



# 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.

## [Infringement Procedures & Referrals to CJEU](#)

### **Referrals to CJEU**

CJEU preliminary ruling on the interpretation of the Merger Directive (2009/133) in capital gain taxation

On October 23, 2018, reference was made to the Court of Justice of the European Union (CJEU) by the French Supreme Court for a preliminary ruling in the case *AQ v Ministre de l'Action et des Comptes publics* (Case C-662/18). The referring court requested that the CJEU answer questions regarding the interpretation of the Merger Directive in capital gain taxation.



## State Aid

### The European Commission adopts recommendations on taxation of ports in Italy and Spain

On January 8, 2019, the European Commission urged Italy and Spain to adapt their legislation on the taxation of ports so that it aligns with State aid rules.

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

### Parliamentary questions on state aid investigation

On January 8, 2019, the European Commission confirmed in an answer to Member of the European Parliament Paul Tang that they are aware of recent news regarding a Dutch headquartered multinational's tax arrangements, but are not in a position to comment on the specific tax ruling in question.

For more information, please refer to the [written answer on the question No. P-006057/2018](#).

### The European Commission plans to prolong EU State aid rules and launch evaluation on their further continuance

On January 7, 2019, the European Commission announced its intent to extend for two years the validity of State Aid rules, adopted as part of the 2012 State aid reform program, set to expire in 2020. Additionally, the Commission is evaluating whether to further extend the expiring State aid rules or update the rules.

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

### AG's opinion on case A-Fonds v Inspecteur van de Belastingdienst (C-598/17)

On December 19, 2018, Advocate General Saugmandsgaard of the CJEU gave his opinion in a case (C-598/17 A-Fonds) concerning state aid as it relates to a Dutch dividend withholding tax refund claim.

### European Commission's final decision on Gibraltar's corporate tax regime

On December 19, 2018, the European Commission announced its final decision on the State aid investigations into Gibraltar's corporate tax regime. The decision confirms the Commission's preliminary view that Gibraltar's tax exemption scheme for interest and royalties, as well as five tax rulings, constitute State aid incompatible with the internal market. As a result, Gibraltar must recover the aid from the beneficiaries. It is now open to both Gibraltar and the companies concerned to appeal the decisions before the General Court (and possibly later the CJEU).

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



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## EU Institutions

### COUNCIL OF THE EUROPEAN UNION

Council publishes business taxation guidance

On December 20, 2018, the Council of the European Union published an updated version of the agreed guidance by the Code of Conduct Group (business taxation): 1998-2018 which compiles the guidance notes agreed upon by the Code of Conduct Group (business taxation) since its creation in March 1998.

For more information, please refer to the [Code of Conduct Group Guidance](#)

Council publishes State of play of cooperation with EU regarding good tax governance principles

On December 20, 2018, the Council of the European Union published an updated version of the State of play of the cooperation with the EU with respect to commitments taken to implement good tax governance principles of non-cooperative jurisdictions on the EU list.

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

### EUROPEAN PARLIAMENT

Parliamentary question on the Digital Services Tax's impact assessment

On January 8, 2019, the European Commission confirmed that the EU's Regulatory Scrutiny Board (RSB) critic of the impact assessment accompanying its proposal for a Digital Services Tax had already been taken into account during the drafting phase and recalled that the Commission is not constrained by the Board's opinions.

For more information, please refer to the [written answer on the question No. E-005508/2018](#).



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## OECD

Cook Islands joins inclusive framework for implementing measures against BEPS

On January 3, 2019, the OECD announced that the Cook Islands joined the Inclusive Framework for the global implementation of the Base Erosion and Profit Shifting (BEPS) Project. The framework focuses on the review and implementation of the BEPS minimum standards.

Multilateral Convention developments

On January 1, 2019, the Multilateral Convention (2016) (MLI) entered into force in respect of France, Lithuania, Slovak Republic, Australia, Israel and Japan. The MLI coverage of the

bilateral treaties entered by the mentioned countries will depend on the final adoption positions taken by other countries. Additionally, Malta, Georgia and Singapore have deposited their instrument of ratification for the MLI.



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## Local Law and Regulations

### Gibraltar

Regulations implementing the EU Anti-Tax Avoidance Directive measures into Gibraltar's domestic law are published

On December 20, 2018, new regulations implementing the EU Anti-Tax Avoidance Directive (ATAD) into Gibraltar's domestic law were published. The Regulations introduce the interest limitation rules, controlled foreign company (CFC) regime and hybrid mismatch rules based on the ATAD. The Regulations came into force on January 1, 2019 and apply for accounting periods beginning on January 1, 2019.

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

### Gibraltar

#### *Brexit* referendum: a draft law published regarding European Union withdrawal

On December 20, 2018, a draft Law was published concerning the Brexit implications for Gibraltar. The draft Law proposes legislative changes to Gibraltar's domestic law in response to Gibraltar's withdrawal from the European Union.

### Isle of Man

#### Order approved regarding economic substance requirements for resident companies

On December 11, 2018, the Parliament approved the Income Tax (Substance Requirements) Order 2018. The Order addresses the concerns made by the EU Code of Conduct Group in November 2017 by introducing substance requirements on resident companies undertaking relevant activities in the Isle of Man. The Order applies for all tax years beginning on or after January 1, 2019.

### Netherlands

#### New regulation clarifies the term substantial economic activity

On December 31, 2018 a regulation modifying several implementation decrees and ordinances was published. A critical change clarifies the term substantial economic activity in relation to the application of the new Controlled Foreign Company (CFC) legislation from January 1, 2019. The article also provides a set of conditions that restrict the application of the CFC legislation.

## Publication of low-tax countries' list

On December 28, 2018, the Ministry of Finance, with regard to the application of the new anti-abuse provisions concerning CFC legislation and withholding tax on interest and royalty payments, published a list of countries with no profit tax or a tax rate of less than 9%. The low-tax countries in the list include: Anguilla, the Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Kuwait, Qatar, Saudi Arabia, Turks and Caicos Islands, Vanuatu and the United Arab Emirates.

## Overview of 2019 anticipated legislation and documentation

On December 18, 2018, the Minister for Finance submitted an overview of anticipated 2019 tax related legislation to the lower house. The principal items regarding taxation include future laws implementing EU Directives in relation to tax dispute resolution, anti-money laundering, hybrid mismatches with third countries and automatic exchange of information regarding reportable cross-border arrangements.

## Romania

### Anti-money-laundering exchange of information implementation

On December 18, 2018, the Ministry of Finance published a proposal to amend the Fiscal Procedures Code to implement the Council Directive 2016/2258 regarding tax authorities' access to anti-money-laundering information.



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