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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 the CJEU

CJEU preliminary ruling on Luxembourg tax consolidation regime

On November 29, 2018, reference was made to the Court of Justice of the European Union (CJEU) by the Luxembourg Administrative Court for a preliminary ruling in the case B and Others (Case C-749/18). The case concerns whether the tax integration regime prior to 2016 is compatible with EU law.



State aid

General Court annuls Commission's decision on Belgian excess profit ruling system

On February 14, 2019 the General Court of the CJEU rendered judgment on the Belgian “Excess profit” tax ruling system case (T-131/16). Belgian tax legislation provided for the possibility of advance rulings allowing a company that is a member of a multinational group to make unilateral downward adjustments to its taxable base for “excess profits”. The General Court ruled that the Commission had failed to demonstrate the existence of an aid scheme and hence, the Commission’s decision of January 11, 2016 was annulled in its entirety.

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



EU Institutions

COUNCIL OF THE EUROPEAN UNION

Publication of letters seeking commitment on non-cooperative jurisdictions for tax purposes

On February 4, 2019, the Council of the European Union published the [letters](#) that were sent to Barbados, Belize, Curacao, Mauritius, Saint Lucia and Seychelles on February 2019 seeking commitments to replace preferential tax regimes.

EUROPEAN COMMISSION

Practical guidance on customs consequences derived from Brexit

Earlier this month, the European Commission published a leaflet with practical guidance on the customs impact that will result from the United Kingdom’s withdrawal from the European Union. The leaflet outlines the type of business that would be affected, the customs consequences, and what can be done to prepare.

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

EUROPEAN PARLIAMENT

TAX 3 Committee – Exchange of views on competition and ongoing fiscal state aid investigations

On February 19, 2019, the TAX3 Committee exchanged views with Margrethe Vestager, Commissioner for competition, to discuss the state of play on ongoing fiscal state aid investigations and implementation of former recommendations made by the Parliament.

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

[TAX 3 Committee – Exchange of views on Spanish digital service tax](#)

On February 19, 2019, the TAX3 Committee exchanged views with the Spanish State Secretary for Finance on the Spanish digital service tax and how the domestic proposal compares to the Commission's proposals.

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



OECD

[OECD gathers input for peer reviews on the BEPS Action 14 \(MAP procedure\) implementation](#)

On February 19, 2019, the OECD announced that it is now gathering input for Stage 1 peer reviews of Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia regarding the BEPS Action 14 implementation in these jurisdictions. The OECD welcomes taxpayers to submit feedback on the Mutual Agreement Procedure (MAP) by March 19, 2019.

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

[The OECD's Forum on Harmful Tax Practices \(FHTP\) scrutinizes the US FDII rules](#)

On February 14, 2019, the US Treasury's Office announced that the US's foreign-derived intangibles income (FDII) tax rules have been identified as a potential preferential tax regime. The US Treasury's Office confirms that they are waiting to publish regulations before engaging in additional discussions with the FHTP but noted that the FDII rules should not be evaluated in isolation but together with the US's global low-taxed intangible income (GILTI) provisions.

[OECD publishes peer review reports on implementation of BEPS Action 6 \(Treaty Abuse\) and BEPS Action 14 \(MAP procedure\)](#)

On February 14, 2019, the OECD published a [peer review report](#) on the implementation of the BEPS Action 6 minimum standards on treaty shopping. The report summarizes the progress made in 2017 and 2018 by the 116 jurisdictions that were members of the BEPS Inclusive Framework on June 30, 2018. The OECD also released recommendations to [Estonia](#), [Greece](#), [Hungary](#), [Iceland](#), [Romania](#), [Slovak Republic](#), [Slovenia](#) and [Turkey](#) on MAP implementation.

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

[Invitation to public for input on the possible solutions to tax challenges of digitalization](#)

On February 13, 2019, the OECD published a consultation document on the tax challenges of the digitalization of the economy. The consultation, originally opened for inputs until March 1, 2019 and now extended until March 6, 2019, will be followed by a conference to be held in Paris on March 13 and 14, 2019. The consultation document contains two pillars. The first pillar concerns a revision of the profit allocation and nexus rules with three proposals on “user participation”, “marketing intangibles” and “significant economic presence”. The second pillar regards a global anti-base erosion proposal involving an income inclusion rule and a tax on base eroding payments.

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

Multilateral Convention developments

On February 12, 2019, Guernsey deposited its instrument of ratification for the Multilateral Convention (2016) (MLI). The MLI will enter into force in relation to Guernsey on June 1, 2019, and the MLI coverage of its bilateral treaties will depend on the final adoption positions taken by other countries. Furthermore, the MLI was approved by the Russian government and the Luxembourg Chamber of Deputies on February 7 and 14, 2019, respectively. With regard to Russia, the MLI was further sent to the parliament's lower chamber for additional approval.

Armenia has joined the Inclusive Framework for the implementation of BEPS

On February 11, 2019, Armenia joined the OECD/G20 Inclusive Framework for the implementation of the BEPS Project. With the addition of Armenia, the Inclusive Framework, created in February 2016, now has 128 members. Members are required to commit to the comprehensive BEPS package, and its consistent implementation.



Local Law and Regulations

Belgium

[Circular letter on penalties regarding transfer pricing reporting obligations](#)

On February 8, 2019, Circular Letter No. 2019/C/14 was published. The Circular letter details the penalties imposed for failure to comply with transfer pricing reporting obligations. This annex to Circular Letter 2017/c/56, specifically addresses infringements following an act of bad faith or the intention to avoid taxes by imposing penalties from EUR 12,500 up to EUR 25,000 on the first instance of infringement. In other instances, penalties between EUR 1,250 and EUR 25,000 are imposed after the fifth instance of infringement.

Denmark

[Danish Tax Board decision on taxation of group contribution](#)

On January 29, 2019, the Danish Tax Board rendered its decision in the case SKM2019.57.SR. The Tax Board ruled that group contributions from a Norwegian parent company to its Norwegian sub-sub-subsidiary do not increase the taxable income of the

intermediate Danish subsidiary. The Board emphasized that the economic benefit of the group contribution (i.e. increase in value of the shares held by the Danish company in the Norwegian subsidiary), is not immediately realizable and therefore should not be taxable in Denmark.

Greece

[Draft bill on company reorganizations](#)

On February 11, 2019, a draft bill on company reorganizations was submitted to the parliament. The draft bill clarifies the procedures applicable to all reorganization operations (mergers, divisions or conversions), dependent on the company's legal type and corresponding characteristics.

Iceland

[Consultation on draft amendments to country-by-country reporting](#)

On January 30, 2019, a consultation on a draft amendment to the Income Tax Act in relation to the country-by-country reporting was launched by the Ministry of Finance and Economic Affairs. The amendments are based on feedback provided by the OECD regarding the implementation of BEPS Action 13.

[Consultation launched on draft amendment to law concerning tax binding rules](#)

On January 30, 2019, the Ministry of Finance and Economic Affairs launched a public consultation on a draft amendment to Law 91/1998 concerning tax binding rulings in tax matters. The draft amendments increase the cost of tax rulings from ISK 75,000 to ISK 150,000 and shortens their validity to 5 years.

Ireland

[Exchange of information in relation to beneficial ownership](#)

On February 1, 2019, the amendments implementing numerous provisions of the [Anti-Money Laundering Directive \(2015/849\)](#), that give full effect to article 22(1a) of the Mutual Assistance Directive were published in the Official Gazette.

Portugal

[Law implementing ATAD rules submitted to parliament](#)

On February 23, 2019, the Draft Law 177/XIII implementing the Anti-Tax Avoidance Directives (ATAD) I and II was presented to the parliament for its approval. The Draft Law includes amendments to the interest limitation, controlled foreign corporation, exit taxes and general anti-abuse rules. Hybrid mismatches rules were not addressed but will be implemented at a later date.

Slovak Republic

[Guidance on TP documentation](#)

On February 6, 2019, the Ministry of Finance issued guidance on transfer pricing documentation. The Guidance amends the criteria for the preparation of TP documentation by creating three categories: 1) full TP documentation (Master and Local File), 2) basic TP documentation (Simplified Master and Local File), and 3) simplified TP documentation (an overview return with a summary of the transactions with related parties). The Guidance is applicable to tax periods commencing on 2018 but allows for a grace period through June 30, 2019 where documentation can be submitted in accordance with previous Guidance.

Spain

Parliament rejects Budget Bill for 2019

On February 13, 2019, the 2019 Budget Bill was rejected by the parliament. The bill included proposals for a 3% Digital Service Tax, amendments to the participation exemption rules, and a new minimum tax on profits. The bill must be amended by the government before it comes back to the parliament for approval.



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