



# E-News from KPMG's EU Tax Centre



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

### **Issue 111 – November 15, 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 in College Pension Plan of British Columbia case**

On November 13, 2019, the Court of Justice of the European Union (CJEU) rendered its decision in the College Pension Plan of British Columbia case (C-641/17) concerning the compatibility with EU law of the German withholding tax on dividends paid to a Canadian pension scheme. The Court ruled that the German legislation constitutes an unjustified restriction to the free movement of capital and noted that the derogation from the prohibition on restrictions to the free movement of capital with non-EU countries (also referred to as the 'Standstill Clause') does not apply to the case at hand.

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

#### [CJEU decision in Romanian Energy Product Taxation case](#)

On November 7, 2019, the CJEU issued a judgment in the *SC Petrotel-Lukoil SA* case (C-68/18) on the taxation of Romanian energy products. The Court held that Romanian provisions that allow the taxation of energy products consumed during the production of additional energy products and electricity on the premises of the same establishment that produced those first energy products, is contrary to EU law.

#### [JNEU database available on Curia website](#)

On November 6, 2019, the CJEU published a press release stating that the all non-confidential procedural and doctrinal documents are now being released through the Judicial Network of the European Union (JNEU) database on Curia website. The primary objective of the database is to share and centralize information and documents that are useful for the application, dissemination and study of EU law. The platform now contains the preliminary ruling cases with orders for reference made after July 1, 2018, [decisions delivered by national courts](#), scientific and educational [notes or studies](#), [factsheets on EU case-law](#), [legal monitoring](#) tools.

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



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## **Infringement Procedures & Referrals to CJEU**

### **Referrals to the CJEU**

#### **Romania**

On July 23, 2019, a referral was made the CJEU by the Tribunalul Cluj in Romania for a preliminary ruling in the case of *Impresa Pizzarotti & C SPA Italia Sucursala Cluj* (Case C-558/19). The ruling request relates to the classification of an outbound bank transfer between a resident branch and its non-resident parent company as a revenue-generating transaction and the compatibility of this classification with the EU freedom of establishment and free movement of capital.



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## **EU Institutions**

### **ECOFIN**

#### **[ECOFIN discusses digital taxation agenda and removes Belize from the tax haven blacklist](#)**

On November 8, 2019, the Economic and Financial Affairs Council of the EU (ECOFIN) exchanged views on the taxation of the digitalized economy following a proposal by the OECD in October 2019 to agree a “unified approach”. The ECOFIN meeting also discussed concerns

regarding the imposition of a minimum tax under the OECD's Global Anti-Base Erosion (GloBE) proposal.

The ECOFIN also approved, without discussion, amendments to the EU blacklist of non-cooperative jurisdictions for tax purposes. Belize was removed from the blacklist, which now includes eight jurisdictions. The Republic of North Macedonia was removed from the EU "grey list" following the submission of instruments of ratification for the OECD Multilateral Convention on Mutual Administrative Assistance to the Council of Europe on September 30, 2019.

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

## EUROSTAT

### Tax-to-GDP ratio in EU goes up to 40.3% in 2018

On October 30, 2019, the statistical office of the European Union (Eurostat) published statistics regarding the overall tax-to-GDP ratio across the EU and individual Member States. Overall, tax-to-GDP is calculated by taking the sum of taxes and net social contributions as a percentage of Gross Domestic Product (GDP). The ratio increased slightly from 40.2% in 2017 to 40.3% in 2018.

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



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## OECD

### Global Forum on tax transparency publishes eight peer review reports

On November 12, 2019, eight new peer review reports were published by the OECD Global Forum on transparency and exchange of information for tax purposes. This second round of reporting covers Andorra, Curaçao, Dominican Republic, Marshall Islands, Samoa and the United Arab Emirates. Saudi Arabia retained its rating of "largely compliant" while Panama was labeled "partially compliant" as it has yet to comply fully with global information exchange standards.

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

### GloBE Proposal public consultation announced

On November 8, 2019 the OECD Secretariat released its Pillar Two consultation document. The proposal seeks to encourage discussion and focus minds on a potential solution regarding the introduction of income inclusion and base erosion payment measures to ensure that multinationals pay a minimum level of tax. The consultation is referred to as the Global Anti-Base Erosion (GloBE) proposal and will run until December 2, 2019.

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

### Multilateral Convention developments

On November 6, 2019 and October 11, 2019 respectively, the governments of Portugal and Kazakhstan approved the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (2016) (MLI).

#### [Additional guidance on country-by-country reporting](#)

On November 5, 2019, the OECD released additional interpretative guidance regarding the implementation and operation of country-by-country (CbC) reporting requirements, as introduced under BEPS Action 13.

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

#### [Guidance on the spontaneous exchange of information by no or only nominal tax jurisdictions](#)

On October 31, 2019, the OECD published guidance on a new “substantial activities standard” which will apply to no-tax or nominal-tax jurisdictions that maintain preferential regimes. The new standard requires these jurisdictions to spontaneously exchange information on the activities of certain resident entities with the jurisdiction(s) where the immediate parent, the ultimate parent, and/or the beneficial owners are resident.

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



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## **Local Law and Regulations**

### **Bulgaria**

#### [2020 Budget Bill submitted for consideration](#)

On October 31, 2019, the Bulgarian National Assembly accepted for consideration the 2020 Budget Bill. The bill includes measures to transpose the hybrid mismatch provisions of ATAD2 into Bulgarian domestic law and measures to harmonize the income tax and corporate tax regimes in respect of the treatment of hidden distributions.

### **Croatia**

#### [DAC 6 transposition bill published](#)

On October 31, 2019, the Croatian Government published a bill to transpose the EU Directive 2018/822 on mandatory disclosure rules (DAC 6) into Croatian domestic law. The bill largely mirrors the text of the Directive and includes relief from reporting for cases where legal professional privilege applies.

For more information on DAC6 implementation across EU Member States, please refer to [KPMG's Euro Tax Flash - MDR Update](#) and [KPMG's Euro Tax Flash – MDR Special Edition](#).

### **Cyprus**

## [Amendments to Cypriot tax rules on investment activities](#)

On October 29, 2019, the Cypriot Tax Department published amendments to Cypriot Income Tax Law regarding the treatment of investment activities. The amendments include conditions for collective investments in transferable securities (UCITS) and an alternative investment funds (AIF) to apply an 8% rate of Cypriot corporate income tax. The amendments also impose a minimum tax of EUR 10,000 for AIF management services.

## **Denmark**

### [Legislation proposal of implementation of DAC 6 submitted to parliament](#)

On November 6, 2019, a bill to transpose EU Directive 2018/822 on mandatory disclosure rules (DAC 6) into Danish legislation was submitted by the Minister of Taxation to the Danish Parliament.

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

## **Finland**

### [Updates on Protocol to Nordic Convention](#)

On November 28, 2019, the amending protocol to the Nordic Convention (1996 as amended through 2008), an Income and Capital Tax Convention between Denmark, the Faroe Islands, Finland, Iceland, Norway and Sweden, will enter into force for Norway and Finland. The protocol, which was concluded to implement the minimum standards under the Base Erosion and Profit Shifting (BEPS) project, includes an addition of principal purpose test (PPT) article and updates to the mutual agreement procedure. The protocol was signed on August 29, 2018 and enters into force 30 days after the ratification of each respective contracting state. The protocol will apply from January 1, 2020, provided that it has been approved by each of the contracting states. To date, the protocol has entered into force in respect of Iceland.

### [Exit tax proposal submitted to Finnish Parliament](#)

On November 7, 2019, the Finnish Government submitted a legislative proposal (HE 76/2019) implementing the exit tax rules required under the EU Anti-Tax Avoidance Directive 2016/1164 (ATAD) to the Finnish Parliament. The proposal follows the Directive closely and, if approved, will enter into effect from January 1, 2020.

### [Draft legislation on ATAD 2 and DAC6 submitted to parliament](#)

On October 31, 2019, the Finnish Government submitted draft legislation to the Finnish Parliament which, if adopted, would transpose EU Directive 2017/952 (ATAD 2) and EU Directive 2018/822 on mandatory disclosure rules (DAC 6) into Finnish domestic law.

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

## **Germany**

## [Federal Cabinet approved DAC 6 implementation legislation](#)

On October 9, 2019, the German Federal Cabinet approved draft legislation to transpose EU Directive 2018/822 on mandatory disclosure rules (DAC 6) into German domestic law.

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

## **Greece**

### [Public consultation on tax legislation amendments](#)

On November 7, 2019, a public consultation was launched in Greece on a bill to introduce amendments to Greek tax legislation which would see a reduction in the Greek corporate income tax rate from 28% to 24% for income earned in 2019, the introduction of a reduced tax rate of 10% for cooperatives and a reduction in the Greek dividend withholding tax rate from 10% to 5%.

## **Italy**

### [Italy issues clarifications on beneficial ownership in respect of assignment of receivables as security](#)

On October 18, 2019, the Italian Tax Authorities issued a resolution clarifying the beneficial ownership requirements applicable to an exemption from withholding tax for interest payments. The resolution clarifies that the creditor, after assigning its receivables as collateral to secure another loan granted by third parties, shall not be considered as the beneficial owner of the interest payment for the purpose of application of the EU Interest and Royalties Directive on the basis that the creditor essentially transfers the power of freely determining the use of the payments received and the economic benefit of those payments.

## **Lithuania**

### [FAQs on CRS published by the State Tax Inspectorate](#)

On November 11, 2019, a frequently asked questions (FAQs) document regarding the reporting obligations of individuals and financial institutions under common reporting standards (CRS) was issued by the Lithuanian State Tax Inspectorate. The FAQ document clarifies that digital platform providers must provide information on reportable accounts under CRS.

### [Bill amending Corporate Income Tax Law accepted by Lithuanian Parliament for consideration](#)

On October 21, 2019, the Lithuanian Parliament accepted for consideration a bill to amend Lithuanian Corporate Income Tax Law. The bill would increase the corporate tax rate applicable to Lithuanian permanent establishments (PE) and dividend income from 15% to 20%. The bill would also reduce, from 15% to 10%, the corporate tax rate on royalty and copyright income for foreign entities with no PE in Lithuania.

## **Malta**

### [Amendments to the notional interest deduction guidelines](#)

On November 7, 2019, amendments were published to the Maltese guidelines on the treatment of notional interest deductions and the attribution of deemed interest income to shareholders. A new paragraph was added to clarify that, under certain circumstances, a shareholder that holds no more than 0.2% of the nominal value of the risk capital of company shall not be entitled to deemed interest income.

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

## **Netherlands**

### [Calls to end airline tax exemption](#)

On November 7, 2019, the Netherlands and eight other countries, France, Germany, Sweden, Belgium, Luxembourg, Denmark, Italy, and Bulgaria, signed a joint statement calling for an end to the specific airline tax exemptions to curb greenhouse gas emissions. The statement is representative of an increasing focus on a “polluter pays” principle. However, some European countries, including Spain, have indicated they do not support the initiative.

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

### [Dutch Official Calls for Improved Corporate Tax Transparency](#)

On November 4, 2019, the Dutch Deputy Finance Minister, Menno Snel, publically announced that increased transparency on the level of taxes paid by companies is required. The Netherlands is hoping that measures introduced in its 2020 budget will help it to counteract tax haven criticisms.

### [Decree on interest deduction limitation](#)

On November 6, 2019, a decree on the application of exemption under the interest deduction limitation for debt-financing of long-term public infrastructure projects was published in the Netherlands. The exemption has been approved by the European Commission under EU State aid rules.

### [Draft decree implementing DAC6 sent to parliament](#)

On October 31, 2019, a draft decree to transpose EU Directive 2018/822 on mandatory disclosure rules (DAC6) into Dutch domestic law was submitted to the Dutch Parliament.

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

## **Sweden**

### [CbCR reporting guidance published](#)

On November 8, 2019, a guide on country-by-country (CbCR) reporting for multinational entities was published by the Swedish Tax Agency. The publication includes guidance on registration requirements, filing procedures and deadlines, amending reports and guidance on preparing a CbCR report using the XML schema.

## United Kingdom

### Amendments to taxation on offshore receipts in respect of intangible property

On November 4, 2019, the *Income Tax (Trading and Other Income) Act 2005 (Amendments to Chapter 2A of Part 5) Regulations 2019 (S.I. 2019/1452)*, amending the existing legislation “offshore receipts in respect of intangible property”, were made. The main amendments include the creation of an exception for sales made by third parties where the intangibles make an insignificant contribution to the UK sales.

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

### New regulations replacing the EU fundamental freedoms

On October 28, 2019, the *Freedom of Establishment and Free Movement of Services (EU Exit) (S.I. 2019/1401)* (the Regulations) were published in the United Kingdom (UK). The regulations were introduced in the UK to replace the direct effect of the EU free movement of services and freedom of establishment with rights which are directly effective under UK domestic law.

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

### Internet-based service provider warned a tax inquiry by HMRC

On October 22, 2019, a prominent internet-based service provider revealed that it was the subject of tax inquiries and proceedings initiated by the UK tax authorities (HMRC) in respect of its “operations and intra-company transactions”. The internet-based service provider further stated that some of the matters under review may result in litigation.



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## Local Courts

### Czech Republic

#### International requests for tax information; period for tax assessments

The Supreme Administrative Court in the Czech Republic recently issued a judgment concluding that the time limit for income tax assessments does not apply during periods when there are any pending international requests for information (regardless of when the limitation period on assessment initially commenced). This pause of the time limits does not apply if the tax at issue is value added tax (VAT).

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

### Denmark

#### Danish court rejects royalties deduction paid offshore by a domestic company



On October 30, 2019, a Danish court rejected the deduction of royalties paid by a Danish company to its Swiss parent company on the basis that a flat royalty was paid to the parent by each of its subsidiaries (irrespective of geographic location), the company was operating at a loss and the Danish company failed to demonstrate how it obtained any benefit from the intellectual property for which the royalties were paid. The case is now pending appeal before the Danish Supreme Court.

## Germany

### German Financial Court follows CJEU decision in X (Case C-135/17) in a local case

On October 31, 2019, the German Federal Financial Court rendered its follow-up decision in X (Case C-135/17) and rejected the taxpayer's appeal. The CJEU confirmed in X, that the EU law does not preclude the German CFC rules that cover passive income derived from a third country, unless there is an existing legal framework empowering Germany to verify the accuracy of necessary information provided in respect of the shareholding in the third country. The CJEU further held that it is for the national court to determine whether the legal framework of administrative cooperation between Germany and the third country concerned exists or not. The German court held that in the case at hand there are no such treaty obligations or comparable obligations which would empower the German tax authorities to verify, if necessary, the accuracy of any information provided by the taxpayer.

For more information on X (Case C-135/17), please refer to the [KPMG's Euro Tax Flash](#).

### German federal tax court (BHF) on the tax exemption on gains by a corporation on the sale of shares

The German federal tax court (BHF) in a recent decision held that gains on forward exchange transactions must be taken into account in the calculation of tax-exempt capital gains if, and to the extent that, the forward exchange contracts are concluded to hedge the foreign exchange risk related to the expected proceeds of the disposal.

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

### German tax consolidation in line with EU freedom of establishment

A lower tax court (Schleswig-Holstein) issued a decision which found that German tax consolidation regulations were not in violation of the EU freedom of establishment.

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





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