



# E-News from KPMG's EU Tax Centre



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

### **Issue 91 – February 8, 2019**

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**

### **Infringement Procedures**

European Commission closes cases for the Czech Republic, Greece and Poland

On January 24, 2019, the European Commission closed the infringement procedure against the Czech Republic, Greece and Poland. The procedures concerned the Member States tax authorities' access to anti-money-laundering information.

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

### [European Commission requests changes to Germany's exit tax provisions on capital gains tax](#)

On January 24, 2019, the European Commission decided to send a reasoned opinion to Germany regarding its exit taxation rules that are applied when German assets are transferred to an EU/EEA Member State. According to the Commission, transfers to EEA States (Norway, Iceland and Liechtenstein) are treated less favorably than purely domestic transactions.

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

### [European Commission requests changes to Portugal's tax rules regarding the sale of real estate by non-residents](#)

On January 24, 2019, the European Commission decided to send a reasoned opinion to Portugal regarding its tax rules on capital gains realized by non-residents. According to the Commission, imposing a flat tax rate on non-resident taxpayers' gains when residents are subject to a progressive income tax is contrary to the judgments of the Court of Justice of the European Union (CJEU) in the Hollmann (C-443/06) and Teixeira (C-184/18) cases.

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

### [European Commission requests changes to United Kingdom's regulations on income tax relief for losses on disposals of shares](#)

On January 24, 2019, the European Commission decided to send a reasoned opinion to the United Kingdom regarding its domestic law on income tax relief for losses on disposals of shares. The relief is only available for shares in companies that carry out their business activities wholly or primarily in the United Kingdom which, according to the Commission, puts taxpayers investing in businesses in other Member States at a disadvantage.

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

### [European Commission calls on the United Kingdom to align its rules on tax relief for loans to traders](#)

On January 24, 2019, the European Commission decided to send a reasoned opinion to the United Kingdom regarding its national law on tax relief for loans to traders. According to the Commission, the rules in question differentiate between the tax treatment of 'irrecoverable loans' granted to UK residents and those granted to non-UK resident borrowers.

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

### [European Commission requests that Spain implement the EU country-by-country reporting rules in their entirety](#)

On January 24, 2019, the European Commission decided to send a letter of formal notice to Spain urging the Spanish authorities to fully implement the EU's country-by-country-reporting measures. According to the Commission, the current Spanish legislation lacks a number of elements included in the EU Directive 2016/881.

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

#### [European Commission requests that Spain change disproportionately restrictive conditions for tax deferrals in cases of company divisions](#)

On January 24, 2019, the European Commission decided to send a letter of formal notice requesting that Spain change the provisions in its legislation that are not aligned with the EU Merger Directive. According to the Commission, the Spanish legislation contains disproportionately restrictive conditions for certain types of company divisions.

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

#### [European Commission calls on 10 EU countries to implement the EU Anti-Money Laundering Directive in its entirety](#)

On January 24, 2019, the European Commission decided to send a letter of formal notice to Germany; reasoned opinions to Belgium, Finland, France, Lithuania, Portugal; and additional reasoned opinions to Bulgaria, Cyprus, Poland, and Slovakia for failing to completely implement the 4th Anti-Money Laundering Directive into their domestic legislation.

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

### **Referrals to the CJEU**

#### [CJEU preliminary ruling on Belgian tax on stock exchange transactions](#)

On November 22, 2018, reference was made to the CJEU by the Constitutional Court of Belgium for a preliminary ruling in the case Anton van Zantbeek VOF v. Ministerraad (Case C-725/18). The case concerns whether a proposed tax on stock exchange transactions is compatible with EU law.

#### [CJEU preliminary ruling on Dutch withholding tax on dividends](#)

On January 23, 2019, the Dutch Supreme Court decided to amend the questions referred to the CJEU in the Köln-Aktiefonds Deka case (C-156/17) in May 2017. The court withdrew the first question but maintained the second and third referred questions concerning a tax refund for a non-resident investment fund.



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### **State aid**

#### [The 2018 State Aid Scoreboard published by the European Commission](#)

On January 24, 2019, the European Commission published the 2018 State Aid Scoreboard highlighting the positive impact State aid policy has had on preventing distorted competition. The Scoreboard also confirms the benefits of the State Aid Modernization package.

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



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## EU Institutions

### EUROPEAN COMMISSION

#### European Commission publishes report on investor citizenship and residence schemes in EU Member States

On January 23, 2019, the European Commission published a report on investor citizenship and residence schemes across EU Member States. The report considers the existing schemes and identifies certain scheme related risks such as security, money laundering, tax evasion and corruption.

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

### EUROPEAN PARLIAMENT

#### Parliamentary question on the EU's grey and black list

On January 28, 2019, an answer was given to the written question E-005617-18. The question concerned the impact Brexit will have on the area of cooperation and the fight against tax havens, specifically, in relation to certain British overseas territories and crown dependencies. In its answer, the Council confirms that most of the British overseas territories and crown dependencies have already been deemed cooperative. The potential effects of Brexit were not addressed separately.

For more information, please refer to [the written answer on the question No. E-005617-18](#).

#### TAX3 Committee hearing on the evaluation of the tax gap

On January 24, 2019, the TAX3 Committee of the European Parliament held a public hearing on "The Evaluation of the Tax Gap". The experts discussed the different methodologies to assess the amount of tax gap and the different solutions that could help to diminish it. The experts concluded that transparency and exchange of information are key to address and reduce the tax gap.

For more information, please refer to the [video of the committee meeting](#).

#### Tax gap report by the S&D Group

On January 23, 2019, a study on the tax gap in Europe was published by the S&D Group of the European Parliament. The study concludes that the fight against tax avoidance has been successful as the amount of tax evasion in Europe has declined since 2012. However, the study acknowledges that the estimated tax gap of EUR 825 billion per year is substantial and provides recommendations on how to further eradicate tax evasion.

For more information, please refer to the [S&D report](#).

#### [Report on effective tax rate on multinationals published](#)

On January 21, 2019, a report on the effective tax rates for multinationals was published by the Greens-EFA Group of the European Parliament. The report compares the effective tax rates in the EU Member States and in 63 third countries and claims that the average effective tax rate of multinationals in the EU (15%) is lower than the third countries' average (22%).

For more information, please refer to the [Greens/EFA report](#).

### **EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

#### [EESC hearing on the taxation of the digitalized economy](#)

On January 29, 2019, the European Economic and Social Committee (EESC) held a hearing on "Taxation in the digitalized economy – Which way forward?" The hearing focused on the major challenges and possible solutions for the taxation of the digitalized economy. The committee agreed that a global consensus should be the focus and would be a more effective solution than individual country's implementing unilateral measures. Following the hearing, the EESC expects to issue an opinion on the topic by July 2019.

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



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### **OECD**

#### [Important progress on the taxation of the digitalized economy](#)

On January 29, 2019, countries and jurisdictions participating in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting agreed to continue working towards reaching a global solution for the taxation of the digitalized economy. The renewed discussion on this topic will now focus on two central pillars. The first pillar involves analyzing how nexus rules and the allocation of profits could be modified to take into consideration the new business models brought by the digitalization of the economy. The second pillar strives to resolve remaining BEPS challenges, including cases regarding low tax jurisdictions. Further, a document describing the two pillars in more detail will be issued soon, and a public consultation on the taxation of the digitalized economy will be held in Paris on March 13 and 14, 2019.

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

#### [New report released on harmful tax practices](#)

On January 29, 2019, as part of the ongoing implementation of Action 5 of the OECD/G20 BEPS project, the OECD published a [report on the progress of the commitments made by jurisdictions to comply with the standards](#), on harmful tax practices including the lining up of preferential tax regimes with substantial operations. The report analyzes and provides new

conclusions in regard to 57 regimes, and sets out the next steps of the Forum on Harmful Tax Practices (FHTP) in addressing these kind of practices.

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

#### **Multilateral Convention developments**

On January 25, 2019, the Multilateral Convention (2016) (MLI) entered into force in respect of Papua New Guinea. The MLI coverage of the bilateral treaties entered by Papua New Guinea will depend on the final adoption positions taken by other countries. Additionally, on January 29, 2019, Ireland deposited its instrument of ratification for the MLI.

#### **BIAC report on the taxation of the digitalized economy**

On January 21, 2019, the OECD's business forum (BIAC) published the report "Business Principles for Addressing the Challenges of the Digitalizing Economy." The report establishes the principles the forum believes should be considered when implementing a solution for the taxation of the digitalized economy.

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



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## **Local Law and Regulations**

### **Austria**

#### **Decree with guidance on CFC rules and low-taxed passive income gazetted**

On January 25, 2019, a decree on the application of Controlled Foreign Companies rules and the switch-over clause for the participation exemption from low-taxed passive income was gazetted. The decree, which generally applies from January 1, 2019, provides detailed guidance on the new CFC rules implementing articles 7 and 8 of the Anti-Tax Avoidance Directive and the notion of low-taxed income.

#### **Draft bill implementing Directive on tax dispute resolution mechanism published**

On January 23, 2019, the Ministry of Finance published and submitted for appraisal a draft bill implementing the EU Directive on dispute resolution mechanism (2017/1852). The bill is expected to enter into force on July 1, 2019.

### **Belgium**

#### **Parliament adopted Bill on fiscal, anti-abuse, financial and other provisions**

On January 31, 2019, the Bill on fiscal, anti-abuse, financial and other provisions was adopted by the parliament. The Bill lays down rules regarding the exchange of information with third countries, employer withholding obligations in relation to stock options and other benefits, and

rulings concerning transactions with jurisdictions included in the OECD list of non-cooperative countries.

#### [Bill on measures to combat tax fraud and tax avoidance regarding withholding tax enters into force](#)

On January 22, 2019, a bill focusing on combating withholding tax evasion and avoidance, and facilitating the recovery of withholding tax in the event of an unjustified exemption or refund was published in the Official Gazette. The bill entered into force on the publication date.

### **Bulgaria**

#### [Tax Insurance Procedure Code amended](#)

On January 21, 2019, amendments to the Tax Insurance Procedure Code for 2019 were published by the National Revenue Agency. The amendments implement the OECD's BEPS project by introducing new annual filing requirements. All taxpayers are now required to prepare a local file which includes information on the activities performed, transactions with related parties and the methods applied to decide the market price of those transactions. Taxpayers that are part of a multinational group must prepare an additional summary file detailing their organizational structure, activities and functions performed, transactions with related parties, and the transfer pricing policy used.

### **Estonia**

#### [Amendments to exchange of information law entered into force](#)

On December 17, 2018, amendments to the Tax Information Exchange Act entered into force. In order to broaden the scope of the information exchange network, the Act includes a provision that allows tax treaties to serve as the legal basis for the exchange of country-specific reports. The Act also includes a general anti-abuse provision that allows for the collection of information in instances where a transaction or act was performed for the purpose of information exchange avoidance.

#### [Amendments reflecting the EU Anti-Tax Avoidance Directive entered into force](#)

On January 1, 2019, ATAD-related amendments to the Estonian Income Tax Law entered into force. However, amendments concerning exit taxation will not enter into force until January 1, 2020.

### **Germany**

#### [Ministry of Finance published a preliminary list of jurisdictions with exchange of information](#)

On January 28, 2019, a preliminary list of jurisdictions that will automatically exchange financial account information in tax matters with Germany was published by the Ministry of Finance. The exchange of information will begin on September 30, 2019.

#### [Guidance issued in response to CJEU decision in EV \(Case C-685/16\)](#)

On January 30, 2019, the Ministry of Finance issued official guidance following the decision of the CJEU in the case of EV (Case C-685/16). The case concerned the German trade tax rules on the deduction of profits. The CJEU ruled that the trade rules were not compatible with the EU free movement of capital.

## **Greece**

### [Circular published clarifying tax treaty credit to Greek tax residents](#)

On January 28, 2019, Circular E. 2018, regarding an underlying tax treaty credit granted to Greek tax residents, was published by the Public Revenue Authority. The Circular clarifies that the tax treaty credit is provided under the provisions of the applicable tax treaty and recourse to the domestic legislation is made only when something is not explicitly regulated by the applicable tax treaty. The Circular also lists the tax treaties granting an underlying tax credit.

## **Grenada**

### [Legislative changes made to identified harmful tax regimes](#)

On December 28, 2018, the Upper House of Parliament approved changes to Grenada's local legislation in order to ensure compliance with the standards of the EU and the OECD. A total of four tax regimes were modified and the changes entered into force on December 31, 2018.

## **Italy**

### [Detail of the administrative measures in law decree on urgent fiscal measures](#)

On December 17, 2018, the Parliament approved Law Decree No. 119 (Law No. 136) related to urgent tax measures. The new administrative measures, which apply from January 1, 2019, include procedures for the settlement of tax audit reports, tax notices and tax acts, tax liabilities, and pending legislation. In order to access the settlement procedures, taxpayers are required to apply for the procedure and pay the full amount of tax due or the first installment.

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

### [New tax on digital services in the Budget Law for 2019](#)

On January 1, 2019, the Budget Law for 2019, which contains urgent tax measures including a new tax on digital services (DST), entered into force. The DST imposes a 3% tax on gross revenues from the supply of qualifying digital services by enterprises with worldwide revenues of at least EUR 750 million and Italian local revenues from qualifying digital services of at least EUR 5.5 million.

## **Netherlands**

### [Transitional regime in case of no-deal Brexit](#)

On February 4, 2019, letter 20019-0000017605 declaring a transitional regime in the case of no-deal Brexit was sent to the parliament by the State Secretary for Finance. The transitional regime, which excludes customs legislation, applies to companies and individuals. However, in



order to avoid the application of two different regimes in the same taxable year – before and after Brexit-, a transitional regime for companies will be further presented.

## **Portugal**

### [Law implementing real estate investment and asset management companies regime gazetted](#)

On January 28, 2019, the Decree-Law 19/2019, implementing the real estate investment and asset management companies' regime, was published in the Official Gazette. Under the new regime, certain real estate investment companies are subject to stricter reporting requirements. They also enjoy the same tax regime as collective investment vehicles which includes a corporate income tax exemption under certain circumstances.

## **Romania**

### [Tax amendments gazetted](#)

On January 17, 2019, tax amendments to Romanian national law were published in the Official Gazette. The amendments mainly concern the interest limitation rules and the right to carry forward losses in a merger situation. The amended tax rules took effect January 1, 2019.

## **Spain**

### [Guidelines on the annual plan for tax control 2019 approved](#)

On January 17, 2019, the resolution of January 11, 2019, approving the general guidelines of the Annual Plan for Tax and Customs Control 2019 was gazetted. The guidelines establish four pillars covering different areas that require special attention from the Spanish tax authorities: 1) prevention of tax fraud – information and assistance, 2) investigations and actions for verifying tax and customs fraud, 3) fraud control in the collection stage, and 4) collaboration between the State Tax Agency and the tax administrations of the autonomous regions.

### [Spanish government approves digital services tax](#)

On January 18, 2019, the Spanish government presented an approved bill concerning specific digital services to the parliament. The scope of the final bill excludes that intra-group digital services provided between entities with a direct or indirect interest of 100%.

### [Spanish government approves financial transaction tax](#)

On January 18, 2019, the Spanish government presented an approved bill concerning a financial transaction tax to the parliament. The tax will be levied at a flat tax rate of 0.2% on acquisitions for consideration on shares of certain large listed Spanish companies (list to be published annually by the Ministry of Finance).

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

## **Sweden**

### [Memorandum amending hybrid mismatches rules sent for comments](#)

On February 1, 2019, the Ministry of Finance sent a proposal that amends the hybrid mismatches rules under the Income Tax Law for comments. The proposal implements the OECD's BEPS recommendations by expanding the scope of the current rules to include types of expenses other than interest expense and to include arrangements executed to obtain tax advantages. The new law is scheduled to enter into force in 2020.



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## Local Courts

### Belgium

#### Brussels Court of Appeal decision on collective investment funds

On November 29, 2018, the Brussels Court of Appeal rendered its judgment in case NN (I) International SA v. l'État de Belge SPF Finances (2011/AR/2950). The Court ruled that the Belgium net asset tax on collective investment vehicles constitutes a capital tax within the meaning of the Belgium – Luxembourg tax treaty and therefore is covered by its provisions.

### Denmark

#### Danish Supreme Court ruled on TP adjustment on marketing services for revenue generated from sales

On January 31, 2019, the Danish Supreme Court rendered its judgment on an upward Transfer Pricing (TP) adjustment in the Skatteministeriet v. Microsoft Danmark ApS (Case 75/2018) case. The Court ruled that the documentation was sufficient, thus, no shifting of burden of proof occurred. The Court further rejected the upward adjustment arguing that it is unlikely that an unrelated marketing enterprise would be compensated for sales in which it did not participate.

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



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