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E-News from the EU Tax Centre

Issue 104 – August 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.

Infringement Procedures & Referrals to CJEU

Infringement procedures

Multiple procedures on the implementation of the Anti-Tax Avoidance Directive

On July 25, 2019, the European Commission announced its decision to send a letter of formal notice to Austria and Ireland requesting the implementation of the interest limitation rules pursuant to the EU Anti-Tax Avoidance Directive (EU) 2016/1164 (ATAD). On the same day, the Commission sent a reasoned opinion to Denmark for its failure to notify national implementing measures for the ATAD Controlled Foreign Company (CFC) rules. Further, the Commission closed infringement proceedings against Belgium, Cyprus, the Czech Republic,

Greece, Portugal, and the UK, as they have now communicated their rules implementing ATAD to the Commission.

For more information, please refer to the Commission's [July infringements package](#).

Belgium

On July 25, 2019, the European Commission referred Belgium to the Court of Justice of the European Union (CJEU) with regard to the tax treatment of taxpayers that invest in immovable property abroad. The action follows the CJEU's decision of April 12, 2018 in case C-110/17, where the Court ruled that the Belgian legislation, which assesses the value of rental income of Belgian taxpayers based on where the property is situated, is incompatible with the free movement of capital because it results in higher rental income assessments from immovable property situated abroad compared to property situated in Belgium.

For more information, please refer to the Commission's [July infringements package](#).

Germany

On July 25, 2019, the European Commission sent a letter of formal notice to Germany regarding their refusal to recognize profit and loss transfer agreements entered into by companies relocating their place of management to Germany. The transfer agreements are a prerequisite for tax consolidation purposes and the German tax authorities mandate that companies register in the country of management. As such, the German tax authorities' refusal to recognize the registration with a Commercial Register in another state results in more favorable treatment for companies with all of their offices registered in Germany. This is incompatible with EU law, as it deters corporations from establishing businesses in Germany due to their less favorable treatment resulting from the lack of tax consolidation.

For more information, please refer to the Commission's [July infringements package](#).

Greece

On July 25, 2019, the European Commission sent a reasoned opinion to Greece with regard to its income tax legislation limiting the deductibility of foreign losses. According to the Commission, the restricted treatment of losses incurred abroad constitutes a restriction to the freedom of establishment.

For more information, please refer to the Commission's [July infringements package](#).

Spain

On July 25, 2019, the European Commission sent a reasoned opinion to Spain regarding its legislation requiring non-resident taxpayers to appoint a Spanish resident as a tax representative. The Commission concluded that this obligation creates additional costs and is contrary to the free movement of workers, the freedom of establishment, the freedom to provide services and the free movement of capital.

For more information, please refer to the Commission's [July infringements package](#).



State aid

Commission's decision on the UK CFC regime

On June 12, 2019, the UK filed an action in case T-363/19 against the European Commission's decision C(2019) on the compatibility of the UK Group Financing Exemption scheme with EU state aid rules.

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



EU Institutions

EUROPEAN COMMISSION

Annual statistics on MAPs and APAs published

On July 22, 2019, the statistics on pending mutual procedures (MAPs) and advance pricing agreements (APAs) for 2018 were published by the EU Joint Transfer Pricing Forum. The report summarizes for each Member State:

- The number of APAs in force at the end of the year (both EU and non-EU), as well as the split between bilateral or multilateral APAs and unilateral APAs
- The number of APAs that have been granted, rejected or withdrawn during the year
- The average time in months to negotiate bilateral or multilateral APAs

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



OECD

Eswatini joins the Inclusive Framework on BEPS

On July 26, 2019, Eswatini joined the Inclusive Framework on BEPS, becoming the 132nd jurisdiction to join the collaboration efforts to end tax avoidance.

Update on preferential regimes, new results on no-tax, and nominal tax jurisdictions

On July 23, 2019, the OECD issued updated peer review results on harmful tax practices. According to the release, twenty-two jurisdictions are changing their laws to address harmful tax practices. Also, the "Inclusive Framework on BEPS" has approved additional reviews conducted by the OECD Forum on Harmful Tax Practices, which covered preferential tax regimes and the substantial activities factor for no or only nominal tax jurisdictions.

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

Multilateral Convention developments

On July 17, 2019, Norway deposited its instrument of ratification for the Multilateral Convention (2016) (MLI). The MLI will enter into force as of November 1, 2019, and the MLI coverage of its bilateral treaties will depend on the final positions taken by other countries. On August 1, 2019, the MLI entered into force in respect of Luxembourg.



Local Law and Regulations

Cyprus

[Consultation on the two draft bills on exit taxation and hybrid mismatches launched](#)

On July 19, 2019, a consultation on two draft bills that implement ATAD's exit taxation and hybrid mismatch rules, was launched by the Tax Department. The consultation closes on August 26, 2019.

Denmark

[DAC6 proposal sent for comments by the Ministry of Taxation](#)

On July 9, 2019, a law proposal transposing the EU Directive 2018/822 on mandatory disclosure rules was sent for comments by the Ministry of Taxation. If passed, the law would come into force on July 1, 2020.

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

France

[Guidelines on the new interest deduction limitation rules published](#)

On July 31, 2019, guidelines concerning the new rules transposing into domestic law article 4 of the ATAD on interest deduction limitations were published by the French tax authorities. The new rules are applicable as of January 1, 2019.

[Bill on digital services tax published in Official Journal](#)

On July 25, 2019, the bill introducing a digital services tax (DST) and restoring the 33.33% corporate income tax (CIT) was gazetted.

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

[Bill on 33.33% corporate income tax published in Official Journal](#)

The French government's plan for a phase-down reduction of the rate of corporate income tax—ultimately to 25% in 2022— has been amended for 2019 for certain large corporate taxpayers. The modified tax rate phase-down schedule was signed by the president on 24 July 2019 and published in the official gazette on 25 July 2019.

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

Germany

[Draft bill implementing Fifth Anti-money Laundering Directive approved by Federal Cabinet](#)

On July 31, 2019, the draft bill implementing EU Directive (2018/843) on the prevention and use of the financial system for the purposes of money laundering or terrorist financing was approved by the Federal Cabinet.

Gibraltar

[Regulations implementing EU Directives on dispute resolution](#)

On July 26, 2019, the 2019 Tax Dispute Resolution Regulations transposing EU Directive 2017/1852 on tax dispute mechanisms were published and entered into effect. The regulations apply to complaints submitted from July 1, 2019, in relation to disputes arising from the application of tax treaties related to income or capital earned in a tax year commencing on or after January 1, 2018.

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

Ireland

[Feedback Statement on the ATAD anti-hybrid provisions](#)

On July 22, 2019, a Feedback Statement on the technical aspects of the anti-hybrid provisions included in EU Anti-Tax Avoidance Directive 2016/1164 (2016) (ATAD) and EU Directive 2017/952 (2017) (ATAD 2) was published by the Department of Finance. The document responds to the views expressed during the last public consultation on hybrid rules and sets out possible approaches to some of the technical issues. Comments may be submitted until September 6, 2019.

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

[Controlled foreign companies rules updated](#)

On July 22, 2019, updates concerning the controlled foreign company (CFC) rules were introduced in the tax and duty manual. The guidance includes definitions of CFC terminology used in legislation, information on the applicable exemptions from the CFC charge and the reliefs available for certain distributions and disposals of shares and securities in a CFC. These rules came into force as of January 1, 2019.

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

[2019 Tax Strategy Group Papers published](#)

On July 17, 2019, the 2019 Tax Strategy Group Papers, offering different options for tax policy changes with regard to the 2020 budgetary process, were published by the Department of Finance and Department of Employment Affairs and Social Protection. Among other things, the papers cover the implementation of ATAD, other recommendations on the Inclusive Framework on BEPS, and Brexit preparedness.

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

[Exit tax provisions updated](#)

On July 11, 2019, it was announced that the tax and duty manual was updated to comply with the EU Anti-Tax Avoidance Directive 2016/1164. These extended exit taxation rules, which were originally introduced in the 2018 Finance act, apply as of October 10, 2018.

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

Italy

[Implementing rules with regard to the amendments to the patent box regime](#)

On July 30, 2019, implementing rules with regard to recent amendments to the patent box regime was issued by the Italian tax authorities. The document provides guidance to taxpayers, who have opted to directly calculate the related tax benefit, and additional information on the possible exemption of penalties for inaccurate tax returns.

Lithuania

[Law implementing EU Directive on tax dispute resolution mechanisms adopted by parliament](#)

On July 11, 2019, the Law on Double Tax Dispute Resolution, transposing into national legislation the provisions of Directive 2017/1852 on tax dispute resolution mechanisms, was adopted by the parliament.

Luxembourg

[Legislations implementing EU Directives on exchange of information in the field of taxation and on anti-money laundering](#)

On July 26, 2019, it was announced that the Council of Ministers adopted legislation implementing EU Directive 2018/822 on mandatory disclosure rules and EU Directive 2018/843 on anti-money laundering. The legislation is expected to be submitted to the parliament for further approval in the coming weeks.

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

Malta

[Guidelines to the application of the Notional Interest Deduction Rules updated](#)

On July 11, 2019, the Guidelines to the application of the Notional Interest Deduction Rules were updated by the Commissioner for Revenue. The guidelines clarify how to calculate adjustments to eliminate disproportionate deductions with regard to accounting periods longer or shorter than 12 months. They apply as of year of assessment 2020.

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

Serbia

[Serbia ratifies convention on mutual assistance in tax matters](#)

On July 22, 2019, Serbia ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (2010 protocol). The law was published in the Official Gazette on July 26, 2019.



Local Courts

Austria

[Supreme Court decision on entitlement of EU Parent-Subsidiary Directive benefits](#)

On March 27, 2019, the Supreme Court rendered its decision in case No. 2018/0004-4, regarding the application of the EU Parent-Subsidiary Directive to an interposed Luxembourg holding company. The Supreme Court concluded that the activities performed by the Luxembourgish company were sufficient to claim the exemption and held that the construction does not constitute an abuse of the Directive.

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

Netherlands

[Advocate General opinion on gains from cum-ex transaction](#)

On July 7, 2019, Advocate General (AG) Wattel of the Dutch Supreme Court rendered his opinion in the X case. The AG considered that gains derived from a cum-ex dividend transaction do not qualify for the participation exemption because they are not derived from business profits or the value of the shares but from a mismatch. Moreover, the AG sustained that the lack of key entrepreneurial risk-taking functions from the foreign permanent establishment excludes the gains to be allocated to it.

Switzerland

[Decision by Switzerland's Federal Supreme Court on administrative assistance](#)

On July 26, 2019, a divergent decision was issued by the Federal Supreme Court regarding a request of administrative assistance from France to Switzerland. The Court accepted the

appeal by Switzerland's Federal Tax Administration and approved the transfer of a major bank's client data to France, but prohibited its use in tax proceedings against third parties.

United Kingdom

UT agrees with FTT in case *Ingenious Games LLP and Others v. Revenue and Customs*

On July 26, 2019, the Upper Tribunal (UT) agreed with the First-tier Tribunal (FTT) in the case *Ingenious Games LLP and Others v. Revenue and Customs [2019] UKUT 226 (TCC)*, stressing that impairment amounts, concerning the expenditure of film rights are not deductible as they are of capital nature.

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



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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