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E-News from the EU Tax Centre
Issue 61 – August 17, 2016

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 will develop and how to leverage opportunities and minimize 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 the case of Brisal (C-18/15)

On July 13, 2016, the CJEU rendered its decision in *Brisal*. This case concerned whether Portuguese withholding tax on interest paid to non-resident financial institutions is contrary to EU law because it is imposed on the gross amount of the interest paid, whereas resident financial institutions are taxed on their net income. The CJEU concluded that the Portuguese legislation constitutes a restriction of the freedom to provide services which is not justified. In addition, it ruled that financing costs should, in principle, be deducted for non-
Residents, as taxpayers with limited tax liability, in the same conditions as for residents with unlimited tax liability.

For more information, see ETF 295.

**CJEU decision in the case of Riskin (C-176/15)**

On June 30, 2016 the CJEU issued its decision in Riskin and Timmermans. The CJEU concluded that the freedom of capital does not preclude a Member State from treating dividends received from another Member State less favorably than those received from a third country as a result of an obligation arising from a tax treaty concluded with this third country. The CJEU stated that the benefits granted by a tax treaty are an integral part of all the rules under the treaty and contribute to the overall balance of mutual relations between the two contracting States. As the more favorable provision included in the Belgium-USA tax treaty is the result of the negotiation between the two States, such provision cannot be seen separately from the remaining treaty. Therefore, the benefit of this provision can be granted only to Belgian residents falling within the scope of that treaty. For this reason, Belgium does not have to extend this benefit to dividends from other countries.

For more information, see ETF 291.

**CJEU decision in the case of Feilen (C-123/15)**

On June 30, 2016, the CJEU issued its decision in the case of Feilen, which concerned German legislation that grants an inheritance tax reduction for persons within a particular tax class (if the estate contains an asset which, in the preceding 10 years, had already been subject to inheritance tax in Germany). No reduction is granted, however, if that previous inheritance was taxed in another Member State. The CJEU ruled that the restriction on the free movement of capital can be justified by the need to maintain the coherence of the tax system as long as there is a direct link between (i) the tax advantage conferred (in this case the reduction of the inheritance tax) and (ii) the offsetting of that advantage by a particular tax levy (in this case the previous German inheritance tax imposition relating to the same tax, the same asset and close relatives of the same family). Therefore, the CJEU held that the restriction was justified in Feilen.

**CJEU decision in the case Hünnebeck (C-479/14)**

On June 8, 2016, the CJEU delivered its judgment in Hünnebeck. This case concerned German legislation which provides that, in the case of a gift of a German piece of land, the allowance to be set against the taxable value for the
calculation of gift tax is lower when the donor and the recipient had their place of residence in another Member State. It also introduced an option for EU/EEA residents who can apply for unlimited tax liability in order to benefit from the higher tax allowance. However, the exercise of that option by the non-resident beneficiary involves the aggregation, for the purposes of calculating the tax payable in respect of the gift in question, of all the gifts received by that beneficiary from the same person over the course of the 10 years preceding and of the 10 years following that gift. However, for gifts involving at least one resident, only the gifts made within the 10 years preceding the gift are aggregated. According to the CJEU, this legislation therefore creates a restriction on the free movement of capital. It ruled that providing a choice to non-residents to be treated similar to residents does not remedy the discriminatory effect, as long as the mechanism that applies automatically is the one incompatible with EU Law. In addition, the fact of taking into account a longer period for the aggregation of gifts between non-residents, than for gifts in respect of which at least one party is a resident, has the effect of restricting the movement of capital.

AG opinion in the case *Masco Denmark* (C-593/14)

On May 12, 2016, Advocate General Juliane Kokott rendered her opinion on the questions referred in the *Masco Denmark ApS and Damixa ApS v Skatteministeriet* case. The case concerns Danish rules which allow for a tax exemption on interest income if the corresponding interest deduction is denied due to thin capitalization rules, but in effect only if the debtor company is resident in Denmark. The AG concluded that this difference in treatment did not constitute a restriction on the freedom of establishment. Furthermore, even if the difference in treatment was found to constitute a restriction, this restriction could be justified based on the balanced allocation of taxing rights, as well as the coherence of the tax system.

For more information, see [ETF 282](#).

AG opinion in case *Commission v Portugal* (C-503/14)

On May 12, 2016, Advocate General Wathelet gave his opinion in the case of *European Commission v Portugal*. This case concerns the compatibility with EU law of Portuguese legislation which provides that a taxable person who (i) exchanges shares and transfers his place of residence abroad, or (ii) transfers assets and liabilities relating to an activity carried out on an individual basis in return for shares in a non-resident company, must, in the former case, include, in relation to the transactions in question, any income not taxed in the last fiscal year in which the taxable person was still
regarded as a resident taxpayer, and, in the latter case, he does not benefit from a deferment of tax resulting from the transactions in question. In the AG’s opinion this legislation infringes the free movement of persons and the freedom of establishment without being justified.

CJEU decision in the case of Commission v Greece (C-244/15)

On May 26, 2016, the CJEU rendered its decision on the case of Commission v Greece. This case concerned Greek legislation providing for an exemption from inheritance tax, relating to the primary residence received by the spouse or child of the deceased person, which applies solely to EU nationals who are permanently resident in Greece. The CJEU ruled that this legislation constitutes a restriction on the free movement of capital because it reduces the value of the estate for the heir who fulfils all requirements apart from being resident in Greece. According to the CJEU, the Hellenic Republic raised no overriding reason in the public interest which is capable of justifying this restriction.

CJEU decision in the case of Kohll and Kohll-Schlesser (C-300/15)

On May 26, 2016 the CJEU issued its decision in Kohll-Schlesser. The case concerned Luxembourg rules which grant a tax credit to resident pensioners receiving pension income, subject to the condition that they have a certificate of deduction of Luxembourg tax, i.e. in effect limited to Luxembourg source pensions. The CJEU held that not granting the credit in respect of pensions received in connection with previous employment in the Netherlands, was a restriction on the free movement of workers which was not justified.

For more information, see ETF 286.

CJEU decision in the case NN (L) International (C-48/15)

On May 26, 2016, the CJEU rendered its decision in the case of NN (L) International regarding the application of a Belgian annual tax on foreign undertakings for collective investment (UCIs) and the imposition of a specific sanction on foreign UCIs that fail to observe this tax obligation. The various questions referred to the CJEU concerned, in particular, the interpretation of the directive concerning indirect taxes on the raising of capital, the freedom to provide services and the free movement of capital. The CJEU ruled, inter alia, that national
provisions by which a Member State imposes a specific penalty, such as a court-ordered prohibition on the foreign UCI marketing units in that Member State in future, in the event of non-compliance by the UCI with the obligation to file an annual declaration, necessary for the recovery of a tax on UCIs or in the event of non-payment of that tax, constitutes a restriction on the freedom to provide services.

**CJEU decision in the case of C (C-122/15)**

On June 2, 2016, the CJEU rendered its decision in the case of C regarding the question of whether the prohibition of age discrimination laid down in EU law also affects national income tax legislation. The CJEU ruled that Finnish provisions relating to a supplementary tax on retirement pension income does not fall within the substantive scope of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation nor, therefore, is it covered by Article 21(1) of the Charter of Fundamental Rights of the European Union.

**CJEU decision in the case of Pensioenfonds Metaal en Techniek (C-252/14)**

On June 2, 2016, in Pensioenfonds Metaal en Techniek v Skatteverket, the CJEU concluded that Article 63 of the TFEU does not preclude Swedish legislation whereby resident and non-resident pension funds are subject to different systems of taxation. It does, however, preclude non-resident funds from being prevented from taking into account professional expenses linked directly with the receipt of dividends, if such deductions are allowed in the tax base of resident funds.

For more information, see [ETF 287](#).

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**Infringement procedures & referrals to CJEU**

**Infringement procedures – Reasoned opinion**

**Austria**

In a reasoned opinion, the Commission requests Austria to changes certain rules requiring non-resident taxpayers to appoint fiscal representatives to administer their tax affairs on their behalf. Austrian residents are not subject to the same rule, which results, according to the Commission, in a discrimination contrary to the freedoms laid down by the TFEU. Austria has a two-month period to provide a
satisfactory response, after which the Commission may then decide to refer it to the CJEU.

Referrals to CJEU

Denmark

In the cases Z Denmark (C-299/16), C Denmark I (C-119/16), X Denmark (C-118/16), N Luxembourg 1 (C-115/16), the Danish High Courts have asked the CJEU for preliminary rulings in relation to the Interest and Royalty Directive. The questions asked request, *inter alia*, clarity on the definition of “beneficial owner” under the Directive, the interaction of the “beneficial owner” concept with the OECD Model Double Tax Treaty (OECD DTA) and confirmation of the application of subsequent OECD DTA commentaries to that interaction, in particular in relation to “conduit companies”.

In the cases Y Denmark (C-117/16), T Denmark (C-116/16), the Danish High Courts have asked the CJEU for preliminary rulings in relation to the Parent-Subsidiary Directive. Again, the questions referred ask, *inter alia*, for clarity on the definitions of certain terms and concepts, including “beneficial owner” (and how this relates to the “beneficial owner” concept in the Interest and Royalties Directive), and, again, for confirmation of the application of the OECD DTA and commentaries and for a ruling on some of the practical applications of the Parent-Subsidiary Directive as they relate to domestic Member State provisions which may result in different tax treatments for cross-border and domestic situations.

Finland

In the case of A Oy (C-292/16), the referring court questioned the compatibility with the freedom of establishment of provisions whereby the transfer of assets of a Finnish company’s PE located in another Member State to a company established in that State is taxed immediately in the year of transfer while in a corresponding national situation it is not taxed until the time of realization.

France

On June 27, 2016, the French Administrative Supreme Court asked the CJEU for a preliminary ruling in *Association française des entreprises privées (AFEP)* regarding the compatibility of French rules, which require an additional 3% contribution to corporate income tax on distributed profits by a resident company, with the EU Parent-Subsidiary Directive.

The French Court also requested a preliminary ruling from the French Constitutional Court on whether rules, which exempt
distributions made within tax-consolidated groups only, conform with the French constitution (see below).

Germany

On June 28, 2016, the German Finance Court referred the case of Hornbach-Baumarkt (C-382/16) to the CJEU. The case involves a German parent company which gave guarantees and letters of comfort to banks making loans to its subsidiaries in other EU Member States without charging a fee. Germany’s transfer pricing rules would impute a charge on an arm’s length basis which would not have applied if the subsidiaries had also been resident in Germany. The view of the court is that there are important distinguishing features from the previously decided case of Société de Gestion Industrielle SA (SGI) v État Belge (the Belgian State), (C-311/08), where the CJEU held that Belgium’s similarly framed (though not identical) transfer pricing rules did constitute a restriction on the freedom of establishment but that such restriction was justified, and therefore compatible with EU law. Therefore, the German Finance Court asked the CJEU for a preliminary ruling on whether Germany’s transfer pricing rules constitute a restriction on the freedom of establishment (under Article 49 TFEU) which is not justified.

For more information, see ETF 299.

Netherlands

On July 8, 2016, the Dutch Supreme Court requested a preliminary ruling from the CJEU in two different cases (case no. 15/00194 and case no. 15/00878) as to whether Dutch rules, which restrict the right for group companies to form a ‘Dutch fiscal unity’ (which would result in a different tax treatment for the deductibility of interest on group loans in one case and the disallowance of currency exchange losses for tax purposes in the second case) only to Dutch resident companies, constitute a restriction on the EU freedom of establishment principle.

Spain

The joined ANGED cases (C-233/16 to C-237/16) concern regional taxes levied on large retail space, because of the environmental damage caused by the use of facilities in retail establishments with large sales and parking areas for their customers. The taxes are simultaneously questioned on the grounds of State Aid and freedom of establishment.

United Kingdom

The case Fisher (C-192/16) questions the constitutional status of Gibraltar and the UK for the purposes of EU law. The UK
Upper Tribunal has asked the CJEU to decide whether Gibraltar is to be treated, regarding the freedom of establishment, as (i) forming a single Member State with the UK; (ii) a separate territory to the UK within the EU; or (iii) a third country part of a single Member State. It also asks if the answers would be different regarding the freedom of movement of capital.

State Aid

**AG opinion in the joined cases of Commission v World Duty Free Group (C-20/15 P) and Commission v Banco Santander and Santusa (C-21/15 P)**

On July 28, 2016, Advocate General Wathelet of the CJEU issued his opinion in the joined cases of Commission v World Duty Free Group and Commission v Banco Santander and Santusa. These cases concern Spanish provisions which allow Spanish resident companies to amortize the goodwill resulting from the acquisition of certain shareholdings in foreign companies. The AG concluded that, contrary to the General Court’s decision, this measure is selective and therefore should be regarded as State Aid incompatible with the common market.

For more information, see ETF 296.

**Belgium – Commission authorizes special tax regime for wholesale diamond sector**

The Commission found the specific tax regime applicable to the wholesale diamond sector compatible with EU law. Under this regime, the calculation of a trader’s gross profit is based on a fixed percentage of turnover. It aims to avoid the difficulties which arise from the difficult assessment of the value of diamond inventories. Since the selectivity criterion is not met, it does not constitute State Aid under Article 107(1) TFEU.

For more information, see the press release.

**CJEU opinion on joined State Aid cases Commission v Aer Lingus (C-164/15 P) and Commission v Ryanair (C-165/15 P)**

On July 5, 2016, Advocate General Mengozzi issued his opinion in the joined cases Commission v Aer Lingus and Commission v Ryanair regarding the Irish air travel tax (ATT), and its compatibility with EU State Aid rules. The ATT is an excise duty on air passenger transport which is applied at
different rates depending on the distance between the departure and arrival airports (EUR 2 for flights within 300km of Dublin airport and EUR 10 in all other cases). The Commission had issued a decision that the lower ATT rate constituted State Aid and ordered recovery of the EUR 8 difference between the two rates from the airlines. Following appeals by Aer Lingus and Ryanair, the General Court upheld the Commission’s decision that the ATT constituted State Aid but disagreed with the computation on the basis that the airlines would have passed the ATT charge on to customers, so there was effectively a nil monetary value to be recovered. The Commission appealed this point, and the AG has now agreed that the amount of aid to be recovered should be the EUR 8 difference per flight.

For more information, see ETF 293.

Commission investigations into tax exemptions for ports – updates

On January 21, 2016, the Commission issued three decisions requiring the Netherlands (SA.25338), Belgium (SA.38393) and France (SA.38398) to realign their rules on the taxation of ports with EU State Aid rules. Following these decisions, please see below for the responses from the countries/affected parties.

France and Belgium

France and Belgium did not agree to realign their rules and so, on July 8, the European Commission announced the opening of two investigations to determine whether the corporate tax exemptions granted by France and Belgium on ports’ economic activities are compatible with EU State Aid rules. According to the Commission, while certain activities of ports, such as safety, surveillance and traffic control, are outside the scope of EU State Aid rules, the economic activity of ports should be subject to corporate tax. Since those measures are regarded as existing aid, the Commission cannot ask these States to recover aid granted up until the adoption of its final decision.

For more information, see the press release.

Netherlands – Groningen Seaports and Others v Commission (T-160/16)

A number of Dutch seaports have lodged a claim with the CJEU to annul the Commission’s decision in respect of the Netherlands, arguing that the public seaports in the Netherlands compete with French, Belgian and German seaports enjoying an exemption from corporate tax and receive other forms of State Aid, which the Commission was
aware of when it issued its decision. The applicants contest the fact that the Commission decision abolishes the aid for the Dutch public seaports, while the corresponding aid in other Member States is maintained for the time being.

For more information, see the Commission decision under appeal.

Belgium – Port autonome du Centre and de l’Ouest and Others v Commission (T-116/16)

Similar to the case brought by Dutch seaports, a number of Belgian seaports have also brought a case before the CJEU to have the Commission’s decision in respect of Belgium annulled. Belgian ports are exempt from the general corporate income tax regime and instead are subject to a different tax regime, with a different base and tax rates, resulting in an overall lower level of taxation compared to other companies active in Belgium. The applicants have put forward ten arguments as to why the CJEU should order that the Commission’s decision be annulled.

Norway – Notification of accelerated depreciations in the windfarm industry

On May 10, 2016 the Norwegian government notified the EFTA Surveillance Authority (ESA) of new rules for accelerated tax depreciation on wind power plants after extensive pre-notification discussions. Under the notified rules, most assets in wind power plants acquired in the qualifying period can be depreciated on a straight-line basis over five years, instead of being based on the lifetime of the equipment.

On July 6, the ESA approved those rules, which aim at promoting the production of renewable energy in Norway.

For more information, see the notification letter and the ESA’s press release.

Norway – Evaluation plan approved for Norwegian R&D tax credit

On June 24, the ESA approved the Norwegian evaluation plan regarding the “Skattefunn” aid scheme. The scheme consists of the provision of tax credits for research and development projects.

For more information, see the ESA’s press release.
Belgium v Commission (T-131/16) and Soudal v Commission (T-201/16)

The Kingdom of Belgium and Soudal have lodged appeals with the CJEU against the European Commission decision in January regarding the Belgian so-called “excess profit” tax rulings system (see ETF 271). This decision ruled that the tax provision in question, which allows multinational companies to reduce their tax base by the amount of calculated "excess profit" it has made over and above what a hypothetical average profit a stand-alone company in a comparable situation would have made, constitutes State Aid incompatible with the internal market and ordered Belgium to recover the aid, estimated at approximately EUR 700 million.

At the same time as lodging the request for annulment, Belgium also requested that the General Court suspend the Commission’s requests that Belgium recover the aid and provide relevant details to the Commission. On July 19, 2016, the President of the General Court dismissed this request on the basis that Belgium had failed to meet the urgency condition required for a suspension in the recovery of State Aid.

For more information, see the Commission’s press release and the order of the General Court’s President.

Non-confidential version of the McDonald’s decision

On June 6, 2016 the European Commission published the non-confidential version of its decision to open a State Aid investigation into a tax ruling given by Luxembourg to McDonald’s. The decision was originally announced on December 3, 2015, when the Commission took the preliminary view that the tax ruling issued by the Luxembourg Tax Administration to McD Europe Franchising S.à.r.l. may constitute State Aid within the meaning of Article 107(1) TFEU.

For more information, see the Commission decision, also see ETF 288 and the European Commission’s Press Release of December 2015.

Non-confidential version of the Fiat decision

On June 9, 2016 the European Commission issued the non-confidential version of its final decision in the Fiat case. This case relates to a transfer pricing ruling on financing activity granted by Luxembourg. The Commission ruled that it constitutes State Aid that is incompatible with EU law and ordered the recovery of this aid.
Commission clarifies scope of EU State Aid rules to facilitate public investment

On May 19, 2016 the European Commission published a Notice on the notion of State Aid as referred to in Article 107(1) TFEU. The aim of the Notice is to contribute to an easier and more transparent and consistent application of the notion of State Aid by clarifying key concepts.

For more information, see ETF 284 and the Commission’s press release.

Germany v Commission (C-208/16 P) and Andres v Commission (C-203/16 P)

Two cases have been brought asking the CJEU to annul a Commission decision which declared that German rules, which, in relation to the restructure of companies in difficulty, provide an exception to a general limitation in the German tax code on the use of tax loss carry-forwards, constitute State Aid incompatible with the common market.

Starbucks decision made public

On June 28, 2016, the European Commission published the non-confidential version of the final decision relating to the Starbucks State Aid case. This case relates to a transfer pricing ruling on manufacturing activity granted by the Netherlands. The Commission ruled that it constitutes State Aid that is incompatible with EU law and ordered the recovery of this aid.

For more information, see ETF 262 and the Commission’s press release of October 2015.

Two Hungarian tax measures found in breach of EU State Aid rules

The Commission issued two decisions declaring that two Hungarian tax measures based on progressive turnover rate structures (a food chain inspection fee, SA.40018 and a health contribution on tobacco products, SA.41187) are incompatible with EU State Aid rules. The Commission considers that the progressive rate structure provides a selective advantage to companies subject to the lower rates.

For more information, see the Commission’s press release.
Ireland publishes guidance on new transparency requirements in relation to State Aid given to individual taxpayers

From July 1, 2016, Member States are required to publish specified information on State Aid provided to individuals over a certain threshold. Ireland have therefore published guidance for taxpayers to provide a brief overview of the rules and the Irish tax relief schemes that would fall under the new rules.

EU Institutions

BEPS: Presidency roadmap on future work

Following a meeting of the High Level Working Party on Taxation on July 7, 2016, the Slovak Presidency has issued its Presidency Roadmap on BEPS, which includes among its aims, *inter alia*, to start an examination of proposals on the Common Consolidated Corporate Tax Base and hybrid mismatches and to start work on amending the Directive on Administrative Cooperation to allow tax authorities to access information under the Anti-Money Laundering Directive.

For more information, see the [Presidency roadmap on future work](#).

75% of Europeans want EU to do more to fight tax fraud

According to the latest Eurobarometer survey commissioned by the European Parliament, 75% of all Europeans believe the EU should do more to fight tax fraud. The fight against tax fraud was highlighted by respondents as the third most important priority for the EU (after the fight against terrorism and unemployment).

Report on tax rulings and other measures similar in nature or effect

The Special Committee on Tax Rulings (TAXE2) report was adopted in committee on June 21, 2016 and in Plenary session on July 7.

This report includes recommendations to make corporate taxation fairer and clearer, such as, *inter alia*, implementation of an EU-wide withholding tax, creation of an EU public register of beneficial owners of companies and a list of non-cooperative jurisdictions, implementation of sanctions against intermediaries who assist in tax evasion or avoidance schemes and protection of whistleblowers.
For more information, see ETF 294.

**Commission communication on an external taxation strategy and recommendation on measures against tax treaty abuse**

On May 25, 2016 the Economic and Financial Affairs Council adopted the conclusions on the Commission communication on an external taxation strategy and the Commission recommendation on measures against tax treaty abuse.

The aim of this communication is to propose a framework for a new EU external strategy for effective taxation. It identifies the key measures which, according to the Commission, could help the EU to promote tax good governance globally, tackle external base erosion threats and ensure a level playing field for all businesses. The Commission Recommendation on the implementation of measures against tax treaty abuse relates to the way of implementing in EU Member States measures against tax treaty abuse that have been discussed in the context of OECD BEPS Action 6.

For more information, see ETF 285.

**Council adopted rules on the exchange of tax-related information on multinationals**

On May 25, 2016 the Economic and Financial Affairs Council adopted the directive on the exchange of tax-related information on multinational companies (country-by-country reporting to tax authorities).

**Set up of the Panama Papers inquiry committee**

On June 8, 2016, the European Parliament agreed to set up an inquiry committee into the “Panama Papers” revelations, of detailed information on offshore companies and their ultimate beneficiaries. The committee’s mandate had already been agreed on Thursday June 2 by the European Parliament Conference of Presidents. It will have to investigate alleged contraventions and maladministration in the application by the EU Commission or member states of EU laws on money laundering, tax avoidance and tax evasion. On June 23, the European parliament named 65 members of the committee from all political groups, and they elected Werner Langen as chair on July 12. The committee will have twelve months until June 8, 2017 to present its report.

**Report of the Code of conduct (Business Taxation)**

The Code of Conduct Group issued a report on June 13, 2016 summarizing its work during the Netherlands Presidency. It
was approved by the ECOFIN on June 17. During the meeting, the Finance Ministers particularly welcomed the agreement reached on new guidance on hybrid permanent establishment mismatches involving third countries. It also asks the Code of Conduct Group to continue monitoring standstill and implementation of the rollback, and invites the Group to continue its work under the Work Package 2015.

For more information, see the Group's report, and ETF 289.

**Adoption of the anti-tax avoidance directive**

On June 17, 2016 the Economic and Financial Affairs Council of the EU held discussions with a view to reaching a political agreement on the proposal for an anti-tax avoidance directive, which had been a high priority for the Dutch Presidency. In light of these discussions the Presidency put forward a final compromise text, to which almost all delegations could agree and announced a silence procedure until Monday June 20, 2016. As no objections were raised by that deadline, political agreement was reached. Following this political agreement, the ATAD was formally adopted during the next ECOFIN meeting on July 12, 2016.

The directive addresses, in particular, situations where corporates, mostly multinational groups, take advantage of disparities between national tax systems in order to reduce their tax bills. It lays down common minimum rules in the areas of interest limitation, exit taxation, general anti-abuse rules (GAAR), controlled foreign companies (CFC) and hybrid mismatches.

For more information, see ETF 289.

**European Commission’s proposals on further measures to enhance transparency and the fight against tax evasion and avoidance**

On July 5, 2016, the European Commission unveiled its latest proposals to tackle terrorism financing and money laundering, and the next steps in the Commission’s agenda for tackling tax avoidance.

In its communication, the Commission proposed, inter alia, amendments to the Directive on Administrative Cooperation in the field of taxation, amendments to the Anti-Money Laundering Directive, and to examine how Member States could automatically exchange their national information on beneficial owners of companies and trusts with a potential tax impact.

For more information, see ETF 292.
**Financial transaction tax**

The ECOFIN briefly discussed how to progress proposals on an EU financial transaction tax contained in a report submitted to it. Austria underlined that there is a strong convergence on the core design of the tax, but that further work is needed on (1) the taxation of derivatives and its potential impact on borrowing costs, and (2) the appropriate mechanisms for an effective collection of the tax. These issues will be addressed by two dedicated task force groups to be set-up.

**ECOFIN Report to the European Council on Tax issues**

A draft ECOFIN Report to the European Council on Tax issues was prepared and agreed in the Council High Level Working Party on Tax issues on June 3, 2016. Then, on June 17, 2016 ECOFIN endorsed the report and agreed to forward it to the European Council on June 28/29, 2016. This report provides an overview of the progress achieved by the Council during the term of the Netherlands Presidency. It includes the anti-tax avoidance package, the common system of Financial Transaction Tax and the work of the Code of Conduct.

For more information, see the report.

**In depth analysis and study requested by the TAXE2 Committee**

At the request of the Special Committee of the European Parliament on Tax Rulings (TAXE2), four research papers have been produced recently by the European Parliament’s research service Policy Department A:

- **In-Depth Analysis - International Taxation and Tax Rulings: Policy issues at Challenging Times**
- **In-Depth Analysis - Influence of EU Law on Taxation in the EU Member States’ Overseas Territories and Crown Dependencies**
- **Study - The Role of the Financial Sector in Tax Planning**
- **Study - Tax Challenges in the Digital Economy**

**European Parliament issues report on role of United States as tax haven**

The Greens/European Free Alliance in the European Parliament (Greens/EFA) has released a report regarding the role of the United States as a tax haven and how it has fallen behind on tax transparency. The paper makes a series of recommendations, including calling on all countries to create
public registries of beneficial owners. It also recommends that the European Union should seriously consider including the United States on their upcoming blacklist of tax havens.

**Speech by Commissioner Pierre Moscovici at the Tax Congress of the Berlin Tax Forum 2016**

On June 20, 2016 Commissioner Pierre Moscovici gave a speech, at the Tax Congress of the Berlin Tax Forum, which touched on topics including EU public country-by-country rules, transparency on beneficial ownership, sanctions to discourage aggressive tax planning schemes, the EU blacklist and the re-launch of the Common Consolidated Corporate Tax Base.

**Agreement between EU and Monaco regarding automatic exchange of financial account information**

On July 12, 2016, the EU and Monaco signed a new agreement aiming at improving international tax cooperation and compliance and providing for an automatic exchange of information on the financial accounts of each other's residents, starting in 2018 for information collected since January 1, 2017. Under this agreement, the Member States will receive the names, addresses, tax identification numbers and dates of birth of their residents with accounts in Monaco, as well as other financial and account balance information. This agreement follows equivalent deals signed with Switzerland, Liechtenstein, San Marino and Andorra.

Pursuant to this agreement, the tax administrations, in Monaco and in the member States, will be able, among other things, to administer and enforce their tax laws in cross-border situations and assess the likelihood of tax evasion being perpetrated.

**UK referendum - Brexit**

On June 23, 2016, the referendum to decide whether the United Kingdom (UK) should remain in or leave the European Union (EU) took place and resulted in a small majority of British voters deciding in favor of leaving the EU. As this “Brexit” will necessarily have major consequences for both the UK and the EU, it is expected that defining the terms and conditions of such a withdrawal will take at least two years and involve challenging negotiations on both sides.

For more information, see ETF 290.

Immediately after the referendum result, President of the EU Council, Donald Tusk, appointed Didier Seeuws to coordinate negotiations on behalf of the EU from a political perspective. On July 27, President of the EU Commission, Jean-Claude
Juncker, appointed Michel Barnier as Chief Negotiator in charge of leading the Commission Taskforce for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the Treaty on European Union, which will formally start the two-year exit period, to deal with the more detailed aspects of the separation.

The new UK Secretary of State for Exiting the EU, David Davis, has indicated that Article 50 should be triggered before or by the beginning of next year, effectively working towards an exit date around January 2019. In the meantime, the UK remains a full member of the EU, though the UK has relinquished the rotating Council presidency planned for July 2017, which will now be taken up by Estonia.

**Exchange of information on beneficial ownership information**

In June 2016, 11 additional countries, including Bermuda, Cayman Islands, India, Jersey or the United Arab Emirates, committed to the project on automatic exchange of information on beneficial ownership. This commitment follows the letter addressed by France, Germany, Italy, Spain and the UK to the G20 on April 14, 2016 and the agreement of all Member States to participate.

For more information, see the updated list of 42 countries involved.

**Protection of whistleblowers**

Following the conviction of "Luxleaks" whistleblowers Antoine Deltour and Raphaël Halet by a Luxembourg court for having revealed favorable tax deals granted to multinationals by the Luxembourg authorities, MEPS held a debate with the Council and Commission on July 6, 2016. They called for EU legislation to protect such whistleblowers, as they leak information in the public interest and play a crucial role in the fight against tax avoidance. In this respect, the TAXE2 report contains some recommendations on how to improve legal safeguards for whistleblowers.

**Consultation on cross-border investment funds**

On June 2, 2016 the European Commission launched a public consultation on strengthening the single market passport for cross-border investment funds. It is open from June 2, 2016 to October 2, 2016. This consultation contains questions regarding taxation and notably the issues of the lack of access to tax treaties and the difficulties in obtaining refunds of withholding taxes or the discrimination of funds established in other Member States.
Directive on exchange of tax-related information on multinationals published


Protection of the European Union’s financial interests - Fight against fraud 2015 Annual Report

On July 14, 2016 the European Commission issued a report to Parliament and Council entitled “Protection of the European Union’s financial interests - Fight against fraud 2015 Annual Report”. As the protection of the EU’s financial interest and the fight against fraud are responsibilities shared between the EU and Member States, this report contains measures taken by them in those respects and the results of those measures.

For more information, see the report.

EU Joint Transfer Pricing Forum documents published

Following the 46th meeting of the EU Joint Transfer Pricing Forum on June 23, 2016, the European Commission has published various documents, including a draft report on the “Use of comparables in the EU”. The next meeting is currently scheduled for October 20, 2016.

For more information, see the Commission’s press release.

OECD

First meeting of the new inclusive framework to tackle BEPS in Kyoto

On June 30 and July 1, representatives of countries met for a special meeting of the OECD Committee on Fiscal Affairs. The aim of this meeting was to push forward ongoing efforts to update international tax rules as the latest step in the OECD/G20 Project to tackle Base Erosion and Profit Shifting (BEPS). Participants started work to undertake standard-setting on issues including transfer pricing and interest deductibility, as well as the development of practical guidance to support consistent, global implementation of their commitments to the BEPS package.

During the meeting, five countries – Argentina, Curacao, Georgia, Korea, and Uruguay – signed the Multilateral Competent Authority agreement for the automatic exchange of Country-by-Country reports, bringing the total number of
signatories to 44 countries. It follows the signatures of Canada, Iceland, India, Israel, New Zealand and the People's Republic of China in May 2016.

**Panama, the Dominican Republic and Nauru joining the multilateral tax information sharing convention**

On July 15, 2016, Panama formally decided to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, becoming the 99th country to do so following the Dominican Republic and Nauru on June 28, which provides for all forms of administrative assistance in tax matters. The OECD welcomed this request to join the Convention, stressing that this is a step forward in implementing its commitment to tax transparency and effective exchange of information.

**Jamaica, Angola and the Seychelles became members of the Inclusive Framework on BEPS**

The OECD Inclusive Framework on BEPS is a joint collaboration between countries, the OECD and G20 members to develop, implement, monitor and review common standards on BEPS related issues. On July 7, Angola and the Seychelles were welcomed as members of the Inclusive Framework, closely followed by Jamaica, which became the 85th member. These accessions follow the first meeting in Kyoto (see above) and the OECD expects that most of the jurisdictions that attended this meeting, which are not already members, will join in the coming months.

For more information, see the inclusive framework composition of July 15, 2016.

**New BEPS discussion drafts**

The OECD recently issued several discussion drafts on BEPS:

- Interest deductibility - [The design and operation of the group ratio rule](https://www.oecd.org/ctp/beps/) (Action 4) (closes August 16, 2016)
- Approaches to BEPS involving interest in the Banking and Insurance sectors (Action 4) (closes September 8, 2016)
- Attribution of profits to PEs (Action 7) (closes September 5, 2016)
- Conforming Changes to Chapter IX of the OECD Transfer Pricing Guidelines “Transfer Pricing Aspects of Business Restructurings” (Actions 8-10) (closes August 16, 2016)
- Revised guidance on profit split method (Actions 8-10) (closes September 5, 2016)
 Guidance released on Country-by-Country Reporting

OECD guidance on the implementation of country-by-country reporting

The OECD published additional guidance on Country-by-Country reporting on June 29, 2016. Under the CBCR rules, the biggest multinationals will be required to provide aggregate information annually in each jurisdiction they do business. The document contains guidance on transitional filing options for Groups that voluntarily file in the home country, the application of CBCR reporting to investment funds and partnerships and the impact of exchange rate fluctuations on filing thresholds.

Tax rulings exchange XML Schema

On July 11, 2016 the OECD released a standardized IT format for the exchange of tax rulings between jurisdictions under BEPS Action 5, called the ETR XML Schema. It is accompanied by the ETR XML Schema User Guide, which provides a further explanation of the information required to be included in each data element to be reported.

IT format for providing feedback on CRS information received

On July 11, the OECD released its standardized IT format for providing structured feedback on exchanged Common Reporting Standard information – the CRS Status Message XML Schema – as well as the related User Guide aimed at preventing errors, caused by either an incorrect file preparation and/or by incomplete or inaccurate record information. The first exchange is scheduled for September 2017.

Confederation Fiscale Européenne forum 2016

On April 21, 2016 the Confédération Fiscale Européenne (CFE) held its 2016 forum in Brussels, with the topic of "Rebuilding the international tax system: How to square the circle?"

More information and materials from the sessions can be found here.

Tenth meeting of Forum on tax administration

From May 11 to 13, 2016 the tenth meeting in the OECD Forum on Tax Administration (FTA) met in Beijing, China. On the agenda was implementation of the OECD’s BEPS project
as well as the Common Reporting Standard (CRS). The meeting also saw the release of a number of publications.

For more information, see the OECD press release.

**Fiscal incentives for R&D and innovation in a diverse world**

On July 9, 2016 the OECD released a report entitled “Fiscal incentives for R&D and innovation in a diverse world”. It concludes, among other things, that certainty and predictability is more important for companies than reduction in tax liabilities and that the R&D policy should take into account the heterogeneity of business and of countries. Moreover, more research is needed on different fiscal incentives to identify the circumstances where they provide the best improvement.

**Latvia ratifies agreement on accession to the OECD**

On June 16, 2016 Latvia ratified the accession agreement with the OECD. On July 1, it became a full member of the organization after depositing its instrument of accession to the OECD Convention.

For more information on Latvia’s accession process, see the OECD's overview.

**Paraguay joined the Global Forum on Transparency and Exchange of Information for Tax Purposes**

Paraguay has joined the Global Forum on Transparency and Exchange of Information for Tax Purposes as its 134th member. It has thus committed to implement the international standard of exchange of information on request and to work towards implementing the standard of automatic exchange of financial account information.

For more information, see the press release.

**Incorporation of BEPS amendments into the Transfer Pricing Guidelines**

provide further clarity and legal certainty about the status of the BEPS changes to the Transfer Pricing Guidelines.

For more information see the press release.

**Public consultation on the multilateral instrument to implement the tax-treaty related BEPS measures**

The report on Action 15 of the BEPS Action Plan concluded that a multilateral instrument to modify bilateral tax treaties to implement the tax treaty-related BEPS measures is needed. Following this report, an Ad Hoc Group of 96 countries was established to finalize the multilateral instrument for signature. In May 2016, the OECD launched a consultation on the multilateral instrument and on July 4 a compilation of the comments received was published.

**Report by the Platform for Collaboration on Tax to the G20: Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries**

Following an earlier request by the G20 Finance Ministers, the IMF, OECD, UN and World Bank Group delivered a report to the G20 Finance Ministers and Central Bank Governors meeting on July 23-24 on recommendations for a number of measures to help strengthen and build tax capacity.

**International community continues movement towards greater tax transparency**

On July 26, 2016, the Global Forum on Transparency and Exchange of Information for Tax Purposes published ten new peer review reports which, they conclude, demonstrate greater advancement in the implementation of the international standard for exchange of information on request.

For more information, see the press release.

**Local Law and Regulations**

**Austria**

**EU tax amendment act**

On July 14, 2016 the Federal Council approved the EU Tax Amendment Act following the earlier approval by parliament. The Act includes provisions to adopt Country-by-Country reporting in line with Action 13 of the OECD BEPS project,
and to implement the Directive on automatic exchange of information with respect to advance tax rulings (Directive 2015/2376/EU). The Act was officially gazetted on August 1, 2016.

Government agrees to amend stability charge on banks

On July 12, 2016, the Austrian government agreed a reduction in the annual stability charge (which is charged on Austrian banks and credit institutions, including Austrian branches of EU banks), which will result in annual revenue for the treasury of EUR 100 million, rather than the current EUR 640 million per year. To help with the shortfall, there will be a one-time levy which the government expects to raise approximately EUR 1 billion. We await further details from the government.

EU Commission asks Austria to amend rules which require non-resident taxpayers appoint fiscal representatives

On July 22, 2016, the EU Commission issued a reasoned opinion to the Austrian government that it believes that Austria’s rules requiring that non-resident taxpayers appoint an Austrian fiscal representative to act on their behalf in relation to their tax affairs are discriminatory and a restriction on the fundamental freedoms of the EU (free movement of people, services, capital and goods). Austria has two months to comply before the Commission may then refer the matter to the CJEU.

Belgium

Implementation of urgent fiscal measures

On June 17, 2016, the Belgian Council of Ministers approved a draft bill, which included some urgent fiscal measures to implement OECD and EU measures, such as the abolition of the 80% patent deduction, implementation of the EU Parent-Subsidiary Directive (regarding hybrid instruments and a general anti-abuse rule) and corresponding amendments to the income tax rules following the CJEU judgment in the case of Tate & Lyle Investments (Case C-384/11).

Tax bill implementing BEPS actions

On June 30, 2016 the Belgian parliament adopted a bill on taxes and reforms, including increased reporting obligations for payments to tax havens and the adoption of Country-by-Country reporting in line with Action 13 of the OECD BEPS
project, with the aim of closing the budgetary gap of circa EUR 2.2 billion.

**Annual tax on credit institutions approved**

On May 13, 2016, a bill which introduced a single, annual tax on credit institutions was approved by the Council of Ministers. The tax combines a number of previous taxes, such as the annual tax on credit institutions and the annual tax on collective investments, into a single annual tax.

**Croatia**

**Automatic exchange of information enacted**

On May 19, 2016, Croatia’s amendments to domestic legislation, to implement the EU Directive on automatic exchange of information, entered into force. The first reports, for the 2016 calendar year, are due to be filed by June 30, 2017.

**Anti-avoidance measures adopted**

On June 9, 2016, changes to domestic legislation, to implement the EU Parent-Subsidiary directive, entered into force.

The new rules prevent tax exemptions, relief or reductions in the taxable base where there is an arrangement or series of arrangements whose purpose is to obtain a tax advantage and is not genuine.

**Czech Republic**

**Conference on future of the tax system**

On June 14, 2016, the Ministry of Finance held a conference on the future changes aimed at modernization and simplification of the tax system. Changes include a new income tax law, self-assessment and upgraded IT structure.

**Bill submitted to parliament on automatic exchange of cross-border rulings**

On July 17, 2016, the government sent a bill for approval by both chambers of parliament to implement the EU Directive 2015/2376 on the automatic exchange of cross-border rulings and advance pricing arrangements.
Cyprus

Publication of circular on recently implemented notional interest deduction on equity

On July 26, 2016, the tax department issued a circular clarifying the definition of certain terms in the recently implemented notional interest deduction on equity, as well as confirming the scope of the new deduction and providing some examples which demonstrate the basic principles and practical operation of the rules.

Tax incentives package for innovative and start-up companies approved

On July 27, 2016, the Council of Ministers approved a package of tax incentives which will now be passed to parliament for approval. The incentives include a 50% tax exemption, capped at EUR 150,000 per annum, for investors in start-up and innovative (the definition of which has been broadened) companies.

Denmark

Withholding tax reclaims – Statute of limitations

On June 13, 2016, the Danish Tax Authorities issued administrative guidance which reduced the statute of limitations from five years to two years with respect to withholding tax reclaims.

There are transitional rules until September 13, 2016, such that claims filed before then will be subject to the previous rules, and claims filed thereafter will be subject to the three-year statute of limitation. Both ordinary tax treaty reclaims as well as reclaims based on EU case law should therefore be filed as soon as possible and before September 13, 2016 if they relate to dividends paid over three years ago.

Disclosure of foreign accounts for tax purposes clarified

On May 26, 2016, the Danish Assessment Board clarified the disclosure obligations of Danish financial institutions following requests from the tax authorities.

It confirmed that non-EU resident/established entities (including companies, foundations, trusts, associations and similar) that have accounts with Danish financial institutions (including foreign branches) are potentially caught by the rules.
Binding rulings issued

On July 26, 2016, the tax administration issued two binding rulings. The first confirms the rules under which an investment company is taxable on gains made on shares, and the second ruling provides that a profit-sharing loan granted by an employer to an employee is not a taxable event for the purposes of the Law on Taxation of Gains and Losses on Debt Claims, Debts and Financial Instruments.

Finland

Press release published regarding judgments on business restructurings financed by debt

The Supreme Administrative Court recently upheld decisions by the tax administration to disallow deductions of interest paid by branches in Finland. Following this, on May 27, 2016, the tax administration published a press release confirming circumstances in which, based on the judgment, debt push-down arrangements may be regarded as tax avoidance.

Developments regarding withholding tax reclains

On May 23, 2016, the Finnish Supreme Administrative Court held that a Norwegian government entity was entitled to the same tax exemption allowed for the corresponding Finnish government entities. The Finnish tax administration has extended this case law to third countries, not just EU government entities, with public entities which perform similar tasks to those Finnish public entities entitled to certain tax exemptions.

In addition, following the CJEU's ruling in Commission v. Finland (case C-342/10), the Supreme Administrative Court also ruled that EU/EEA based insurance companies providing unit-link products are entitled to refunds of WHT levied on Finnish-source dividends, and possibly claim zero-rated dividends in the first place.

Tax administration opens public consultation on guidance on CRS and Mutual Assistance Directive

On June 30, 2016, the tax administration published draft guidance and invited comments from the public by August 15, 2016 on the implementation of the EU Directive on the automatic exchange of information and the OECD Common Reporting Standard (CRS), and the interaction with the Finland - United States FATCA Model 1A Agreement (2014).
France

Public register of trusts

On May 11, 2016 a decree implementing the public register of trusts was published in the Official Journal. The register will be accessible online from June 30, 2016 by any person, and contain information on the trusts, such as name and address of the trust and any of its settlors, beneficiaries and the trustees.

Transposition of PSD anti-abuse clause – public consultation launched

On June 7, 2016, the tax administration issued amended guidelines, inviting comments from the public by July 7, 2016, on the participation exemption on dividends following recent statutory changes enacted in 2015. The guidelines include additional comments on rules implementing the EU Parent-Subsidiary Directive, including the anti-abuse clause and the interaction between the new participation exemption anti-abuse rule and the general anti-abuse rule (abuse of law).

Extension of 140% amortization base

On August 1, 2016, the government announced an extension to December 31, 2017 of the 140% amortization base on qualifying investments in industrial, manufacturing and scientific research.

Germany

Bill implementing anti-BEPS measures

On May 12, 2016, the lower house of parliament approved a draft bill, which will now be submitted to the Federal Council for approval, on the simplification of tax assessments. The bill will, inter alia, deal with digitization of the assessment procedure and transition from paper to electronic filing.

Federal Cabinet approves draft bill on implementation of amendments to EU Mutual Assistance Directive and other measures against base erosion and profit shifting

On July 13, 2016, the Federal Cabinet approved the draft bill, which will now be sent to the lower house of parliament for approval, on the implementation of amendments to the EU Mutual Assistance Directive and other measures against base erosion and profit shifting, including country-by-country reporting and the automatic exchange of information.
Measures to combat tax fraud

On June 3, 2016 the Ministry of Finance announced that an agreement had been entered into concerning measures to combat tax fraud. The measures include increased powers for the tax authorities as well as increased reporting requirements for taxpayers. In particular, banks may be required to notify authorities of investments in or business relationships with letterbox companies, fines for non-reporting are increased and certain tax and bank secrecy provisions are revealed.

Greece

Tax treatment of collective investment vehicles clarified

On June 7, 2016 the Public Revenue Authority published a circular on the tax treatment of collective investment vehicles, such as portfolio investment companies, real estate investment companies, real estate investment funds and UCITS, following the amendments to the income tax legislation with effect from June 1, 2016.

Taxation of interest payments upon repeal of Savings Directive

On June 21, 2016, the Public Revenue Authority published a circular clarifying the taxation of interest payments after the repeal of the Savings Directive (2003/48) from January 1 2016, including on the reporting and withholding tax implications under the general provisions of the Greek income tax code (15% withholding) and under bilateral tax treaties (where a different rate may apply).

Tax treatment of income derived from service or employment contract – clarifications released

On July 12, 2016, the Public Revenue Authority published a circular clarifying that any service or employment income from a non-Greek resident taxpayer, without a Greek tax presence (e.g. no permanent establishment) will not be treated as employment income under Article 12(2)(f) of the Income Tax Act, despite the fact that it is earned in Greece.

Clarifications issued on deductibility of scientific and technological research expenses

On July 18, 2016, a circular was published providing further details on the applicable rules for depreciation of equipment and instruments used for scientific and technological research, as well as guidance on the determination of deductible expenses for scientific and technological research.
Amendments to draft bill on taxes before parliament

On July 27, 2016, the draft bill on taxes before parliament was amended. Some of the amendments include extending the statute of limitations for the tax authority to issue tax assessments, and making the production of a tax compliance certificate optional for a Greek S.A. (A.E.), Ltd (Ε.Π.Ε.) or a permanent establishment of a foreign company. The final bill, which also includes other provisions amending the tax code, such as amendments to the procedural tax code and to transfer pricing legislation, was formally adopted by parliament on July 28, 2016.

Hungary

Bill to combat base erosion and profit shifting

On June 7, 2016, parliament adopted a bill introducing a number of measures to implement BEPS initiatives. The bill will align the current intellectual property (IP) regime with the modified nexus approach envisaged in OECD’s BEPS Action 5 from July 1, 2016.

The bill will also implement the EU directives on the automatic exchange of tax information, disclosure of non-financial and diversity information by certain large undertakings and taxation of energy products.

Iceland

Draft bill to combat tax avoidance

On May 25, 2016, as part of the government’s response to the “Panama Papers” scandal, a draft bill was presented to parliament to combat tax evasion in relation to transactions and/or assets in low-tax countries, including restricting the ability to transfer legal domicile and assets to such countries, clarification of controlled foreign corporation (CFC) rules of companies in those low-tax countries, the disclosure and reporting obligations on financial institutions and tougher sanctions for providing incorrect information.

Ireland

Country-by-country reporting (CBCR) FAQ

On June 23, 2016, the Revenue published a country-by-country reporting (CBCR) FAQ in relation to the interpretation of the Irish laws to implement the OECD BEPS Action 13 and the Irish reporting requirements.
APA guidelines published

On June 23, 2016, the Revenue published guidelines for taxpayers on applying for a formal bilateral advance pricing agreement (APA) program (effective from July 1, 2016) for transfer pricing issues.

2016 Tax Strategy Group Papers published

On July 21, 2016, the government published its 2016 Tax Strategy Group Papers, which are designed to list options and issues being considered as part of the budgetary process for the following year. The corporate tax paper includes recent international tax developments, including the EU Anti-Tax Avoidance Directive, country-by-country reporting, CCCTB, and the OECD multilateral instrument on tax treaties.

Isle of Man

Enhanced tax requirements for accounting records – consultation launched

On July 12, 2016, the Income Tax Division published a consultation on proposed regulations regarding making and keeping accounting records, including a minimum standard of adequacy of such records to be produced and a minimum five-year retention period. Comments and suggestions on the draft regulations are invited by August 26, 2016.

Italy

Tax rulings procedure for new investments

On May 12, 2016, a Ministerial Decree was published implementing rules whereby new investments, of at least EUR 30 million, with a significant impact on employment may submit for a ruling with respect to their entire investment plan, covering issues such as the applicability of anti-abuse rules and eligibility of different tax regimes.

Financial transactions tax – list of uncooperative countries updated

On June 9, 2016, the Italian tax authorities issued a protocol updating the list of uncooperative countries for financial transactions tax (FTT) purposes.

Of particular note is that Croatia, following its accession to the EU in 2013, is now included in the list of cooperative countries.
which guarantee exchange of information and assistance in tax collection.

**Patent box regime – clarifications on submission of supporting documentation**

On June 27, 2016, the Italian tax authorities issued a protocol which clarifies the required supporting documentation for taxpayer applications for the patent box tax ruling procedure.

**European Law 2015/16 enters into force**

On July 23, 2016, the European Law 2015/16, which makes corresponding amendments to Italian domestic legislation following recent EU Directives (including the amended Parent-Subsidiary Directive), CJEU judgments and pending infringement proceedings, entered into force.

**Liechtenstein**

**Consultation on country-by-country reporting issued**

On July 5, 2016, the government issued a consultation, to run until August 2, 2016, on the implementation of the OECD BEPS Action 13 following Liechtenstein’s signature of the Multilateral Competent Authority Agreement (MCAA) on the automatic exchange of country-by-country reports earlier this year.

**Luxembourg**

**Tax reform plans for 2017 – corporate income tax**

On July 13, 2016, the government adopted various corporate income tax reform plans to take effect from 2017, including a lower corporate tax rate (the current standard 21% down to 19% for 2017 and further to 18% from 2018), stricter enforcement of the use of carry-forward of losses, increase of the investment bonus and the monitoring of international developments, particularly the development of BEPS rules within the EU, to ensure Luxembourg’s tax rules remain competitive.

**Bill on new investment vehicle is enacted**

On July 28, 2016, a bill was enacted which introduces a new investment vehicle (fonds d'investissement alternatifs réservés, FIAR), which combines certain legal (e.g. possibility to opt for a variable capital structure) and tax (e.g. will usually be subject to annual subscription tax at 0.01%) features of
existing investment fund regimes but without the regulatory requirements.

**Netherlands**

EU Common Reporting Standard: obligation for financial institutions to determine beneficial owner if account holder is investment vehicle – updated list of countries published

On July 11, 2016, the updated list of countries and territories, which are signatories to the OECD Automatic Exchange of Information Agreement, and therefore not within the rules requiring Dutch resident financial institutions to look through foreign entities resident in those countries and report their ultimate beneficial owners, was published.

The additional countries are Andorra, China, Greenland, Israel, Malaysia, Monaco, Russia and St. Kitts and Nevis.

**Norway**

Political agreement on tax reform

Six parties in Parliament have reached a broad agreement on 17 items that are to form the basis for tax policy in the coming years. Among the items are:

- ordinary tax rate to be reduced to 23% by 2018;
- a finance tax, to be introduced from 2017, for financial services that are exempt from value added tax;
- the implementation of all parts of the OECD’s BEPS project as soon as possible;
- interest stripping rule to include third-party interest expenses in line with OECD recommendations; and
- an expert committee is to assess whether limitations should be made to tax attorneys’ and other advisors’ confidentiality in the area of taxation.

For more information see the TaxNewsFlash.

**Poland**

GAAR adopted by parliament

On June 7, 2016 the President signed a bill introducing a general anti-avoidance rule (GAAR) in Polish tax legislation. The legislation will come into effect 30 days after its official publication.
Portugal

New exchange of information form for cross-border transfer of funds

On May 13, 2016, a circular regarding mandatory exchange of information was issued. It included the form to be completed by entities making cross-border payments to recipients in a country with a favorable tax regime and where there is no other obligation for reporting the transfer to the tax authorities.

Slovakia

New transfer pricing guidelines published

The Slovakian authorities have issued updated guidelines on transfer pricing documentation. The guidelines broadly remain the same as the 2015 guidelines, with clarifications for public administration units, additional rules for public interest transactions and transactions involving specially regulated prices.

Slovenia

Financial Administration publishes guidance on research and development tax incentives

On July 14, 2016 the Slovenian authorities issued guidance, particularly aimed at the health sector, on the 100% tax deduction for corporate taxes for qualifying research and development costs and its application in practice.

Sweden

Introduction of tonnage tax regime

On May 23, 2016 a proposal on a tonnage tax system was presented to the Swedish parliament. The regime is intended to apply for tax years beginning after 2016. Qualifying entities will be, inter alia, ships with a gross tonnage of at least 100 tonnes, with strategic and financial management in Sweden, and which are mainly used for international transport or non-Swedish domestic transport.

Transfer pricing guidance updated with BEPS

The Swedish transfer pricing guidance was updated on July 2, 2016 with the OECD’s final report on aligning transfer pricing outcomes with value creation (BEPS Actions 8-10).
Switzerland

Corporate tax reform approved by parliament

On June 17, 2016, the Swiss parliament approved the Corporate Tax Reform Act III, which has some amendments to the version presented by the Federal Council. The final approved act includes provisions such as a notional interest deduction on surplus equity and a restriction at the cantonal level, to a maximum of 80%, on the overall tax relief of newly introduced measures.

The Swiss Federal Council approves the Joint Declaration on Automatic Exchange of Information with various EU Member States and other third countries

The Swiss Federal Council has approved joint declarations on automatic exchange of information with Norway, Korea (Rep.), Jersey, Japan, the Isle of Man, Iceland, Guernsey and Canada.

United Kingdom

Consultation on interest deductibility

On May 12, 2016, following its previous announcement on its intention to introduce new rules on the deductibility of interest for corporate tax purposes under BEPS Action 4 from April 2017, the UK government published a consultation document on the detailed policy design and implementation of the rules.

For more information, please see TaxFlash-Europe.

Consultation on secondary transfer pricing adjustments

The UK government published a consultation document on May 26, 2016 on whether a secondary adjustment rule should be introduced into the UK’s transfer pricing legislation and, if so, what form such a rule should take. Responses are invited by August 18, 2016.

Consultation on Double Taxation Treaty Passport (DTTP) scheme

On May 26, 2016 HMRC published a Consultation on reviewing and extending the scope of the Double Taxation Treaty Passport (DTTP) scheme. The DTTP scheme was set up to reduce the administrative burden for overseas lenders to UK corporate borrowers, by only requiring one application (instead of one application for every single loan) to apply double tax treaty withholding rates on interest payments made
from any UK borrowers to the non-UK lender that holds the DTTP, rather than the standard 20% withholding otherwise required. The scope of the Consultation is to determine if the scheme still meets the needs of UK borrowers and foreign investors and whether the scheme should be extended beyond “corporate to corporate” lending (i.e. to include funds and partnerships).

Consultation on reforms to corporation tax loss relief

Following the announcement in the UK Budget in March 2016 that it would consult on two major reforms to corporation tax loss relief rules, the UK government published a consultation document on May 26, 2016, with responses invited by August 18, 2016. The two proposed reforms, to take effect for losses arising after April 1, 2017, are: 1) to allow losses to be carried forward and offset against profits of different activities of the company or its group members; and 2) to introduce an overall limit (50% or GBP 5 million, whichever is lower) of profits which can be offset by any carried forward losses.

Consultation on reform of substantial shareholdings exemption

Following the announcement in the UK Budget in March 2016 that it would consult on possible reform of the substantial shareholdings exemption (SSE) to make it simpler, clearer and internationally competitive, the UK government published the formal consultation document on May 26, 2016, with responses invited by August 18, 2016. The SSE is an exemption from corporation tax on realized capital gains and losses on the disposal of certain shareholdings. The Consultation includes a number of options for possible reform, ranging from technical changes to the existing SSE legislation to a more comprehensive corporation tax exemption for gains on substantial share disposals that corresponds with regimes in place in other countries.

Large businesses: publication of tax strategy

On June 24, 2016, the UK tax authority, HMRC, issued guidance on new tax strategy reporting requirements (for financial years commencing after the Finance (No.2) Bill 2016 receives Royal Assent, expected to be ) for companies, partnerships, groups or sub-groups (but not open-ended investment companies or investment trusts) with either turnover above GBP 200 million or a balance sheet total above GBP 2 billion. The tax strategy will explain the business’ tax arrangements, including how it manages tax risks and its attitude to tax planning, but does not need to
include amounts or if tax paid or any commercially sensitive information.

**Budget for 2016/17 – outbound royalties**

Following the UK Budget in March 2016 that the government intends to reform the rules governing the deduction of income tax at source from payments of royalties, including an anti-treaty abuse rule, with effect from March 17, 2016, the government has announced additional changes to take effect from June 28, 2016. The changes include widening the class of royalties to be subject to withholding tax and the introduction of rules concerning UK sourcing of royalties related to UK PEs.

**Update on UK implementation of country-by-country reporting**

On August 2, 2016, the UK government confirmed it will implement amendments to the existing domestic regulations on country-by-country reporting to include partnerships, following the updated OECD guidance published at the end of June.

**Local Courts**

**Belgium**

**Supreme Court rules on notification procedure for tax fraud**

On April 7, 2016, the Belgian Supreme Court held that, where a taxpayer is properly notified by the tax authorities that there are indications of tax fraud, the period for issuing an assessment may be extended by four years. Further, the Court held that a discrepancy between signs of wealth and spending patterns which cannot be convincingly explained by the taxpayer will be sufficient to constitute an indication of tax fraud, and found against the taxpayer.

**Finland**

**Supreme administrative court rules on debt-funded restructurings**

On May 19, 2016, Finland’s Supreme Administrative Court (SAC) issued its rulings on two similar cases on debt-funded restructurings and dismissed taxpayer appeals on three other similar cases which were deemed to be tax avoidance. Both appeal cases actually heard by the SAC concerned the intra-group sale of shares on credit where the corresponding debt
was attributed to Finnish branches after the reorganization. In both cases the court upheld the decisions from the tax authorities and denied the interest deductions. The shares and hence the loans were not deemed attributable to the Finnish branches. The Finnish tax administration subsequently published guidance stating that the SAC rulings will have an impact on any other debt push-down arrangements.

For more information, see TaxFlash-Europe.

**Netherlands**

**Amsterdam Court of Appeal: banking groups' tax planning structures not considered *fraus legis***

On June 9, 2016, the Amsterdam Court of Appeal gave its decisions in two cases which both concerned whether tax planning structures used by bank groups, which resulted in deductible interest claims from the Dutch entities of multinational groups, constituted *fraus legis*. In both cases the court found that the taxpayers had demonstrated that they met conditions within the relevant provisions which allowed the interest deductions and provided defendable arguments, despite the Court's view that both arrangements appeared to be primarily for tax saving purposes.

**District Court refers case to Supreme Court to reconsider judgment on dividend withholding tax refunds for foreign investment fund**

On July 10, 2015, the Dutch Supreme Court denied a request for the refund of Dutch dividend withholding tax (WHT) filed by a Luxembourg investment fund on the basis that the Luxembourg fund was not in an objectively comparable situation to a Dutch fund. Following this decision, in the joined cases of Miljoen (C-10/14), X (C-14/14) and Société Générale (C-17/14), the CJEU held that the Dutch WHT was contrary to EU law if the tax burden on the non-resident is greater than for a resident shareholder. Consequently, on August 1, 2016, a Dutch District Court rendered judgments in two cases on similar points, in which it requested the Dutch Supreme Court to reconsider its judgment from July 10, 2015 in light of the CJEU’s ruling in Miljoen *et al.*

For more information, see ETF 298.

**Poland**

**Supreme Administrative Court: Thin capitalization provisions also apply to loan repaid to former shareholder**

On May 19, 2016 the Polish Supreme Administrative Court (SAC) issued its decision in a case regarding Polish domestic
legislation that disallows deductibility of interest where a debt-to-equity ratio of 3:1 is exceeded in loans granted between related parties. In this case, the lender company was a shareholder of the debtor company when the loan, which exceeded the debt-to-equity ratio of the debtor company, was granted but not when the loan was repaid. The SAC agreed with the tax authorities that the thin capitalization rules are assessed at the point in time when the loan is granted, not repaid. The taxpayer’s appeal was dismissed.

Spain

Supreme Court: Dell Ireland is deemed to have a Spanish PE due to the control exercised over its commission agent in Spain

On June 20, 2016 the Spanish Supreme Court upheld the decision of the National Court that Dell Ireland has a PE in Spain as a result of its commission agreement with Dell Spain. The Court held that Dell Spain could not be considered to be an independent agent due to the level of supervision and control exercised by Dell Ireland. The decision included some clarification on the interpretation of Article 5 (permanent establishment) of the Spain – Ireland double tax agreement and the related commentary.

United Kingdom

Upper Tribunal: Successor can only use accumulated losses from an acquired business against the profits of that same acquired business

On July 12, 2016 the Upper Tribunal held that a successor company, which acquired a business that had accumulated tax losses, could only use the same amount of those accumulated losses against future profits which the predecessor company would have been entitled to offset if it was still a separate business, and not against the successor company’s other profits. The court agreed with the revenue’s argument that the purpose of the relevant loss relieving provision was not to put the successor in a better position than that in which the predecessor would have been had the business not been sold.

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