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E-News from the EU Tax Centre

Issue 101 – June 28, 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 may develop and how to leverage opportunities and reduce 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.

[Latest CJEU, EFTA and ECHR](#)

[CJEU decision on cross-border loss relief](#)

On June 19, 2019, the Court of Justice of the European Union (CJEU) rendered its decision in the Memira (C-607/17) and in the Holmen (C-608/17) cases. Both cases concerned the compatibility with EU law of the Swedish rules on the deductibility of losses from foreign subsidiaries, and the extent to which the 'Marks & Spencer exception' applies, i.e. losses are considered final. The CJEU generally upheld the "Marks and Spencer exception" but further limited its applicability. In particular, the CJEU clarified that the losses of sub-subsidiaries may

be considered final only if the intermediate parent companies are situated in the same Member States as the sub-subsidiary. The CJEU further concluded that the losses would not be characterized as final before the completion of the subsidiary's liquidation if there is a possibility to transfer them to a third party. In that respect, the existence of certain local provisions restricting the transfer of losses in the subsidiary's Member State is irrelevant.

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



Infringement Procedures & Referrals to CJEU

Referrals to the CJEU

Luxembourg

On March 20, 2019, reference was made to the CJEU by the Administrative Court of Luxembourg for a preliminary ruling in the B case (C-245/19) and the B, C, D, F.C (C-246/19) case. The referring court requested that the CJEU answer questions regarding remedies available to a third party holding information to challenge a decision requesting information for international mutual assistance under the light of privacy and protection of personal data rights and the EU Directive 2011/16 on administrative cooperation in the field of taxation.

Italy

On February 25, 2019, reference was made to the CJEU by the Italian court of auditors for a preliminary ruling in the HB case (C-168/19) and IC case (C-169/19). The referring court requested that the CJEU answer questions regarding the compatibility of the Italian tax rules for non-residents with the free movement of persons and the general prohibition of discrimination on grounds of nationality.



State aid

Advocate General's opinion on progressive tax rate rules

On June 13, 2019, the Advocate General (AG) Kokott of the CJEU rendered her opinion in the Vodafone case (C-75/18). The case evaluates the compatibility with EU law of the Hungarian special tax on telecommunications. The AG concluded that the progressive tax rates on telecommunications do not restrict the freedom of establishment nor constitute illegal State aid, and, cannot be characterized as a turnover tax and is not thus precluded by the EU VAT Directive 2006/112.



EU Institutions

COUNCIL OF THE EUROPEAN UNION

[ECOFIN discusses Financial Transaction Tax and removes Dominica from the EU blacklist](#)

On June 14, 2019, the Economic and Financial Affairs Council of the EU (ECOFIN) received an update, from the ten Member States participating in the so-called enhanced cooperation procedure, on the latest developments regarding the financial transaction tax (FTT). The ECOFIN also approved, without discussion, amendments to the EU blacklist of uncooperative jurisdictions for tax purposes. Dominica was removed from the blacklist, which now includes eleven jurisdictions.

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

[ECOFIN report on achievements made in the tax field](#)

On June 14, 2019, the Council of the European Union published the ECOFIN report on the tax developments during the Romanian Presidency. The report summarizes the achievements made and the state of play in the most relevant tax issues including the taxation of the digitalized economy, the EU list of non-cooperative jurisdictions for tax purposes, the Common Consolidated Corporate Tax Base (CCCTB), and the overlap between ATAD and the Common Corporate Tax Base (CCTB).

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

[Overview of preferential tax regimes issued](#)

On June 12, 2019, the Council of the European Union issued an updated overview of the preferential tax regimes examined by the Code of Conduct Group since March 1998. The overview, divided into three sections (regimes of EU Member States, EU Member States' dependent or associated territories to which EU treaties are not applicable and other jurisdictions), concluded that 254 out of the 638 regimes examined were considered harmful.

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

EUROPEAN COMMISSION

[Annual report on euro area fiscal policy direction published](#)

On June 25, 2019, the European Fiscal Board of the European Commission published its 2020 Assessment on the fiscal stance of the euro area. The report briefs the euro area fiscal policy direction.

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



OECD

[Multilateral Convention developments](#)

On June 18, 25 and 26, 2019, Russia, India and Belgium, respectively, deposited their instruments of ratification for the Multilateral Convention (2016) (MLI). The MLI will enter into force in relation to these countries on October 1, 2019, and the MLI coverage of their bilateral treaties will depend on the final positions taken by other countries. On June 25, 2019, Morocco signed the MLI, and a provisional list of expected reservations and notifications on the coverage of its bilateral treaties was released. Further, on June 21, 2019, the MLI was ratified by Canada and approved by the Portuguese parliament respectively.

On June 18, 2019, the OECD expanded the functionality of its MLI Matching Database including now information related to the entry into effect dates.

[OECD's collection of transfer pricing country profiles increases to 55 countries](#)

On June 18, 2019, the OECD released Chile, Finland and Italy's transfer pricing country profiles, increasing the total number of profiles to fifty-five. The profiles highlight key information on the country's transfer pricing legislation and practices, including the application of the arm's length principle. Additionally, Colombia and Israel's profiles were updated.

For more information, please refer to the [country profiles database](#).

[New handbook on the fight against money laundering and terrorist financing released](#)

On June 13, 2019, the OECD issued an updated version of the Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors. The handbook provides tax authorities with new tools to fight against money laundering and terrorist financing and aims to raise awareness among tax professionals about their role in combatting these crimes.

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

[Serbia joined the Convention on Mutual Administrative Assistance in Tax Matters](#)

On June 13, 2019, Serbia signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The convention facilitates mutual assistance in tax matters by means of a wide range of exchange of information, international examinations and assistance in tax collection. Serbia is the 129th jurisdiction to join the convention.



Local Law and Regulations

Bulgaria

[Parliament votes on transfer pricing documentation requirements and tax dispute resolution mechanisms](#)

On June 5, 2019, amendments to the Tax and Social Security Procedure Code were voted at first reading by the Bulgarian Parliament. The amendments introduce mandatory transfer

pricing documentation requirements and implement the EU Directive 2017/1852 on Tax Dispute Resolution Mechanisms.

Finland

[Public consultation on mandatory exchange of information](#)

On June 19, 2019, the Ministry of Finance launched a public consultation on legislation implementing EU Directive 2018/822 on mandatory disclosure rules. The consultation will run until August 16, 2019.

[Law proposal introducing new rules on hybrid mismatches sent for comments](#)

On June 12, 2019, the Ministry of Finance sent a law proposal, introducing new rules on the taxation of hybrid mismatches, for comments. The law implements the hybrid mismatch rules in the EU Anti-Tax Avoidance Directive 2016/1164 and the OECD's BEPs recommendations on this matter. Comments may be submitted until August 15, 2019, and the new rules are expected to enter into force on January 1, 2020.

France

[Decree on tax dispute resolution published](#)

On June 22, 2019, Decree No. 2019-616 on tax dispute resolution was published in the Official Journal. The decree transposed EU Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. It includes details of the complaints that may be submitted by the taxpayers, the mutual agreement procedure and the advisory commission.

[Decree introducing new reporting requirements published](#)

On June 16, 2019, Decree No. 2019-594 implementing additional reporting requirements related to the French tax consolidation regime and the interest deduction limitation legislation was published in the Official Journal.

Greece

[Clarifications on ultimate beneficial ownership](#)

On June 20, 2019, the Ministry of Finance published clarifications on the ultimate beneficial owner register. The document includes explanations on the persons and information to be included in the register, the registration procedure and the rights to access the register.

Guernsey, Jersey and Isle of Man

[Joint statement on beneficial ownership of companies registers](#)

On June 20, 2019, the Chief Ministers of Guernsey, Jersey and the Isle of Man issued a joint statement committing to the implementation of a public register for beneficial ownership information. The register will follow the principles settled in the EU Anti-Money Laundering Directives and will be implemented in three stages throughout 2019-2023.

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

Guernsey

[Circular informing changes to be made to the economic substance rules](#)

On June 17, 2019, the Revenue Service published GSCCA Circular 11 informing on the proposed changes expected to be made to the economic substance rules applicable for companies that are tax resident in Guernsey or incorporated in Guernsey.

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

Italy

[Clarifications issued on participation exemption regime](#)

On June 18, 2019, the Italian Tax Authorities published Ruling Answer No. 185 on the application of the participation exemption regime in corporate reorganizations. The ruling confirms that the holding period requirement for the application of the 95% tax exemption on gains from the alienation of shares is not interrupted by corporate reorganizations, transfers of business and transformations.

Netherlands

[Decree on dividend withholding tax gazetted](#)

On June 21, 2019, Decree No. 2019-10144 consolidating previous guidance on the dividend withholding tax was published in the Official Gazette. Changes mainly relate to the issuance of dividend vouchers in case of share repurchase and the deletion of past guidance on the attribution of shares to a permanent establishment.

[Public consultation on group taxation regime](#)

On June 17, 2019, the Ministry of Finance launched a public consultation on a new group taxation regime after the CJEU's decision in the joint X BV (C-398/16 and C-399/16) cases where the CJEU ruled that the Dutch legislation permitting the non-deductibility of interest on loans associated with capital contributions to foreign subsidiaries are incompatible with EU law. The consultation contains four scenarios on the future of the regime: maintaining the current regime, abolishing the current regime without any replacement, introducing a transfer of profits or losses/result pooling regime or a cross-border group taxation regime. Interested parties may submit their comments until July 29, 2019.

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

[Changes to reflect the CJEU's beneficial ownership decisions announced](#)

On June 14, 2019, the Secretary for Finance sent a letter to the parliament to analyze the impact of the CJEU's beneficial ownership decisions in the cases N Luxembourg 1 (C-115/16) and T Denmark (C-116/16). The letter clarified that abuse can be present even when the

substance requirements are met and that in the context of tax treaties the definition of “beneficial owner” is consistent with the definition in the Commentaries of the OECD Model Tax Convention (2017) to the extent that the relevant provisions of the treaty follows this model convention.

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

Norway

[Ruling on the carry forward of losses on an acquisition](#)

On June 13, 2019, the Tax Appeal Board published Ruling 01 NS 9/2019 on post-acquisition loss carry forwards. The case concerns the acquisition of a company with substantial losses that were subsequently deducted from the taxable income of the acquiring company. The Norwegian tax legislation allows losses to be carried forward in such cases when the restructuring does not have a predominantly tax motive. The Tax Appeal Board held that a predominant tax motive existed in this case because the amount of the losses was substantially higher than the combined value of cash, receivables and Intellectual Property rights acquired and therefore denied the carry forward of the losses.

Poland

[Draft explanatory notes on withholding tax published](#)

On June 19, 2019, the Ministry of finance published a draft of explanatory notes with respect to the withholding tax provisions effective in 2019. The explanatory notes explain the withholding tax rules and how taxpayers and tax remitters are to apply the new rules.

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

Slovak Republic

[Law implementing EU Directives](#)

On May 29, 2019, the government approved two Laws implementing the EU Anti-Tax Avoidance Directive 2016/1164 as regards hybrid mismatches with third countries, and the EU Directive 2018/822 on mandatory disclosure rules. It is anticipated the new rules will enter into force on January 1, 2019. However, regarding micro taxpayers, the rules on hybrid mismatches are expected to enter into force on January 1, 2021.

Slovenia

[Amendments to several tax laws announced](#)

On June 18, 2019, the Ministry of Finance announced the government's proposals to amend several tax laws. The amendments to the Corporate Income Tax Law include the introduction of a minimum tax of 7% and an increase of the corporate income tax rate from 19% to 20%.

Spain

Public consultation on the implementation of EU Directive on exchange of information

On June 20, 2019, a public consultation on a law implementing EU Directive 2018/822 on mandatory disclosure rules was launched by the Spanish tax authorities. The consultation closes on July 12, 2019.



Local Courts

Greece

Decision on withholding tax exemption on interest and royalties

On June 14, 2019, it was reported that the Supreme Administrative Court had published its decision in the case 580/2019 concerning the withholding tax exemption regime for interest and royalties. The court ruled that the tax exemption regime is also applicable in purely domestic scenarios since the relevant provision of the Income Tax Code on the withholding exemption only refers to companies based in the EU Member States and does not explicitly exclude payments between Greek companies.



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