



E-News from KPMG's EU Tax Centre



[State Aid](#)

[EU Institutions](#)

[OECD](#)

[Local Law and Regulations](#)

[Local Courts](#)

E-News from the EU Tax Centre

Issue 86 – November, 2018

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

Infringement Procedures

European Commission requests that Belgium implement the CJEU judgement on the evaluation of rental income

On November 8, 2018, the European Commission sent Belgium a letter of formal notice for failing to implement the CJEU's decision in the Commission vs. Belgium case (C-110/17). on the tax treatment of rental income earned by Belgian residents but derived from immovable property abroad, . In its judgement, the CJEU concluded that calculating rental income based on the cadastral value of assets is contrary to the free movement of capital. If Belgium does not act within the next two months, the case may be referred to the CJEU.

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

[European Commission requests that Bulgaria amend its rules on the automatic exchange of information](#)

On November 8, 2018, the European Commission sent a letter of formal notice to Bulgaria for failing to comply with the EU's rules on the automatic exchange of information outlined in Directive 2014/107/EU (DAC2). According to the Commission, Bulgaria's reporting obligation exemption is not in line with the Directive. If Bulgaria does not act within the next two months, the Commission may send a reasoned opinion (second stage of the infringement procedure).

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

[European Commission refers Luxembourg to the CJEU regarding anti-money laundering rules](#)

On November 8, 2018, the European Commission referred Luxembourg to the CJEU for failure to transpose in full the Anti-Money Laundering Directive 2015/849 (AMLD4).

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

[European Commission closes procedure against Cyprus and Luxembourg regarding DAC 5](#)

On November 8, 2018, the European Commission closed the infringement procedure against Cyprus and Luxembourg for failure to implement rules that grant tax authorities access to anti-money laundering information (Directive 2016/2258 or DAC5).

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



State Aid

[General Court's decision in Spanish goodwill cases](#)

On November 15, 2018, the General Court issued its final decisions on Banco Santander (T-399/11) and Deutsche Telekom (T-207/10). The General Court confirmed the European Commission's decisions finding that the tax amortization of financial goodwill for foreign shareholding acquisitions in Spain constitutes illegal State aid.



EU Institutions

COUNCIL OF THE EUROPEAN UNION

[Code of Conduct Group issues report on its activities during the Austrian Presidency](#)

On November 20, 2018, the Code of Conduct Group issued a report summarizing the activities of the group during the second half of 2018. More specifically, the report details

the EU blacklisting process and the methods used to monitor harmful tax practices by Member States, including the review of certain patent boxes, and notional interest deduction regimes.

For more information, please refer to the Code of Conduct Group [report](#).

EUROPEAN COMMISSION

[European Commission releases documents on Brexit preparations](#)

On November 14, 2018, the European Commission released a first draft agreement on UK's withdrawal from the EU. The agreement includes an outline of political declaration that establishes a framework for the future relationship between the UK and the EU and a joint report from the EU's negotiators and the UK Government on the negotiations status under article 50 of the Treaty on the EU. The released documents still have to be approved by the European Council.

EUROPEAN PARLIAMENT

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

On November 19, 2018, the ECON Committee held a second debate on the significant digital presence and on the digital services tax proposals. More than one hundred amendments have been tabled on each proposal. The shadow rapporteurs will meet in the coming weeks to assess the tabled amendments. The ECON is scheduled to vote on both reports on December 3, 2018 and the EU Parliament is expected to vote in plenary on December 12, 2018.

[ECON Committee releases opinion on cross-border conversions, mergers and divisions](#)

On November 14, 2018 the ECON Committee voted in favor of the opinion to be presented to the JURI Committee, the European Parliament's committee in charge of the file on cross-border conversions, mergers and divisions. The opinion suggests to clarify a number of concepts, in particular the definition of "artificial arrangement" and to add detailed substance requirements. No date has been set up yet for a vote on the final report.

[TAX3 Committee issues draft report](#)

On November 14, 2018, the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) issued a draft report and an overview of the activities performed during its mandate. The draft report calls for urgent reforms to outdated international and national tax systems. Additionally, the report provides recommendations on: fighting tax avoidance by both companies and high net worth individuals, revising corporate tax rules, strengthening anti-money laundering requirements, fighting VAT fraud, and better protecting whistle-blowers.



OECD

[Request for comments on the peer review of dispute resolution mechanisms \(MAP\) issued](#)

On November 15, 2018, the OECD issued a request for comments and input on a peer review of the tax treaty dispute resolution process under Action 14 of the base erosion and profit shifting (BEPS) project.

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

[Update on preferential regimes, zero-tax jurisdictions](#)

On November 15, 2018, the OECD released a progress report from the “Inclusive Framework” on BEPS that examines fifty-three preferential tax regimes, demonstrating that the jurisdictions continue to offer tax breaks only to substantive activities that do not pose risks of harmful competition..

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

[New jurisdiction join inclusive framework for implementing measures against BEPS](#)

Cape Verde has recently become the 124th member to join the BEPS Inclusive Framework.

[Guidance on synthesized texts of double tax treaties amended by the MLI released](#)

On November 14, 2018, the OECD released new Guidance for the Development of Synthesized Texts. The guidance includes an overview of the tax treaty modifications made in response to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

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

[Regional Meeting of Eastern Europe and Central Asia on BEPS implementation](#)

On November 7-9, 2018, over sixty delegates from sixteen countries gathered in Yerevan, Armenia for the regional meeting of the Inclusive Framework on BEPS in Eastern Europe and Central Asia.

For a summary of the discussions, please refer to the OECD's [report](#).

[Synthesized texts of Japan's tax treaties with four EU Member States released](#)

The Japanese Ministry of Finance published the synthesized texts of the tax treaties between Japan and [Poland](#) (1980), [Slovak Republic](#) (1977), [Sweden](#) (1983) and the [United Kingdom](#) (2006) as modified by the MLI. The documents were jointly prepared and agreed to by the competent authorities of the EU Member States referred to and Japan.



[Local Law and Regulations](#)

Belgium

[Consultation on draft transfer pricing circular launched](#)

On November 9, 2018 the Belgian tax authorities launched a consultation on a draft circular, aiming to align Belgian transfer pricing rules with the latest OECD recommendations. The circular provides detailed guidance on the determination of an arm's length price, the use of transfer pricing methods and the comparability analysis, as well as on hard-to-value intangibles, intra-group services with low added value, restructurings, profit allocation between a headquarter and its permanent establishments, and intra-group financing. The consultation lasts until December 12, 2018.

Denmark

[Tax Board ruling on the determination of a PE for venture capitalist employer](#)

On October 23, 2018, the Danish Tax Board rendered an advance ruling on the activities performed in Denmark by a development director for a venture capitalist employer. The Board concluded that such activities do not constitute a permanent establishment, as the director's tasks performed in Denmark were mainly of a sporadic and temporary character and he represented his employer in portfolio companies without any influence on their operations.

France

[Additional guidelines on Common Reporting Standard released](#)

On November 7, 2018, the French tax administration published additional administrative guidelines regarding the implementation of the Common Reporting Standard (CRS). An internet consultation on the guidelines has been launched until January 31, 2019.

Finland

[Parliamentary committee suggests amendments to the interest limitation rules](#)

On November 16, 2018, the parliamentary finance committee issued comments regarding the bill transposing interest limitation rules in accordance with the EU ATAD. The committee suggested technical amendments regarding the calculation of group debt to equity ratio and the grandfathering of loans granted prior to June 17, 2016.

[Public consultation launched on new rules for investment funds](#)

On November 9, 2018, the Ministry of Finance launched a public consultation on the legislative proposal amending the tax treatment of investment funds. The bill aims to clarify the investment fund tax exemption conditions and notes that as of fiscal year 2020, income paid to qualifying non-resident funds will be exempt from Finnish withholding tax.

Greece

[Information on the implementation of ATAD and other tax measures](#)

On November 13, 2018, the Greek tax authorities provided additional information on the implementation of the EU ATAD. Greece plans to introduce a new general anti-abuse rule (GAAR), provisions on thin-cap rules and CFC rules. According to the statement, the Greek tax authorities are now focusing on mandatory disclosure rules, new tax provisions for restructurings and solving issues non-residents face when performing activities in Greece.

Ireland

[Ireland launches ATAD implementation consultation on Hybrids and Interest Limitation](#)

On November 14 2018, the Irish Government launched a consultation on the adoption of measures under the EU ATAD. The consultation relates to Ireland's adoption of measures to counteract cross border hybrid mismatches as well as matters to consider when Ireland moves to adopt a general interest limitation rule

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

Italy

[Withholding tax rate on interest paid by an Italian resident to a Swiss bank](#)

The Italian tax authority issued a tax ruling to clarify the tax treatment of interest income realized by a non-resident taxpayer from a loan made to an Italian resident individual. The tax ruling clarifies that interest paid by the individual in Italy on a loan granted by a Swiss bank is subject to the beneficial withholding tax rate of 12.5% pursuant to the income tax treaty between Italy and Switzerland.

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

[Clarifications on interest deduction released](#)

On 5 November 2018, the Italian tax authority issued a tax ruling clarifying the scope of application of the Italian interest deduction limitation rules. The tax ruling concludes that when a company subject to the limitation rules is absorbed by a company qualifying for an exemption, the limitation provided by the ordinary interest deduction rules remain applicable, as the relevant interest expenses were incurred by a non-qualifying person.

Jersey, Guernsey, and Isle of Man

[Guidance on economic substance requirements released issued](#)

On November 7, 2018, Jersey, Guernsey and the Isle of Man conjointly published a document setting out the functioning of the economic substance requirements for companies in the Crown Dependencies.

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

Malta

[Guidelines of tax treatment of distributed ledger technology \(DLT\) assets released](#)

On November 1, 2018, the Maltese tax authorities issued guidelines on the tax treatment of transactions related to Digital Ledger Technology (DLT). The guidelines cover income tax, duties on documents and transfers and value added tax.

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

The Netherlands

[Update on 2019 Tax Plan package and ATAD1 bill](#)

On November 15, 2018, the Lower House of the Dutch Parliament adopted the 2019 Tax Plan package and the bill implementing the first European Anti-Tax Avoidance Directive (ATAD1), including a number of amendments and motions.

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

[Update on "emergency repair of fiscal unity" bill](#)

In a November 2018 memorandum the Dutch government answered questions raised by the parliament about pending fiscal unity emergency repair legislation. The bill, which was presented to the parliament in June 2018 provides that, for a number of legal provisions, the approach to be taken is as if a fiscal unity for corporate income tax purposes does not exist.

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

[Measures to combat tax avoidance and tax evasion announced](#)

On November 6, 2018, the Dutch government sent a letter to the parliament announcing its plans to introduce a conditional withholding tax on interest and royalties paid to low-tax jurisdictions, as well as the negotiation of a principal purpose test in Dutch tax treaties in 2019.

Norway

[Norwegian government approves the MLI](#)

On November 16, 2018, the MLI was approved by the Norwegian cabinet, which will subsequently be submitted for endorsement to the parliament.

Poland

[Income tax legislation enacted in Poland](#)

Poland's president signed into law a bill that makes changes to the income tax law. The enacted legislation is effective beginning January 1, 2019. The new tax legislation includes provisions concerning: an exit tax, taxation of profits from virtual currencies and reduction of tax rates.

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

Spain

[Draft bill for financial transactions tax](#)

The Ministry of Finance has published a draft bill introducing a financial transactions tax (FTT). The proposed legislation reflects efforts under way since 2013, for the introduction of an EU wide FTT, under the enhanced cooperation procedure.

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

Sweden

[Bill to implement CFC rules into domestic law into domestic law enacted](#)

On November 14, 2018, the Swedish Parliament approved the bill introducing controlled foreign company (CFC) rules, in accordance with the requirements under the EU ATAD. The new rules will apply as of January 1, 2019.

[Country-by-country reporting obligations for non-resident entities clarified](#)

On November 6, 2018, the Swedish Tax Agency updated its country by country reporting guidance to clarify when taxpayers are required to report additional information.

Switzerland

[Modifications on federal practices concerning principal companies and Swiss finance branches](#)

On November 15, 2018, the government announced that its existing administrative practices on the allocation of tax between principal companies and Swiss financial branches will terminate in 2019. This change aims to align the federal rules with the corporate tax reform (Tax Proposal 17) providing for the abolition of the cantonal status companies.

[Transitional provision on International Automatic Exchange of Information in Tax Matters removed](#)

On November 7, 2018, the Swiss government decided to abolish, the transitional provisions that allow financial institutions to treat jurisdictions that are committed to introducing the OECD standards on automatic exchange of information as a "participating states" as of January 1, 2019.

[Geneva proposes to reduce corporate income tax rate to 13.79%.](#)

The Geneva State Council presented a final cantonal project for implementation of federal tax reform and other tax provisions, including a measure to reduce the canton's corporate income tax rate to 13.79%.

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

United Kingdom

[Details on the withdrawal agreement between the UK and EU](#)

On November 14, 2018, the UK government released supporting documentation to the Brexit preparation documents issued on the same day by the European Commission. The documentation summarizes the agreement's provisions and explains technical aspects of the application of Article 6-8 of the Northern Ireland Protocol being a part of the agreement.

[Status of Finance Bill 2018-19, related consultations](#)

Finance Bill 2018-19, published on November 7, 2018 is proceeding through Parliament and received a second reading in the House of Commons on November 12, 2018. Discussions are focusing, among other items on profit fragmentation, hybrid mismatches, controlled foreign companies, capital gain tax (CGT) exit charges, corporation tax exit charges, and international tax enforcement and disclosure arrangement

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



[Local Courts](#)

[Czech Republic](#)

[High court decision, interpreting tax treaty provisions](#)

The Supreme Administrative Court held that if an income taxation treaty can be applied to a taxpayer's situation, the tax inspector cannot automatically use domestic law or regulations to interpret a treaty's concepts. Instead international law principles and the commentaries to the OECD's Model Convention should be applied.

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

[Greece](#)

[Supreme Administrative Court decision on individual's place of residence](#)

On November 16, 2018, the Greek Supreme Administrative Court rendered its decision in a case aimed at determining the tax residence of a Greek taxpayer who was living and working in Switzerland as provided for in the Double Tax Treaty between Greece and Switzerland. The Court ruled that the taxpayer is a Swiss resident and that the Greek tax authorities misapplied the Income Tax Code, considering that the taxpayer provided all the necessary documents to establish that his tax residence is in Switzerland.

[Supreme Administrative Court decision on recovery of illegal State aid](#)

On November 12, 2018, the Greek Supreme Administrative Court published its judgement concerning the recovery of illegal state aid. The questioned measure allows companies to establish a tax exempt reserve fund of up to 35% of their profits in order to invest that amount.

This measure was considered an illegal state aid by the European Commission in its decision on July 18, 2007. The Supreme Administrative Court decided that the aid concerned will not be recovered, because, the aid could also be covered by a regulation on private investment aid for the country's economic and regional development, which was considered acceptable aid.



Robert van der Jagt
Chairman, KPMG's EU Tax Centre and
Partner,
Meijburg & Co

Key links

- Visit our [website](#) for earlier editions

kpmg.com/socialmedia



kpmg.com/app



[Privacy](#) | [Legal](#)

You have received this message from KPMG International Cooperative in collaboration with the EU Tax Centre. Its content should be viewed only as a general guide and should not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. If you wish to unsubscribe from Euro Tax Flash mailing list, please e-mail KPMG's EU Tax Centre mailbox (eutax@kpmg.com) with "Unsubscribe Euro Tax Flash" as the subject line. For non-KPMG parties – please indicate in the message field your name, company and country, as well as the name of your local KPMG contact.

If you have any questions, please send an e-mail to eutax@kpmg.com.

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

© 2018 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved