



E-News from KPMG's EU Tax Centre



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E-News from the EU Tax Centre

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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

[CJEU decision in Jacob and Lassus on French mechanism for deferred taxation of capital gains \(Joined Cases C-327/16 and C-421/16\)](#)

On March 22, 2018, the CJEU rendered its decision in the joined cases, Jacob ([C-327/16](#)) and Lassus ([C-421/16](#)), concerning the compatibility with the Merger Directive of French tax deferral rules in the case of an exchange of shares. The CJEU concluded that the French legislation is compatible with the Merger Directive, but constitutes an infringement to the freedom of establishment, insofar as capital losses occurring upon the subsequent transfer of the shares are not taken into account.

For more information, please refer to [Euro Tax Flash 362](#).

CJEU decision in the Picart case on the right of establishment of a self-employed person under the EU agreement with Switzerland (C-355/16)

On March 15, 2018, the CJEU rendered its decision in the Picart case ([C-355/16](#)). The Court concluded that the right of establishment of a self-employed person, as defined in the EU-Swiss Agreement, may not be considered as equivalent to the freedom of establishment guaranteed by Article 49 of the Treaty on the Functioning of the European Union (TFEU). In the case at hand, the situation of a French national who transfers his residence to Switzerland, while maintaining his economic activity in France, but without undertaking every day, or at least once a week, a journey from the place of his economic activity to that of his residence does not fall within the scope of the EU-Swiss Agreement. As a consequence, French exit taxation rules are compatible with the latter.



Infringement procedures & referrals to CJEU

Referrals to the CJEU

Austria

On November 3, 2017, the Austrian Administrative Court decided to refer a case to the CJEU ("Vorarlberger Landes - und Hypothekenbank AG v. Finanzamt Feldkirch", [C-625/17](#)). The Austrian Court asked in essence whether the Austrian bank levy is contrary to the freedom to provide services and/or the free movement of capital.



State Aid

EU Commission approves Portuguese tonnage tax regime

On April 6, 2018, the EU Commission approved under EU state aid rules a Portuguese tonnage tax regime that will encourage ship registration in Europe and contribute to the competitiveness of maritime transport while preserving employment in the sector and promoting high environmental standards. Under the newly introduced Portuguese tonnage tax regime, maritime transport companies will pay taxes on the basis of the net tonnage (i.e., the size of the shipping fleet) operated in maritime transport activities rather than on the basis of their taxable profits.

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

EU Commission publishes non-confidential version of its decision to open a State aid investigation into the Netherlands' tax treatment of Inter IKEA

On March 27, 2018, the EU Commission published the non-confidential version of the decision to open an in-depth investigation into the Netherlands' tax treatment of Inter IKEA (case number [S.A. 46470](#)).

[EU Commission invites comments on potential state aid in respect of Polish tax incentive for shipyards](#)

On March 2, 2018, the EU Commission invited interested parties to submit their comments on the potential state aid ([SA. 46981](#)) affecting the flat rate sales tax in the Polish shipbuilding sector. Interested parties may submit their comments until April 3, 2018).

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



[EU Institutions](#)

[COUNCIL OF THE EUROPEAN UNION](#)

[European Council \(Art. 50\) guidelines on the framework for the future EU-UK relationship](#)

On March 23, 2018, the European Council (Art. 50) adopted [guidelines](#) on the framework for post-Brexit relations with the UK. These guidelines define the framework for negotiations under Article 50 TEU and set out the overall positions and principles that the Union will pursue throughout the negotiations.

[Council opens negotiations for a multilateral investment court](#)

On March 20, 2018, the Council authorized the EU Commission to negotiate, on behalf of the EU, a convention establishing a multilateral court for the settlement of investment disputes. The court would adjudicate disputes under investment treaties and eventually replace the bilateral investment court systems included in EU trade and investment agreements.

For more information, please refer to the [Council Press Release](#).

[Consolidated EU Black List and State of Play](#)

On March 19, 2018, the ECOFIN published a consolidated EU list of non-cooperative jurisdictions for tax purposes, together with a consolidated version of the 'State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles'.

For more information, please refer to the [EU Blacklist](#) and the [State of Play](#).

[ECOFIN agrees on Mandatory Disclosure Requirements for Intermediaries and makes further revisions to the EU Blacklist](#)

On March 13, 2018, the ECOFIN Council reached political agreement on rules requiring intermediaries (and taxpayers) to disclose information on potentially aggressive tax planning

arrangements. In addition, the Council decided to further amend the EU blacklist of non-cooperative jurisdictions by removing Bahrain, the Marshall Islands and Saint Lucia from the list and adding the Bahamas, Saint Kitts and Nevis, and the US Virgin Islands.

For more information, please refer to [Euro Tax Flash 359](#).

[The EU list of non-cooperative jurisdictions for tax purposes: Compilation of commitment letters received from jurisdictions](#)

On February 14, 2018, the Code of Conduct Group (Business Taxation) published the letters seeking commitments sent to jurisdictions in the context of the preparation of the EU list of non-cooperative jurisdictions for tax purposes.

For more information, please refer to [the compilation of commitment letters](#).

EUROPEAN COMMISSION

[EU Commission releases package on Fair and Effective Taxation of the Digital Economy](#)

On March 21, 2018, the EU Commission issued several proposals on a Fair and Effective Tax System in the EU for the Digital Single Market, including a Directive proposal on a Digital Services Tax, a Directive proposal on the introduction of a digital permanent establishment concept, and Recommendations to Member States to implement this concept in their double tax treaties. The release of the proposals comes less than a week after the publication by the OECD of its Interim Report on the [“Tax Challenges Arising from Digitalisation”](#) on March 16, 2018.

For more information, please refer to [Euro Tax Flash 360](#).

[EU Commission issues communication on effective counter-measures on the EU Blacklist](#)

On March 21, 2018, the EU Commission published [guidelines](#) on the use of EU funds that are meant to ensure that EU funds are not channeled through non-cooperative tax jurisdictions (the EU “Blacklist”).

For more information, please refer to [Euro Tax Flash 361](#).

[EU Commission publishes report on aggressive tax planning structures](#)

On March 7, 2018, the European Commission released a [taxation paper](#) on aggressive tax planning indicators, providing a broad picture of which EU Member States appear to be exposed to aggressive tax planning structures, and how those may affect their tax base (erosion or increase). The structures are grouped into three areas (interest payments, royalty payments and strategic transfer pricing) and are used to examine multinational enterprise (MNE) structures under one of three types (target entities, the lower tax entities or conduit entities).

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

[EU Commission publishes answers to its consultation on Fair taxation of the digital economy](#)

The objective of the consultation was to provide some comments that will facilitate the Commission's analysis and proposals in the future. The statistical report and individual answers can be accessed via the Consultation [page](#).

EUROPEAN PARLIAMENT

[ECON/TAX3 Committees exchange views with Commissioner Moscovici](#)

On March 27, 2018, the European Parliament's Committee on Economic and Monetary Affairs (ECON) and the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) held an exchange of views with the Commissioner Moscovici. During the meeting, Moscovici presented the EU Commission's recent proposals on taxation of the digital economy and commented on the 2018 European Semester, observing that although there are no tax havens within the EU according to international standards, there are countries with tax schemes that may encourage tax planning.

For more information, please refer to the European Parliament's [press release](#).

[European Parliament adopts resolutions suggesting amendments to the CCTB/CCCTB regarding the taxation of the digital economy](#)

On March 15, 2018, the European Parliament approved in plenary two reports on the European Commission's proposals for a CCTB and CCCTB, including suggested amendments to the taxation of the companies' online activities.

For more information, please refer to the European Parliament's [press release](#) and resolutions on [CCTB](#) and [CCCTB](#).

[European Parliament endorses a resolution on the framework for a future relationship between the EU and the UK](#)

On March 14, 2018, the European Parliament endorsed a [resolution](#) on the framework for a future relationship between the EU and the UK. This relationship would be based on four pillars: (i) trade and economic relations, (ii) foreign policy, security cooperation and development cooperation, (iii) internal security and (iv) the thematic cooperation. Furthermore, the resolution sets the framework for a future cooperation that will be based on the integrity of the internal market, the customs union and the four freedoms, avoiding any sector-by-sector approach.



OECD

[Global Forum issues tax transparency compliance ratings for nine jurisdictions](#)

On April 4, 2018, the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#) released nine peer review reports assessing tax transparency compliance. Estonia, France, Monaco and New Zealand received an overall rating of "Compliant", while The

Bahamas, Belgium and Hungary were rated “Largely Compliant” and Ghana was rated “Partially Compliant”. Progress for Jamaica was recognized through a Supplementary Report which attributes a “Largely Compliant” rating.

For more information, please refer to the [OECD press release](#).

[Multilateral BEPS Convention will enter into force on July 1, 2018 following Slovenia's ratification](#)

On March 23, 2018, the OECD announced that the [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#) will enter into force in five European jurisdictions on July 1, 2018.

For more information, please refer to [Euro Tax Flash 363](#).

[OECD releases additional guidance on the attribution of profits to a permanent establishment under BEPS Action 7](#)

On March 22, 2018, the OECD released the report [Additional Guidance on the Attribution of Profits to Permanent Establishments](#) (BEPS Action 7). The additional guidance sets out high-level general principles for attributing profits to permanent establishments (PE) in accordance with applicable treaty provisions and provides examples on the attribution of profits to certain types of PEs arising from the changes to the PE definition under BEPS Action 7.

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

[OECD Secretary-General Report to G20 Finance Ministers and Central Bank Governors](#)

On March 20, 2018, the OECD published its General Tax Report. The report is divided into two parts: Part I reports on the activities and achievements of the OECD's tax agenda by evaluating significant achievements with hindsight and using foresight to determine where further progress is needed; Part II is a Progress Report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

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

[OECD issues Interim Report on the Tax Challenges Arising from Digitalisation](#)

On March 16, 2018, the OECD published its [Interim Report on the Tax Challenges Arising from Digitalisation](#), setting a framework for taxing the digital economy. The report comes as a result of an agreement reached by more than 110 jurisdictions to work towards a consensus-based solution in order to improve the efficiency of tax collection and prevent tax evasion.

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

[Third round of peer reviews on implementation of the BEPS Action 14 minimum standards](#)

On March 12, 2018, the third round of BEPS Action 14 Stage 1 peer review reports were released to highlight the implementation of the BEPS Action 14 minimum standard by the [Czech Republic](#), [Denmark](#), [Finland](#), [Korea](#), [Norway](#), [Poland](#), [Singapore](#), and [Spain](#). The OECD

is also requesting input from taxpayers for the fifth round of Action 14 Stage 1 peer reviews for Estonia, Greece, Hungary, Iceland, Romania, Slovak Republic, Slovenia and Turkey.

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

OECD issues model disclosure rules for CRS arrangements and opaque offshore structures

On March 9, 2018, the OECD announced the release of new [model disclosure rules](#) that require lawyers, accountants, financial advisors, banks and other service providers to inform tax authorities of any schemes they put in place for their clients to avoid reporting under the common reporting standard (CRS) or prevent the identification of the beneficial owners of entities or trusts.

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



Local Law and Regulations

Belgium

Government approves draft bill on various corporate income tax measures

On March 30, 2018, a draft bill on corporate income tax measures was approved by the Council of Ministers. Among other things, the draft bill provides for the introduction of an anti-abuse provision in the notional interest deduction regime, the abolition of the fairness tax for large companies benefiting from the notional interest deduction or loss carry-forward provisions, and technical amendments to the CFC regime, the interest deduction limitations regime and the group contribution regime.

Guidelines on practical aspects of dispute resolution under tax treaties published

On March 7, 2018, the tax administration published a circular letter providing practical guidance on the procedural rules for the settlement of disputes under tax treaties. The circular letter explains the main procedural rules applicable and acknowledges that taxpayers can simultaneously pursue both a mutual assistance procedure and an arbitration procedure.

Bulgaria

New definition of “beneficial owner” and disclosure requirements

On March 27, 2018, the new Anti-Money Laundering Act was published in the State Gazette and will enter into force on March 30, 2018. Bulgaria introduces a definition of the term “beneficial owner” in order to correspond to the definition introduced by the EU Directive 2015/849. Penalties for failing to comply with the disclosure requirements of beneficial owners may be imposed on individuals and legal entities.

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

Denmark

[Bill to prevent retroactive cross-border merger submitted to parliament](#)

On March 23, 2018, the Danish government submitted a bill to the parliament to prevent retroactive cross-border mergers. The proposal follows a 2017 decision of the Eastern District Court to allow a retroactive merger between a Danish company into a German sister company more than six months before the final decision was taken. As a consequence of the bill, which will apply as of March 23, 2018, it will no longer be possible for a cross-border merger to become effective for tax purposes before the date that the merger decision is adopted.

[National Tax Board rules that a Luxembourg SCSp is a transparent vehicle](#)

On February 28, 2018, the customs and tax administration published a binding answer on the tax qualification of a Luxembourg Société en Commandite Spéciale (SCSp). The Board concluded that the SCSp is a transparent vehicle, as the entity had at least one General Partner with unlimited liability and the limited partners were not able to engage third parties without creating unlimited liability for the entity. Additionally, the General Partners were jointly and severally liable for the debt of the SCSp and the profits were distributed based on a pro rata share of the capital contributed to the SCSp.

France

[Bill relating to the fight against tax fraud](#)

On March 28, 2018, the French government presented a bill aimed at strengthening the fight against tax fraud. The proposed measures include increased fines for online peer-to-peer platforms failing to inform users about their tax obligations, the possibility for tax authorities to publicize the amount of tax averted by companies as a result of fraud, the introduction of administrative fines for intermediaries who assist taxpayers in committing tax fraud, and amendments to the French list of non-cooperative jurisdictions to reflect the EU Blacklist.

Greece

[Liechtenstein removed from Greek list of non-cooperative countries](#)

On March 29, 2018, the Ministry of Finance announced that Liechtenstein has been removed from the Greek list of non-cooperative countries as from January 1, 2017 as a result of the entry into force of the multilateral Convention on Mutual Administrative Assistance in Tax Matters.

[Circular published with Exchange of Information clarifications and templates](#)

On March 21, 2018, the Greek tax authorities published a circular with updated clarifications on the various international agreements providing for automatic exchange of financial information and a request template to be filed with the authorities.

Ireland

[Transfer pricing guidelines on low-value intra-group services – tax and duty manual published](#)

On March 15, 2018, the Irish tax authorities issued a Tax and Duty manual on transfer pricing guidelines for low-value intra-group services. The manual outlines the tax authorities' approach and in particular the possibility to apply a mark-up of 5% of the relevant cost base without a benchmarking study in cases where the cost-based method is the most appropriate.

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

[Guidelines on treatment of goodwill on disposal of business published](#)

On February 21, 2018, the Irish tax authorities issued a Tax and Duty manual on guiding principles in relation to the treatment of goodwill on the disposal of a business. The manual sets out key principles to assess whether or not goodwill exists.

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

Lithuania

[Ministry of Finance releases updates to transfer pricing rules](#)

A draft order that updated the current transfer pricing rules was recently released by the Ministry of Finance. The draft order brings the transfer pricing documentation rules in line with the requirements provided under OECD BEPS Action 13 and BEPS Actions 8–10.

Luxembourg

[Parliament adopts bill on new patent box regime](#)

On March 22, 2018, the bill on the new intellectual property tax regime was adopted by the parliament. The new regime makes Luxembourg compliant with the “modified nexus approach” as developed by the OECD in the final BEPS report of Action 5, “Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance”.

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

Netherlands

[State Secretary of Finance withdraws appeal to Supreme Court in the X case](#)

On March 7, 2018, the Dutch State Secretary for Finance withdrew his appeal to the Supreme Court against the decision of the Court of Appeal confirming the CJEU conclusions in the X case ([C-283/15](#)). According to The Hague Court of Appeal, a non-resident taxpayer may deduct 60% of the mortgage interest from his Dutch income, as Switzerland also allowed a deduction of such mortgage interest. The State Secretary also announced that the Dutch legislation will soon be amended to reflect the outcome of these proceedings.

Norway

[Consultation launched on disclosure rules for intermediaries facilitating real estate sales or rentals through a digital platform](#)

On March 20, 2018, the Ministry of Finance issued a consultation on a proposal for disclosure rules for companies that provide real estate sales or rentals through a digital platform. The consultation period ends on June 1, 2018.

Poland

[Extension of deadline for transfer pricing documentation requirements](#)

The Ministry of Finance on March 15, 2018 released a decree that extends the deadline for taxpayers to comply with certain transfer pricing documentation requirements. The new deadline for compliance is extended to the end of the ninth month after the end of the tax year. The extension applies to deadlines in 2018 and 2019.

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

Slovakia

[Slovakia places Liechtenstein on a white list](#)

On March 9, 2018, the Liechtenstein Ministry of Finance announced that Slovakia has placed Liechtenstein on its “white list” with effect as of January 1, 2017. The measure, which is due to the applicability of the multilateral Convention on Mutual Administrative Assistance in Tax Matters, will allow Liechtenstein residents to benefit from reduced withholding tax rates on income received from Slovakia.

[Guidance on tax treatment applicable to cryptocurrencies](#)

On March 23, 2018, the Ministry of Finance issued guidelines on the taxation of income arising from the realization of virtual currencies. The guidelines provide a common definition of a cryptocurrency, clarify that the gain arising from the realization of cryptocurrency is considered as taxable income and provide details on deductible expenses.

Slovenia

[Multilateral Instrument \(MLI\) – Slovenia deposits instrument of ratification](#)

On March 22, 2018, Slovenia deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.

Sweden

[Proposal to introduce an exit tax no longer under consideration](#)

On March 25, 2018, the Swedish government announced that the Tax Agency's proposal for an exit tax will no longer be under consideration as a result of the consultation on the introduction of amendments to the exit tax that commenced on December 8, 2017.

[Counter-measures against countries on EU blacklist implemented](#)

On March 5, 2018, the Swedish government decided to implement countermeasures against countries on the EU's list of non-cooperative jurisdictions in tax matters. The measures include reviewing all transactions performed with blacklisted countries, reporting on certain categories of transactions where there is a suspicion of tax evasion, and analyzing whether tax-driven transactions are associated with problems concerning the blacklisting criteria.

[Swedish Government proposes new interest deduction limitation rules and corporate tax cuts](#)

The Swedish Government has presented its proposal on new tax legislation relating to interest deduction in the corporate sector. The proposal follows the EU Anti-Tax Avoidance Directive. The Government also proposes a phased reduction of the corporate tax rate to 20.6%.

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

Switzerland

[Federal Council adopts dispatch on Tax Proposal 17](#)

On March 21, 2018, the dispatch on tax proposal 17 (TP17) was adopted by the Federal Council and should be further adopted by the parliament later during the autumn session of 2018. The proposed measures cover inter alia the abolition of cantonal status companies, the introduction of a mandatory patent box regime for all cantons, and a higher taxation of dividends from qualified participations. The tax proposals, if adopted, may enter into force as early as the beginning of 2019.

[Position paper on taxing the digital economy](#)

On March 8, 2018, the Swiss government published a position paper with regard to taxing the digitalized economy. The paper concludes that a multilateral approach must be favored and measures outside the scope of tax treaties should be excluded to avoid double taxation. If a short-term measure is implemented, it should be narrow in scope, target domestic and foreign companies, and be limited temporally with a sunset clause.

United Kingdom

[Guidance published on warning notices under the Serial Tax Avoidance Regime](#)

On March 29, 2018, the UK tax authorities issued guidelines on Compliance checks: Serial Tax Avoidance Regime. The guidance provides clarifications on the regime, the procedure upon receipt of a warning notice, as well as the applicable sanctions.

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

[Guidance published on provisional counteraction notices under the GAAR](#)

On March 26, 2018, the UK tax authorities issued guidelines on Compliance checks: provisional counteraction notices given under the general anti-abuse rule (GAAR). The guidance provides details on the adjustments made by the UK tax authorities under the GAAR and sets out the taxpayer's appeal rights.

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

[Guidance published on offshore tax evasion](#)

On March 16, 2018, the UK tax authorities issued guidelines on Offshore tax evasion: offenses relating to offshore income. New criminal offenses relating to offshore income, assets and activities have been in force from fiscal year 2017-2018 and the guidance provides details on the types of offense, the notification, withdrawal and amendment periods, as well as defenses and penalties.

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

[Spring Statement 2018](#)

On March 13, 2018, the Chancellor of the Exchequer announced his first Spring Statement. It was trailed as not introducing new tax measures or spending measures, but a number of interesting consultations and requests for evidence were published focusing on how the tax system should adapt to the modern world. The consultations released on the day of the [Spring Statement](#) include:

- [Digital economy](#);
- [Cash and digital payments in the new economy](#);
- [Online platforms' role in ensuring tax compliance by their users](#).

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



Local Courts

Czech Republic

[Retroactive exemption of withholding tax for interest, royalties](#)

On January 4, 2018, the Supreme Administrative Court held that an exemption from withholding tax on payments of interest and royalties may be applied retroactively for a period of up to two years from filing the application for exemption with the tax authority.

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

France

[Court of Appeal rules on criteria for finding permanent establishment](#)

On March 1, 2018, the Paris Administrative Court of Appeal rendered its decision in a case concerning an Irish company providing digital marketing services to a French sister company in France. The Court concluded that there was no PE within the meaning of the France-Ireland tax treaty because the French sister company was neither a fixed place of business for the

Irish company (all services performed were covered by the intercompany service agreement), nor a dependent agent, due to the inability to conclude contracts on behalf of the Irish company.

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

Greece

Obligation to complete a tax audit within a reasonable time frame

On March 7, 2018, the Greek Administrative Court issued a decision regarding the obligation for the Greek tax authorities to conclude a tax audit within a reasonable period of time. The Court concluded that there is no such obligation, but that the tax authorities' right to issue a decision may be limited by the applicable statutes of limitation.

Netherlands

District Court denies refund of dividend withholding tax to a US investment company

On March 1, 2018, the Zeeland-West-Brabant District Court rendered a decision regarding the entitlement of a US investment company to receive a refund of the Dutch withholding tax levied on dividends received from Dutch companies. The Court denied the claim based on the free movement of capital with third countries, as the standstill clause applies. In addition, the Court noted that a Dutch investment institution and a US investment company are not comparable, as the profits distributed by the US fund to its investors are not subject to withholding tax.

Court of Appeal concludes that foreign investment income of a Dutch citizen detained in Germany is not taxable in the Netherlands

On January 16, 2018, the Court of Appeal Amsterdam rendered a decision on the taxation of Swiss income derived by a Dutch citizen detained in Germany. The Court concluded that according to the tax treaty between the Netherlands and Germany and based on the 183-day rule used for employment income, the taxpayer was resident in Germany during his detention. The Court also held irrelevant that the taxpayer intended to return to the Netherlands or that he was insured for social security in the Netherlands. As a consequence, the Netherlands have no taxing rights on the Swiss income derived by the taxpayer.

Norway

Supreme Court clarifies deductibility rules for management fees

On February 28, 2018, the Supreme Court rendered its decision regarding the deductibility of a management fee paid by Norwegian investors in a Finnish private equity fund to the fund's general partners located in Guernsey. If a management fee covers both deductible and non-deductible costs for tax purposes, but no clear division can be made between the two, the Court concluded that the management fee is only partially deductible and that an arbitrary division can be made, taking the particular circumstances of the case into account.

Spain

Applicability to non-EU residents of the CJEU decision in the Commission v. Spain case

On February 19, 2018, the Spanish Supreme Court rendered a decision regarding the discriminatory tax treatment of donations and inheritances for non-EU resident taxpayers. The Court ruled that the CJEU conclusions in the Commission v. Spain case (C127/12) should be also applicable to tax residents in third countries, in the case at hand Canada. As a consequence, individuals resident in third countries for tax purposes are also eligible for tax benefits provided by the regional law.

Switzerland

Supreme Court rules on deductions available to non-resident workers

On February 6, 2018, the Swiss Federal Supreme Court rendered its decision on a case regarding the taxation of a French resident working in Switzerland. The Court concluded that there is no discrimination between residents and non-residents in the Canton of Geneva as both are taxed at the same rate and have the same amount of deductions.

United Kingdom

The First De Sales Ltd Partnership & Ors v HMRC – FTT decision

On February 28, 2018, the First-tier Tribunal rejected the taxpayers' appeals against HMRC closure notices on the basis they had no prospect of success. A group of limited liability partnerships (LLPs) entered into tax arrangements that were notifiable under the Disclosure of Tax Avoidance Schemes (DOTAS) regime. As part of the arrangements, the LLPs made significant payments which were contractual considerations for specific individuals granting restrictive undertakings. The LLPs then claimed tax deductions in their partnership tax returns for these payments. The HMRC refused the deductions on the basis that the payments were being made primarily for the purposes of the tax arrangements.

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

Court of Appeal's decision on the unallowable purposes rule

On March 20, 2018, the Court of Appeal rendered a decision on the UK unallowable purposes rule. The taxpayer had claimed a deduction in respect of the reduction in fair value of a shareholding in a group company that was deemed to represent a loan relationship. The Court concluded that the unallowable purpose rule not only applies to deny relief for this deduction (which was the intended benefit), but also for the interest debits in respect of borrowings transferred as part of the arrangement. Although the facts are specific to the particular arrangement, the decision provides useful guidance as to how the Courts will apply the unallowable purposes rule.

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





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