



E-News from KPMG's EU Tax Centre



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E-News from the EU Tax Centre

Issue 77 – May 29, 2018

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 the ANGED case concerning Spanish regional taxes on large retail establishments (Joined cases C-233/16 to C-237/16)

On April 26, 2018, the CJEU rendered its decision in the ANGED case (Joined cases [C-233/16 to C-237/16](#)), concerning the compatibility of regional taxes in Spain with EU law. The CJEU concluded that a tax on large retail establishments does not infringe the freedom of establishment and the State aid rules.



State Aid

The European Commission approves Ireland's sugar-sweetened drinks tax

On April 24, 2018, the European Commission announced its conclusion that Ireland's sugar-sweetened drinks tax does not involve state aid, and that the measure's scope and design are consistent with the health objectives of addressing obesity and other sugar-related diseases.

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



EU Institutions

COUNCIL OF THE EUROPEAN UNION

[Fifth revision of the Anti-Money Laundering Directive formally adopted](#)

On May 14, 2018, the Council of the European Union formally adopted the fifth revision of the Anti-Money Laundering Directive (EU/2015/849). The amended Directive contains especially extended provisions regarding the implementation and design of Ultimate Beneficial Ownership registers within the EU.

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

[Presidency note released for the evaluation of the specific CCTB provisions on national revenues](#)

On April 20, 2017, the Council of the European Union published a Presidency note for evaluating the impact of the key provisions of the proposal for a Council Directive on a Common Corporate Tax Base (CCTB) on national revenues.

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

[Fiscalis 2020 progress report published](#)

On April 17, 2018, the 2016 progress report on the Fiscalis 2020 Programme was published by the Council of the European Union. Fiscalis 2020 is an EU cooperation program, which enables national tax administrations to create and exchange information and expertise. The report highlights a strong demand for program support, a high level of achievement of results of the joint actions, as well as a positive assessment of the achieved results.

For more information, please refer to the [progress report 2016](#).

EUROPEAN COMMISSION

[European Commission proposes new rules on cross-border reorganizations](#)

On April 25, 2018, the European Commission proposed new company law rules setting out common EU-wide procedures for the cross-border relocation of companies, as well as ensuring the protection of employee rights and preventing tax abuse.

For more information, please refer to [Euro Tax Flash 365](#).

European Commission proposes new rules on the protection of whistleblowers

On April 23, 2018, the European Commission unveiled its proposal to strengthen whistleblower protection across the EU. If adopted, the new rules would require certain companies and public authorities to establish safe channels for the reporting of breaches of EU law. The proposal also aims at guaranteeing legal protection against any form of retaliation, while preventing abusive reporting.

For more information, please refer to [Euro Tax Flash 364](#).

EU Joint Transfer Pricing Forum publishes documents of 51st meeting

On March 8, 2018, the meeting of the EU Joint Transfer Pricing Forum (JTPF) was held in Brussels, with the following matters on the agenda:

- Update from the European Commission on *inter alia* the recent State aid cases, the proposals to tax the digital economy, the EU list of non-cooperative jurisdictions, the mandatory disclosure rules for intermediaries, public country-by-country reporting, etc.
- Statistics on Mutual Agreement Procedures (MAP);
- An [overview](#) of the approach to Transfer Pricing audits within the European Union;
- A [discussion paper](#) on the Transactional Profit Split Method (TPSM).

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

EUROPEAN PARLIAMENT

TAX3 Committee hearing on the EU blacklist and the level of transparency of the Council legislative process

On May 15, 2018, the TAX3 Committee discussed the fight against harmful tax practices, both at the EU level and internationally. A panel consisting of Prof Elly Van de Velde (Hasselt University), Alex Cobham (Tax Justice Network (TJN)) and Valère Moutarlier (Director at the European Commission), closely examined the EU blacklist, indicating the opaque criteria under which some jurisdictions are placed on the blacklist, grey list or simply removed entirely. Some Members of the European Parliament (MEPs) noted that this practice was a result of political pressure and stressed the need for sanctions on this kind of process. During the second part of the hearing, the European Ombudsman further explained her inquiry ([OJ/2/2017/TE](#)) into the transparency of the Council legislative process, confirming that the Council's current practices constitute maladministration and invited MEPs to lodge formal complaints against this practice.

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

Parliamentary questions submitted to the European Commission

In April and May 2018, members of the European Parliament referred numerous questions to the European Commission on tax issues, including:

- The adverse effects of FATCA on EU citizens (O-000053/2018)
- Removing the Bahamas from the EU list of non-cooperative jurisdictions for tax purposes (P-002576-18)
- Cryptocurrencies (E-002443-18)
- Information sharing: towards greater transparency (E-002417-18)
- Digital equalization tax (E-002325-18)
- Tax exemption for UEFA under German law (E-002269-18)
- Legal action against off-the-shelf tax-avoidance packages (P-002253-18)
- Commission resources for combating financial crime (E-002183-18)
- Brexit - digital taxation (E-002157-18)

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



OECD

Review of 11 preferential regimes of BEPS inclusive framework members

On May 17, 2018, the OECD issued a release updating the results of preferential regime reviews conducted by the Forum on Harmful Tax Practices (FHTP) in connection with Action 5 under the base erosion and profit shifting (BEPS) project.

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

Public comments for the future revision of Chapter IV (administrative approaches) and Chapter VII (intra-group services) of the Transfer Pricing Guidelines

On May 9, 2018, the OECD announced the revision of Chapter IV (administrative approaches) and Chapter VII (intra-group services) of the Transfer Pricing Guidelines, inviting public comments until June 20, 2018, at the latest.

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

Developing countries address BEPS; mining sector's excessive interest deductions

On April 18, 2018, the OECD released a practice note that is intended to help developing countries address base erosion and profit shifting challenges in raising revenue from the mining sector.

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

OECD addresses the misuse of residence/citizenship by investment schemes

The OECD has recently taken various measures in order to guarantee the integrity of the OECD/G20 Common Reporting Standard (CRS), such as addressing new [model disclosure rules](#), informing jurisdictions of the risk of abuse of their CBI/RBI schemes and giving further

guidance to stakeholders about the potential risk. On April 17, 2018, the OECD also published the [public comments](#) received on misuse of residence by investment schemes to circumvent the CRS. The input received gave rise to new types of misuse of RBI/CBI schemes, which will be discussed during the next meeting of the OECD/G20 in Paris.

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



Local Law and Regulations

Austria

Horizontal monitoring and advance rulings

The Austrian government recently published a draft on the administrative tax legislation, effective as from January 1, 2019, codifying the concept of horizontal monitoring and expanding the use of binding rulings. Both measures would increase the predictability of tax payments, reduce tax exposure, and improve cooperation between taxpayers and the tax authorities.

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

Ministerial draft to introduce CFC rules

On April 9, 2018, the Ministry of Finance published a ministerial draft on several changes to Austrian tax law, and in particular measures implementing the EU Anti-Tax Avoidance Directive (2016/1164), including:

- amendments to the existing exit tax rules
- amendments to the rules limiting the deductibility of intra-group interest and royalty payments
- a proposal to introduce controlled foreign corporation (CFC) rules
- amendments to the switch-over clause (international participation exemption regime)
- amendments to the general anti-avoidance rule.

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

Denmark

Tax bill presented to the parliament

On May 4, 2018, a Bill amending the Danish Corporate Income Tax Act was presented to the Danish parliament. The Bill amends the thin capitalization rules, the permanent establishment (PE) rules within the context of performing business activities and introduces rules on the prevention of the circumvention of tax-free equity gains exemption.

Finland

Tax penalty provisions updated

On April 30, 2018, the Finnish tax administration published updated guidelines, which amend the tax penalty provisions in the Guidelines on Transfer Pricing Documentation, Guidelines on Country-by-Country Reporting (CbCR), Guidelines on attribution of profits to PEs, and Guidelines on Taxation of non-resident Companies. The new penalty provisions apply as of May 1, 2018.

France

Plans to bring French legislation into line with EU law and the OECD's anti-BEPS measures

On April 24, 2018, the Ministry of Finance announced plans to bring French legislation into line with EU law and the OECD's anti-BEPS measures. The proposed corporate tax amendments, to be included in the Finance Bill for 2019, include:

- amendment of the interest limitation rules in line with Article 4 of the Anti-Tax Avoidance Directive (ATAD),
- application of the modified nexus approach to patents; and
- compatibility of the tax consolidation regime with EU law.

Germany

Guidance on application of anti-treaty shopping rules

On April 4, 2018, the Ministry of Finance released guidance on the application of German anti-treaty shopping provisions, following the CJEU judgment in the Deister and Juhler cases (joined Cases C-504/16 and C-613/16). The document states that the previous version of the incriminated provision as amended in 2007 will no longer apply and that the current provision will be interpreted differently, in particular as regards taking the facts and circumstances of associated companies into account, and the definition of participating in general commerce and carrying on business activities.

Greece

Government's position on CCTB and European Commission's digital package

On April 20, 2018, the Ministry of Finance informed Parliament that during the European Council meeting on March 22 and 23, 2018, the Prime Minister indicated that he was in favor of taxing the digital economy and establishing a common tax base to address unfair tax evasion practices.

Iceland

Proposed amendments to the joint taxation regime

On May 2, 2018, the Ministry of Finance released proposed amendments to bring the Icelandic rules on joint taxation of companies in line with the EEA Agreement. The proposed rules extend

the scope of the regime to the Icelandic-resident PEs of companies established in EEA Member States, EFTA countries or on the Faroe Islands.

Ireland

Manual on dividend withholding tax updated

On April 6, 2018, the Tax and Duty Manual on dividend withholding tax (WHT) was updated. Changes include the electronic submission of dividend WHT returns, an updated list of entities the payment to which is not considered a 'relevant distribution'; and updated penalties applicable in respect of the failure to provide certain statements.

Italy

New transfer pricing guidelines

On May 14, 2018, the Ministry of Finance issued a decree providing transfer pricing guidelines, in compliance with Article 110(7) of the Italian income tax law, in order to incorporate the arm's length principle. The Italian transfer pricing guidelines introduce a definition of "low value-added intra-group services" as well as a simplified approach, in line with the OECD Transfer Pricing Guidelines, for the exclusive purpose of evaluating the arm's length value of those services.

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

Latvia

Transfer pricing documentation

New requirements apply for transfer pricing documentation with respect to related-party transactions conducted during the reporting year beginning as from 2018. Latvian taxpayers will be expected to prepare transfer pricing documentation pursuant to the recommendations of Action 13 of the OECD's base erosion and profit shifting (BEPS) project, Country-by-Country reports, Master files, and Local files.

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

Luxembourg

Defensive tax measures in Luxembourg against EU-blacklisted jurisdictions

On May 7, 2018, the Luxembourg tax authorities published a circular detailing the defensive measures that will apply in relation to countries appearing on the EU list of non-cooperative jurisdictions for tax purposes. The Luxembourg authorities indicated that structures or arrangements involving these countries will be subject to an increased audit risk in Luxembourg, and transactions with associated enterprises in these jurisdictions will be subject to some reporting and documentation obligations.

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

Legislation introducing the new IP regime adopted by Parliament

On April 17, 2018, the Bill on the new IP regime was published in the Official Gazette. The new regime, which makes Luxembourg compliant with the “modified nexus approach” as developed by the OECD in the final BEPS report of Action 5, will apply retroactively from January 1, 2018. However, taxpayers who are able to benefit from the previous regime can opt to continue to be subject to the old regime.

Malta

Budget Measures Implementation Act 2018 adopted

The Budget Measures Implementation Act 2018 contains a number of amendments of a fiscal nature, such as the reduction of the 10% participating holding threshold to 5%, the computation of the notional interest deduction and the tax credits available to taxpayers under the Business Promotion Act.

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

Multilateral Instrument (MLI) ratified

On April 27, 2018, Malta ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI).

The Netherlands

Update on earnings stripping, ATAD1, fiscal unity proposals

In May 2018, the Deputy Minister of Finance sent letters to both Houses of Parliament in response to questions that had been raised and to explain the plans for legislation to implement the EU anti-tax avoidance directive (ATAD1) and the fiscal unity rules for corporate income tax purposes.

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

New Transfer Pricing Decree incorporates OECD standards

On May 11, 2018, the Dutch Ministry of Finance published a new Transfer Pricing Decree that incorporates provisions from the OECD's base erosion and profit shifting (BEPS) action plans (2015) and from the OECD's Transfer Pricing Guidelines (2017). The Decree introduces changes in order to comply with the application of the arm's length principle.

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

30% ruling for expats shortened to five years, effective as of 2019

On April 20, 2018, the Dutch Government announced that the 2019 Tax Plan will include a measure shortening the period for which the 30% ruling is granted from eight years to five years as of January 1, 2019. Under this ruling, 30% of the salary of expat employees who meet certain conditions is untaxed.

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

Implementation of UBO register postponed

The Minister of Finance informed the Lower House of the Dutch Parliament that the implementation of the ultimate beneficial owner (UBO) register is being postponed due to the approval by the European Parliament of the fifth revision of the Anti-Money Laundering Directive, which contains new provisions on UBO registers.

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

Norway

Revised 2018 Budget published

On May 15, 2018, the government published a revised 2018 Budget, which includes amended Country-by-Country reporting rules and simplified documentation requirements for non-resident shareholders claiming reduced withholding tax on income.

Public consultation on proposed rules for information processing within the tax administration

On March 23, 2018, the Ministry of Finance opened consultations on proposed changes to the rules regarding information processing within the tax administration. The proposed rules include measures granting the tax authorities greater access to information and the right to share information with other public authorities. The consultation closes on June 25, 2018.

Poland

Amendments to Corporate Income Tax Law

On May 10, 2018, the Polish Parliament issued a proposal amending the Corporate Income Tax Law. Under the proposed amendments, cash contributions will not be taken into consideration for the taxation of capital contributions to companies and cooperatives. The proposed changes will have retroactive effect to January 1, 2018.

Limited tax deductibility of certain intangible service fees, royalties

The Ministry of Finance released explanatory notes on the rules that limit the tax deductibility of certain intangible service fees and royalties paid to related entities. The tax deductibility limitation rules were added to the Corporate Income Tax Law, effective as of January 1, 2018.

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

Transfer pricing forum considers benchmarking studies, simplified APA procedure

A transfer pricing forum, organized by the Ministry of Finance, held its first meeting in April 2018 to consider practical problems and challenges related to benchmarking analyses and proposals for a simplified procedure for concluding advance pricing agreements (APAs). The transfer

pricing forum is intended to provide a venue for representatives of the Ministry of Finance, tax advisors, and the business community to discuss transfer pricing issues.

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

Serbia

Multilateral Instrument (MLI) ratified

On April 23, 2018, the law ratifying the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) was published in the Official Gazette.

Slovakia

Guidelines on taxation of non-resident digital platforms

On March 28, 2018, the tax administration released guidance on the taxation of non-resident operators performing intermediary services in Slovakia through digital platforms. As a consequence of the introduction of the concept of a digital PE, non-resident operators of digital platforms must register a PE in Slovakia, irrespective of the existence of an applicable tax treaty. If digital platforms fail to register, Slovak taxpayers using the platforms must act as withholding tax agents.

Slovenia

Amendment on mutual agreement procedure is released

On May 7, 2018, an amendment of the mutual agreement procedure was released, containing further guidance on technical issues and on the implementation process of the agreement.

Spain

Proposal to amend the patent box regime

On April 3, 2018, the government presented the 2018 Budget Bill to Parliament, including proposed amendments to align the Spanish patent box regime with the OECD modified nexus approach. The proposed rules clarify the scope of eligible assets, as well as the definition of qualifying profits and introduces a transitional regime for intangible assets before July 1, 2016.

Sweden

Bill to limit interest deduction and reduce corporate income tax rate submitted to Parliament

On May 3, 2018, the government submitted a bill to Parliament providing for a reduction of the corporate income tax rate to 20.6% by 2021, as well as the introduction of a number of limitations for interest deductions for companies, including a general limitation rule coupled with a SEK 5 million safe-harbor clause, anti-hybrid provisions, tax rules for financial leasing, and a limited scope for the application of existing limitation rules for certain internal loans.

Switzerland

First spontaneous exchange of information on advance tax rulings

On May 8, 2018, the Swiss Federal Tax Administration (FTA) announced that, as a result of Switzerland's ratification of the OECD/Council of Europe Multilateral Administrative Assistance Convention, it was now obliged to exchange information on tax rulings, and the first exchange of this information had subsequently taken place with partner states. The FTA shared 82 reports with a total of 41 states, including the United Kingdom, Germany, the Netherlands and France.

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

United Kingdom

UK requires companies in Cayman Islands, BVI, and other territories, to publicly disclose ownership

On May 1, 2018, the British Parliament introduced a new law requiring the UK's overseas territories, such as the Cayman Islands, the British Virgin Islands and Bermuda, to introduce publicly accessible registers of the beneficial ownership of companies located in their jurisdictions, before 2021. In case of non-compliance, a draft Order should be prepared in Council no later than December 31, 2020, in order to oblige these territories to comply.

New measures on CIR, hybrid mismatches and loss reform

The HMRC recently adopted three measures on Corporate Interest Restriction (CIR), hybrid mismatches, and loss reform, informing businesses of recent changes that may impact their tax position.

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

Proposals on profit fragmentation, addressing avoidance arrangements

In the 2017 Autumn Budget, the government announced that it would consult on proposals to combat avoidance arrangements where the profits of trades or professions are moved outside the UK's tax jurisdiction. The consultation is open for public comment until June 8, 2018.

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



Local Courts

Czech Republic

Activities giving rise to a "dependent agent" PE

The regional Court recently ruled on whether the activities of an agent give rise to a PE. The Court held that if an agent's activities are a separate and essential part of a non-resident

taxpayer's business activity, then this constitutes the taxpayer having a PE in the Czech Republic.

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

Brokerage fee non-deductible, burden of proof not satisfied

The Supreme Administrative Court rejected a taxpayer's claim to treat a brokerage fee (commission) paid to an unrelated party as a deductible expense, despite supporting documents and witness testimonies. The court stated that the burden of proof rests on the recipient of the service, who must prove that the brokerage did actually take place, and a taxpayer claiming that this would violate the broker's trade secrecy does not change the burden of proof.

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

Denmark

Application of contemporaneous preparation rule in transfer pricing documentation

The Eastern High Court rendered its decision on the interpretation of the Danish statutory measure concerning the deadline for preparing transfer pricing documentation. The Court ruled that the taxpayer must finalize the transfer pricing documentation by the filing date of the tax return for the respective tax year, while the submission of the transfer pricing documentation is only upon request of the tax authorities.

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

France

Administrative Supreme Court rules on Bitcoin gains

On April 26, 2018, the Administrative Supreme Court rendered its decision on Bitcoin gains. The Court ruled that proceeds from the disposal of Bitcoins should be regarded as capital gains on movable property, whereas revenue realized from the exercise of a commercial activity should be regarded as industrial and commercial profits.

Anti-avoidance tax provision ("Charasse amendment") held constitutional

On April 20, 2018, the French Constitutional Court ruled that a French anti-avoidance tax provision, known as the "Charasse amendment", which prohibits the deduction of part of the interest charge borne by a French tax group for the acquisition of the shares of a French company that was not previously a member of the tax group from a company that controls the acquiring company or is under common control of the acquiring company, was constitutional.

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

Limitation on loss carry-forward – compatibility with Constitution

On April 13, 2018, the Constitutional Court rendered its decision on the retroactive amendment of the application of the provision regarding the limitation of loss carry-forward. The Court ruled

that the new amendment is compatible with the Constitution as the scope and the objective of the provision remain the same.

Former neutralization of 5% add-back on dividends within tax-consolidated groups – compatible with constitution

On April 13, 2018, the Constitutional Court rendered its decision on the former rules neutralizing the 5% add-back on dividends within tax-consolidated groups. The Court concluded that these rules are of general interest and do not breach the principle of equality due to the fact that they are intended to facilitate tax consolidation.

United Kingdom

Coal Staff Superannuation Scheme Trustees Limited v HMRC

On May 16, 2018, the Upper Tribunal rendered its decision in Coal Staff Superannuation Scheme Trustees Limited (the Trustee) v HMRC concerning the compatibility of the UK tax treatment of MODs with EU law. The Court ruled in favor of the Trustee's claim to recover UK withholding tax on MODs, thereby overturning the earlier decision by the First-tier Tribunal.

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

Implications of court decision on UK mergers

The Court of Appeal recently ruled on cross-border mergers between multiple UK companies and a dormant EEA entity. The Court concluded that it cannot impose any additional restrictions on merging companies and further ruled that a UK group is entitled to use a regime to take advantage of more favorable legislation than that available domestically, thereby obtaining a tax advantage.

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

Bloomberg Inc. (UK permanent establishment) v HMRC

On April 16, 2018, the First-tier Tribunal ruled on whether PEs should be treated as separate and distinct entities under the UK-US Double Taxation Convention. In the case at hand, two PEs undertook transactions to increase their holding in a Delaware-registered LLP, and argued that under the UK-US Double Taxation Convention, the transaction, when viewed from the perspective of the PE, should be regarded as an acquisition of intangible fixed assets. The Court concluded that the US-UK Convention principle that PEs should be treated as separate and distinct entities, did not require the transaction to be treated as a transfer of assets to each of the PEs.

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





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