in their EEA state of residence. The EFTA considers such different treatment to be contrary to EEA law.

#### Transposition of new transparency rules for the exchange of tax rulings

On December 7, 2017, the European Commission sent a reasoned opinion to Belgium for failure to communicate the transposition of new measures on the automatic exchange of tax rulings between Member States, and decided to close similar infringement procedures against Bulgaria, Cyprus and Portugal.

#### Transposition of new rules on automatic exchange of Country-by-Country reports

On December 7, 2017, the European Commission sent a reasoned opinion to Cyprus for failure to communicate the transposition of new measures on the mandatory automatic exchange of country-by-country reports, and decided to close similar infringement procedures against Belgium, Bulgaria, the Czech Republic, Greece, Portugal and the UK.

#### Transposition of rules on mandatory automatic exchange of financial information

On December 7, 2017, the European Commission decided to close infringement procedures against Cyprus, Croatia, Malta and Slovakia for failure to communicate the transposition of rules on the automatic exchange of information within the EU on financial income, including dividends, capital gains, and account balances.

#### Referrals to the CJEU

##### Germany

On November 17, 2017, the Finance Court of Munich submitted questions to the CJEU in the College Pension Plan of British Columbia case ([C-641/17](#)). Specifically, the CJEU was asked whether a German rule that precludes foreign pension trusts from receiving tax relief for dividend withholding tax infringes the free movement of capital, where a German pension fund would be able to submit a tax declaration, deduct the pension payments from the taxable income, and credit the withheld tax against the remaining corporate tax.



## State Aid

Advocate General's Opinion in the *Heitkamp Bauholding* case on the German restructuring clause according to Section 8c(1a) of the Corporate Income Tax Act

On December 20, 2017, Advocate General Wahl of the CJEU rendered his Opinion in the *Heitkamp BauHolding* case ([C-203/16 P](#)). On appeal, the Court was asked to set aside the judgment of the General Court in Case T-287/11. In that judgment, the General Court dismissed the appellant's action for annulment of Commission Decision 2011/527/EU on State Aid as implemented by Germany and based on a provision that allows losses to be carried forward in the case of restructuring of companies in difficulty. The AG agrees with the appellant, insofar as he considers that the General Court erred in determining the reference system. Accordingly, he concludes the judgment in Case T-287/11 should be set aside to the extent that it dismissed the action as unfounded.

European Commission opens in-depth State aid investigation into tax rulings granted to Inter IKEA by the Netherlands

On December 18, 2017, the European Commission announced that it was opening in-depth investigations into two tax rulings granted by the Netherlands to Inter IKEA (see the European Commission's [Press Release](#)). The European Commission has concerns that the tax rulings may have given an unfair tax advantage to Inter IKEA, in violation of EU State aid rules and has decided to initiate a formal investigation procedure in order to validate its preliminary view. The European Commission will reach a final decision at the end of the formal investigation.

For more information, please refer to [Euro Tax Flash 348](#).



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## EU Institutions

### COUNCIL OF THE EUROPEAN UNION

Bulgaria takes over Presidency of the Council

On January 1, 2018, Bulgaria took over the rotating Presidency of the Council. Some of the main tax objectives to be attained during the next six months concern the digital economy and achieving a fair and effective taxation of corporate profits.

Bulgaria hopes to intensify administrative cooperation between Member States, in particular by reaching a common approach on the proposal to amend the Administrative Cooperation Directive on the automatic exchange of information linked to reportable cross-border arrangements by tax intermediaries. The Presidency will also strive to make progress on the draft Directive on a Common Corporate Tax Base.

For more information, please refer to [Bulgaria's Program](#).

Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes

On December 5, 2017, the EU list of non-cooperative jurisdictions for tax purposes was published. Besides the official list of non-cooperative countries, the document contains information about defensive measures in the area of tax and non-tax as well as guidelines for further process. [KPMG's Tax NewsFlash](#) names the countries appearing on the EU list.

For more information, please refer to [Euro Tax Flash 345](#) and the Council [conclusions](#).

#### Code of Conduct (Business Taxation)

On December 5, 2017, the Council endorsed the [Guidance on the interpretation of the fourth criterion](#) of the Code of Conduct for business taxation. Preferential business taxation measures, in particular, will be subject to intense scrutiny by the Code of Conduct Group when interpreting the fourth criterion.

The Code of Conduct group also published [Guidelines on setting working methods for an effective monitoring of Member States' compliance with agreed guidance](#). During the monitoring exercises, the Code of Conduct Group will verify whether Member States are complying with agreed guidance and decide whether national provisions or practices are 'compliant', or 'partly non-compliant'. As soon as guidance is agreed by the Group, Member States must amend their national provisions within a reasonable timeframe, at the latest within two years of its adoption.

#### Council conclusions on 'Responding to the challenges of taxation of profits of the digital economy'

On December 5, 2017, the Council agreed on EU input to discussions at the international level on the taxation of profits in the digital economy. The Council suggests that the concept of 'virtual permanent establishment' be explored, as well as amendments to the rules on transfer pricing and profit attribution.

The Council called on the Commission to thoroughly assess all options mentioned in the conclusions, including temporary measures.

For more information, please refer to [Euro Tax Flash 345](#) and the Council [conclusions](#).

#### ECOFIN Report to the European Council on tax issues

On December 5, 2017, ECOFIN endorsed a draft report to the European Council on tax issues and agreed to forward it to the European Council on December 14-15, 2017.

The report provides an overview of the progress achieved at the Council during the term of the Estonian Presidency. Specifically, the Council adopted a Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union and Council conclusions on Responding to the Challenges of Taxation of Profits of the Digital Economy. It also completed the Article-by-Article examination of Chapters 1 to 5 of the Common Corporate Tax Base (CCTB) proposal, started the technical examination of the proposal for amending the Directive on administrative cooperation as regards reportable cross-border arrangements (DAC6), and continued the discussions on the recast of the Interest and Royalty Directive (IRD).

For more information, please refer to the [ECOFIN Report](#).

#### EUROPEAN COMMISSION

## 2017 survey on tax policies in the European Union

On December 22, 2017, the European Commission published the annual survey on Tax Policies in the European Union. The survey presents the state of play of taxation in the Member States and it substantiates the priorities outlined in the Annual Growth Survey in the area of taxation. The survey also presents the most recent reforms in Member States and the main indicators used by the European Commission to analyze tax policies in the context of the European Semester.

For more information, please refer to the [survey](#).

## European Commission Questions and Answers – The rights of EU and UK citizens post-Brexit

On December 12, 2017, the European Commission published a memorandum with questions and answers on the rights of EU and UK citizens post-Brexit, as outlined in the [Joint Report](#) from the EU negotiators and the UK government. The document provides information on the common understanding reached during phase 1 of negotiations on the UK's withdrawal from the EU.

For more information, please refer to the [European Commission memo](#).

## European Commission announces new guidelines on withholding taxes

On December 11, 2017, the European Commission published guidelines on withholding taxes to help Member States reduce costs and simplify procedures for cross-border investors in the EU. Implementation of the Code is voluntary for Member States. The Code outlines a range of practical ways for Member States to address key issues including:

- measures to help investors with overly complex rules on the refund of withholding tax;
- the creation of digital forms to apply for withholding tax relief due to overpayment;
- a reliable and effective timeframe for tax authorities to grant relief of withholding tax;
- a single contact in Member State tax administrations to facilitate questions from investors on withholding tax.

For more information, please refer to the [Code of Conduct on Withholding Tax](#).

## State of progress of negotiations with the UK

On December 8, 2017, the European Commission issued a Communication on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on the European Union, recommending that the European Council conclude that sufficient progress has been achieved during the first phase of the negotiations. Following the adoption by the Council on December 15, 2017, of guidelines on the second phase of negotiations, the European Commission issued recommendations including additional negotiating directives and details on possible transitional arrangements.

## EUROPEAN PARLIAMENT

## [Agreement reached by the Council and the European Parliament on 5th Anti-Money Laundering Directive](#)

On December 20, 2017, EU ambassadors confirmed that the European Parliament and the Council had reached agreement on the latest amendments to the Anti-Money Laundering Directive (AMLD 5) proposed by the European Commission in July 2016. The amended Directive contains extended provisions on the implementation and design of Ultimate Beneficial Ownership registers within the EU.

For more information, please refer to [Euro Tax Flash 351](#).

## [Vote on PANA Committee's Recommendation following the inquiry into money laundering, tax avoidance, and tax evasion](#)

On December 13, 2017, the European Parliament voted in plenary session on the Recommendation adopted by the PANA Committee on October 18, 2017, following the inquiry into money laundering, tax avoidance and tax evasion. The [Final Recommendation](#), which was adopted by 492 votes to 50, with 136 abstentions, includes recommendations to the European Commission and the Member States on how to tackle the harmful practices exposed by the Panama Papers revelations, as well as on how to properly enforce existing legislation in this respect. The document deplores the fact that some EU Member States fail to combat money laundering and tax evasion and insists the EU should take the lead on this issue at the global level.

For more information, please refer to [Euro Tax Flash 346](#).

## [Fact Sheets on the European Union - Tax Policy](#)

On December 7, 2017, the ECON Committee released the Tax Policy publication that contains Fact Sheets on general tax policy, direct taxation: personal and company, and indirect taxation.

For more information, please refer to the [Tax Policy publication](#).



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## [OECD](#)

### [Update to the OECD Model Tax Convention published](#)

On December 18, 2017, the OECD published the [2017 edition](#) of the OECD Model Tax Convention, which mainly reflects a consolidation of the treaty-related measures resulting from the work on the OECD/G20 BEPS Project under Action 2 (Neutralizing the Effects of Hybrid Mismatch Arrangements), Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances), Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status), and Action 14 (Making Dispute Resolution More Effective).

For more information, please refer to [KPMG's TaxNewsFlash](#).

### [OECD Tax Talks #8](#)

Due to recent developments in international tax law, the OECD hosted a webinar on December 15, 2017, to discuss multiple topics, including taxation of the digitalized economy, BEPS – including progress on the Multilateral Instrument and the latest on mutual agreement procedures, tax policy – update on revenue statistics and work on inclusive growth, tax certainty and the latest on the International Compliance Assurance Program, and public discussion draft on mandatory disclosure rules.

For more information, please refer to the [webcast](#).

#### [OECD releases second round of peer reviews on implementation of BEPS minimum standards on improving tax dispute resolution mechanisms](#)

On December 15, 2017, the OECD released the second round of analyses of individual country efforts to improve dispute resolution mechanisms. The seven peer review reports relate to implementation by [Austria](#), [France](#), [Germany](#), [Italy](#), [Liechtenstein](#), [Luxembourg](#), and [Sweden](#). These seven peer review reports represent the second round of stage 1 evaluations of how countries are implementing the new minimum standards agreed in the OECD/G20 BEPS Project. In stage 2 of the peer review process each jurisdiction's efforts to address any shortcomings identified in the stage 1 peer review report will be monitored.

#### [OECD seeks input on Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures](#)

On December 11, 2017, the OECD released a consultation document seeking input on model mandatory disclosure rules. The model rules target promoters and service providers with a material involvement in the design, marketing, or implementation of a CRS avoidance arrangement or offshore structure. The envisioned rules would require such intermediaries to disclose information on the scheme to their local tax authority.

For more information, please refer to the [discussion draft](#).

#### [Platform for Collaboration on Tax: public comments on draft toolkit for the taxation of offshore indirect transfers](#)

On August 1, 2017, interested parties were invited to provide comments on the discussion draft of a toolkit on the Taxation of Offshore Indirect Transfers. On December 6, 2017, the Platform for Collaboration on Tax published the public comments received during the consultation period.

For more information, please refer to the downloadable [comments](#).

#### [Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings](#)

On December 4, 2017, the OECD published a [report](#) containing the outcome of the first peer reviews on the implementation of the BEPS Action 5 minimum standard.

For more information, please refer to [KPMG's TaxNewsFlash](#).

#### [Updated guidance on Country-by-Country reporting \(BEPS Action 13\)](#)



On November 30, 2017, the OECD announced that the “Inclusive Framework” on BEPS released additional guidance for tax administrations and multinational entity groups on the implementation of country-by-country reporting under BEPS Action 13.

For more information, please refer to [KPMG's TaxNewsFlash](#).

#### [International tax co-operation: Key indicators and outcomes](#)

The OECD has developed an interactive map presenting key indicators and outcomes of the OECD's work on international tax matters, with close to 150 countries and jurisdictions, which can be found [here](#).

#### [Revenue Statistics from 1965 to 2016](#)

On November 23, 2017, the OECD published the Revenue Statistics for 1965 to 2016. The annual publication provides a conceptual framework to define which government receipts should be regarded as taxes. The publication presents a unique set of internationally comparable tax data in a common format for all OECD countries from 1965 to 2016.

For more information, please refer to the [Revenue Statistics](#).



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## **Local Law and Regulations**

### **Belgium**

#### [Guidance on Country-by-Country reporting updated](#)

On November 28, 2017, the Belgian tax administration published a press release stating that the deadline for filing country-by-country reports for large companies has been extended from December 31, 2017, to March 31, 2018.

### **Bulgaria**

#### [Clarifications on filing Country-by-Country reports and notifications](#)

The Bulgarian tax authorities released two clarifications on the preparation and filing of country-by-country (CbC) reports and notifications. The first CbC reports for 2016, as well as notifications for 2016 and 2017, were to be submitted to the dedicated portal of the tax authorities by December 31, 2017. Subject to filing are Bulgarian companies, branches, or permanent establishments that are constituent entities of a foreign multinational group with consolidated revenue exceeding EUR 750 million or of a Bulgarian multinational group with consolidated revenue exceeding BGN 100 million (approximately EUR 55 million).

[Multilateral Competent Authority Agreement on automatic exchange of Country-by-Country reports – signed by Bulgaria](#)

On November 17, 2017, Bulgaria joined the Multilateral Competent Authority Agreement on the automatic exchange of country-by-country reports. The agreement was developed within the framework of the OECD's BEPS project and has now been signed by 68 jurisdictions.

For more information about the signatories and signing dates, please refer [here](#).

## **Denmark**

### [Tax Board binding answer on taxation of pension income under tax treaty with Germany](#)

On November 24, 2017, the tax and customs administration published a binding ruling dated November 17, 2017, on the taxation in Denmark of a pension under the Denmark – Germany Tax Treaty. The Tax Board concluded, in line with the general Danish tax treaty policy, that Denmark has the right to tax the pension payments concerned, as the contributions were previously tax deductible in Denmark.

## **France**

### [Finance laws enacted](#)

After constitutional review, the Finance Law for 2018 and the second Corrective Finance Law for 2017 were adopted by the French Parliament and officially published on December 31, 2017, and December 29, 2017, respectively.

For more information, please refer to [KPMG's TaxNewsflash](#).

### [Exceptional CIT surtax guidelines published](#)

On December 8, 2017, the tax administration published guidelines on the exceptional surtaxes on corporate income tax. According to the guidelines, turnover thresholds must be appreciated with respect to the turnover relating to profits subject to French corporate income tax only (and not the global turnover).

### [Corporate income tax exemption for ports abolished](#)

On December 6, 2017, the French tax authorities abolished the corporate income tax exemption for state-owned ports carrying on an economic activity. The measure, which took effect on January 1, 2018, brings French law in line with the European Commission's decision of July 27, 2017, which considered the exemption to be unlawful State aid.

### [Country-by-Country reporting transitional measure announced](#)

On December 4, 2017, the tax administration announced a transitional measure regarding the conditions under which French entities held or controlled by a company resident in a jurisdiction not appearing on the list of cooperative jurisdictions published by the French tax administration may nevertheless be exempt from country-by-country reporting obligations. The measures are in accordance with guidance issued by the OECD.

## **Germany**

## [Ministry of Finance issues revised guidance on change-in-ownership rules](#)

On November 30, 2017, the Ministry of Finance published a revised version of the official guidance on the application of the change-in-ownership rules contained in Section 8c of the Corporate Income Tax Act (CITA), based on an earlier draft of April 15, 2014, and former guidance issued in 2008.

## **Greece**

### [Process for filing and exchanging Country-by-Country reports– circular released](#)

On December 4, 2017, the tax authorities issued a circular clarifying the process for filing and exchanging country-by-country reports.

The circular, which refers to the OECD guidance, provides additional information on the procedure and timeframe for filing reports and notifications. A FAQ guide was issued on December 15, 2017.

### [Clarification on the tax administration's right to file a report on tax evasion](#)

On December 1, 2017, the tax authorities issued a circular on the tax administration's right to file a report on tax evasion. The filing of a report on tax evasion is limited to cases where a tax audit will not be conducted due to the expiration of the statute of limitations on the state's right to levy taxes. For these cases, an audit will not be performed and a final corrective tax assessment will not be issued, which is a prerequisite for filing the report and initiating criminal proceedings. On December 20, 2017, an additional circular was released on the qualification of accounting differences for the purpose of reporting tax evasion cases.

### [Extension of statute of limitations](#)

On December 1, 2017, the tax administration issued two circulars clarifying the circumstances under which the five-year statute of limitations may be extended. In cases of tax evasion, the tax administration accepts that the extension to 20 years is only possible for pending cases covering the years from 2012 onward. With respect to cases involving additional information, the circular provides clarification on the type of new information that can be considered.

## **Hungary**

### [Clarification on Country-by-Country reporting and notification requirements](#)

The Hungarian tax authorities have provided unofficial clarifications on issues regarding country-by-country reporting obligations, and specifically in respect of filing the reporting notification on the 17T201T form.

For more information, please refer to the [KPMG's TaxNewsflash](#).

## **Italy**

### [Clarifying decree on Patent box regimes](#)

The Italian tax authorities issued a new decree that revises the rules for an optional tax regime providing for a partial tax exemption on income from the use or exploitation of qualifying intangible assets.

For more information please refer to the [KPMG's TaxNewsflash](#).

#### [Updated definition of "permanent establishment"](#)

The draft budget law includes new provisions reflecting a broader definition of "permanent establishment" (PE) according to Italian tax law. The proposal would make the definition of PE more consistent with how the term is defined in the final report under the BEPS Action 7.

For more information please refer to the [KPMG's TaxNewsflash](#).

#### [Country-by-Country reporting – implementing rules issued](#)

On November 28, 2017 and December 11, 2017, the Italian tax authorities issued additional instructions for country-by-country reporting obligations and postponed the deadline for the first year of application to February 9, 2018.

For more information, please refer to the [KPMG's TaxNewsFlash](#).

### **Ireland**

#### [Country-by-Country reporting filing deadline extended](#)

On November 24, 2017, the Irish tax authorities published [eBrief No. 107/17](#) extending the deadline for the filing of the first country-by-country reports to February 28, 2018.

### **Latvia**

#### [Corporate income tax law changes](#)

Various tax reform measures take effect in Latvia beginning January 1, 2018. A noteworthy development is the increase of the corporate income tax rate from 15% to 20% and a change in the "tax point" from the date when the profits are earned to the date when the profits are distributed as dividends.

For more information on the changes to the tax regime, please refer to the [KPMG overview](#).

### **Liechtenstein**

#### [Ordinance clarifying the need for Transfer Pricing documentation](#)

The Income and Municipal Tax Amendment Ordinance of December 19, 2017 introduces a reference to the OECD Transfer Pricing Guidelines for the determination of arm's length transfer prices and clarifies documentation requirements for certain cross-border transactions with related companies or permanent establishments. The measures apply as of January 1, 2018.

## Luxembourg

### Council of Ministers approves amendment to bill on new IP regime

On December 13, 2017, the Council of Ministers approved an amendment to Bill No. 7163 on a new IP regime. The amendment clarifies the definition of eligible expenditure by a permanent establishment located in another EEA Member State.

### Council of Ministers approves bill to amend exchange of information procedure

On December 19, 2017, the Council of Ministers submitted a draft bill to Parliament to amend the exchange of information procedure and bring it into line with the decision rendered by the Court of Justice of the European Union in the *Berlioz* case ([C-682/15](#)).

### Circular published on certificate of residence for collective investment funds

On December 8, 2017, the Luxembourg tax administration published a circular on the granting of a certificate of residence to collective investment vehicles. The circular clarifies inter alia that the contractual funds (FCP) generally do not qualify for treaty benefits, except if explicitly mentioned (e.g. Germany) and outlines which tax treaties are applicable or not to corporate funds (i.e. SICAVs and SICAFs).

### Proposal on implementation of “ultimate beneficial owners” register

On December 6, 2017, Luxembourg's Finance and Justice Ministers presented a new draft law that would implement registries of “ultimate beneficial owners”. It is proposed to implement one register for beneficial owners of legal entities and one for trusts and fiduciaries.

For more information, please refer to the [KPMG's TaxNewsFlash](#).

## Malta

### Regulations for beneficial ownership registry

On December 6, 2017 and December 20, 2017, the Minister for Finance adopted several regulations introducing the obligation for entities to set up and maintain an up-to-date register of their beneficial owners. The measures, which apply as of January 1, 2018, require companies, trusts/trustees, foundations, and associations to provide a register of their respective beneficial owners upon their establishment and to notify any subsequent changes. In this respect, false or deceptive declarations may be sanctioned by a fine up to EUR 5,000 and/or imprisonment for up to six months.

## Netherlands

### Corporate income tax substance requirements for activities within chain of companies gazetted

The regulation on amendments to tax and subsidy implementation ordinances was published on December 28, 2017. This regulation clarifies that valid business reasons reflecting economic reality are deemed to exist if a substantial shareholder enters into a relationship with a chain of companies, so long as certain conditions are fulfilled, including in relation to the residency and

competencies of the board members, where the decision-making process and main bank accounts are located, as well as the presence of adequate personnel and the location where the taxpayer's accounts are kept.

#### [New Salary Requirements for Expatriates subject to the 30% Ruling](#)

On December 28, 2017, new salary requirements for the 30% ruling were published and apply from January 1, 2018. The new amounts are EUR 28,350 for individuals below 30 years of age holding a Ph.D. or Master's degree and EUR 37,296 for all other expatriates.

For more information, please refer to the [December 2017 report](#).

#### [The Deputy Minister of Finance answers parliamentary questions about the Netherlands being at odds with the EU approach to tax avoidance.](#)

In his answers, the Deputy Minister referred to his letter of December 12, 2017 (2017-0000233470), in which he stated he does not recognize the image of the Netherlands as being uncooperative in an EU context.

Concerning the abolition of the BV / CV tax avoidance structure, the State Secretary notes that ATAD 2 prescribes how measures to combat hybrid mismatches should be implemented with effect from January 1, 2020. The State Secretary also announced that the Cabinet is considering an internet consultation on the implementation of ATAD 2 in 2018.

#### [Decrees on application of the innovation box regime published](#)

On November 21, 2017, a new decree was published, which provides clarifications for the purpose of the application of the innovation box regime on the determination of the net turnover, the relevant expenses to be taken into account for the nexus formula, the qualifying expenses, and the transitional regime. Another decree was published on November 27, 2017, which clarifies that an earlier decree of September 1, 2014 remains applicable to the innovation box regime that was effective until December 31, 2016. Both decrees apply retroactively from January 1, 2017.

### **Norway**

#### [Parliament adopts bill to authorize information exchanges under MCAA-CRS, MCAA-CbC](#)

On December 5, 2017, the Norwegian Parliament adopted a bill to amend effective dates for the automatic exchange of financial account information under the common reporting standard and country-by-country reporting. Norway intends to exchange information for the 2016 and 2017 tax periods with jurisdictions that have recently signed or are going to sign the OECD Automatic Exchange of Financial Account Information Agreement (2014) and the Multilateral Competent Authority Agreement (2016).

## Portugal

### Country-by-Country reporting and mandatory automatic exchange of information

On December 21, 2017, the official forms that must be used for country-by-country reporting and mandatory automatic exchange of information were published.

The reporting form must be submitted electronically within 12 months of the end of the fiscal year, except for the fiscal year 2016, for which the deadline has been extended until February 28, 2018.

## Slovakia

### Amendments to Income Tax Act

On December 20, 2017, proposed changes amending the Income Tax Act were signed by the President, following approval by the parliament on December 7, 2017. The amendments introduced included the following:

- Introduction of the participation exemption as regards capital gains;
- Clarification of certain provisions in respect of the newly introduced patent box regime;
- Extension of the domestic definition of a permanent establishment (PE) to include the OECD recommendations under BEPS Action 7 and introduce the concept of digital PE;
- Introduction of a definition of digital platform.

However, a proposal to extend the controlled foreign company rules to individuals was rejected. The amendments will become effective from January 1, 2018.

## Sweden

### Decree on automatic exchange of information on financial accounts

On November 30, 2017, the Tax Agency published an updated decree on the automatic exchange of information for financial accounts with an updated list of participating countries.

### Exit tax on unrealized capital gains for individual taxpayers

On November 29, 2017, the tax administration submitted a proposal to the government regarding the implementation of an exit tax on unrealized capital gains over SEK 100,000 for taxpayers that move abroad after having been tax resident in Sweden during five of the last ten years, or who receive assets as a gift from another taxpayer that fulfils these residency requirements. If approved, the proposal would enter into force in 2020. In this respect, a public consultation was also launched by the Ministry of Finance on December 8, 2017, for which comments are due by March 5, 2018.

## Switzerland

### Country-by-Country reporting for FY 2016

The deadline for taxpayers in Switzerland filing country-by-country reports for tax year 2016 was December 31, 2017, if the taxpayer files on the basis of a calendar year.

For more information, please refer to the [Tax News Flash](#).

## United Kingdom

### General Anti-Abuse Rule factsheet

On December 8, 2017, HMRC published a factsheet to explain the general anti-abuse rule (GAAR) and when tax arrangements may be considered to be abusive under the GAAR.

For more information, please refer to the [Factsheet](#).

### Consultation outcomes released on “Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures”

On December 1, 2017, HMRC released the outcome to the consultation on “Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures”, which includes a summary of the responses received and the government’s response to the issues raised in the consultation.

For more information, please refer to the [outcome](#).

### Consultation on the taxation of royalties

On December 1, 2017, HMRC launched an open consultation on the taxation of royalties and other types of payment made to non-resident related persons. The consultation is open until February 23, 2018.

For more information, please refer to the [consultation document](#).

### Corporate Interest Restriction

On December 7, 2017, HMRC issued guidance on the new Corporate Interest Restriction rules, which came into force on April 1, 2017. The regulations related respectively to Consequential Amendments ([S.I. 2017/1227](#)) and Financial Statements: Group Mismatch ([S.I. 2017/1224](#)) will take effect on December 29, 2017. On December 1, 2017, HMRC also launched an [open consultation](#) concerning the corporate interest restriction on leases, which will be open until February 28, 2018.



## Local Courts

### Czech Republic

Czech Supreme Administrative Court rules on application of double tax relief clause in the treaty between Czech Republic and Germany



In a recently published decision of January 11, 2017, (No. 2 Afs 166/2016-35), the Czech Supreme Administrative Court ruled on the application of the double tax relief clause under the Czech Republic – Germany Income and Capital Tax Treaty (1980) (the treaty).

The Supreme Administrative Court upheld the decision of the lower court. In the absence of double taxation of the capital gains, the plaintiff could not rely on Article 23(2) of the treaty. In addition, the plaintiff was not entitled to unilateral double taxation relief and could not treat the German tax as a tax-deductible expense.



**Robert van der Jagt**

Chairman, KPMG's EU Tax Centre and  
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