# E-News from KPMG's EU Tax Centre

## Key Insights of E-News Issue 226

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. Today's edition includes updates on:

- *CJEU:* CJEU decision on the compatibility of the Belgian CFC rules with the ATAD
- *Council of the EU:* February 2026 update of the EU list of non-cooperative jurisdictions
- *European Commission*: Call for evidence on upcoming tax omnibus proposal
- *European Parliament:* Commissioner Wopke Hoekstra's response to Members of the European Parliament on how the EC intends to simplify the DAC
- *OECD:* BEPS Action 5 peer review results (harmful tax regimes)
- *Malta:* Exemption for local group members from filing GIR and related notifications
- *Qatar:* Pillar Two resolution issued
- *Romania:* New R&D tax credit enacted
- *Slovenia:* Pillar Two tax returns published
- *Spain (court decision):* Spanish Supreme Court decision on beneficial ownership under the IRD and treaty override

Overview of our E-News
E-News - KPMG Global

ETFs – Euro Tax Flash
Euro Tax Flash - KPMG Global

# Table of contents

# Latest CJEU, EFTA and ECHR

## Key Insights

- CJEU decision on the compatibility of the Belgian CFC rules with the ATAD

## CJEU

### CJEU decision on the compatibility of the Belgian CFC rules with the ATAD

On February 26, 2026, the Court of Justice of the European Union (CJEU or the Court) rendered its decision in the case C-524/23. The case concerns the compatibility of the old Belgian controlled foreign company (CFC) rules with the EU Anti-Tax Avoidance Directive (ATAD or the Directive).

Article 7 of the ATAD sets out the CFC rule, requiring Member States to tax the income of low-taxed controlled subsidiaries or permanent establishments as if it were earned by the parent company or the head office. The rule applies where the tax paid by the CFC or PE is substantially lower than the corporate tax that would have been due in the Member State of the parent. In such cases, the income is attributed to the parent and taxed in its jurisdiction. Member States may choose between two approaches:

- *Model A*: which applies to non-distributed passive income under Article 7(2)(a), and
- *Model B*: which applies to non-distributed income arising from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage under Article 7(2)(b).

Under Article 8(7), Member States must allow a deduction for foreign tax paid by the CFC against the domestic tax liability of the parent company.

At the time of the proceedings in the case at hand, Belgium had transposed ATAD and opted for Model B, but it had not implemented Article 8(7), arguing that its domestic legal framework provided more robust safeguards against tax avoidance by disallowing such deductions. Contrary with the Advocate General (AG)'s recommendation, the Court found that Belgium's failure to transpose the deduction required under Article 8(7) of the ATAD constitutes a breach of its obligation to implement the Directive. The ruling also clarified that the foreign tax credit under this Article is mandatory for both situations covered by the CFC rules – namely both for Model A and Model B.

For more details, please refer to Euro Tax Flash Issue 575.

# EU institutions

## Key Insights

- Council of the EU adopts February 2026 update of the EU list of non-cooperative jurisdictions
- European Commission launches a call for evidence on an "Omnibus on taxation"
- Commissioner Wopke Hoekstra responds to Members of the European Parliament on how the EC intends to simplify the DAC

## Council of the EU

### February 2026 update of the EU list of non-cooperative jurisdictions

On February 17, 2026, the Economic and Financial Affairs Council adopted conclusions on the EU list of non-cooperative jurisdictions (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II – so called "grey list").

The Council agreed to add Turks and Caicos Islands and Viet Nam and to remove Fiji, Samoa and Trinidad and Tobago from the list of non-cooperative jurisdictions (Annex I). Following this latest revision, Annex I of the EU list of non-cooperative jurisdictions therefore includes the following ten jurisdictions: American Samoa, Anguilla, Guam, Palau, Panama, the Russian Federation, Turks and Caicos Islands, the US Virgin Islands, Vanuatu and Viet Nam.

In addition, the Council agreed to remove Antigua and Barbuda and the Seychelles from Annex II (the grey list), as those jurisdictions have fulfilled their previous commitments. The grey list now includes the following nine jurisdictions: Belize, the British Virgin Islands, Brunei Darussalam, Eswatini, Greenland, Jordan, Montenegro, Morocco and Türkiye.

For further background, please refer to Euro Tax Flash Issue 574.

## European Commission

### Call for evidence on upcoming tax omnibus proposal

On February 16, 2026, the European Commission (EC) launched a call for evidence on an "Omnibus on taxation". The objective of the Omnibus on taxation initiative is to simplify the existing EU legal direct taxation framework and boost competitiveness in the internal market without undermining the objectives of the existing corporate tax Directives.

Key objectives of the initiative include:

- reducing unnecessary reporting and compliance burden – the EC has committed to cutting administrative burden by at least 25 percent for all businesses and by 35 percent for SMEs by the end of the mandate;
- eliminating outdated and overlapping tax rules;
- simplifying tax legislation with the objective to improve competitiveness in the internal market;
- clarifying concepts in tax legislation;

- streamlining and improving the application of tax rules, procedures and reporting requirements.

According to the call for evidence, the Omnibus on taxation may include legislative amendments to the following legal instruments:

- The Controlled Foreign Company rule under the Anti-Tax Avoidance Directive - to eliminate overlaps with Pillar Two. In addition, the call for evidence document indicates that the EC sees a need to rectify the current fragmentation in the implementation of the rule by Member States, which is the result of the various available options to this effect.
- The Interest Limitation Rules under the Anti-Tax Avoidance Directive - to address the procyclical effect of the rule, inflation effects, and consider the concerns of sectors that usually have high levels of legitimate leverage, as well as the needs of small and medium enterprises. This also includes considerations of streamlining the rules.
- The scope of the Parent-Subsidiary Directive, the Interest Royalty Directive and the Tax Merger Directive - to improve the efficiency of these Directives and, by extension, of the internal market.
- The procedural rules to obtain the benefits of the Parent-Subsidiary Directive and the Interest Royalty Directive, with the aim of reducing the administrative burden and compliance costs for businesses and consequently enhancing the overall current functioning of the Directives.
- Limited and targeted amendments to the Tax Dispute Resolution Mechanisms Directive, in particular the provisions regarding the admission phase, to remove ambiguities, ensure its consistent application across Member States and facilitate its use for taxpayers and tax administrations alike.

The consultation period initially ending on March 16, 2026 has been extended until March 30, 2026. A legislative proposal is scheduled to be released in the second quarter of 2026.

For further background on the EU tax decluttering and simplification agenda, please refer to Euro Tax Flash Issue 572.

## European Parliament

### Commissioner Wopke Hoekstra's response to Members of the European Parliament on how the EC intends to simplify the DAC

On February 12, 2026, Wopke Hoekstra, Commissioner for Climate, Net Zero and Clean Growth – who is also responsible for taxation, provided a response to Members of the European Parliament (MEPs) on how the EC intends to pursue simplification to the Directive on administrative cooperation (DAC). In his response, the Commissioner highlighted that the EC is working on a legislative proposal to recast the DAC with two main objectives:

- simplify and clarify reporting obligations under the DAC to reduce the associated burdens for business stakeholders;
- implement targeted improvements to the overall functioning of the DAC.

Commissioner Hoekstra also noted that the EC held a call for evidence and public consultation on the DAC recast proposal.

Apart from the consultation process, the EC intends to explore whether, alongside possible legislative amendments, common guidance could be developed in certain cases.

For more information on the DAC recast proposal, please refer to E-News Issue 225.

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# OECD and other International Organizations

## Key Insights

- OECD releases the latest peer review results on preferential tax regimes under BEPS Action 5

## OECD

### BEPS Action 5 peer review results (harmful tax regimes)

On February 12, 2026, the OECD published peer review results on preferential tax regime reached by the Forum on Harmful Tax Practice (FHTP), as part of their on-going review of the implementation of the BEPS Action 5. The FHTP provided its conclusions for four preferential tax regimes:

- Ireland's participation exemption regime for certain foreign dividends was assessed as not harmful.
- Peru's framework law on special economic zones was assessed as not harmful.
- Fiji's Original Income communication technology (ICT) business investment incentives and Fiji's Export income deduction regime were determined as abolished.

In addition, the FHTP reviewed the effectiveness in practice of the *substantial activities' requirements in no or only nominal tax jurisdiction*. The FHTP concluded that Anguilla still requires improvement in exchanges of information and that Turks and Caicos' compliance programme needs to be substantially improved by the next annual monitoring. No issues were identified for The Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man and Jersey.

For previous coverage, please refer to E-News Issue 207.

# Local Law and Regulations

## Key Insights

- Malta amends Pillar Two legislation to exempt local group members from GIR filing
- Qatar issues Pillar Two resolution
- Romania enacts new R&D tax credit
- Slovenia publishes Pillar Two tax returns

## Malta

### Exemption for local group members from filing GIR and related notifications

On February 20, 2026, Malta published in the Official Gazette a legislative amendment to the Maltese minimum taxation rules (Pillar Two).

The amendments clarify that Maltese Constituent Entities are exempt from filing the GloBE Information Return (GIR) and making related notifications.

The amendments are aligned with Article 50 of the EU Minimum Tax Directive allowing Member States to defer the application of the IIR and the UTPR up to December 31, 2029, where a maximum number of 12 UPEs are based in that EU Member State. Estonia, Latvia, Lithuania, Malta and Slovakia have made use of that option (with Slovakia already applying a Domestic Minimum Top-up Tax (DMTT) for fiscal years starting on or after December 31, 2023).

Article 50(2) of the EU Minimum Tax Directive further provides that groups headquartered in EU countries that have opted for the deferral shall nominate a designated filing entity in another jurisdiction with which a qualifying competent authority agreement (DAC9 or GIR MCAA) is in effect. That designated filing entity shall then be responsible for filing the GIR. The Constituent Entities located in the deferring Member State shall provide the designated filing entity with required information and shall be exempted from the filing obligations referred to in Article 44(2) of the EU Minimum Tax Directive.

For more details on local Pillar Two compliance requirements, please refer to the KPMG BEPS 2.0 tracker in Digital Gateway.

## Qatar

### Pillar Two resolution issued

On February 12, 2026, Qatar published a resolution of the Council of Ministers in the Official Gazette prescribing detailed rules for applying the DMTT and IIR. Key takeaways include:

- *OECD materials:* The Pillar Two legislation in Qatar is to be interpreted in a manner consistent with the GloBE rules, guidance and commentary issued by the OECD.
- *DMTT:* The DMTT rules in Qatar closely follow the OECD requirements for a QDMTT and are aimed to benefit from the QDMTT Safe Harbour under the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR) in other jurisdictions.

- *Safe Harbours:* The resolution provides for the transitional Country-by-Country Reporting Safe Harbour and other GloBE exclusions and Safe Harbours.

The Ministerial Decision complements Law No. 22 of 2024, which introduced a DMTT and IIR for fiscal years starting on or after January 1, 2025.

For previous coverage, please refer to E-News Issue 209.

## Romania

### New R&D tax credit enacted

On February 25, 2026, Romania published in the Official Gazette legislation introducing a new refundable R&D tax credit (Government Emergency Ordinance no. 8/2026).

Key features of the measure include:

- The tax credit amounts to 10 percent of eligible R&D expenses.
- The tax credit is deductible against the corporate income tax (CIT) or minimum turnover tax due for the company in the fiscal year in which the expenditure is incurred or, alternatively, within a period of four fiscal years.
- Taxpayers are entitled to receive a cash refund where the credit has not been used against the CIT or minimum turnover tax liability within a period of four years.

The new R&D tax credit applies from January 1, 2026 and is available as an alternative to the existing R&D tax incentive providing for an additional 50 percent deduction of eligible expenditure for innovation, research and development. Supplementary to those options (i.e., 10 percent tax credit or 50 percent additional deduction), taxpayers are entitled to apply accelerated depreciation for R&D equipment.

For more information on R&D tax incentives available across the globe, please refer to KPMG's Global R&D Incentives Guide, which will be updated on a regular basis.

## Slovenia

### Pillar Two tax returns published

On February 13, 2026, the tax administration in Slovenia made available the forms for the IIR and UTPR top-up tax return and DMTT return.

The DMTT return is required no later than 15 months after the end of the fiscal year (18 months for the transitional year), i.e., the same deadline as for the GIR.

The IIR and UTPR top-up tax return is to be filed within 30 days following the submission deadline for the GIR.

For more information on local Pillar Two compliance requirements, please refer to the KPMG BEPS 2.0 tracker in Digital Gateway.

# Local courts

## Key Insights

- Polish Anti-Tax Avoidance Council issues opinions on trademark amortization and closed-end investment funds
- Spanish Supreme Court decision on beneficial ownership under the IRD and treaty override
- Spanish Supreme Court confirms deduction of technical provisions for EU insurers with no PE in Spain

## Poland

### Polish Anti-Tax Avoidance Council issues opinions on trademark amortization and closed-end investment funds

On December 17, 2025, the Polish Anti-Tax Avoidance Council (the Anti-Tax Avoidance Council) published an opinion regarding the sale and amortization of trademarks and another opinion on sequence of activities involving closed-end investment funds. On January 9, 2026, the Anti-Tax Avoidance Council followed up on the opinion on closed-end investment funds by publishing two separate opinions. These opinions can be accessed here and here.

In the opinion on the sale and amortization of trademarks, the Council analyzed a series of transactions in which a private limited company contributed trademarks in kind to a limited joint-stock partnership, which subsequently sold those trademarks to a private limited company formed through the transformation of a sole proprietorship. The acquiring company then amortized the trademarks for tax purposes. The Council concluded that a tax advantage had arisen because the income from the sale of the trademarks was not taxed due to the interposition of the limited joint-stock partnership, and that obtaining this advantage was one of the main purposes of the arrangement. The Council further found the structure to be artificial and determined that the resulting tax benefit was contrary to the object and purpose of the relevant provisions of the Polish Corporate Income Tax Act. Consequently, the Council held that the general anti-abuse rule under the Polish Tax Code applied to the series of transactions.

The remaining three opinions concerned structures involving a Polish closed-end investment fund (CEIF). The Council reviewed a set of transactions that included: (i) the sale by the CEIF of shares in a Luxembourgish company to Polish companies; (ii) the issuance of bonds by those Polish companies and their subsequent acquisition by the CEIF; and (iii) the set-off of mutual receivables between the CEIF and the Polish companies. According to the Council, a tax advantage arose because the CEIF did not incur corporate income tax (CIT) as a result of recharacterizing its income – shifting from previously taxable income derived from partnerships to interest income on bonds, which benefits from an exemption under local tax rules. The Council also identified elements of artificiality, including an unjustified fragmentation of operations and the absence of genuine financial flows. It therefore concluded that the tax benefit obtained was contrary to the purpose of the Polish Corporate Income Tax Act and that the general anti-abuse rule under the Polish Tax Code was applicable to the transactions under review.

For more details, please refer to an alert prepared by KPMG in Poland.

## Spain

### Spanish Supreme Court decision on beneficial ownership under the IRD and treaty override

On January 12, 2026, the Spanish Supreme Court (the Supreme Court) issued a ruling concerning the application of the beneficial ownership test to Spanish-source royalty payments.

The case concerned royalties paid by a Spanish company to a Dutch group holding company for the use of intellectual property (IP). The Dutch company's main activity was to administer and collect royalties from EU subsidiaries. In practice, however, it retained only a small margin and promptly transferred most of the royalties to a related entity in Curaçao. Initially, the Dutch company claimed relief under the Spain – Netherlands double tax treaty. That treaty did not contain a beneficial ownership requirement and limited Spain's taxing rights to 6 percent of the gross royalties. The company later applied for a full withholding tax exemption under the EU Interest and Royalties Directive (IRD), which requires the recipient to be the beneficial owner of the income.

The Spanish tax authorities held that the Dutch company did not meet the beneficial ownership requirement because – in the tax authorities' view, it lacked real substance, decision-making functions, and the ability to use and enjoy the royalty income. As a result, the Spanish tax authorities held that the Dutch company was not considered the beneficial owner under the IRD and rejected the withholding tax exemption.

Following an initial appeal brought by the plaintiff, the High Court of Justice of Catalonia upheld the tax authorities' position. Referring to the principles established in the 'Danish cases[1]', the court found that the Dutch company acted as a conduit and did not carry out genuine economic activity. It also noted that the royalties were ultimately intended for the Curaçao entity, which is not established in an EU Member State and therefore falls outside the scope of the IRD. On this basis, the court upheld the application of domestic withholding tax and denied both the IRD exemption and treaty benefits.

The taxpayer further appealed to the Supreme Court. The Supreme Court dismissed the appeal and upheld the tax authorities' assessment. The Supreme Court concluded that 'beneficial ownership' under the IRD requires genuine economic activity and sufficient operational substance. Relevant factors include the existence of appropriate personnel and real decision-making autonomy. In the Supreme Court's view, entities that lack these features, as described in the Danish cases, do not qualify as beneficial owners and cannot benefit from the IRD exemption.

Finally, the Supreme Court clarified the relationship between EU Directives and double tax treaties. The Supreme Court confirmed that the IRD takes precedence and, if the Directive denies an exemption, the taxpayer cannot rely on treaty benefits as an alternative.

### Spanish Supreme Court confirms deduction of technical provisions for EU insurers with no PE in Spain

On November 17, 2025, the Spanish Supreme Court (the Supreme Court) issued Judgment no. 1463/2025, confirming that EU insurers without a permanent establishment in Spain may deduct technical provisions directly linked to Spanish-source dividends, provided the correlation is duly evidenced. This judgment dismisses the appeal filed by the State Attorney and supports the National High Court's approach in a case involving a German insurance company seeking a refund of Spanish withholding tax applied in excess.

The case concerned a German insurance company that received dividends from Spanish listed companies and claimed a refund of Spanish withholding tax. The insurer argued that certain technical provisions, recognized in accordance with insurance regulatory requirements, should be treated as deductible expenses for Spanish non-resident income tax (NRIT) purposes. The Spanish tax authorities rejected the claim on the grounds that the company's activities in Spain constituted a mere investment of capital rather than the pursuit of insurance business in Spain. The tax authorities further argued that the insurer had failed

[1] Joined cases N Luxembourg 1 (C-115/16), X Denmark (C-118/16) and C Danmark 1 (C-119/16) and Z Denmark case (C-299/16) on the Interest and Royalties Directive and joined cases T Danmark (C-116/16) and Y Denmark (C-117/16) on the Parent-Subsidiary Directive.

to demonstrate a sufficiently direct connection between the Spanish-source dividend income and the technical provisions it sought to deduct.

At first instance, the National High Court rejected the tax authority's restrictive interpretation and held that denying the deduction of comparable technical provisions to EU insurers could result in discriminatory treatment contrary to the freedom of movement of capital – particularly since Spanish resident insurers are, in principle, allowed to deduct such provisions under domestic corporate income tax rules.

The Supreme Court dismissed the State Attorney's appeal and held that EU resident insurance companies without a Spanish permanent establishment may deduct expenses relating to technical provisions for the purposes of Spanish law on NRIT, provided that (i) those provisions are comparable in nature to those required of Spanish insurers under domestic insurance regulations, and (ii) the taxpayer can demonstrate that the expenses, which are specific to the insurance business, are directly related to the Spanish-source income and have a direct and inseparable economic link with the activity carried out in Spain.

The Supreme Court emphasized that the success of refund claims is fact-dependent and must be backed by rigorous evidence. In the case at hand, particular weight was given to the taxpayer's detailed documentation and allocation methodology evidencing the correlation between the technical provisions and the dividend income.

Following this judgment, the Supreme Court reiterated the same doctrine in two further decisions dated December 11, 2025.

For more details, please refer to a tax alert prepared by KPMG in Spain.


### The tax impact of remote work: state of play and future horizons

Global workforce mobility remains a key issue for multinational groups, both from the perspective of retaining and attracting talent and in responding to the increased flexibility now expected by employees. These developments have driven a significant transformation in how international workforces are managed. In many regions, remote work – whether temporary or permanent, has increased substantially in recent years, both in scale and in permanence.

Against this background, the OECD has released its highly anticipated update to the Commentary on the Model Tax Convention (MTC). One of the most significant developments addressed in this update is the permanent establishment impact of cross-border remote working.

On March 25, 2026, a panel of KPMG tax specialists will share their insights on the impact of the update and what can be expected next, including a closer look at:

- clarifications brought by the revised Commentary, as well as remaining unresolved tax issues relating to remote working;
- expected approaches to the application of the revised Commentary by jurisdictions across the globe;
- industry best practices and practical challenges for businesses in managing the global mobility of individuals, including personal income tax and transfer pricing considerations;
- potential future OECD initiatives in this area and their anticipated impact on multinational groups.

Please access the event page to register.

### Navigating the first wave of EU public country-by-country reporting

The regulatory landscape for multinational groups operating in the European Union has become more complex with the implementation of the EU public country-by-country (CbyC) reporting requirements across all Member States. Whilst for most in-scope multinational enterprises (MNEs) the first round of disclosures under these new rules will be due by the end of 2026, with respect to financial year 2025 (for calendar year taxpayers), others have already published their first disclosures.

Specifically, non-EU groups with significant operations in Romania and MNEs headquartered in Romania were required to publish their first reports by the end of 2024. Similarly, MNEs with a qualifying presence in Croatia are subject to a reporting obligation with respect to financial years starting on or after January 1, 2024, with these reports due by the end of 2025.

With the public CbyC reporting rules now in effect across all EU Member States, aside from the exceptions mentioned, 2025 is the first year for which that compliance is required across the full range of EU countries in which these groups have a qualifying presence. As a result, non-EU MNEs will now need to consider differences in national implementation when preparing their public CbyC reports.

To help multinational groups understand the practical implications of these new requirements, KPMG's EU Tax Centre (ETC) conducted an internal survey in December 2025 across the network of KPMG member firms in Europe. The results of the survey were summarized in a dedicated blog post.

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