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E-News from the EU Tax Centre

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KPMG's EU Tax Centre compiles a regular update of EU tax developments that can have both a domestic and a cross-border impact. E-News 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.

[Latest CJEU, EFTA and ECHR](#)

[CJEU decision in the Köln-Aktienfonds Deka Case \(C-156/17\)](#)

On January 30, 2020, the Court of Justice of the European Union (CJEU) rendered its decision in the case of *Köln-Aktienfonds Deka v. Staatssecretaris van Financiën* (Case C-156/17). The case concerned the ability of a non-resident investment fund to reclaim withholding tax suffered in the Netherlands. The Court found that the distribution requirements imposed by Dutch legislation in order to benefit from a tax refund were contrary to the free movement of capital.

For more information, please refer to [Euro Tax Flash Issue 422](#).

[CJEU decision in the Banco de Santander Case \(C-274/14\)](#)

On January 21, 2020, the CJEU rendered its decision in the *Banco de Santander Case* (C-274/14). The case concerned whether the Spanish Tribunal Económico-Administrativo Central de Madrid (TEAC) could be considered to be a court or tribunal for the purposes of raising a preliminary question to the CJEU.

The CJEU ultimately ruled that the TEAC could not be considered to be a court or tribunal within the meaning of Article 267 of the Treaty on the Functioning of the European Union due to issues with the independence of the TEAC. The TEAC was therefore not permitted to make a preliminary ruling request to the CJEU. A similar opinion was issued by Advocate General (AG) Hogan, as reported in [E-News Issue 109](#).

[Advocate General opinion in the État Belge Case \(C-19/19\)](#)

On January 14, 2020, AG Hogan provided an opinion in the case of *État Belge v Pantochim SA, in liquidation* (C-19/19). The case concerned the application of the Mutual Assistance Directive (2010/24) in respect of the recovery of tax claims where a tax claim in Belgium was intended to be offset against a German tax debt. AG Hogan considered that the power to offset claims falls within the scope of the Directive and that the Belgian court must determine whether the Belgian rules deviate from the general rules on the offset of losses under civil law. In addition, the AG stated that a measure which merely simplifies the procedure for recovering claims but does not grant preferential or priority rights in respect of the order or ranking of the payment of claims should also comply with the requirements of the Directive.



[State Aid](#)

[European Commission finding that Estonian agricultural company received State aid](#)

On January 24, 2020, the European Commission announced its finding that an Estonian agricultural company had received State aid through the rent of agricultural land at below market value. The Commission has ordered that Estonia must now recover the aid provided from the company. The Commission estimates that the advantage received by the company is approximately EUR 1.2 million.

[German rule on carry-forward of losses does not constitute State aid](#)

On January 22, 2020, the European Commission concluded that a German tax reorganization measure, referred to as a "Sanierungsklausel", does not constitute State aid on the basis that the measure does not deviate from German tax law which allows companies to carry-forward losses for tax purposes.



[Infringement Procedures & Referrals to CJEU](#)

[Infringement procedures initiated by European Commission for failure to transpose EU mandatory disclosure rules \(DAC6\)](#)

On January 24, 2020, the European Commission sent [letters of formal notice](#) to fifteen EU Member States for their failure to transpose EU Directive 2018/822 on mandatory disclosure rules (DAC6) into domestic law. The Commission has not made public any further information at this stage but it is expected that the issue is a failure to meet the implementation deadline or to implement the Directive fully.

The Member States affected are: Belgium, Cyprus, Czech Republic, Estonia, France, Greece, Italy, Luxembourg, Latvia, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom.

[Infringement procedures initiated by European Commission for failure to transpose EU Anti-Tax Avoidance Directive \(ATAD\)](#)

On January 24, 2020, the European Commission sent [letters of formal notice](#) to six EU Member States for their failure to transpose the EU Anti-Tax Avoidance Directive 2016/1164 (ATAD). The Commission has not made public any further information at this stage but it is expected that the issue is a failure to meet the implementation deadline or to implement the Directive fully.

The Member States affected are: Germany, Greece, Latvia, Portugal, Romania and Spain.

[Infringement procedures initiated by European Commission for failure to transpose EU Anti-Tax Avoidance Directive \(ATAD II\)](#)

On January 24, 2020, the European Commission sent [letters of formal notice](#) to seven EU Member States for their failure to transpose the EU Anti-Tax Avoidance Directive 2017/952 (ATAD II). The Commission has not made public any further information at this stage but it is expected that the issue is a failure to meet the implementation deadline or to implement the Directive fully.

The Member States affected are: Cyprus, Germany, Greece, Latvia, Poland, Romania and Spain.

[Infringement procedures initiated by European Commission for failure to transpose EU Tax Dispute Resolution Mechanism Directive](#)

On January 24, 2020, the European Commission sent a [letter of formal notice](#) to Belgium for its failure to transpose the EU Tax Dispute Resolution Mechanism Directive 2017/1852. The Commission has not made public any further information at this stage but it is expected that the issue is a failure to meet the implementation deadline or to implement the Directive fully.



EU Institutions

EUROPEAN COMMISSION

[Commission President calls for global level playing field on carbon emissions](#)

On January 22, 2020, European Commission President, Ursula von der Leyen, delivered a keynote speech at the World Economic Forum in Davos, Switzerland. During her speech, von der Leyen emphasized the role that the European Green Deal will play as part of Europe's future growth strategy. She also encouraged international trading partners to work with Europe to ensure a global level playing field in respect of CO2 emissions, highlighting that Europe will protect itself against unfair competition, potentially through the use of a Carbon Border Adjustment Mechanism.

For more information, please refer to the Commission President's [speech](#).

[Brexit task force publishes negotiation documentation](#)

On January 14, 2020, the European Commission's Task Force on Relations with the United Kingdom published materials used during internal discussions on the future relationship that should be pursued with the United Kingdom, once it has formally left the European Union.

For more information, please refer to the [European Commission's document](#).

COUNCIL of the EU

[Council approves EU-UK Withdrawal Agreement](#)

On January 30, 2020, the Council of the EU adopted, by written procedure, the EU-UK Withdrawal Agreement. This follows a vote by the European Parliament on January 29, 2020 to give consent to the finalization of the EU-UK Withdrawal Agreement and the publication of a recommendation from the European Parliament's Committee on Constitutional Affairs on January 23, 2020. The Presidents of the European Commission and European Council, respectively, had previously signed the agreement on January 24, 2020.

As noted below, the EU-UK Withdrawal Agreement was passed by the both houses of the UK Parliament and received Royal Assent on January 23, 2020. The UK has therefore formally exited the European Union with effect from midnight (Central European Time) on January 31, 2020. An initial transition period will apply until December 31, 2020, during which time negotiations on the future relationship between the UK and the EU will commence.

For more information, please refer to the Council [press release](#). Guidance from the European Commission on the impact of the withdrawal of the UK on EU rules on direct taxation are available [here](#).

[ECOFIN discusses digital taxation](#)

On January 21, 2020, the Economic and Financial Affairs Council (ECOFIN) held its first meeting of the year and the first meeting of the Croatian presidency of the Council of the EU. Key measures debated include digital taxation and the European Green Deal. In relation to digital taxation, it was re-emphasized that a global solution is preferred. Some Member States expressed concerns about the effects of Pillar 1 and Pillar 2 on their economies and tax revenue with several Member States in favor of economic impact assessments being performed at the level of individual Member States as well as the European Union as a whole. There was also broad support for testing the extent to which the OECD proposals are compatible with EU law.

For more information, please refer to the [minutes of the meeting](#).



OECD

Multilateral Convention developments

On February 1, 2020, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (2016) (MLI) entered into force for Mauritius and Latvia.

On January 23, 2020, Cyprus and the Kingdom of Saudi Arabia deposited their instruments of ratification of the MLI. Qatar also deposited its instrument of ratification with the OECD on December 23, 2019. The MLI will enter into force for Cyprus and the Kingdom of Saudi Arabia on May 1, 2020, and Qatar on April 1, 2020.

On January 29, 2020, North Macedonia signed the MLI. This brings the total number of signatories to 94 jurisdictions. In total, 41 jurisdictions have deposited their instruments of ratification with the OECD. The MLI has entered into force for 36 jurisdictions.

Despite ratifying the MLI on October 1, 2019, Russia made a reservation in accordance with Article 35(7)(a) of the MLI when signing the MLI. The earliest date from which the MLI will apply for treaties concluded by Russia is January 1, 2021.

OECD Tax Talks

On January 31, 2020, the OECD Secretariat presented the outline of the architecture on a Unified Approach on Pillar One, confirming that it is intended that both automated digital businesses and consumer facing businesses would be in scope. The OECD aims to release a final report on the technical details of the solution under Pillar One by the end of 2020.

Following a meeting of the OECD Inclusive Framework on January 29-30, 2020, on January 31 the OECD Centre for Tax Policy and Administration held a live webcast during which experts from the Center provided an update on the work relating to the tax challenges arising from the digitalization of the economy. In addition to the note on the Pillar One Architecture, an updated programme of work for Pillar One and a revised Progress Report on Pillar Two were also released.

For more information, please refer to [Euro Tax Flash Issue 423](#).

Montenegro ratifies Mutual Administrative Assistance in Tax Matters convention and protocol

On December 27, 2019, legislation to ratify the Convention on Mutual Administrative Assistance in Tax Matters was published in the Montenegrin Official Gazette.

Vietnam and Palau join the Global Forum on Tax Transparency

On January 24, 2020, Vietnam and Palau became the 159th and 160th members to join the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global

Forum's focus is to ensure that jurisdictions maintain high-levels of cooperation in the fight to prevent tax evasion.

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

[Joint Chiefs of Global Tax Enforcement day of action against tax avoidance](#)

On January 23, 2020, the Joint Chiefs of Global Tax Enforcement (also known as the J5) – which includes Australia, Canada, the Netherlands, the United Kingdom and the United States – announced that it had completed a coordinated day of action to tackle offshore tax evasion.

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

[Bahrain joins MCAA on automatic exchange of country-by-country reports](#)

On December 22, 2019, Bahrain joined the OECD Multilateral Competent Authority Agreement (MCAA) (2016) on the automatic exchange of Country-by-Country reports (CbC MCAA). In total, 84 jurisdictions have signed the CbC MCAA.



Local Law and Regulations

Barbados

[Amendments to economic substance legislation](#)

On November 29, 2019, the Companies (Economic Substance) Act was published in the Barbados Official Gazette. The legislation broadens the scope of the economic substance legislation and modifies a number of definitions and concepts. A requirement to file annual substance declarations was also included. Penalties for non-compliance of BBD 330,000 (approx. EUR 150,000) can also apply.

Bermuda

[Amendments to economic substance legislation](#)

On December 24, 2019, legislation to amend Bermudan economic substance legislation entered into force. In addition, guidance on the scope of the rules was also published. Key amendments include a narrowing of the definition of “holding entities” and clarifications on the definition of “financing and leasing activities”.

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

Cayman Islands

[Amendments to economic substance legislation](#)

On November 14, 2019, amendments to the Cayman Islands economic substance legislation were published. In particular, the amendment requires a beneficial ownership register to be maintained by companies that are (i) subject to the rules and (ii) are not listed on the Cayman Islands Stock Exchange.

France

Digital services tax deferral

On January 21, 2020, it was announced that the French authorities had decided to delay the collection of digital services tax payments due in April and October 2020 pending the outcome of discussions on the taxation of the digital economy at international level.

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

Ireland

Bank and health insurance levy guidelines published

On January 17, 2020, the Irish Revenue Commissioners published updated guidance in respect of the Irish health insurance levy and bank levy.

For more information, please refer to the [health insurance levy guidance](#) and [bank levy guidance](#).

Italy

E-Commerce platform reporting obligations

On January 21, 2020, legislation regarding reporting obligations for e-commerce platforms was published by the Italian tax authorities. In particular, the legislation includes special reporting obligations for taxable persons facilitating distance sales through the use of an electronic interface, such as an online marketplace, and apply until December 30, 2020.

Romania

Transposition of DAC6 into Romanian domestic law

On January 31, 2020, regulations to incorporate Directive (EU) 2018/822 on mandatory disclosure rules ("DAC6") into Romanian law were published in the Romanian Official Gazette. The rules largely mirror the text of the Directive. The Romanian tax authorities are expected to issue additional guidance to provide clarification on the interpretation of specific terms and provisions. The following penalty regime applies to both intermediaries and taxpayers:

- Between RON 20,000 and RON 100,000 (approx. EUR 4,000 and EUR 20,000) – if the information is not disclosed or it is disclosed after the relevant deadline;
- Between RON 10,000 and RON 50,000 (approx. EUR 2,000 and EUR 10,000) – if the information disclosed is incomplete or incorrect.

Spain

Mutual Agreement Procedure consultation launched

On December 23, 2019, the Spanish Ministry of Finance published a draft Royal Decree for public consultation in respect of mutual agreement procedures (MAP). The draft Royal Decree would transpose the EU Tax Dispute Resolution Directive (2017/1852) into Spanish domestic law. The consultation closed on January 31, 2020.

The United Kingdom

[Fifth Anti-Money Laundering Directive consultation outcome published](#)

On January 23, 2020, Her Majesty's Revenue and Customs (HMRC) published the outcome of its consultation process on the transposition of the Fifth Anti-Money Laundering Directive into UK domestic law. The regulations transposing the Directive into law entered into force on January 10, 2020.

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

[EU Tax Dispute Resolution Directive regulations published](#)

On January 22, 2020, Double Taxation Dispute Resolution (EU) Regulations 2020 (S.I. 2020/51) to transpose the EU Tax Dispute Resolution Directive into UK domestic law were finalized. The Regulations will enter into force on February 14, 2020 with retrospective effect for income or gains realized in a tax period which commenced on or after January 1, 2018.

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

[Digital services tax update](#)

On January 22, 2020, it was [reported](#) in the Guardian that the UK Chancellor of the Exchequer, Sajid Javid, indicated that the UK plans to continue with the introduction of a digital services tax with effect from April 2020 despite calls to defer the introduction of the measure until negotiations at an international level are concluded.



Local Courts

Netherlands

[Application of anti-abuse rule to non-resident substantial shareholders](#)

On January 10, 2020 the Dutch Supreme Court rendered its decision on the compatibility of Dutch anti-abuse provisions with the Parent-Subsidiary Directive and with the freedom of establishment. The Court concluded that the Dutch provision only targets wholly artificial arrangements and is therefore compatible with EU law. As a consequence, the Court rejected the taxpayer's appeal of a decision made by the Hague Court of Appeal and ruled that the dividend payments were subject to withholding tax in the Netherlands.



KPMG Insights

Global Withholding Taxes report

On January 22, 2020, a Global Withholding Taxes report was published by KPMG International. The report contains a tabular summary of the taxation of income and gains from listed securities in 114 markets around the world as of December 31, 2019.

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



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