



# E-News from KPMG's EU Tax Centre



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

### **Issue 94 – March 22, 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 requests changes to Finnish group contribution rules](#)**

On March 7, 2019, the European Commission announced that a letter of formal notice was sent to Finland requesting amendments be made to the tax deductibility of group contributions rules. The Commission considers the Finnish legislation allowing group contributions to be deducted among affiliated domestic companies but not in affiliated companies across EU/EEA Member States to be contrary to the freedom of establishment. Finland has a two-month period to reply to the letter.

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

#### [Infringement procedures on Member States for contraventions to EU law](#)

On March 7, 2019, the European Commission announced that a reasoned opinion was sent to Germany regarding the housing premium for cross-border workers. The Commission claims the housing premium regime infringes the free movement of workers and the freedom of establishment because it is only available to German tax residents. In addition, letters of formal notice were sent to Hungary and Spain concerning violations to the free movement of capital in relation to the Hungarian property acquisition duty for foundations and the Spanish tax discrimination of non-residents on rental income and on capital gains on the alienation of shares. The concerning Member States have two months to take action before the Commission can continue with infringement procedures.

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

#### [Infringement procedures on Member States for failing to transpose EU anti-money laundering and terrorism financing rules](#)

On March 7, 2019 the European Commission decided to issue a reasoned opinions to Austria and the Netherlands, and letters of formal notice to the Czech Republic, Hungary, Italy, Slovenia, Sweden, and the United Kingdom for failing to completely transpose the EU anti-money laundering and terrorism financing rules (EU Directive 2015/849) into their domestic legislations.

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

### **Referrals to the CJEU**

#### [CJEU preliminary ruling on request for recovery of tax claims](#)

On January 11, 2019, reference was made to the CJEU by the Belgian Court of Cassation for a preliminary ruling in the case *État belge v Pantochim SA, in liquidation* (C-19/19). The case concerns the application of the Mutual Assistance Directive 2008/55 as it relates to the recovery of tax claims.



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### **State aid**

#### [Invitation to submit comments on State aid investigation](#)

On March 15, 2019, the European Commission issued an invitation to submit comments on the in-depth investigation opened to examine whether the Portuguese aid scheme in Zona Franca Madeira complies with the EU State aid rules. Interested parties may submit their comments until April 15, 2019.

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

## [European Commission investigation into Luxembourg tax rulings on interest-free loans](#)

On March 7, 2019 the European Commission launched an investigation to evaluate whether the tax rulings granted to a Finnish food and drink packaging group by Luxembourg constitute State aid within the meaning of EU law.

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



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## **EU Institutions**

### **COUNCIL OF THE EUROPEAN UNION**

#### [The Council adds ten jurisdictions to its list of non-cooperative jurisdictions](#)

On March 12, 2019 the Council adopted a revised EU “black list” of non-cooperative jurisdictions for tax purposes. In addition to the five jurisdictions that were already listed, the revised list now includes ten additional jurisdictions that did not deliver on their commitments on time: Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Marshall Islands, Oman, United Arab Emirates and Vanuatu.

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

#### [ECOFIN fails to reach agreement on digital advertising tax compromise text](#)

The Economic and Financial Affairs Council of the EU (ECOFIN) did not reach agreement on the digital advertising tax (DAT) during the March 12, 2019 meeting. Member States’ representatives held an exchange of views on a watered-down version of the Commission’s digital services tax (DST) proposal, but failed to reach consensus on a compromise text tabled by the Romanian Presidency of the EU.

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

#### [Provisional agreement on first EU-wide protection rules for whistle-blowers](#)

On March 11, 2019, EU negotiators reached a provisional agreement on EU-wide whistle-blower rules that protect individuals reporting breaches on EU law in different fields including tax fraud, money laundering, and data protection. Under the rules, whistle-blowers, depending on the specific facts of the case, will have the option to make an initial report through internal channels before reaching out directly to competent national and EU authorities. The provisional agreement still needs to be confirmed by the Member State’s ambassadors and the Legal Affairs committee before being sent for vote to the full House and the Council.

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

### **EUROPEAN COMMISSION**

#### [European Commission publishes taxation paper on the CCTB](#)

On March 15, 2019, Taxation Paper No. 75 "The Impact of the CCTB on the Effective Tax Burden of Corporations: results from the Tax Analyzer Model" was published by the European Commission. The paper evaluates the impact certain provisions of the CCTB draft Council Directive may have on Member States' effective corporate tax burdens, if implemented. A comparison on the tax effects between the current draft and the original draft Council Directive of 2011, is also included in the paper.

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

## EUROPEAN PARLIAMENT

### Publication of the final TAX3 Committee report

On March 8, 2019, the European Parliament's TAX3 Committee published its final report on findings and recommendations on financial crimes, tax evasion and tax avoidance during its first year of activities from March 2018 to February 2019.

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



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## OECD

### OECD welcomes the launch of cooperative tax compliance program in France

On March 14, 2019, the OECD welcomed France's new program on cooperative compliance, an initiative developed by the OECD Forum on Tax Administration. The program aims at increasing the degree of reassurance as to the absence of aggressive tax planning for tax administrations, while giving greater tax certainty to the taxpayer.

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

### OECD Public Consultation – Addressing the Tax Challenges of the Digitalization of the Economy

On March 13 and 14, 2019, the OECD held a public consultation on the tax challenges of the digitalization of the economy. Specialists in the field of international taxation were invited to discuss the two-pillar proposal suggested by the OECD in a recent document issued last February which aims to address the tax challenges of the digitalization of the economy.

For more information on the consultation and for a recording of the meeting, please refer to the [OECD's website](#).

To view the written submissions received for the consultation, please refer to the [OECD's website](#).

### Multilateral Convention developments

On March 5 and 13, 2019, the upper house of Dutch parliament and the Swiss National Assembly, respectively, approved the Multilateral Convention (2016) (MLI). In addition, Luxembourg ratified the MLI on March 7, 2019.

#### [Morocco joins inclusive framework for implementing measures against BEPS](#)

According to an update published by the OECD on March 5, 2019, Morocco has joined the Inclusive Framework for the global implementation of the Base Erosion and Profit Shifting (BEPS) Project. With the addition of Morocco, the Inclusive Framework now has 129 members.



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## Local Law and Regulations

### Belgium

#### [Parliament approved Bill on company law in relation to tax matters](#)

On February 28, 2019, the parliament approved Bill No. 54k3367. The Bill contains tax rules that interrelate with company law and implements legal criterion for determining a companies' tax residence.

### Czech Republic

#### [Bill implementing ATAD signed by President](#)

On March 15, 2019, the president signed the bill introducing modifications to several tax laws including the implementation of the EU Anti-Tax Avoidance Directive 2016/1164, after some amendments suggested by the Senate were rejected by the lower chamber of the parliament. The bill will become law upon its publication in the Official Gazette.

### Finland

#### [Guidance on recently amended interest limitation rules](#)

On March 7, 2019, the Finnish tax authorities issued guidance No. VH/955/00.01.00/2019 in relation to the recently amended interest limitation rules that entered into force in January 1, 2019.

### France

#### [Bill on digital service tax presented by the government](#)

On March 6, 2019, the government presented a bill introducing a digital services tax (DST) on large digital enterprises based on the European Commission proposal of March 21, 2018. The DST would apply to companies with revenues in excess of €750 million worldwide and €25 million in France. The services covered by the tax include online advertising, resale of personal data for advertising purposes, and the provision of a digital interface enabling users to connect

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to each other. The applicable rate is 3% and will apply retroactively from January 1, 2019, if approved by the parliament.

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

#### [Corporate Income Tax remains constant for large companies in 2019](#)

On March 6, 2019, the government presented a bill amending and reducing rates of corporate income tax (CIT). The 2018 CIT rate of 33.3% will be progressively reduced down to 25% in 2022. The bill amends the CIT rate relevant for 2019 from the originally settled 31% to 33.3% applicable to companies with a turnover of EUR 250 million or more for profits exceeding EUR 500,000. The 28% rate for profits up to this threshold and the reduction for the subsequent years remain unchanged. The bill was sent to the parliament for approval.

#### [Tax treatment of UK-source dividends received after Brexit – administrative ruling published](#)

On March 6, 2019, ruling No. BOI-RES-000035-20190306 on the tax treatment of dividends received by French companies from UK companies after the withdrawal of the UK from the European Union (EU) was issued by the tax authorities. Under the ruling, UK companies distributing dividends to French companies will be considered as European Companies during the full fiscal year of the withdrawal from the EU. As such, they will be able to utilize the 99% exemption under the parent-subsidiary regime.

### **Greece**

#### [New rates on income tax and withholding tax on dividends published](#)

On March 18, 2019, a supplement to a draft law reducing the rates of income tax on dividends and withholding tax on dividends from 15% to 10% was published in the Official Gazette. The new rates apply retroactively from 2019.

### **Iceland**

#### [Draft amendment on binding ruling and CbC reporting rules sent to the parliament](#)

On March 4, 2019, a draft amendment to the Income Tax Act in relation to the country-by-country (CbC) reporting and to Law 91/1998 on tax binding rulings in tax matters was sent to the parliament by the Minister of Finance and Economic Affairs. The draft amendment was subject to public consultation in early 2019 but no changes were made to the original draft.

### **Italy**

#### [Ruling clarifying the participation exemption regime on gains from the alienation of shares](#)

On March 6, 2019, the Italian Tax Authorities issued Ruling Answer No. 70 clarifying the impact of business restructuring operations on the application of the participation exemption regime. The Ruling clarifies that business restructuring operations do not interrupt the holding period (first day of the 12th month preceding the alienation) required for the application of the exemption regime on gains from the alienation of shares.

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## **Luxembourg**

### [Budget 2019 sent to parliament](#)

On March 5, 2019, the Minister of finance presented the 2019 Budget to the parliament. The main features on direct taxation of the Budget include a reduction of the standard corporate income tax rate from 18% to 17%, a modification of the threshold for the application of the 15% rate for small and medium enterprises (SME) from EUR 25,000 to EUR 175,000, and implementation of an option for groups of companies to select the interest deduction limitation, 30% of the EBITDA or EUR 3 million, at the level of the individual entity or the entire group.

## **Netherlands**

### [Decree on the application of the participation exemption regime published](#)

On March 8, 2019, Decree No. 2019-0000012049 on the application of the participation exemption regime was published in the Official Gazette. The Decree's main amendments and clarifications include, the application of the participation exemption and the inclusion rule to option rights, inapplicability of the general rule for expiring participations to certain option rights and the inclusion rules, and adds two conditions to the simplified dissolution procedure.

### [Draft decree on transitional tax rules in the case of no-deal Brexit](#)

On March 8, 2019, the Deputy Minister of Finance sent a draft decree with transitional tax rules in connection with Brexit to the Lower House of the Dutch Parliament. The draft decree provides transitional rules with regard to a number of (elements of) Dutch tax laws in the event of a withdrawal of the United Kingdom from the European Union without a withdrawal agreement (no-deal Brexit).

For more information, please refer to [KPMG Meijburg & Co Flash](#).

### [Amended proposal to amend fiscal unity regime put on hold](#)

On March 5, 2019, the bill proposing amendments to the fiscal unity regime was put on hold by the upper house of the parliament. Additional discussions are scheduled for later this month.

## **Slovenia**

### [Amendments to the Tax Procedure Law proposed](#)

On March 1, 2019, amendments to the Tax Procedure Law were proposed by the government. The amendments concern the transposition of the Council Directives 2018/822 on mandatory automatic exchange of information in the field of taxation and 2017/1852 on tax dispute resolution mechanisms.

## **Spain**

### [Spain and United Kingdom signed tax agreement relating to Gibraltar](#)

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On March 4, 2019, a tax agreement in relation to Gibraltar was signed by Spain and the United Kingdom. The agreement focuses on increasing transparency and cooperation in tax matters and tax residency disputes.

#### [Interposition of companies by individuals – information note published](#)

The Spanish tax authorities recently distributed an information note on the interposition of companies by individuals. The information note provides that 1) companies with a lack of substance or that do not participate in relevant transactions will be considered as interposed and the individual behind will be taxed, and 2) non-inclusion transactions between the company and the individual will be considered contrary to the law.

### **United Kingdom**

#### [Parliament approved request extension for Brexit](#)

On March 14, 2019, the British parliament voted in favor of requesting an extension related to the UK's withdrawal from the European Union under article 50 of the Treaty on the Functioning of the EU. In order for the extension to be approved, all EU Member States must unanimously agree. During the same session, Parliament voted against a second Brexit referendum.

#### [Chancellor of Exchequer presents his 2019 Spring Statement](#)

On March 13, 2019, the Chancellor of the Exchequer presented his 2019 Spring Statement to the Parliament. The Statement referenced the non-compliance policy paper and No Safe Havens strategy aimed at tackling tax avoidance and tax evasion.



## **Local Courts**

### **France**

#### [Decision on outbound dividends following the Sofina case](#)

On February 27, 2019, the French Supreme Administrative Court rendered its decision following the judgement of the CJEU of November 22, 2018, in the Sofina case (C-575/17). The Supreme Administrative Court ruled that withholding taxes on outbound dividends may not be charged if the company receiving the dividend is in a loss position under the domestic laws of its residence state.







**Robert van der Jagt**  
Chairman, KPMG's EU Tax Centre and  
Partner,  
Meijburg & Co

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KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

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