



# E-News from KPMG's EU Tax Centre



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

### **Issue 102 – July 12, 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.

### **State aid**

#### [Advocate General opinion on progressive tax rates](#)

On July 4, 2019, Advocate General (AG) Kokott of the Court of Justice of the European Union (CJEU) rendered her opinion in the Tesco-Global case (C-323/18) regarding the compatibility with EU law of the Hungarian progressive tax on store retail trade. The AG concluded that the tax does not constitute a restriction of the freedom of establishment or illegal State aid.

#### [Non-confidential version of the State aid decision on Dutch tax rulings published](#)

On July 1, 2019, the European Commission published its non-confidential version of the decision to open an in-depth investigation into five tax rulings granted by the Netherlands to a

Multinational Entity (MNE) between 2006 and 2015 (case SA.51284). The case regards whether the Dutch rulings (involving royalty payments) allowed the MNE concerned to pay less taxes, thus, giving an unfair advantage over its competitors in breach of the EU State aid rules.

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

## Hungary

### Compliance of Hungarian advertisement tax with state aid rules

On June 27, 2019, the General Court of the European Union annulled the European Commission's state aid decision in the Hungary v. Commission case (T-20/17). The General Court found the Hungarian advertisement tax to be compatible with EU state aid rules, as the progressivity of the tax's structure did not provide an advantage to certain undertakings.

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



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## EU Institutions

### COUNCIL OF THE EUROPEAN UNION

#### 2019 country-specific recommendations on economic, employment and fiscal policies

On July 9, 2019, the Council of the European Union issued its 2019 country-specific opinions and recommendations on economic, employment and fiscal policies. The reports for Cyprus, Hungary, Ireland, Luxembourg, Malta and the Netherlands all include recommendations to address features of the countries' tax system that may facilitate aggressive tax planning.

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

#### Finland's program for EU presidency

On July 4, 2019, the Finland's program for EU presidency was published. As it relates to taxation, Finland will focus on combating aggressive tax planning and tax evasion to reduce the harm caused by tax competition. Further, it will address the issue of taxation of the digital economy.

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

#### New EU rules on tax dispute resolution mechanisms

On July 1, 2019, EU Directive 2017/1852 on tax dispute resolution mechanisms came into force. The new rules aim at implementing effective resolution mechanism for tax disputes between Member States, where double taxation issues arise.

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

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

### The impact of corporate taxes in the EU

On July 5, 2019, the European Economic and Social Committee presented a commissioned study on the impact of corporate taxes on investments. The study concludes that a high corporate tax rate can hinder investments, thus reducing the tax base and revenue collection. The study shows that, in six countries, a reduction in corporate tax rates led to higher revenues, which, according to the authors, come from an increase in foreign direct investment.

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

## EUROPEAN COMMISSION

### Member States' efforts to comply with EU law

On July 4, 2019, the Annual Monitoring reports on the Application of EU law and the online Single Market Scoreboard were published. The former sets out the Commission's efforts to enforce EU law, focusing on the transposition of EU directives into national legislations. The latter illustrates how Member States applied EU single market rules and contributed to its functioning by making their markets more open and integrated.

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

### European trends on taxation

On June 28, 2019, a detailed study on taxation trends in the EU was published by the European Commission. The research shows that on the one hand there has been an increase in labor taxation in the period 2012-2017, while, on the other hand, there has been a simultaneous decrease in corporate taxation beginning in 2005. The findings suggest that environmental taxes have remained unchanged over time.

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



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## OECD

### Gibraltar joins the Inclusive Framework on BEPS

On July 5, 2019, Gibraltar joined the Inclusive Framework on BEPS, becoming the 130th jurisdiction to join the collaboration efforts to end tax avoidance.

### Multilateral Convention developments

On July 1, 2019, the Multilateral Convention (2016) (MLI) entered into force in respect of Curaçao, Georgia, and the Netherlands. The MLI coverage of their bilateral treaties will depend on the final adoption positions taken by other countries.

## Secretary-General Tax report

The OECD's Secretary-General presented its Tax Report to the G20 Leaders during the G20 summit held in Osaka, Japan on June 28-29, 2019. The report summarizes the activities and achievements of both the OECD's international tax agenda and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

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

## G20 priorities at Osaka Summit backed by OECD

On June 28 and 29, 2019, G20 leaders gathered in Osaka, Japan, to discuss the international tax system and the impact of digital transformation on economies worldwide. The leaders concluded the summit by recognizing the progress made towards resolving tax challenges that arise from digitalization, and committed to reach a unanimous solution by 2020.

For more information, please refer to the G20 Osaka Leaders' [Declaration](#).

## Framework for the exchange of information collected under reporting instruments released

On June 27, 2019, the OECD issued the International Exchange Framework for Mandatory Disclosure Rules on CRS Avoidance Arrangements and Opaque Offshore Structures. Additionally, the first draft of a Multilateral Competent Authority Agreement, which will be the base for the exchange of information, and the MDR XML Schema and User Guide, supporting the operational and technical part of the program, were released.

For more information, please refer to the [International Exchange Framework document](#) and [KPMG's TaxNewsFlash](#).

## Anguilla and Morocco joined agreement on exchange of country-by-country reporting

On June 25, Anguilla and Morocco joined the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA). The CbC MCAA establishes rules and procedures for countries implementing the OECD's BEPS Action 13 on the automatic exchange of country-by-country reports. The CbC MCAA framework now includes 79 jurisdictions.



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## Local Law and Regulations

### Bermuda

#### Bill amending the Economic Substance Act

On June 21, 2019, the Bermudian parliament passed a bill amending the Economic Substance Act. The bill sets forth additional provisions for non-residents including: defining non-resident entities, obligating non-resident entities to prove their tax residence for each tax period and to

share tax information with the relevant foreign tax authorities. The amendments were proposed as a result of the Bermuda's involvement in the EU blacklist process.

## **Czech Republic**

### [Legislation introducing a digital services tax](#)

On July 4, 2019, the government started the formal legislative process to introduce a 7% levy on digital revenues. The tax would apply to advertising, multisided digital interfaces and the sale of user data on internet platforms with more than EUR 750 million global revenue and EUR 2 million in domestic revenue.

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

## **Finland**

### [New guidance for international taxation cases](#)

On July 1, 2019, Finnish tax authorities published additional guidelines on dispute resolution mechanism in international taxation cases. The guidance targets disputes covered by the EU Directive 2017/1852 on tax dispute resolution mechanisms and by tax treaties. Additionally, it addresses transfer pricing and the attribution of profits to a permanent establishment.

## **France**

### [National Assembly adopts digital services tax and corporate income tax reductions](#)

On July 4, 2019, the National Assembly (the lower house of parliament) adopted a bill introducing a tax on digital services and reducing the corporate income tax rate. The bill still needs to be approved by the Senate.

### [Guidelines on the new general anti-abuse rule](#)

On July 3, 2019, guidelines on the new general anti-abuse rule (GAAR) were published. The new GAAR, which applies from January 1, 2019, targets provisions that focus on tax-driven abuses of law. According to the guidance, taxpayers may request an assessment from the French tax authorities on specific arrangements and if no answer is received within six months, the arrangement will be deemed not to fall within the scope of the new provision.

## **Iceland**

### [Parliament adopts bill on beneficial ownership](#)

On June 13, 2019, the parliament adopted a bill on beneficial ownership transposing EU Directive 2015/849 which was proposed by the Minister of Industries and Innovation. The bill enter into force on June 13, 2019.

## **Jersey**

### [Amendments to the economic substance rules](#)

On June 4, 2019, the States adopted the Taxation (Companies – Economic Substance) (Amendment) (Jersey) Law 201-. The law includes the following amendments: exclusion of unregulated fund service businesses if a separate manager is appointed, clarification that the economic substance test is only fulfilled if all the core-income generating activities are performed in Jersey, and extension of the exchange of information regarding the economic substance test to non-EU countries.

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

## **Lithuania**

### [Explanation of a decision on the avoidance of withholding tax on dividends](#)

On June 20, 2019, the Lithuanian tax authorities provided clarifications on a Supreme Administrative Court decision on a holding company put in place by individual shareholders in order to avoid withholding tax on dividend payments. The Court held that the substance over form principle applied to the case. Consequently, the Lithuanian tax authorities considered that the income distributed should be requalified as dividends and withholding taxes should be paid.

## **Luxembourg**

### [Circular on the applications of the IP tax regime](#)

On June 28, 2019, an administrative circular, containing the application of Luxembourg's intellectual property tax regime of article 50ter, was published. This new regime complies with the OECD's nexus approach that provides an 80% income tax exemption for activities with a sufficient level of substance.

## **Malta**

### [Updated Mutual Agreement Procedure](#)

On June 28, 2019, it was reported that the guidance on the Mutual Agreement Procedure (MAP) has been updated by the Commissioner for Revenue. The updated guidelines clarify the situations in which the MAP can be exercised, and the implementation procedures once a MAP is resolved.

## **Netherlands**

### [Bill implementing ATAD 2 under consideration by the lower house of the parliament](#)

On July 2, 2019, a bill implementing Council Directive 2017/952 regarding hybrid mismatches with third countries (ATAD 2) was sent to the lower house of the parliament. The directive's provisions would come into force on January 1, 2020.

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

### [EU Tax Dispute Resolution Directive under scrutiny by the upper house of the parliament](#)

On July 2, 2019, the EU Tax Dispute Resolution Directive (2017/1852) was under preliminary investigation by the upper house of the parliament for its transposal into domestic law. The provisional report will now be drafted, and sent to the government for approval before the directive can enter into force.

#### [Commission to broaden corporate tax base formed](#)

On June 25, 2019, letter no. 2019-0000104322 was sent to the lower house of the parliament by the State Secretary for Finance. The letter announced the formation of a commission in charge of providing measures to broaden the Netherlands corporate tax base without harming the Netherlands' attractiveness as a head office location for multinational companies. The commission will report its findings within a period of six months.

#### [Decree on business restructurings](#)

On June 21, 2019, Decree No. 2019-3013 was published in the Official Gazette. The decree amends the previous decree on business and legal mergers, split off and split ups in relation to the carry forward of interest not deducted under the earning-stripping rules recently introduced in article 15b of the Corporate Income Tax Act 1969.

### **Norway**

#### [Consultation launched to limit the interest deduction](#)

On June 26, 2019, a consultation to discuss a draft bill that limits the interest deduction was launched by the ministry of Finance. This bill aims to calculate the deductible net interest amount as a percentage of EBITDA, which is in line with article 4 of the EU Anti-Tax Avoidance Directive and OECD BEPS action 4.

### **Slovenia**

#### [Amendments implementing EU Directives on dispute resolution and exchange of information gazetted](#)

On June 7, 2019, amendments to the Tax Procedure Law transposing EU Directive 2017/1852 on Tax Dispute Mechanisms and EU Directive 2016/881 on country-by-country reporting were published in the Official Gazette. The amendments entered into force on June 22, 2019, and will be effective from July 1, 2019 and January 1, 2020, respectively.

### **Sweden**

#### [EU Tax Dispute Resolution Directive transposed into Swedish legislation](#)

On June 19, 2019, a law proposal that implements the EU Tax Dispute Resolution Directive (2017/1852) was presented to the parliament to be transposed into Swedish legislation. If passed, the law will enter into force on November 1, 2019.

### **United Kingdom**

#### [Consultation launched on taxation of hybrid capital instruments](#)

On July 5, 2019, a consultation to formulate regulations concerning the new rules on the taxation of hybrid capital instruments has been called by the Her Majesty Revenue & Customs (HMCR). The consultation will close on August 9, 2019.

#### [Consultation on Regulations implementing tax dispute resolution directive](#)

On July 1, 2019, HMCR launched a consultation on draft Regulations implementing EU Directive 2017/1852 on tax dispute resolution mechanisms. The consultation closes on August 27, 2019.



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## Local Courts

### Belgium

#### [Supreme Court decision on notional interest deduction in abnormal circumstances](#)

On May 24, 2019, the Supreme Court rendered its decision in the company X v. the Belgian tax administration case, regarding the application of the Notional Interest Deduction (NID) rules. The case concerned the take-over of a Russian company by a Finnish group via the creation of a Belgian holding company. The Court, reciting article 207 of the Income Tax Code (ITC) which prohibits deductions on abnormal or gratuitous advantages, denied the NID deduction on the basis that a transaction that is tax-driven and lacks economic substance is abnormal under the meaning of article 207 of the ITC.

### Denmark

#### [Decision on withholding tax on dividends distributed to non-resident investment funds](#)

On July 2, 2019, Denmark's high court issued its decision in a case following the 2018 judgment of the CJEU concerning the compatibility with EU law of the Danish withholding tax on dividends distributed to non-resident investment funds. The court held that foreign funds are not entitled to the same tax benefits, no withholding tax on dividends, as domestic funds regardless of whether the requirements for the entitlement of the benefit are satisfied. The case has now been appealed to the Danish Supreme Court.

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







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