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E-News from the EU Tax Centre

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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.

Infringement Procedures and Referrals to CJEU

Referrals to CJEU

Belgium

On June 13, 2018, a Belgian Court referred questions to the CJEU in the Brussels Securities case (C-389/18) concerning the compatibility of the Belgian participation exemption regime with the EU Parent-Subsidiary Directive. Under this regime, dividends received by a qualifying parent company are first included in the latter's taxable basis, after which 95% of the dividends are subsequently deducted. However, a combined application with other tax provisions on imputation of losses may lead to a reduction of the losses that the parent company would have been able to deduct if the dividends had been directly excluded from the parent company's taxable basis. The referring court asked in essence whether this is compatible with the Parent-Subsidiary Directive.

Czech Republic

On June 19, 2018, a Czech Court made a reference to the CJEU for a preliminary ruling in the AURES Holdings case (C-405/18). The referring court asked the CJEU whether the freedom of establishment also covers a transfer of the place of a company's management from one EU Member State to another. If so, the Czech Court then asked whether Czech law that prevents an EU entity relocating its place of business or place of management to the Czech Republic in order to claim a tax loss incurred in its Member State of origin is contrary to EU law.

Hungary

On May 16, 2018, a Hungarian Court made a reference to the CJEU for a preliminary ruling in the Tesco-Global case (C-323/18) regarding the compatibility with EU law of the Hungarian advertisement tax. The referring court asked whether the imposition of a progressive tax rate is compatible with the EU fundamental freedoms, the EU principles of non-discrimination, equal treatment, equality of taxation of companies, as well as prohibition of state aid measures, to the extent that it leads to higher taxation of foreign retailers operating as a single company, as compared to domestic retailers operating independent stores under a franchise system.

Portugal

On July 4, 2018, a Portuguese court made a reference to the CJEU for a preliminary ruling in the Galeria case (C-438/18). The referring court asked whether the Portuguese rules on the non-deduction of interest in the event of a reverse merger are compatible with EU Law, and in particular with the EU Merger Directive.



State Aid

Non-confidential version of the EU Commission's negative decision in the Engie State aid case released

On September 4, 2018, the European Commission issued the unclassified report of its decision of June 20, 2018, determining that Luxembourg had granted illegal State aid to the Engie group, which gave rise to undue benefits.

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

Belgian court refers question to the CJEU regarding interpretation of the EU Commission's decision in the Belgian Excess Profit Rulings System

On May 11, 2018, a Belgian Court made a reference to the CJEU for a preliminary ruling in the Oracle Belgium case (C-318/18). The referring court asked from whom the illegal aid should be recovered, if the recipient of the aid was acquired by a new corporate group.



EU Institutions

COUNCIL OF THE EUROPEAN UNION

EU Finance Ministers discuss proposal on a Digital Services Tax

During an informal meeting of the Economic and Financial Affairs Council (ECOFIN) of the European Union held in Vienna on September 7 and 8, 2018, EU Finance Ministers discussed the recent European Commission's proposal on a Digital Services Tax (DST).

For more information, please refer to [Euro Tax Flash 380](#).

EUROPEAN PARLIAMENT

ECON Committee's draft opinion on protection of whistleblowers

On August 29, 2018, the Committee on Economic and Monetary Affairs (ECON) held a first debate on the draft opinion to be addressed to the Committee on Legal Affairs (JURI), the European Parliament's committee in charge of the file on protection of whistleblowers. In its suggested amendments, the ECON aims to improve the definition of a reporting person, as well as ensure material support and guarantee legal certainty for reporting persons.

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

ECON Committee's draft opinion on cross-border conversions, mergers and divisions

On August 29, 2018, the ECON Committee held a first debate on the draft opinion to be addressed to the JURI Committee, the European Parliament's committee in charge of the file on cross-border conversions, mergers and divisions. The main suggested amendments include clarifying the definition of "artificial arrangement", adding detailed substance requirements ("genuine economic activity" test), and deleting the requirement for national authorities to consult an independent expert when conducting their assessment of the cross-border operation.

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

[ECON Committee debate on taxation of the digital economy](#)

On August 29, 2018, the ECON Committee discussed the EU Commission's proposals on digital taxation. During the debates, the rapporteurs mentioned that further work needs to be done on the suggested thresholds for determining a "significant digital presence", and that the definition of in-scope digital services should be improved. Possible changes in the scope and rate of the proposed Digital Services Tax were also discussed.



OECD

[Report on global tax policy reforms](#)

On September 5, 2018, the OECD released a report describing recent tax reform efforts in various countries.

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

[Fourth round of BEPS Action 14 review reports](#)

On August 30, 2018, the OECD published new reports on Australia, Ireland, Israel and Malta in the fourth round of stage 1 BEPS Action 14. Each report assesses a country's efforts to implement the Action 14 minimum standard on dispute resolution mechanisms as agreed to under the OECD/G20 BEPS Project.

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

[Former Yugoslav Republic of Macedonia \(FYROM\) joins the Inclusive Framework on BEPS](#)

On August 23, 2018, the Former Yugoslav Republic of Macedonia (FYROM) joined the Inclusive Framework on BEPS. This takes its membership to 117 members. The Inclusive Framework, aims to bring interested non-G20 countries and jurisdictions, including developing economies, under the BEPS framework.

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



Local Law and Regulations

Belgium

Operating Procedures of the ultimate beneficial ownership register published

On August 14, 2018, a Royal Decree providing details on the implementation of an ultimate beneficial ownership (UBO) register was published in the Official Gazette. The Royal Decree, which enters into force on October 31, 2018, prescribes that information must be submitted for first time in the UBO register before November 30, 2018.

Bulgaria

Proposed bill amending the CIT Act to implement ATAD

The Bulgarian government has released a bill on the transposition of the Anti-Tax Avoidance Directive (EU 2016/1164) into domestic tax law. The bill addresses provisions related to five main topics: interest limitation, controlled foreign companies (CFCs), a general anti-abuse rule (GAAR), hybrid mismatches and exit taxation. The proposal is under public consultation until September 29, 2018.

Czech Republic

Draft Bill to ratify the MLI submitted to Parliament

On August 29, 2018, the Czech Ministry of Finance submitted a draft bill on the ratification of the Multilateral Instrument (MLI) to Parliament.

Proposed rules for corporate representatives, transparency measures

Changes to the law governing corporations in the Czech Republic—including amendments that would concern “elected bodies” of corporations and in particular when they are other corporate entities—are being considered.

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

Finland

Guidance on profit split method updated

On August 29, 2018, new guidance on the profit split method was published by the Tax Agency. The publication implements the revised guidance on the profit split method published by the OECD as part of Action 10 of the BEPS Project.

New rules for international tax disputes

On August 27, 2018, the Finish Ministry of Finance launched a public consultation on a new law which transposes the EU Directive on Double Taxation Dispute Resolution Mechanisms (2017/1852).

France

[Corporate tax changes expected in the 2019 Finance Bill](#)

The French government is expected to submit a draft of the Finance Bill for 2019 soon. Based on current understanding, the following corporate tax items could possibly be included in the draft bill: tax group regime, implementation and transposition of ATAD 1 into French law, French patent box regime.

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

Ireland

[Ireland announces Corporation Tax Roadmap](#)

On September 5, 2018, the Department of Finance released Ireland's Corporation Tax Roadmap laying out the future of Ireland's corporation tax regime. The Roadmap details ATAD implementation measures, some update to the transfer pricing regime, as well as the government's commitment to implementing EU mandatory disclosure rules for intermediaries.

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

Malta

[Guidelines on Notional Interest Deduction updated](#)

Guidelines on the application of the Notional Interest Deduction (NID) Rules were updated by the Maltese Commissioner for Revenue on August 8, 2018. The document clarifies some points including determination of the reference rate, attribution of deemed interest income, deductions and limitations.

The Netherlands

[Consultation on review of the Dutch ruling practice announced](#)

On August 30, 2018, a public consultation on the ruling practice in the Netherlands was launched by the Ministry of Finance. The consultation seeks responses to four questions with regard to: requirements for a taxpayer to qualify for a ruling, type of tax structures within the scope of a ruling, what is the best process for granting a ruling and the most desirable regulation to ensure the transparency of the ruling process. The Dutch ruling practice is under consultation until September 20, 2018.

Poland

[Exit tax to enter into force on January 1, 2019](#)

The Polish Ministry of Finance announced that the new exit tax rules compatible with ATAD 1 will be introduced into domestic law as of January 1, 2019. The exit tax rules will apply to both individuals and corporate taxpayers.

[New Bill on taxation of cryptocurrencies](#)

A new draft bill introducing amendments to the taxation of cryptocurrencies has been published in Poland. The new bill defines virtual currency as the digital representation of value and differentiates between decentralized virtual money and centralized virtual currencies. As a rule, proceeds from the sale of cryptocurrencies should be treated as income from capital gains. However, the exchange of cryptocurrencies will not be taxed. The document has been presented for consultation and its adoption is planned for the third quarter of 2018.

[Proposals for amending corporate income tax law released for public consultation](#)

On August 24, 2018, the Ministry of Finance presented a number of measures that would affect Poland's corporate income tax law and would transpose certain EU law measures (specifically EU directives about anti-tax avoidance and concerning the automatic exchange of financial account information) into Polish law.

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

[Proposed changes to transfer pricing rules](#)

On July 16, 2018, the Ministry of Finance published a draft bill that would amend, among other tax measures, the transfer pricing rules. The draft legislation would introduce a new, separate chapter dedicated to transfer pricing in both the Corporate Income Tax and Personal Income Tax Acts. The new measures are expected to take effect on January 1, 2019.

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

Portugal

[Details on implementation of the Central Registry of Beneficial Ownership published](#)

On August 21, 2018, an Ordinance regulating the implementation of the Portuguese Central Registry of Beneficial Ownership was published. The Ordinance, which enters into force on October 1, 2018, provides details on, for example, the declaration form, the information to be included and the submission deadlines.

Sweden

[Proposed legislative changes to align the Swedish rules with the Anti-Tax Avoidance Directive](#)

At the beginning of September 2018, the Swedish government published a legislative proposal (2017/18:296) that would impose stricter rules on companies subject to low taxation. The purpose of the proposal is to make it more difficult to use tax planning that involves companies in foreign jurisdictions. The proposal extends the CFC legislation, the law enforcement powers of the Tax Agency regarding crimes and the list of countries covered by the automatic exchange of information on financial accounts.

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

[Updated guidance on profit split method](#)

On August 29, 2018, the Swedish tax authorities issued updated guidance on the profit split method. The guidelines, which implement the updated OECD standards as of June 2018, will apply retrospectively.

[Tax authorities' position on interest on withholding tax refunds](#)

On August 28, 2018, the Swedish Tax Agency published a commentary on a judgment by the Supreme Administrative Court in case No. 109/17. The Agency confirmed their existing practice, in line with the court's judgement that the right to interest exists only when the withholding tax has been imposed in breach of EU law or the recipient was not subject to withholding tax at all.

Switzerland

[Swiss Federal Council adopts MLI](#)

On August 22, 2018, the Swiss Federal Council adopted a dispatch on MLI. In order to finalize the ratification process of the MLI, the Federal Council has submitted a request to Parliament for authorization.



Local Courts

Denmark

[Application of the permanent establishment concept under the tax treaty with Denmark](#)

On June 26, 2018, the Copenhagen City Court ruled on the existence of a permanent establishment (PE) under the double tax treaty between Poland and Denmark. The Court concluded that the Polish taxpayer's activities in Denmark constituted a PE, as almost all activities of the taxpayer for the relevant tax period had taken place in Denmark and that such activities could not be considered as auxiliary or preparatory.

France

[French Supreme Court's decisions in the Jacob and the Lassus cases](#)

On June 25 and 27, 2018, the French Supreme Court rendered judgment in the Jacob and the Lassus cases, which closely follows the CJEU's decision of March 22, 2018, in the joined cases Jacob (C-327/16) and Lassus (C-421/16). In the Jacob case, the French Supreme Court therefore referred to the CJEU decision, and concluded that the tax deferral regime in question is compatible with EU Law. In the Lassus case, the Court concluded that the taxpayer is only able to offset the capital loss suffered on the sale of the shares received in exchange. Therefore, the French Supreme Court refused to offset the losses incurred on the other shares in the same company that the taxpayer had subscribed to after the contribution.

The Netherlands

Advocate-General's Opinion on application of anti-abuse rules to outbound dividends

On August 20, 2018, Advocate-General Wattel of the Supreme Court of the Netherlands issued his Opinion in the X case concerning the compatibility of Dutch anti-abuse provisions with the EU Parent-Subsidiary Directive and with the freedom of establishment. Making reference to previous CJEU case law on anti-abuse rules, the AG concluded that the judgment of The Hague Court of Appeal should be upheld, as the structure at issue was artificial and aimed at avoiding tax and the taxpayer had failed to convincingly demonstrate that the structure was business-motivated.

Determination of tax residence under bilateral tax treaty

On May 30, 2018, The Hague Court of Appeal ruled on the determination of a taxpayer's residence under the double tax treaty between the Netherlands and the United States. The Court upheld the District Court's conclusion that the taxpayer was solely a resident of the Netherlands for the relevant tax years.



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