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 Radgen (C-478/15)

On September 21, 2016, the CJEU delivered its decision in Peter Radgen, Lilian Radgen v. Finanzamt Ettlingen that, under the right of equal treatment of employees contained in the EU-Switzerland bilateral agreement for the free movement of persons (signed June 21, 1999), legislation which denies a taxpayer a tax exemption in respect of teaching income from a public body solely because that public body is established in Switzerland, whereas the exemption would have been
available had the public body been established within the EU, is not permitted.

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**Infringement procedures & referrals to CJEU**

**Referrals to CJEU**

**France**

On June 10, 2016, the Conseil d’État referred the case of *Marc Jacobs v Ministre des finances et des comptes publics* (C-327/16) to the CJEU for a preliminary ruling on the interpretation of Article 8 of the Merger Directive (90/434), which prevents a charge to tax on the merger, division or share-for-share exchange of a company in certain circumstances.

On June 28, 2016, the Conseil d’État referred the case of *Christian Picart v Ministre des finances et des comptes publics* (C-355/16) to the CJEU for a preliminary ruling on whether the right of establishment as a self-employed person under the bilateral agreement between the EU and Switzerland for the free movement of persons (signed June 21, 1999) is to be regarded as equivalent to the freedom of establishment under article 49 (ex article 43 TEC) TFEU.

On July 4, 2016, the Conseil d’État referred the case of *Association française des entreprises privées (AFEP) and Others v Ministre des finances et des comptes publics* (C-365/16) to the CJEU for a preliminary ruling on whether the Parent-Subsidiary Directive precludes a levy on the distribution of profits to parent companies subject to corporation tax in France or, if such a levy is permissible, is it classified as a “withholding tax” under the Directive (and therefore profits distributed to a parent company should be exempt from it)?

**Belgium**

On June 22, 2016, the Tribunal de première instance de Liège referred the case of *Jacob and Lennertz* (C-345/16) to the CJEU for a preliminary ruling on whether Belgian rules that take Luxembourg pensions, which are not otherwise taxable in Belgium under the relevant DTA, into account when calculating the availability of certain tax advantages in Belgium and which are correspondingly lower than if the taxpayers had only received Belgian sourced income, contravene the principle of freedom of movement of workers (Article 45 TFEU).
Germany

On June 28, 2016, the Finance Court of Rhineland-Palatia (FCR) referred the case of *Hornbach-Baumarkt* (C-382/16) to the CJEU regarding German transfer pricing rules. The taxpayer Claimant is a German parent company which had given guarantees and letters of comfort to banks, in relation to loans to its foreign subsidiaries, without requiring any payment. The questions referred are whether the imputation of income under the German transfer pricing rules in relation to these transactions is compatible with the freedom of establishment under EU law (Article 49 TFEU), in particular as regards the possibility for the taxpayer to present evidence of commercial justifications.

For more information, see KPMG’s [Euro Tax Flash 299](#) and [TaxNewsFlash](#).

State Aid

**Commission invites comments on Belgian and French tax exemptions for ports**

As reported in [E-News 61](#), the Commission opened [investigations](#) in July 2016 to determine whether the corporate tax exemptions granted by Belgium and France on ports’ economic activities are compatible with EU State Aid rules following both countries’ refusal to realign their rules in line with the Commission’s decisions ([SA.38393](#) for Belgium and [SA.38398](#) for France) of January 21, 2016. On August 19, 2016, the Commission published public invitations (see for [Belgium](#) and [France](#)) for comments on the investigations.

**US Department of the Treasury releases white paper on EC’s State aid investigations into transfer pricing rulings**

On August 24, 2016, the US Department of the Treasury released a [white paper](#) on the European Commission’s recent State aid investigations into the advance transfer pricing rulings that various Member States have granted to several US headquartered multinational groups. This white paper follows an exchange of correspondence in February 2016 between the US Secretary of the Treasury and the European Commissioner for Competition. The white paper sets out the US Treasury’s arguments that the EC should not be seeking to make its Member States recover State aid from the impacted groups, and, in its conclusion, the US Treasury says it will consider potential responses if the EC “continue[s] its present course”.

For more information, see the US Treasury’s [blog post](#).
Commission decision that Ireland granted illegal State aid to Apple of up to EUR 13 billion

On August 30, 2016, the European Commission (EC) announced its final decision that two tax rulings, issued by Ireland to Apple group companies in 1991 and 2007, constituted illegal State aid under EU rules. The EC estimates that the tax benefits could amount to as much as EUR 13 billion, plus interest, for the period 2003 – 2014 (the maximum time period for which the State aid can be recovered). The final amount payable to Ireland may be reduced if other countries require Apple to pay more tax on profits of the companies concerned under their national tax rules. Ireland must now calculate and collect the State aid plus interest and hold in an escrow account pending any appeals. Ireland and Apple have both indicated that they intend to lodge an appeal against the Commission's decision.

For more information, see KPMG's Euro Tax Flash 300 and KPMG's TaxNewsFlashes on the Commission’s decision, on the response from the US congressional tax writing committees and on the response from the US Treasury Secretary.

Following the decision, Markus Ferber, a leading MEP on tax matters, gave an interview confirming that the Commission’s decision regarding Ireland and Apple, and its work on other State aid cases, had the European Parliament’s full backing, and this was confirmed in the MEPs’ debate in plenary session on September 14, 2016 where there was widespread support for the Commission’s decision. Further, at an informal ECOFIN meeting on September 9-10, 2016, several Finance Ministers from EU Member States indicated that, should the Commission’s decision against Ireland and Apple be upheld by the CJEU, then they would seek to claim a share in respect of the sales made in their respective Member States.

In-depth investigations opened into Polish retail sales tax

On September 19, 2016, the European Commission opened an in-depth investigation (SA.44351) into the Poland’s retail sales tax in order to determine if the tax, which applies progressive rates of tax based on a company’s turnover, constitutes State aid on the basis that it provides a selective advantage to companies with a lower turnover. This investigation follows the Commission’s decision in July 2016 that two similar progressive rate turnover taxes/levies in Hungary constituted illegal State aid (SA.40018 and SA.41187).

For more information, see KPMG's TaxNewsFlash.
In-depth investigation opened into Luxembourg tax rulings issued to GDF Suez group companies

On September 19, 2016, the European Commission opened an in-depth investigation to determine if tax rulings granted by Luxembourg to GDF Suez (now known as Engie) constituted illegal State aid under EU rules. Under tax rulings issued by the Luxembourg tax authorities in relation to intra-group loans, which carried zero interest, the borrowing companies were nonetheless permitted to provide for interest payments in their accounts, thereby reducing their taxable profits. No interest payments were made to the lenders and the loans were then subsequently converted into company shares in favor of the lending companies, incorporating the value of the interest payments provided for by the borrowing companies. This value was treated as a dividend-like payment and accordingly not taxed in the hands of the lenders. This examination is the result of the EU Commission’s wider investigation into the Member States tax rulings in December 2014, following the LuxLeaks scandal.

On September 19, 2016, the Luxembourg Ministry of Finance published its response to the Commission’s investigation, stating that the government did not believe it had given GDF Suez special tax treatment or a selective advantage, but that it would cooperate with the investigation.

For more information, see KPMG’s TaxNewsFlash and EuroTax Flash 302.

EU Institutions

Effect of inflation and interest rates on effective tax rates

The European Commission’s has published Taxation Paper No. 63, which was prepared and submitted by the Centre for European Economic Research, on the effect of inflation and interest rates on forward-looking effective tax rates. Conclusions include the fact that the cost of capital is not very sensitive to changes in inflation rates but that it is highly sensitive to the real interest rate.

European Parliament priorities for the remainder of 2016

On August 18, 2016, the European Parliament issued a press release outlining its priorities for the remainder of 2016. For taxation, the priorities listed were on the operational work of the committee investigating tax evasion and money laundering practices in the EU following the Panama Papers scandal, and work on improving the tax transparency of multinationals operating within the EU.
EU priorities in the G20 summit in Hangzhou

On August 29, 2016, the President of the European Council, Donald Tusk, and the President of the European Commission, Jean-Claude Juncker, issued a joint letter to EU leaders on the EU’s priorities to be discussed in the G20 summit in Hangzhou, China, on September 4-5, 2016. In relation to tax, the letter stated, inter alia, that the G20 should encourage all countries and jurisdictions to join and participate in the Global Standard on the Automatic Exchange of Information, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Base Erosion and Profit Shifting (BEPS) Inclusive Framework.

Updated schedule of rotating presidencies of the Council

On July 26, 2016, the Council adopted an updated order of the rotating presidency of the Council of the EU. Following the UK’s decision to relinquish its presidency from July 1, 2017, the Council had previously issued a revised order up to June 30, 2020. The new updated order runs to December 31, 2030.

Brexit updates

On September 8, 2016, the European Parliament Conference of Presidents (made up of the President of the Parliament, Martin Schulz, and a member of each of the political groups in Parliament) appointed Guy Verhofstadt to act as Parliament’s ‘point man’ in the Brexit negotiations. Mr. Verhofstadt will work with Michel Barnier, the Commission’s lead negotiator, and be responsible for keeping the Conference of Presidents informed of the latest negotiation developments and to help prepare negotiation positions on behalf of Parliament.

On July 12, 2016, Parliament’s Committee on Economic and Monetary Affairs (ECON) commissioned a study on the impact of the UK’s withdrawal and ECON is to begin preparatory work ahead of formal negotiations expected to begin once Article 50 has been invoked.

On September 14, 2016, the European Commission announced it has set up a Task Force for the preparation and conduct of the negotiations with the UK under Article 50. Sabine Weyand has been appointed as Deputy Chief Negotiator, joining the Chief Negotiator Michel Barnier (reported in E-News 61).

Amendments to the Directive on exchange of anti-money laundering information

On September 12, 2016, the Committee on Economic and Monetary Affairs proposed amendments to the draft Directive amending the Directive on administrative cooperation in the
field of direct taxation (2011/16/EU) to include automatic exchange of data provided under the anti-money laundering rules to be implemented by Member States by the end of 2017.

**Taxation agreement with Andorra approved**

On September 20, 2016, the Council announced that it had approved an agreement with Andorra on the automatic exchange of financial account information in order to prevent taxpayers from hiding income or assets on which tax has not been paid.

For more information, see KPMG’s TaxNewsFlash.

**Draft report on annual report on EU Competition policy**

On September 15, 2016, the European Parliament Committee on Economic and Monetary Affairs published its annual report on EU competition policy. In the report, the Committee states that it welcomes the Commission’s investigations into tax measures which provide selective tax advantages or excess profit ruling systems, and it refers to the work done by the TAXE and TAXE2 special committees to look at tax ruling practices by Member States and find ways to combat unfair tax competition and evasion within the EU.

**Presidency compromise on the Directive regarding access to AML information by tax authorities**

On September 2, 2016, the Council of the EU issued a Presidency compromise on the Commission’s proposal for a Directive (amending the Mutual Assistance Directive [2011/16]) regarding access to anti-money laundering information by tax authorities. The main change is in pushing back the deadline for implementation by a year to January 1, 2018. The proposal was then discussed in the ECOFIN meeting of September 6, 2016.

**Common EU list of non-cooperative tax jurisdictions**

On September 15, 2016, as part of the EU’s efforts to clamp down on tax evasion and avoidance, the European Commission released a set of ‘scoreboard indicators’, the first step of the new EU listing process to identify and address non-cooperative third country tax jurisdictions. The scoreboard provides an objective overview of the tax systems of third-country jurisdictions to help Member States identify which countries may require further screening as regards tax good governance issues. The EU Commission further specified that it is aiming for this screening process to be completed by
summer 2017 so that a definitive list of non-cooperative jurisdictions can be released by the end of 2017.

For more information, see KPMG’s Euro Tax Flash 301.

**First European Parliament Committee meeting on the Panama Papers**

On September 27, 2016, the European Parliament’s Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA) met for the first time to hear from the five journalists who first received the ‘Panama Papers’ documents, the biggest ever leak of financial information, which was taken from a Panama-based law firm. In the meeting, the Chairman also announced that the PANA’s scope would be expanded to include the Bahamas Leak, which consisted of 1.3 million documents and shareholder lists from the Bahamian government’s registry of offshore companies. The next PANA hearing is scheduled for October 13, 2016.

**OECD**

**Global Forum on Transparency and Exchange of Information for Tax Purposes (“the Global Forum”)**

On August 1, 2016, the OECD announced that Egypt became the 135th member of the Global Forum. The Global Forum is a collaboration between participating countries working together to implement agreed standards of transparency and exchange of information in relation to tax.

**Kuwait becomes 84th signatory to the CRS MCAA**

On August 19, 2016, the OECD announced that Kuwait had become the 84th signatory to the CRS Multilateral Competent Authority Agreement (CRS MCAA). The CRS MCAA is an international framework agreement for the automatic exchange of offshore financial account information outlined in the OECD Common Reporting Standard.

**Multilateral Convention on Mutual Administrative Assistance in Tax Matters**

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention) was developed by the OECD and Council of Europe to facilitate international cooperation in the administration, assessment and collection of taxes with a particular focus on preventing tax avoidance and evasion.
On August 25, 2016, the OECD announced that a further five countries, Burkina Faso, Malaysia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Samoa, signed the Convention taking the total number of participating jurisdictions to 103. Pakistan later became the 104th member as announced by the OECD on September 14, 2016.

The OECD also announced that Andorra, Saint Kitts and Nevis, Israel and Senegal, along with Liechtenstein as announced by the OECD a few days earlier, had deposited their instruments of ratification of the Convention, which will enter into force from December 1, 2016 in all the countries listed. Uganda, Uruguay and Switzerland also all formally ratified the Convention, where it will enter into force with effect from January 1, 2017.

BEPS Monitoring Group responds to OECD consultations

The BEPS Monitoring Group (BMG) is a network of international tax specialists that produces reports on international corporate tax developments, focusing on the work of the G20 and OECD BEPS project.

On August 20, 2016, the BMG submitted its comments to various OECD consultations / discussion drafts:

- A response on the OECD’s discussion draft on Attribution of profits to PEs (Action 7) (which closed on September 5, 2016). The BMG makes various recommendations, including broadening out the guidance to be of use to both taxpayers and tax authorities and to address situations where the authorized OECD approach is not applicable, as well as to include more examples relevant to larger MNE groups.

- Recommendations to the OECD on its Transfer Pricing Consultation, including making more reference to the transactional profit-split method in the OECD’s transfer pricing guidelines and shifting the burden of proof on showing business reasons for a restructuring to the taxpayer.

- A response to the OECD’s discussion draft on Revised guidance on profit split method (Actions 8-10) (which also closed on September 5, 2016). The BMG’s view is that most MNE group business units are centrally managed, and it therefore makes various recommendations to the OECD on revisions to the guidance on the profit split method accordingly.
The OECD has published comments it received in relation to recent consultations:

- On August 24, 2016, the OECD published the comments received on its discussion draft "Conforming Changes to Chapter IX of the OECD Transfer Pricing Guidelines "Transfer Pricing Aspects of Business Restructurings" (Actions 8-10).
- On August 25, 2016, the OECD published the comments it received in response to its discussion draft on interest deductibility - The design and operation of the group ratio rule (Action 4).
- On September 8, 2016, the OECD published the comments received on its discussion drafts Attribution of Profits to Permanent Establishments (Action 7 - a copy of KPMG’s submitted comments can be found here) and the Revised Guidance on Profit Splits (Actions 8-10 - a copy of KPMG’s submitted comments can be found here).
- On September 15, 2016, the OECD published the comments received on its discussion draft Approaches to address BEPS involving interest in the banking and insurance sectors (Action 4 - a copy of KPMG’s submitted comments can be found here).
- On August 22, 2016, the OECD published a discussion draft document on branch mismatch structures under Action 2 of the OECD’s BEPS project following the OECD’s Report on Neutralizing the Effects of Hybrids Mismatch Arrangements released in October 2015. The discussion draft detailed five types of branch mismatch arrangements which have been identified, with preliminary recommendations on how the mismatches in tax could be neutralized without risking economic double taxation. On September 23, 2016, the OECD published the comments it received on the discussion draft. For more information, see KPMG’s TaxNewsFlash with an initial analysis on the release of the discussion draft.

**G20 summit in Hangzhou, China**

On September 4-5, 2016, the G20 leaders attending their annual summit in Hangzhou, China, where:

- The G20 formally approved the three criteria proposed by the OECD to identify non-cooperative jurisdictions (excluding developing countries which do not have financial centers), i.e. exchange of information on request, automatic exchange of information and joining the OECD’s Mutual
Assistance Convention. The OECD have been asked to report back by June 2017 on the progress made, with a list of jurisdictions which have not met at least two of the three criteria to be prepared by July 2017, such that formal defensive measures can then be considered for use against them;

- The Secretary-General to the OECD delivered a tax report on the key developments in the international tax agenda, particularly progress on the OECD BEPS project, tax transparency, tax policy tools to support sustainable and inclusive growth, and tax and development since last year’s G20 Leaders’ Summit;

- The G20 leaders issued a communiqué reiterating their support for a timely, consistent implementation of the BEPS package and calling on the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes to make initial proposals by October 2016 on ways to improve the implementation of the international standards on transparency.

Public consultation on BEPS related transfer pricing matters

The OECD announced a public consultation on transfer pricing matters, to take place on October 11-12, 2016 at the OECD in Paris, France. The focus of the consultation will be two recently published discussion drafts that address work in relation to Action 7 (Attribution of profits to permanent establishments) and Actions 8-10 (Revised guidance on profit splits) of the BEPS project.

Local Law and Regulations

Belgium

Urgent tax measures bill passed by parliament

On July 20, 2016, parliament adopted a bill of urgent fiscal measures to implement OECD and EU measures, which was officially gazetted on August 11, 2016. Measures include the abolition of the 80% patent deduction from July 1, 2016, and corresponding amendments to the income tax rules following the CJEU judgment in the case of Tate & Lyle Investments (Case C-384/11) with effect from August 11, 2016. The final bill passed by parliament does not include measures to implement changes to the EU Parent-Subsidiary Directive (regarding hybrid instruments and a general anti-abuse rule) which had previously been included in the draft bill.
Annual tax on credit institutions gazetted

On August 11, 2016, a previously approved bill introducing a single, annual tax on credit institutions, as reported in E-News 61, was published in the Official Gazette. 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.

Official publication of bill introducing measures on certain real estate investment companies

On August 16, 2016, a bill which introduces various tax measures for regulated real estate companies and investment companies with fixed capital for investment in real estate was officially published after it was adopted by parliament a few days earlier. The bill applies from July 1, 2016.

Draft circular on profit allocation to permanent establishments

On September 5, 2016, following the OECD report on the Allocation of Profits to a PE (AOA approach) and the updated article 7 in the 2010 OECD Model Tax Convention, the government issued a draft circular containing comparative examples of tax calculations under the old and new article 7 on the transfer of depreciable and non-depreciable assets between a PE and its head office.

Bulgaria

Change in tax residency certificate procedure

On July 29, 2016, the tax administration published guidance on a new procedure for the issue of tax residency certificates to Bulgarian residents for the purpose of tax treaties, to apply from August 15, 2016.

Draft bill on the automatic exchange of advance tax ruling information

On September 16, 2016, the government published a draft bill in order to enact the EU's Directive (2015/2376/EU) on the automatic exchange of advance tax ruling information with other EU Member States, which must be implemented by the end of 2016. The draft bill also implements the Council of Europe - OECD Mutual Assistance Treaty 1988, which is to take effect from January 1, 2017 in Bulgaria, to allow international mutual assistance in the collection of public liabilities.
Draft bill implementing country-by-country reporting published

On September 16, 2016, the government published a draft bill to implement EU Directive 2016/881 which mandates the introduction of non-public country-by-country reporting (CBCR) by EU Member States. Where the ultimate parent entity (UPE) of the corporate group is a Bulgarian resident, then the suggested reporting threshold has been set at BGN 100 million. Otherwise, where the UPE is not resident in Bulgaria, the group reporting threshold is set at EUR 750 million, in line with the Directive.

Cyprus

Circular on advance cross-border tax rulings

On August 16, 2016, the Tax Department issued a circular which clarifies, *inter alia*, that where an expedition fee is paid (double the normal EUR 1,000 tax ruling fee), the tax ruling will be issued within 21 business days. Otherwise tax rulings will be dealt with in the order of receipt. The circular also provides the conditions for a tax ruling to be considered an “advance cross-border tax ruling” for the purposes of the proposed amendments to the Mutual Assistance Directive (2011/16) and the procedure to be followed.

Czech Republic

Consultation on country-by-country reporting


Denmark

Proposed Budget for 2017

On August 30, 2016 the government published its proposal for the 2017 Budget, which includes additional research and development investment deductions and a three-year corporate tax exemption for new enterprises established between 2017 and 2019 with taxable profits less than DKK 7 million.

Order for country-by-country reporting issued

On August 27, 2016, the government issued executive order number 1133 introducing country-by-country reporting
obligations for relevant groups. The order came into force on September 1, 2016 and includes the template forms to be completed.

For more information, see KPMG’s TaxNewsFlash.

Tax authorities to buy Panama Papers information

On September 7, 2016, the government announced that it will enable the tax authorities to purchase information related to 500-600 Danish taxpayers based on the Panama Papers leak.

Estonia

Amendments to Tax Information Exchange Act proposed

On August 18, 2016, the government presented proposed legislative amendments in order to enact the EU’s Directive (2015/2376/EU) on the automatic exchange of information with other EU Member States with respect to advance tax rulings and to introduce non-public country-by-country reporting for corporate groups with consolidated income of more than EUR 750 million per annum. If and once the proposed amendments are adopted by parliament, the changes will enter into force from January 1, 2017.

Finland

Updated guidance issued on the GAAR

On August 5, 2016, the tax administration issued updated guidance on the application of Finland’s general anti-avoidance rule (GAAR), which looks at the substance of a transaction, in recent case law.

Launch of the Tax and Development Action Program

On August 26, 2016 the government announced the launch of its Tax and Development Action Program, the government’s action plan against international tax avoidance and strategy to combat the grey economy by working with developing countries and key partners, such as the EU, UN and OECD, to help those developing countries strengthen their tax base and build taxing capacity.

2017 Budget proposal presented to parliament

On August 15, 2016, the government presented its proposal for the 2017 Budget to parliament which included
amendments to the transfer pricing documentation requirements covering country-by-country reporting obligations.

**Germany**

**Bill amending Income Tax Act officially published**

On July 26, 2016, a bill which makes various amendments to the German income tax code was officially published. The bill includes provisions, with effect from January 1, 2018, to treat public investment funds as opaque for tax purposes and tax investors on actual distributions and on any gains made on the sale of fund units, with some corresponding exemptions to help offset the effect of some of the tax already suffered at fund level. In addition, the bill includes a retrospective anti-tax avoidance provision, with effect from January 1, 2016, in relation to foreign investors purchasing German shares in order to claim refunds of tax credits over and above what was actually paid.

**Budget speech 2017 delivered to the lower house**

On September 6, 2016, the Minister of Finance delivered his budget speech to the Bundestag (the lower house of parliament) which included tax measures such as the continuation of international tax transparency policy efforts.

**Draft bill on change-of-ownership amendments**

On September 14, 2016, the Federal Cabinet approved a draft bill which provides an exception to the change-of-ownership rules, restricting the availability of carry-forward loss relief on the sale of a business in certain circumstances. The proposed amendments would provide an exception where the loss-making company’s business operations remain unchanged following sale, certain conditions are met and an application is made with the tax authorities.

**New measures against tax havens and shell companies**

On September 22, 2016, the government announced new tax related measures, including a requirement for taxpayers to report interests in foreign companies, including the business policy of that company, and an obligation for banks to report details of offshore
Draft bill to implement the OECD’s MCAA approved by parliament

On September 22, 2016, the lower house of parliament approved a draft bill to implement the OECD’s Multilateral Competent Authority Agreement (MCAA). The aim of the MCCA is to enable consistent and swift implementation of the country-by-country reporting requirements under Action 13 of the OECD’s BEPS project. The bill will now be subject to approval by the Federal Council.

Greece

Amendments to income tax code officially published

On July 28, 2016, amendments to the income tax code were officially gazetted. Areas of change include those in relation to transfer pricing documentation, where the submission deadline for documentation for transactions after January 1, 2015 has been amended, possible new exemptions for small enterprises from such documentation, amended tax audit procedures and extension of the deadline for preliminary approval of transfer pricing documentation.

Clarification on deductibility of expenses related to exempt income

On September 7, 2016, the Public Revenue Authority published a clarification that where a loan is taken out to acquire an interest on which exempt dividends are paid, or to help a subsidiary’s financial position in order to increase the amount of exempt dividends it pays, any related expenses (e.g. loan interest) will remain non-deductible regardless of when the exempt dividends are paid and whether or not the shareholding level changes.

Iceland

Bill presented to parliament to reduce restrictions on cross-border transfer of funds

On August 17, 2016, a bill was presented to parliament to introduce a raft of measures aimed at reducing the restrictions for individuals and companies on transferring funds to and from Iceland. Some of the measures will take immediate effect once the bill is enacted, and others will come into effect from January 1, 2017.
Ireland

Proposed amendments to securitization regime

On September 6, 2016, the Minister of Finance proposed amendments to the taxation of debt secured on Irish real estate through certain special purpose companies and funds, in order to prevent perceived abuse that has led to the avoidance of tax on Irish property transactions.

For more information, see KPMG’s TaxNewsFlash.

Italy

Resolution issued on transfer of tax residence

On August 5, 2016, the tax authorities issued a resolution (no. 69/E) confirming that a recently introduced article, which mandates that the tax basis of assets and liabilities transferred to Italy from a jurisdiction which allows adequate information exchange is determined with reference to fair market value, also applies to inbound cross-border mergers including holding companies.

White list amended

On August 22, 2016, the government published the official White List of jurisdictions that allow adequate exchange of information with Italy.

Circular issued on CFC legislation

On August 4, 2016, following recent legislative amendments, the Italian tax authorities published a Circular (No. 35/E) confirming, inter alia, that any jurisdictions (not including EU Member States or EEA countries with adequate exchange of information with Italy) that have a nominal level of taxation of less than 50% of the nominal level of taxation in Italy (made up of the corporate income tax, IRES, and regional tax on productive activities rates, IRAP) then that jurisdiction will be considered a privileged tax regime for the purposes of Italy’s Controlled Foreign Companies (CFC) rules.

European Delegation Law 2015 entered into force

On September 16, 2016, the European Delegation Law 2015, which authorizes the government to implement the EU Anti-Money Laundering Directive (2015/849) and the EU Directive
on the automatic exchange of advance tax ruling information (2015/2376) entered into force.

**Clarifications on CFC legislation issued**

On September 16, 2016, the tax authorities issued Protocol number 143239 to provide simplified rules to calculate the effective foreign tax and hypothetical domestic tax rates of a controlled foreign company for the purposes of determining whether the foreign tax is less than 50% of the Italian corporate tax rate.

**Luxembourg**

**Bill to abolish application of EU Savings Directive**

On March 29, 2016, a bill was presented to the Luxembourg parliament to repeal the EU Savings Directive (2003/48), which was repealed and replaced by the EU following a strengthening of global tax measures to prevent tax evasion.

**Bill to implement country-by-country reporting submitted to parliament**

On August 2, 2016, a bill to implement EU Directive 2016/881 on non-public country-by-country reporting, in line with Action 13 of the OECD’s BEPS project, was submitted to parliament for approval. Once formally adopted, the bill will apply retroactively from January 1, 2016.

**Bill to implement EU Directive on exchange of advance tax rulings information gazetted**

On July 28, 2016, a bill which implements EU Directive 2015/2376 on the automatic exchange of information with regards to advance tax rulings was published in the Official Gazette. The rules will apply from January 1, 2017, in relation to certain advance cross-border rulings and advance pricing agreements issued, amended or renewed, potentially, as from January 1, 2012.

**Netherlands**

**Bill on automatic exchange of advance tax ruling information submitted to parliament**

On September 1, 2016, a bill was presented to parliament on the implementation of the EU Directive on the automatic exchange of advance tax ruling information (2015/2376). The
new provisions would take effect from January 1, 2017, with transitional provisions for rulings issued after January 1, 2012.

**Limitation of interest deductibility in “takeover-holdings”**

On September 8, 2016, the State Secretary for Finance confirmed in writing to parliament that, following a public consultation earlier in 2016, in the 2017 Tax Plan the government will include amendments to the limitation of interest deductibility in “takeover-holding” situations to further restrict the availability of the deduction.

**Government response to questions on fiscal unity regime**

On September 12, 2016, the Finance Secretary published a written response to questions from parliament on a bill to amend the fiscal unity regime. Comments include that the Secretary prefers to keep the fiscal unity regime as optional rather than mandatory and that the Secretary considers that the use of double loss compensation is not widespread enough as to cause concern or create a need for further action at this stage.

Following the written response, on September 27, 2016 the lower house of parliament adopted the bill, which amends the fiscal unity regime and closes the double loss loopholes.

**Tax Plan 2017 presented to the lower house of parliament**

On September 20, 2016, the Minister of Finance presented the government’s proposed Tax Plan 2017, which would apply from January 1, 2017, to the lower house of parliament. Corporate tax related measures in the plan included amendments to the innovation box regime to implement the “nexus approach” in Action 5 of the OECD’s BEPS project, restrictions on the types of projects eligible for the innovation box regime, an expansion of the limitations on the deductibility of interest expenses between related parties, the introduction of a new withholding tax refund procedure in relation to dividends paid to non-resident shareholders and proposed changes to Dutch dividend withholding tax obligations for holding cooperatives.

For more information on that final proposal, see KPMG’s TaxNewsFlash. [KPMG’s overall coverage of the Tax Plan can be found here.](#)
**Norway**

New accounting records requirements of corporate taxpayers

The tax administration has announced that it will be implementing a new standardized file format (called SAF-T) for all entities with a statutory reporting obligation in Norway with effect from January 1, 2017.

For more information see KPMG’s [TaxNewsFlash](#).

**Poland**

Bill to amend income tax laws

On July 22, 2016, a bill to introduce various amendments to the Polish income tax code, with effect from January 1, 2017, was passed by the lower chamber of the Polish parliament and will now be passed to the higher chamber and President for approval. Changes include a lower corporate tax rate for small taxpayers, and clarification of certain interpretations in the law aimed at preventing tax avoidance.

Increased number of transfer pricing audits and assessments

A summary of the results of tax audits conducted in the first half of 2016 reveals an increase in the number of transfer pricing audits conducted in Poland. In the first half of 2016, the tax auditors made determinations imposing more than PLN 9.5 billion in additional tax assessments (compared to the previous year, an increase of 36.6%). Officials expect that by the end of 2016, the amount of total assessments will exceed PLN 20 billion (approximately USD 5.2 billion). On August 18, 2016, the Ministry of Finance issued a press release confirming that it intends to continue to reduce harmful tax “optimization” by addressing “artificial” activities and to address perceived abuses with regard to transfer pricing.

For more information, see KPMG’s [TaxNewsFlashes here](#) and [here](#).

R&D tax credits bill adopted by Council of Ministers

On August 18, 2016, a bill to increase the tax incentives for research and development ("R&D") expenditure was adopted by the Council of Ministers and sent to parliament for approval. Measures include extending the list of qualifying R&D expenses, increasing the percentages of deductible qualifying R&D expenses, extending the period in which such expenses can be deducted from 3 to 6 years, and the
introduction of additional tax relief for taxpayers who systematically increase their R&D spend.

**Bill on tax transparency measures adopted by parliament**

On September 5, 2016, parliament adopted a bill which amends income tax laws with effect from January 1, 2017. In relation to corporate tax transparency and anti-avoidance, measures, the bill included the implementation of measures to restrict the preferential tax treatment of exchange of shares where the transaction was not carried out for legitimate economic reasons, and thus, as per Article 15 of the EU Merger Directive (2009/133), it will be presumed that the principle objective of the transaction was tax avoidance or evasion.

**Romania**

**Guidance notes for automatic exchange of financial information published**

On August 24, 2016, the Ministry of Finance published order number 1939/2016 which contains provisions for the consistent application of the recently implemented FATCA regime and the Common Reporting Standard for exchange of financial account information.

For more information, see KPMG’s [TaxNewsFlash](https://www.kpmg.com).

**Slovakia**

**Proposed tax law amendments to be presented to parliament**

In September 2016, the government approved proposed legislative provisions that would revise the income tax law of Slovakia, which are expected to be approved by Parliament by year-end to generally take effect as of January 1, 2017. Proposals include a tax rate of 35% on dividends paid from or to taxpayers resident in non-treaty countries and a corporate tax exemption for dividends paid to/from a Slovak resident company from/to another Slovak resident company or a treaty country resident company.

For more information, see KPMG’s [TaxNewsFlash](https://www.kpmg.com).

**Slovenia**

**Bill implementing EU Directives submitted to parliament**

On August 24, 2016, a bill to implement the EU’s Directives on the automatic exchange of information with other EU Member
States with respect to advance tax rulings (2015/2376/EU) and on non-public country-by-country reporting (2016/881/EU) was submitted to parliament. Once the bill is adopted by parliament, it will enter into force from January 1, 2017.

**Sweden**

**Budget bill presented to parliament including CBCR provisions**

The government presented its 2017 budget bill to parliament in September 2016. The bill includes various tax provisions, which, for large corporates, were mostly focused on intensifying efforts to counter tax offences, tax evasion, and tax avoidance - including country-by-country reporting rules, to take effect from January 1, 2016.

For more information see KPMG’s [TaxNewsFlash](#) on the tax proposals in the bill and [TaxNewsFlash](#) on the CBCR provisions.

**Notification form issued for financial institutions caught under CRS and / or DAC 2 regimes**

On September 9, 2016, the tax agency issued a notification form that a financial institution must submit when it either: (1) meets the criteria for reporting obligations; or (2) ceases to have any reporting obligations and no longer meets the criteria for reporting requirements under the common reporting standard (CRS) and the EU equivalent DAC 2 regimes.

For more information see KPMG’s [TaxNewsFlash](#).

**Switzerland**

**Consultation on interest withholding tax exemption**

On September 23, 2016, the Federal Council published a three-month consultation on a proposed exemption from withholding tax, currently set at 35%, on intra-group interest payments and a proposal to limit the exemption for certain transferred debts to Swiss guarantors of foreign equity.

**Draft AEoI guidelines published**

On August 3, 2016, automatic exchange of information (AEoI) draft guidelines were published, completing the necessary legal steps for AEoI. The guidelines are intended to address implementation aspects that were left open in the common reporting standard (CRS) on which AEoI is based, and explain
how the AEoI is to be applied (illustrated by some 200 examples).

For more information see KPMG’s TaxNewsFlash.

**United Kingdom**

**Various consultations issued by the government**

Due to the Brexit referendum in the UK, the publication of various consultations were held back during the campaigning period. Following the referendum result, HM Revenue & Customs (HMRC) published consultation documents as follows (if no closure date has been indicated below, the consultation closed before the publication of this E-news):

- August 4, 2016 – a consultation on the technical design of a new type of capital instrument created by the government for mutual insurers to issue, called Mutuals’ Deferred Shares (MDS).

- August 9, 2016 – a consultation on the creation of clearer tax rules for certain partnerships, where there is currently uncertainty. The consultation closes on November 1, 2016.

- August 17, 2016 – a consultation on the government’s proposals for sanctions and deterrents against those who enable the use of tax avoidance arrangements by others which have been determined unlawful.

- August 24, 2016 – a consultation on the introduction of an obligation for taxpayers to disclose to the UK revenue authorities any details of undeclared UK tax liabilities in respect of offshore interests by September 2018, ahead of the adoption of the Common Reporting Standard (CRS), when tougher sanctions will apply for offshore tax evasion. The consultation closes October 19, 2016. In the meantime, on September 5, 2016, HMRC launched a Worldwide Disclosure Facility (WDF), which taxpayers can use via a new online Digital Disclosure Service to make disclosures of underpaid tax in relation to offshore interests, and issued guidance for taxpayers who wish to make a disclosure of unpaid tax but are not eligible for HMRC Campaigns. For more information, see KPMG’s TaxNewsFlash.

- August 26, 2016 – three consultations, running to October 21, 2016, on the following proposals to
“tackle the hidden economy, promote tax compliance and create a level playing field for UK business”:

— Extend HMRC’s bulk data-gathering powers to include customer data held by money service businesses;

— Make access to services or support for businesses conditional on proving tax registration (‘conditionality’); and

— Introduce new penalties and sanctions to tackle those operating in the hidden economy, including those previously penalized but who have not changed their behavior.

Revised AEOI submission schema, v2.0, released

On August 15, 2016, HMRC released a revised schema, v2.0, to be used for all automatic exchange of information reporting beginning January 1, 2017 for the purposes of the common reporting standard (CRS), the UK Crown Dependencies & Overseas Territories (CDOT), and the FATCA reporting regimes and including any amendments to previously submitted data.

For more information, see KPMG’s TaxNewsFlash.

Finance Act 2016 received royal assent

On September 15, 2016, Finance Act 2016 (FA16) received Royal Assent. Included are measures to generally implement the following elements from the OECD’s BEPS project:

— Action 2 regarding hybrid and other mismatch arrangements;

— Action 5 regarding the common definition of “qualifying residual profit” as applicable in the modified Patent Box legislation.

Also included in FA16 is a late amendment, which was made to the finance bill, giving the UK Treasury the option to require public country-by-country reporting (CBCR) as part of a group’s published tax strategy. The amendment does not include a fixed timetable for implementation, but increases the pressure for adoption of multilateral public reporting initiatives such as that proposed by the EU. For more information on this amendment, see KPMG’s TaxNewsFlash.
Client notification regulations for financial institutions enter into force

On September 30, 2016, the International Tax Compliance (Client Notification) Regulations 2016 entered into force, requiring financial institutions and other advisors to notify clients of any information the financial institution is required to provide to the UK tax authorities under international agreements and to remind the client of their tax obligations. A list of affected clients must also be provided to the tax authorities by August 31, 2017.

For more information, see KPMG’s TaxNewsFlash.

Local Courts

Denmark

Binding ruling on conditions to be regarded as an investment company

The Danish Assessment Board issued a binding ruling (Ruling SKM2016.341.SR) setting out the conditions for a taxpayer to be regarded as an investment company for the purposes of the capital gains tax regime, including in particular, that investments are made in securities and that a share-buy-back obligation exists.

Ruling issued on profit allocation to PE

On August 16, 2016, the Danish Assessment Board issued a ruling (SKM2016.353.SR) that a foreign company had a Danish PE due to its construction activities in Denmark and that part of the functions and the installation during construction (until handed over to the client) should have been attributed to the Danish PE for the purpose of attributing profit to the PE on an arm’s length basis, rather than cost-plus as originally applied by the company.

France

Referral to Constitutional Court on constitutionality of public register of trusts

On July 22, 2016, the Administrative Supreme Court suspended the accessibility of the new public register of trusts while it refers a case to the Constitutional Court to rule on whether providing unrestricted access to the register to all
French taxpayers is in contravention of the French constitution due to privacy concerns.

Unused foreign tax credits do not need to be refunded

On June 27, 2016, the Administrative Supreme Court ruled that the parent company of a tax-consolidated group, which had withholding tax levied on interest and royalty payments by the source states of various subsidiaries making those payments, was not entitled to a refund from the French tax authorities of foreign tax credits that it was unable to use because the group as a whole was in a loss position, and therefore there was no French tax charge against which to offset the foreign tax credits.

Referral to Constitutional Court on constitutionality of withholding tax on dividends paid to NCSTs

On September 14, 2016, the Administrative Supreme Court asked the Constitutional Court to determine if a French 75% withholding tax on dividends paid to residents of a non-cooperative state or territory (NCSTs) is contrary to the principle of equality, because it does not allow the taxpayers to submit evidence to prove the dividends are not abusive, and therefore the withholding tax is unconstitutional.

Netherlands

Decision on low-taxed portfolio investment

On September 9, 2016, in the case of X BV v the tax administration (No. 15/00707) the Supreme Court held that a Dutch holding company’s interest in subsidiaries in other EU Member States were not “low-taxed portfolio investments” for purposes of the Dutch participation exemption rules. Further, currency losses on the intra-group loans could be deducted from the profits of the subsidiary when calculating the effective tax rate in that subsidiary, regardless of whether the other Member State allowed for such losses to be deducted when calculating the subsidiary’s tax liability in that state (i.e. when calculating the effective tax rate of the subsidiary, the calculation should use Dutch tax rules).

Referral to Supreme Court regarding entitlement of a German UCITS to refund of Dutch dividend withholding tax

On August 1, 2016, a District court referred a case to the Dutch Supreme Court for a preliminary ruling on whether a German undertaking for collective investment in transferable securities (UCITS) is entitled to a refund of Dutch dividend withholding tax on the basis that, under Article 63 TFEU (free
movement of capital), it should be compared with a Dutch resident fund (which would be entitled to a refund in the same situation). The referral from the Lower Court was made in the context of recent decisions from the CJEU in the joined cases of Miljoen (C-10/14), X (C-14/14) and Société Générale (C-17/14) (as reported in E-News 61 and KPMG’s Euro Tax Flash 298)

**Poland**

Cash-pooling to be treated as a loan subject to the transfer pricing documentation regime

On August 3, 2016, in its ruling in case ref. no. II FSK 879/16 and II FSK 880/16, the Supreme Administrative Court confirmed that case-law relating to cash-pooling agreements is consistent and, accordingly, settlements within a cash-pooling arrangement may be treated as a form of loan, and therefore subject to the transfer pricing documentation regime where certain legal thresholds are met.

For more information, see KPMG’s TaxNewsFlash.

**Switzerland**

Dutch government’s “group request” for bank’s customers ruled permissible

On September 11, 2016, the Swiss Federal Supreme Court reversed a decision of the Swiss Federal Administrative Court and ruled that a “group request” filed by the Netherlands for administrative assistance concerning unnamed customers of a Swiss bank was acceptable under the double tax convention between Switzerland and the Netherlands.

For more information, see KPMG’s TaxNewsFlash.

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