



E-News from KPMG's EU Tax Centre



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E-News from the EU Tax Centre

Issue 116 – March 5, 2020

KPMG's EU Tax Centre compiles a regular update of EU and international tax developments that can have both a domestic and a cross-border impact, with the aim of helping you keep track of and understand these developments and how they can impact your business.

[Latest CJEU, EFTA and ECHR](#)

[CJEU decisions on progressive tax on turnover and fines related to advertising tax](#)

On March 3, 2020, the Court of Justice of the European Union (CJEU) rendered its decisions in three cases, (C-482/18), (C-323/18) and (C-75/18), each of which concerned aspects of Hungarian law. The CJEU decided that the EU freedom of establishment does not preclude Member States from levying a progressive tax on turnover, the actual burden of which is mainly borne by companies controlled from another Member State. The Court also ruled that Hungarian advertisement tax penalty regime disproportionately affected companies located in another EU Member State and was therefore contrary to the EU principle of freedom to provide services.

For more information, please refer to [Euro Tax Flash Issue 426](#).

[CJEU decision on use of losses incurred in another EU Member State \(C-405/18\)](#)

On February 27, 2020, the Court of Justice of the European Union (CJEU) rendered its decision in the case of *AURES Holdings a.s. v Odvolací finanční ředitelství* (C-405/18). The case concerned the submission of a loss-relief claim in the Czech Republic in respect of losses generated in the Netherlands.

The CJEU determined that the principle of freedom of establishment under Article 49 of the Treaty of the Functioning of the European Union (TFEU) does not preclude the legislation of a Member State from excluding the possibility for a company, which has transferred its place of effective management and, as a result, its tax residency to that Member State, from claiming a tax loss incurred, prior to that transfer, in another Member State, in which it has retained its registered seat.

For more information, please refer to [Euro Tax Flash Issue 425](#).



EU Institutions

COUNCIL OF THE EUROPEAN UNION

[Council opens negotiations on new EU-UK partnership and adopts negotiating directives](#)

On February 25, 2020, the Council approved a negotiating mandate which authorizes the European Commission to begin negotiations with the United Kingdom on the future relationship between the EU and the UK. The documents reiterate that a level playing field for open and fair competition is the key overall objective that will underpin any agreement on the new EU-UK economic partnership.

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

[Council revises its EU list of non-cooperative jurisdictions](#)

On February 18, 2020, the Economic and Financial Affairs Council of the EU (ECOFIN) adopted a revised EU blacklist of non-cooperative jurisdictions for tax purposes. The EU Finance Ministers agreed to add four new jurisdictions to the list: Cayman Islands, Palau, Panama and Seychelles. Sixteen jurisdictions were found to have fulfilled their commitments within the 2019 deadline and were therefore removed from Annex II of the Council conclusions – the so-called “grey list”.

For more information, please refer to [Euro Tax Flash Issue 424](#).

EUROPEAN COMMISSION

[Initiative launched in respect of Roadmap for Action Plan on fight against tax fraud](#)

On March 4, 2020, the European Commission launched an initiative to develop an Action Plan to address tax fraud. The feedback period on the proposed roadmap will close on April 1, 2020.

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

[Launch of initiatives related to the European Green Deal.](#)

On March 4, 2020, the European Commission launched inception assessments on the future of the Carbon Border Adjustment Mechanism and the review of the Energy Taxation Directive, both of which are considered key aspects of the recently announced European Green Deal. Both initiatives are open for public feedback until April 1, 2020.

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

[Proposal to codify the Administrative Cooperation Directive published](#)

On February 13, 2020, the European Commission published a proposal to codify the EU Directive on Administrative Cooperation in the field of taxation (2011/16). The proposal does not amend the Directive further but would consolidate the amendments made to the original text of the Directive into a single document.

The codification proposal is available [here](#). The annexes to the proposal can be found [here](#).



OECD

[Multilateral Convention developments](#)

On February 28, 2020, Portugal deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). The MLI will enter into force for Portugal on June 1, 2020.

On March 2, 2020, authorities in San Marino approved the ratification of the MLI. This follows the ratification of the MLI by the President of Kazakhstan on February 20, 2020. The MLI will become effective for San Marino and Kazakhstan three months after the month in which each jurisdiction deposits its instrument of ratification with the OECD.

The OECD provided a full list of the signatories and parties to the MLI as of February 28, 2020, and the list is available [here](#).

[Convention and protocol on Mutual Administrative Assistance in Tax Matters deposited by Mongolia](#)

On February 19, 2020, Mongolia deposited its instrument of ratification of the Convention on Mutual Administrative Assistance in Tax Matters with the OECD. The Convention will enter into force in respect of Mongolia on June 1, 2020 and will be applicable from January 1, 2021.

[OECD seeks input on draft Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy](#)

On February 19, 2020, the OECD launched a public consultation on the sharing and gig economy with a focus on the reporting obligations of online platforms. Interested parties are invited to provide their input on [the draft Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy](#) by March 20, 2020.

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

[BEPS Action 14 stage 1 peer review reports on dispute resolution released for eight countries](#)

On February 24, 2020, the OECD published the eighth round of stage 1 peer review reports on dispute resolution for Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia. These reports evaluate each jurisdiction's effort to implement BEPS Action 14 minimum standard and indicate the targeted recommendations for stage 2 peer reviews. In addition, the mutual agreement procedure (MAP) statistics from 2016 to 2018 are also included in the reports.

The full text of the reports for each country are available here: [Brunei Darussalam](#), [Curacao](#), [Guernsey](#), [Isle of Man](#), [Jersey](#), [Monaco](#), [San Marino](#) and [Serbia](#).

[IT-tools released to support the implementation of TRACE and the wider exchange of tax information](#)

On February 25, 2020, the OECD released IT-formats and guidance to support the technical implementation of its Treaty Relief and Compliance Enhancement (TRACE) initiative, and to facilitate the wider use of its Common Transmission System (CTS) for the exchange of information between tax administrations.

For more information, please refer to OECD's [press release](#).

[The Global Forum and Italy support Albania in the implementation of automatic exchange of tax information](#)

On February 17-18, 2020, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and the Italian Revenue Agency provided assistance to Albania regarding the implementation of international standard of automatic exchange of financial account information (AEOI) through an onsite visit in Tirana. The technical assistance was provided in respect of the legal and regulatory framework in Albania, the confidentiality and data safeguards framework and other building block of AEOI. Albania committed to start its first automatic exchanges of information by 2021.



Local Law and Regulations

Austria

Update on Digital Service Tax published

On February 24, 2020, the Austrian Ministry of Finance published additional information on the Digital Service Tax which became effective on January 1, 2020. The update outlines the rules on registrations for the tax and clarifies that the digital service tax will be payable on a monthly basis.

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

Bahrain

Guidance released on economic substance requirements

On January 1, 2020, the Bahraini Ministry of Commerce, Industry and Tourism published guidance on the application of the Bahraini economic substance requirements. The guidance outlines which entities are subject to the economic substance requirements and includes a two-step examination on core income-generating activities and the location of effective management. The guidance also addresses the requirement to file an annual economic substance return.

The full text of the guidance is available [here](#).

Belgium

Transfer pricing circular published

On February 25, 2020, the Belgian tax administration published the Circular Letter on transfer pricing guidelines for multinational enterprises and tax administrations. The Circular Letter is generally applicable to related-party transactions made as of January 1, 2018, while a number of specific items will be applicable as of January 1, 2020, including the guidance on intra-group financing contained in Chapter X in the OECD Transfer Pricing Guidelines and the report on Transfer Pricing Guidance on Financial Transactions.

Brexit law adopted by parliament

On February 13, 2020, the Belgian Parliament adopted a Brexit law, which provides measures for the transitional period during which the United Kingdom will still be treated as an EU Member State (until December 31, 2020). The Brexit law addresses a range of measures including the maintenance of benefits related to pensions, wage withholding tax reductions, capital gains tax exemptions, corporate migrations, and the Belgian tonnage tax regime.

Bermuda

[List of reporting jurisdictions for CbCR published for 2019](#)

On January 31, 2020, a government notice was published by the Ministry of Finance in Bermuda, which provides a list of reporting jurisdictions for country-by-country (CbC) reporting during 2019 reporting period.

For more information, the full list is available [here](#).

British Virgin Islands

[Guidance notes on CbCR updated](#)

On March 1, 2019, the tax authorities in the British Virgin Islands issued updated guidance notes on the CbC reporting requirements. The guidance notes clarifies the scope, CbC reporting approach, registration obligations and consequences of non-compliance in respect of the CbC reporting provisions.

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

Estonia

[Exit taxation and anti-hybrid rules adopted](#)

On January 1, 2020, Estonian tax law was amended to implement the exit and anti-hybrid mismatch taxation provisions of the EU Anti-Tax Avoidance Directives 2016/1164 (ATAD) and 2017/952 (ATAD II) respectively. The amendments entered into force on January 1, 2020 with the exception of reverse hybrid mismatch provisions which will become effective from January 1, 2022.

France

[Guidelines updated on automatic exchange of information on financial accounts under CRS](#)

On February 26, 2020, the French tax authorities published updated guidelines on the collection and filing of information on Financial Accounts for the purpose of automatic exchange with other competent authorities under the common reporting standard (CRS). The updated guidelines clarify the reporting requirements for financial institutions and the applicable penalties applicable in cases of non-compliance. The French Foreign Account Tax Compliance Act (FATCA) guidelines were also updated.

[Enactment of French Finance Bill for 2020](#)

On December 29, 2019, the French Finance Bill for 2020 was enacted into law with an effective date on January 1, 2020. Key measures include a reduction of the French rate of corporate income tax to 28% and an extension of the French anti-abuse of law doctrine.

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

Germany

[Update on German tax rules during Brexit transition period](#)

In conjunction with the adoption of the Withdrawal Agreement which saw the United Kingdom formally leave the EU, a Brexit Transition Act entered into force in Germany. The legislation is intended to respond to the need for rules in various areas of German tax and financial market laws with regard to “Brexit” and during the transition period that is initially in effect until December 31, 2020.

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

[Guidance issued on the limitation of deductibility of royalty payments](#)

On February 20, 2020, the German Ministry of Finance published official guidance on the application of rules to limit the deductibility of royalty payments. In particular, the guidance clarifies that intra-group royalty payments would not be fully deductible for the payer where the recipient of the payment is either not taxed on that income, or, benefits from a low tax rate (below 25%) under a preferential tax regime that does not comply with the OECD standard on harmful tax practices.

[Ministerial Draft Bill for an Act on the implementation of the ATAD](#)

The German Federal Ministry of Finance has published a Ministerial draft bill to transpose the provisions of ATAD, which includes provisions on exit taxation, hybrid mismatches, and controlled foreign corporations rules.

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

Ireland

[Extended deadline for filing profit-sharing information returns](#)

The Irish Revenue published updated guidance on the information return filing requirements for Revenue “approved profit-sharing schemes” (APSS). In particular, the deadline for filing 2019 APSS information returns has been extended to June 30, 2020.

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

Luxembourg

[Draft law published to modify provisions on CRS and FATCA](#)

On February 20, 2020, a draft law to modify the law on automatic exchange of information in tax matters (CRS) and the law on Foreign Account Tax Compliance Act (FATCA) was published in Luxembourg. The draft law imposes additional reporting requirements on financial institutions and outlines the applicable penalties in cases of non-compliance.

Netherlands

[Decree published clarifying 2020 tax consequence of Brexit](#)

On January 30, 2020, the Dutch Government published a decree to clarify the treatment of the United Kingdom under Dutch law in 2020 in light of the adoption of the Withdrawal Agreement between the UK and the EU. The Decree confirms that the UK will still be treated as an EU Member State for both direct and indirect tax purpose until the end of transition period (December 31, 2020).

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

[Q&A published on decree concerning pre-consultations for rulings with international character](#)

On February 25, 2020, the Dutch Tax Administration issued a questions and answers (Q&A) document in respect of a decree relating to pre-consultations for tax rulings that have an international aspect. The Q&A document clarifies under which conditions and for which types of transactions a tax ruling can be requested.

Norway

[Proposal for withholding tax on interest and royalty payments](#)

On February 27, 2020, the Norwegian Ministry of Finance issued a public consultation paper that proposes to introduce a withholding tax regime on interest and royalty payments made to related parties. The Norwegian Ministry of Finance is also considering whether to introduce a withholding tax on certain lease payments.

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

Qatar

[Directives issued on Mutual Agreement Procedure](#)

On February 11, 2020, six directives on mutual agreement procedures (MAP) were published by the General Tax Authority in Qatar. These directives provide clarification on tax authority's powers, intention and approach with respect to MAP requests, as well as clarifying the information requirements of a MAP request and the criteria that must be applied before a MAP request is rejected.

Saudi Arabia

[Guidance issued on incentive rewards for whistleblowers](#)

On February 17, 2020, the Saudi Arabian Government published guidance on incentive rewards for whistleblowers who contribute to detecting infringements of laws and regulations. The guidance provides information on the requirements for notifications submitted by the whistleblower, obligations imposed on the department that receives the notification and the conditions to be satisfied for reward bonuses to be claimed. The guideline has been effective as from April 17, 2019.

Slovenia

[Proposed changes to corporate income tax rate not adopted](#)

The proposed changes by Slovenian Ministry of Finance in September 2019 to increase the Slovenian corporate income tax rate from 19% to 20% and to introduce an alternative minimum tax at 7% were not included in the final amendments to the Corporate Income Tax Law adopted. Consequently, the Slovenian corporate income tax rate remain 19% without an alternative minimum tax.

Spain

[Draft proposal for Digital Services Tax presented to parliament](#)

On February 18, 2020, the Spanish Government gave its approval for draft legislation for Digital Service Tax (DST) to be presented to the Spanish Parliament (proposal was published in the Official Parliamentary Gazette on February 28). The proposed DST would be imposed at a rate of 3% on income derived from certain digital services.

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

[Draft proposal for Financial Transaction Tax presented to parliament](#)

On February 18, 2020, the Spanish Government gave its approval for draft legislation for Financial Transaction Tax (FTT) to be presented to the Spanish Parliament. The proposed FTT would be imposed at a rate of 0.2% on consideration paid for the acquisition of certain shares and securities.

[Resolution published on income attribution regime](#)

On February 13, 2020, a resolution was published to clarify the conditions under which an entity incorporated abroad can be considered to qualify for the attribution of income regime under Spanish tax law. The resolution specifies several criteria in respect of the tax liability, income attribution and nature of income earned by the foreign entity that must be satisfied to be considered to qualify under the Spain income attribution regime.

Sweden

[Tax on plastic bags enacted](#)

A new tax on plastic carrier bags has been enacted in Sweden, which will be effective from March 1, 2020 and will apply from May 1, 2020.

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

The United Kingdom

UK considers opposition to digital tax in pursuit of US trade deal

On March 2, 2020, it was reported by Reuters that the British Government announced that it would consider opposition to its proposed digital services tax when forming its policy objectives for negotiating future trade deals. The digital services tax had been proposed to apply at a rate of 2% and enter into effect from April 2020.

Approach adopted to negotiation with the EU on the future relationship

On February 27, 2020, the Office of the UK Prime Minister published a document that sets out its approach to negotiations with the EU on the future relationship between both parties. The document outlined that the approach is established based on principles of friendly cooperation between sovereign equals and includes targets of reaching a comprehensive Free Trade Agreement, a separate agreement on fisheries, an agreement on law enforcement and judicial cooperation in criminal matters and agreements in technical areas cooperation.

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

Draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 published

On February 24, 2020, Her Majesty's Revenue and Customs (HMRC) published a draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020. This statutory instrument would amend existing EU law relating to the supervision framework for third country central counterparties, to be laid under the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020.

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

Guidance issued on transparency and exemption elections for CIVs and qualifying companies in respect of UK capital gains

On February 24, 2020, the UK HMRC issued guidance for offshore collective investment vehicles (CIV) on electing to be tax transparent for UK capital gains as well as guidance for CIVs and qualifying companies on electing to claim a tax exemption on UK capital gains.

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



Local Courts

Sweden

Foreign investment fund claim for refund of withholding tax

In February 2020, the Swedish Supreme Administrative Court issued a decision concluding that a refund of withholding tax to non-UCITS investment funds cannot be denied solely by reference to legal form, in particular regarding foreign investment funds that are legal entities that received Swedish-sourced dividends.

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



KPMG Insights

Denmark

DAC6 transposition summary published

KPMG has prepared a summary of the latest developments with respect to the Danish implementation of mandatory disclosure rules under EU Directive 2018/822 (DAC6) into domestic law.

For more information, please refer to the [DAC6 summary](#).

Isle of Man

Substance requirements for certain resident companies

KPMG has prepared an introduction to the substance requirements in Isle of Man following the approval of the Income Tax (Substance Requirements) Order 2018.

For more information, please refer to KPMG in the Isle of Man's [Publication](#) and [Flowchart](#).

Russia

Look-through approach to be applied to beneficial ownership for the purpose of withholding tax

Under Russian tax law, it is possible to employ the look-through approach to identify the ultimate beneficial ownership of Russia-sourced income, and thus apply the withholding tax rate provided under the tax treaty with the residence state of the ultimate beneficial owner instead of the residence state of the direct recipient.

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





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