



# E-News from KPMG's EU Tax Centre



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## E-News from the EU Tax Centre

### Issue 95 – April 5, 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.

#### **State aid**

##### [European Commission investigation into Slovak food retail sector tax rules](#)

On April 2, 2019, the European Commission launched an in-depth investigation to evaluate whether the tax imposed on the food retail sector in Slovakia violates the EU State aid rules.

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

##### [European Commission State aid decision on the UK tax treatment of multinational groups under the CFC regime](#)

On April 2, 2019, the European Commission announced its final decision on the State aid investigation into the UK Group Financing Exemption scheme, which allows certain transactions by multinational groups to be exempt from the otherwise applicable rules on Controlled Foreign Corporations (CFC) targeting tax avoidance. The decision confirms the

Commission's preliminary view that this special exemption gives an unfair tax advantage to certain UK resident companies, in violation of EU State aid rules. It is now open to both the UK and the companies concerned to appeal the decisions before the General Court (and possibly later the Court of Justice of the European Union (CJEU)).

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

#### Appeals on the Spanish financial goodwill cases

On January 25 and 29, 2019, several appeals were filed before the CJEU against the decisions rendered by the General Court on November 15, 2018, regarding the Spanish tax scheme for the amortization of financial goodwill.

The following cases were appealed:

- Sigma Alimentos Exterior v Commission (C-50/19)
- World Duty Free Group v Commission (C-51/19)
- Santander v Commission (C-52/19)
- Banco Santander and Santusa v Commission (C-53/19)
- Axa Mediterranean v Commission (C-54/19)
- Prosegur Compañía de Seguridad v Commission (C-55/19)
- Spain v Commission(C-64/19)
- Banco Santander and Santusa v Commission (C-65/19)



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## EU Institutions

### COUNCIL OF THE EUROPEAN UNION

#### Fiscalis programme for cooperation in the field of taxation

On March 21, 2019, a provisional agreement was reached between the European parliament and the Council of the EU to provide funding to the 'Fiscalis' programme for the period 2021-2027. Fiscalis is an EU cooperation programme which enables national tax administrations to create and exchange information and expertise.

For more information, please refer to the [state of play](#) published by the Council.

#### Brexit extension deadline

On March, 21, 2019, the European council agreed to an extension of the withdrawal of the United Kingdom (UK) until May 22, 2019. However, if the Withdrawal Agreement is not approved by the House of Commons, the European Council only agrees to an April 12, 2019 extension and expects the UK to indicate a way forward in advance of this date for consideration by the European Council. The European Council has stated that there can be no further amendments to the Withdrawal Agreement agreed in November 2018 between the EU and the UK.

## EUROPEAN COMMISSION

### EU Joint Transfer Pricing Forum 54th meeting documents

On March 29, 2019, the European Commission published the documents from the 54th meeting of the EU Joint Transfer Pricing Forum (JTPF) held in Brussels on March 7, 2019. These documents summarize the results of the questionnaire on the future of the JTPF and announce the completion of the JTPF 2015-2019 work programme and provide an update on the draft report on the use of the profit split method within the EU.

For more information, please refer to the [questionnaire](#), [note](#) and the [report](#).

### European Commission completes "no-deal" Brexit preparations

On March 25, 2019, the European Commission issued a press release on Brexit. The press release explains that the Commission has completed preparations in the event of a no-deal withdrawal on April 12, 2019.

## EUROPEAN PARLIAMENT

### Vote on public CBCR

On March 27, 2019, the European Parliament voted on and approved again the draft report on public country by country reporting (CBCR), to conclude the first reading stage of the file. The draft was sent to the Council of the EU for further approval. However, there is still no position from the latter and no further progress is expected on this file.

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



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## OECD

### Multilateral Convention developments

The following jurisdictions have made progress in implementing the Multilateral Convention (2016) (MLI):

- On April 1, 2019, the MLI entered into force in respect of Malta and Singapore.
- On March 29, 2019, the Netherlands, Curaçao and Georgia deposited their instrument of ratification, and the MLI will enter into force in relation to these countries on July 1, 2019.
- The Ukrainian government ratified the MLI on March 22.
- The Belgian, Danish and Swiss Parliaments, and the Portuguese Council of Ministers approved the MLI on March 21 and 22, and April 2, 2019.

Forum on Tax Administration decides agenda to enhance global tax administration

On March 28, 2019, the Forum on Tax Administration (FTA) reached a consensus on an agenda that focuses on increasing tax certainty, enhancing international cooperation and reaching a collective consensus on the challenges of the digitalized economy. Further, the FTA agreed to actively participate in the second phase of the pilot on the International Compliance Assurance Programme and to provide additional support to policy makers in developing reporting obligations facilitating the exchange of information.

#### **Study on taxation and forms of employment published**

On March 21, 2019, a new study on the “Taxation and the future of work: How tax systems influence choice of employment form” was published by the OECD. The study analyzes the impact of differential tax treatment across employment form and whether this differential tax treatment can be justified when evaluated against tax design principles.

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

#### **Beneficial Ownership Toolkit released**

On March 20, 2019, the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inter-American Bank released the Beneficial Ownership Toolkit. The purpose of the Toolkit is to ensure governments have access to information that reveals the ultimate beneficial owners behind legal entities in order to tackle tax evasion and financial crimes.

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

#### **Support for higher taxes on the wealthy**

On March 19, 2019, a new OECD’s study demonstrated that there is public support for increasing taxes on the wealthy to provide more public services. The study is based on the 2018 OECD Risks That Matter Survey that surveyed 22,000 people across 21 OECD countries.

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

#### **Peer review reports on transparency and exchange of information published**

On March 18, 2019, the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes published seven peer review reports regarding compliance with the international standard on transparency and exchange of information. The report revealed that the seven jurisdictions reviewed, Hong Kong, Liechtenstein, Luxembourg, the Netherlands, North Macedonia, Spain and the Turks and Caicos Island, have all made progress in the fields of transparency and exchange of information.



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## **Local Law and Regulations**

### **Greece**

## Clarification on new withholding tax provisions

On March 21, 2019, the Public Revenue Authority published Circular E. 2047, which clarifies that dividend income will be subject to a 10% withholding tax beginning January 1, 2019.

### Ireland

#### Senate approved no-deal Brexit bill

On March 13, 2019, the Irish Senate passed the Withdrawal of the UK from the EU Bill 2019. Part 6 of the bill relates to taxation and provides that some income and capital gain tax advantages will continue to apply post Brexit. The bill will only be enacted in case of a no-deal Brexit.

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

### Italy

#### Law Decree on no-deal Brexit entered into force

On March 26, 2019, Law Decree No. 22, concerning urgent measures in case of a no-deal Brexit, entered into force. The Decree provides for the continued application of domestic tax rules transposing EU law during the 18-month transitional period following the withdrawal of the UK from the EU. The measures are meant to stabilize the markets and free movement of persons during the transitional period.

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

#### Patent Box Regime Clarified

On March 18, 2019, the Italian Tax Authorities (ITA) published Ruling Answer No.76. The ruling states that all costs deductible for tax purposes and linked to income derived from the licensing of a qualifying intangible property must be taken into account when determining the amount of income qualifying for the exemption provided under the patent box regime. As a result, any costs incurred by a qualifying company in respect of research and development (R&D) services provided by its shareholders must also be included.

#### Clarification on qualified research and development activities

In March 2019, the Italian Tax Authorities issued clarifications on the tax treatment of qualified research and development (R&D) activities. The Italian authorities clarified that resident entities that are subcontracted by non-resident entities qualify for the credit as long as the R&D activities were performed in Italy. Additionally, the clarifications note that expenses related to trademarks and the realization of prototypes do not meet the criteria as qualified research.

### Netherlands

#### Netherland and Germany agreement on minimum tax

On March 27, 2019, the Dutch Ministry for Finance announced that the Dutch State Secretary for Finance and its German counterpart agreed to work together to implement an international minimum tax standard. Later, on April 1, 2019, the Dutch State Secretary for Finance clarified the Dutch position, stating that the minimum tax proposed by the Netherlands would only apply to direct payments made to low tax jurisdictions.

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

## **Norway**

### **Brexit Impact on Norway**

On March 18, 2019, the Norwegian tax authorities published information on the possible impact of Brexit. The authorities concluded that if an agreement is reached between the UK and the EU about the specific terms of the exit, all EEA-relevant tax rules will remain in force until December 31, 2020 with a possible extension period of 2 years. If an agreement is not reached the 2013 Double Taxation Convention between the UK and Norway will continue to apply. However, the UK will no longer qualify for the tax exemptions provided to recipients of EEA countries, will be subject to exit taxes, and pensions paid to UK residents will be subject to withholding tax.

## **United Kingdom**

### **“No Deal” Brexit impact on EU-UK interest, royalties and dividends**

On March 20, 2019, Her Majesty’s Revenue and Customs (HMRC) advised that the Parent Subsidiary Directive and the Interest and Royalties Directive will no longer apply to the UK, should they leave the EU without a deal. HMRC has issued Guidance which details the amendments to the withholding tax interest, royalties and dividends paid between the UK and EU companies in the event of a no-deal Brexit.

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



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## **Local Courts**

### **Norway**

#### **Decision on valuation of intangibles**

On March 19, 2019, the Norwegian Court of Appeal rendered its decision in the case LB-2017-202539 concerning the valuation of intangibles in an intra-group transaction. The Court ruled that the value of intangibles acquired from an independent enterprise and subsequently transferred within the group should be determined taking into consideration the price formerly paid for their acquisition.

## **United Kingdom**

#### **Decision on intra-group payments**

On March 25, 2019, the First-tier Tribunal Tax Chamber rendered its decision in the Gallaher Ltd v. HM Revenue & Customs (20190 UKFTT 0207 (TC)) case. The Tribunal concluded that the UK tax legislation on intra-group disposals is not compliant with EU Law because the group transfer rules do not allow payment in installments, which violates the freedom of establishment.

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



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