



E-News from KPMG's EU Tax Centre



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E-News from the EU Tax Centre

Issue 87 – December 7, 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.

[Latest CJEU, EFTA and ECHR](#)

[Advocate General's Opinion on unilateral revocation of Article 50 notification](#)

On December 4, 2018 Advocate General Campos issued its opinion in the case Wightman and Others v Secretary of State for Exiting the EU ([C-621/18](#)). In the AG's opinion, the CJEU should declare that Article 50 of the Treaty on European Union (TEU) allows the unilateral revocation of the notification of the intention to withdraw from the EU, until such time as the withdrawal agreement is formally concluded, and provided that the revocation has been decided upon in accordance with the UK's constitutional requirements, is formally notified to the European Council and does not involve an abusive practice.

For more information, see the full [CJEU press release](#).

CJEU decision on withholding tax levied on dividends

On November 22, 2018, the CJEU rendered its decision in the Sofina and Others case (C-575/17). The case concerned the compatibility with EU law of the French withholding tax levied on dividends paid by French companies to non-resident loss-making companies. The Court concluded that the French legislation is contrary to the free movement of capital.

For more information, please refer to [KPMG's EU Tax Flash](#)

CJEU decision of the freedom to provide services

On November 22, 2018, the CJEU rendered its decision in Vorarlberger Landes- und Hypothekenbank AG (Case C-625/17). The Court concluded that the Austrian bank levy is not contrary to the freedom to provide services.



Infringement Procedures & Referrals to CJEU

Referrals to CJEU

France

On October 12, 2018, the French Supreme Tax Court referred two questions to the Court of Justice of the European Union (CJEU) regarding the compatibility of the French tax legislation with the EU Merger Directive. The referring court requested clarification concerning the tax treatment applicable to deferred capital gains realized by individuals.

Italy

On September 6, 2018, reference was made to the CJEU by an Italian Court for a preliminary ruling in the case of Société Générale S.A. v Italy (C-565/18). The local court requested the CJEU to clarify whether the Italian tax on financial transactions is compatible with the free movement of capital, the freedom to provide services and the prohibition of discrimination on grounds of nationality as guaranteed by the Treaty on the Functioning of the European Union (TFEU).



State Aid

Commission v. Ireland (C-678/17) removed from register

On November 8, 2018, the case Commission v. Ireland (C-678/17) was removed from the CJEU register. Following the confirmation by Ireland that the full recovery of the illegal State aid granted to Apple had been finalized, the Commission decided on October 18, 2018 to withdraw its CJEU action. Ireland is now obliged to cover the procedural costs.



EU Institutions

COUNCIL OF THE EUROPEAN UNION

ECOFIN discusses new French-German proposal for an EU Digital Services Tax and adopts further items on the work of the Code of Conduct

On December 4, 2018, the Economic and Financial Affairs Council of the EU (ECOFIN) held an exchange of views on the digital services tax, but failed to reach an agreement on a compromise text tabled by the Austrian Presidency of the EU. Member States also had the opportunity to comment on a last minute proposal presented by France and Germany that would reduce the scope of the tax to revenues for advertisement only. Additionally, the ECOFIN approved, without discussions, amendments to the EU “grey list” of uncooperative jurisdictions for tax purposes and welcomed the progress achieved by the Code of Conduct Group during the Austrian Presidency.

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

Draft texts of the withdrawal agreement and political declaration on future EU-UK relations approved by the European Council

On November 25, 2018, the European Council endorsed the [draft Brexit withdrawal agreement](#) and the [political declaration](#) that sets out the framework for the future relationship between the EU and the UK. On the topic of taxation, the draft addresses issues around customs, mutual assistance and fair competition. The draft agreement and any subsequent agreements will not apply to Gibraltar. The EU and UK should negotiate a separate agreement related to the territory.

EUROPEAN COMMISSION

Taxation in 2017: Tax-to-GDP ratio up to 40,2% in the European Union

According to a report published by Eurostat, the European Commission's statistic services on November 26, 2018, the EU tax-to-GDP ratio (sum of taxes and net social contributions as a percentage of GDP) was 40.2% in 2017, up 0,3% from 2016. The tax-to-GDP ratio in the Euro area also increased from 41,2% in 2016 to 41,4% in 2017.

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

EUROPEAN PARLIAMENT

ECON Committee reports on taxation of the digital economy

On December 3, 2018, the ECON Committee adopted reports on a Digital Services Tax (DST) and on the taxation of a Digital Significant Presence (DSP). In its [report on a DST](#),

the ECON Committee recommends: a scope extension, lowering the applicable thresholds, including a sunset clause, and subjecting the DST to CBCR. In its [report on a DSP](#), the ECON's recommendations include: integrating the concept of DSP with the proposals on a Common Consolidated Corporate Tax Base, broadening the scope of digital services to include the sale of goods or services via 'e-commerce' platforms, introducing a new criterion to determine a significant presence, that the European Commission provides guidelines on the concepts used in the Directive and, granting a mandate to the latter to negotiate tax treaties with third countries to introduce the DSP concept.

ECON and TAX3 Committees joint meeting on Cum-Ex scandal

On November 29, 2018, the European Parliament voted in favor of a resolution calling for an inquiry into rule changes and stronger tax authorities as a result of the EUR 55 billion cum-ex tax fraud. The vote on the resolution follows a joint meeting of the TAX3 and the ECON Committees on November 26, 2018, during which the recent revelation of the Cum-Ex files, were examined. The discussion mostly focused on the German investigations and on-going litigation with respect to the use of "cum-ex" and cum-cum" schemes since 2002. Multiple questions were raised on several aspects of the scheme.

For more information, please refer to the [European Parliament's press release](#).

TAX3 Committee Draft Report issued

On November 27, 2018 the TAX3 Committee held a first exchange of views on their draft report. The European People's Party (EPP) rapporteur underlined that the report builds on the work performed by the previous special TAXE and ECON Committees. The draft addresses issues that were not previously prioritized such as VAT fraud, and golden visas. Following these discussions, it was suggested that a European research center be established in order to provide more data on the tax files.

For more information, please refer to the TAX3 Committee [draft report](#).

TAX3 Committee exchange of views with Moscovici and Hearings of multinationals

On November 27, 2018 the TAX3 Committee held an exchange of views with Commissioner Moscovici and several multinationals. During the first part of the discussion, the commissioner took stock of the initiatives launched and results achieved during his mandate and also provided an update on various initiatives such as: the recommendations to seven Member States to address certain features of their tax system; the compatibility of the US tax reform with World Trade Organization rules; alternative solutions to qualified majority on tax files; minimum taxation; the relevance of the data underlying the DST proposal; the cum-ex scandal and the EU blacklist. During the multinationals presentation, companies from the digital economy insisted that profit allocation should be decided multilaterally, and that such allocation is currently based on functions performed and risks assumed.



Synthesized text of Japan's tax treaty with France released

On December 3, 2018, the Japanese Ministry of Finance published the synthesized text of the tax treaty between Japan and France (1995), as modified by the MLI.

For more information, please refer to the [Japanese Ministry of Finance's summary](#).

OECD Secretary-General's report to G20 leaders

The OECD has published the 2018 Secretary-General's report to the G20 Leaders, following the G20 summit which took place on November 30-December 1 in Buenos Aires, Argentina. The publication summarizes the OECD's international tax agenda (Part 1) and reports on the activities of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Part 2).

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



Local Law and Regulations

Austria

Updated transfer pricing documentation

On November 23, 2018 the Austrian Ministry of Finance released updated guidelines on the transfer pricing documentation which replaces the previous guidance of December 4, 2017.

Belgium

Bill to amend Company Law presented

On November 22, 2018, the Belgian government submitted to the parliament a Draft bill to align its federal tax rules with the new Code on Companies and Associations. The bill includes an amendment that replaces the real seat doctrine with the incorporation doctrine. As a result, Belgian company law may no longer apply to all Belgian tax residents. Consequently, new definitions and rules will be established to ensure that tax residents governed by another country's company law will remain compliant with Belgian Generally Accepted Accounting Principles.

Bulgaria

Amendments to Corporate Income Tax Act published

On November 27, 2018, the amended Corporate Income Tax Act was published in the Bulgarian State Gazette, after the Bulgarian Parliament overturned the presidential veto and approved the amendments to the tax legislation. The main amendments address interest limitation, thin capitalization, CFCs and new tax rules for certain operating lease agreements.

The amendment was necessary to implement the provisions of the ATAD 1 directive. The above amendments will be applicable as of 1 January 2019.

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

France

ATAD and possible loosening of new interest limitation

On November 23, 2018, the high chamber of the French Parliament ("Sénat") voted to limit the effects of the lower 10% (or EUR one million) limitation to the net interest expenses corresponding to the debt above the 1.5:1 debt to equity ratio.

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

Finance Bill for 2019 – second part adopted by National Assembly

On November 20, 2018, the second part of the Finance Bill for 2019 was adopted in full by the French Parliament. Some new measures were added to the Bill, such as the extension of scope of the abuse of law concept and the introduction of a 30% flat tax rate on income from conversion of digital assets (e.g. virtual currencies).

Greece

Corporate tax rate decrease proposed in Greek Budget for 2019

On November 22, 2018, Greece submitted its 2019 Budget to the parliament. The draft includes a gradual decrease in the corporate income tax rate (from 29% to 25%) and dividend withholding tax rate (from 15% to 10%) over the course of four years. The decrease will take effect in 2019 or 2020.

Guernsey

Ordinance on substance requirements for resident companies issued

On November 28, 2018, the Ordinance on substance requirements for resident companies was approved. The Ordinance enumerates a number of substance requirements (e.g. connection with and activity in Guernsey, governance, employees, offices, etc.) and grant powers to the government to provide additional guidance on those requirements, the companies and activities covered, audit requirements, and supervision. The Ordinance came into force on December 1, 2018.

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

Hungary

Draft Bill to implement ATAD approved by Parliament

On November 13, 2018, the Hungarian Parliament approved a bill partly transposing EU Directive 2016/1164 (ATAD1) into domestic law. The draft bill introduces interest limitation

rules, controlled foreign company (CFC) rules, a general anti-avoidance rule (GAAR) and hybrid mismatches rules in accordance with ATAD1. The new rules will apply as of January 1, 2019.

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

Ireland

Manual on tax treatment of Islamic financial transactions published

On November 19, 2018, Irish Revenue released a manual outlining the tax treatment of predominant Islamic financial transactions and their equivalents.
For more information, please refer to the [manual](#).

Italy

Legislative Decree implementing ATAD approved by Council of Ministers

On November 28, 2018, the Council of Ministers approved the Legislative Decree implementing the provisions of ATAD 1. The Decree amends rules on interest limitation, exit taxation, CFCs, taxation of foreign dividends and capital gains and hybrid mismatches.

Jersey

Policy on register of Beneficial Ownership published

On November 23, 2018, the government of Jersey published a [policy document](#) on its Beneficial Ownership (BO) Register outlining the following matters: Jersey's present position on BO registers; the current concerns on BO registers in the international arena; its general policy on sharing BO information and the country's commitment to share BO information with EU Member States.

Netherlands

Features of the new Dutch ruling presented

On November 22, 2018, a letter highlighting key changes to the future Dutch ruling practice was sent to parliament by the State Secretary for Finance. These modifications, set to take effect on July 1, 2019, focus on enhancing the quality and quantity of services available to companies with real activities in the Netherlands. The changes will tighten the conditions to obtain a ruling both in terms of substance requirements for the requesting taxpayer and in terms of the structure reviewed. The tax authorities will publish an anonymous summary of each international tax ruling. They will also publish an annual report on the issued rulings.

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

Poland

Public consultation on ATAD implementation launched

On November 23, 2018, the Polish Government launched a public consultation on the implementation of the ATAD's exit rules into domestic law, which will be effective from January 1, 2019. The Ministry of Finance is seeking commentary on triggering tax events, taxable base calculation methods, the exact date of tax liability, and the scope of compliance obligations. The consultation runs until December 21, 2018.

[Ministry of Finance opens public consultation on IP Box regime](#)

On November 23, 2018, the Ministry of Finance opened a public consultation on the patent box (IP Box) regime which comes into force on January 1, 2019. The main provision of the new Polish IP box regime is the introduction of a 5% tax rate on income from intellectual property.

[Public consultation on new transfer pricing regulations open](#)

On November 16, 2018, the Ministry of Finance initiated a public consultation on new transfer pricing regulations, drafted in response to the amended Corporate Income Tax Law and Personal Income Tax Law, which will enter into force on January 1, 2019. The Minister of Finance intends to release guidance on the application of the new transfer pricing regulations and is, therefore, looking to receive input from taxpayers through a consultation.

Sweden

[Tax Agency opinion on tax treatment of servers](#)

According to an opinion issued on November 23, 2018, the Swedish tax authorities consider that a server located in Sweden for a period of at least six months may constitute a permanent establishment of a non-resident entity, even if it is the only business activity of such entity in Sweden.

Switzerland

[Global Forum's recommendations adopted](#)

On November 21, 2018, the Swiss Federal Council adopted legislation to implement the recommendations issued by the Global Forum on Transparency and Exchange of Information. The bill requires that bearer shares be converted into registered shares or structured as intermediated securities. Failure to comply and report non-compliance with this requirement will trigger sanctions. The bill also provides clarity on the confidentiality of administrative requests, the process to take legal action in administrative assistance proceedings and administrative assistance available in instances of stolen data.

United Kingdom

[Policy paper and Statutory Instruments released](#)

On November 28 and 29, 2018, the HMRC published a Policy Paper and several Customs (EU Exit) regulations in connection with the withdrawal of the UK from the EU. The publications include a [Policy note](#) on Financial Services, [regulations](#) on temporary storage facilities,

regulations on the import duty, regulations on special procedures and outward processing, regulations on customs transit procedures, and regulations on contravention of a relevant rule.



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