



# E-News from KPMG's EU Tax Centre



## [Latest CJEU, EFTA and ECHR](#)

[State Aid](#)

[EU Institutions](#)

[OECD](#)

[Local Law and Regulations](#)

[Local Courts](#)

## **E-News from the EU Tax Centre**

**Issue 88 – December 19, 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](#)

[CJEU decision in Montag \(Case C-480/17\)](#)

On December 6, 2018, the Court of Justice of the European Union (CJEU) rendered judgment in *Frank Montag v. Finanzamt Köln-Mitte* ([C-480/17](#)). The CJEU ruled that the German legislation under which compulsory pension contributions paid by a non-resident are treated as non-deductible, while the same contributions paid by a resident are treated as deductible, is contrary to the freedom of establishment. At the same time, the CJEU ruled that if the pension contributions paid are voluntary, German law can differentiate between tax residents and tax non-residents in the sense that tax residents may benefit from a deduction of such contributions for tax purposes whereas this is not possible for tax non-residents.

## CJEU decision on Article 50 allowing unilateral revocation of notification of intention to withdraw from the EU

On December 10, 2018, the CJEU ruled in the Wightman and Others v. Secretary of State for Exiting the European Union case (Case C-621/18). The Scottish Court of Session requested a preliminary ruling from the CJEU as to whether Article 50 of the Treaty on the European Union allows a Member State to unilaterally revoke a notification of intention to withdraw from the EU. The CJEU ruled that such unilateral revocation is allowed and should take place by means of a written notice to the European Council once the Member State agrees on the revocation in accordance with its constitutional requirements. Such revocation ends the withdrawal procedure and confirms that the Member State's status in the EU remains unchanged.



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## State Aid

### CJEU decision in the A-Brauerei case

On December 19, 2018, the CJEU rendered judgment in the Finanzamt B v. A-Brauerei case (C-374/17). The case concerned the compatibility of the German real property transfer tax with EU State aid rules. The applicable transfer tax is not charged on taxable acquisitions involving a merger within a group of companies. Following the Advocate General's Opinion, the CJEU ruled that the German legislation does not constitute selective State aid.

### Non-confidential version of decision in the McDonald's case published

On December 17, 2018, the European Commission released the non-confidential version of its decision of September 19, 2018, in which it concluded that the tax rulings issued by the Luxembourg Tax Administration to McDonald's do not constitute State aid within the meaning of EU law.

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

### European Commission refers Romania to the CJEU regarding State Aid recovery

On December 7, 2018, the European Commission referred Romania to the CJEU for failure to recover EUR 92 million of illegal State aid from Viorel and Ioan Micula and their group of companies. In 2015, the European Commission concluded that the compensation paid by Romania to two investors as a result of a 2013 arbitral award was in breach of EU State aid rules. As part of the EU accession process, Romania had revoked an investment incentive scheme in 2005, four years prior to its scheduled expiry in 2009, thus infringing a bilateral investment treaty between Romania and Sweden.

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



## **EU Institutions**

### **COUNCIL OF THE EUROPEAN UNION**

#### **ECOFIN endorses six-monthly report to the European Council**

On December 5, 2018, the ECOFIN endorsed a six-monthly report to the European Council on tax issues, which provides an overview of the progress achieved at the Council during the term of the Austrian Presidency and of the state of play on the most important dossiers under negotiation in the area of taxation, including the Common Consolidated Corporate Tax Base, the Digital Taxation package, Value Added Tax, the Financial Transaction Tax, and the work of the Code of Conduct Group.

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

#### **Assessment of Panama's foreign-owned call centers regime published**

On December 4, 2018, the Council of the European Union released the final description and assessment of Panama's foreign-owned call centers regime. This law provides an exemption from corporate income tax to approved call centers. From the assessment made under the EU Code of Conduct, the Council concluded that the call center regime is not harmful.

For more information, please refer to the Council of the European Union's [assessment](#).

#### **Updated overview of preferential tax regimes published by the Council of the European Union**

On December 3, 2018, the Council of the European Union published an updated overview of the preferential tax regimes examined by the Code of Conduct Group since its inception in March 1998. According to the overview, the Code of Conduct Group examined 663 preferential regimes, 263 of which were deemed harmful and have been rolled back.

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

## **EUROPEAN COMMISSION**

#### **European Commission publishes report on automatic exchange of tax information**

On December 17, 2018, the European Commission presented an overview report that included an assessment of the statistics and information on the automatic exchanges in the field of direct taxation. The report includes the data compiled and shared under the EU Directive on administrative cooperation and how it has been used by some Member States to raise their tax base.

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

#### **EU Commission on effectiveness of Member States' measures compared to Article 4 ATAD**

On December 7, 2018, the European Commission published Notice 2018/C 441/confirming that the national interest limitation rules of Greece, France, Slovakia, Slovenia and Spain are

"equally as effective" as the rule provided under Article 4 of the Anti-Tax Avoidance Directive (EU) 2016/1164 (ATAD1). Consequently, the above Member States may continue to apply their rules until January 1, 2024.

#### Taxation paper on collection of corporate income tax published

On December 6, 2018, the European Commission issued a Taxation Paper which addresses corporate income tax (CIT) collection, in particular the latest developments in the European Union between 1995 and 2015, the breakdown and distinction of the CIT to GDP ratio and the evolution of each element.

For more information, please refer to the [Taxation Paper](#)

### **EUROPEAN PARLIAMENT**

#### EU Parliament adopts reports on taxation of the digital economy

On December 13, 2018, the European Parliament adopted in plenary two reports: one on a Digital Services Tax (DST) and the other on the taxation of a Digital Significant Presence (DSP). The EU Parliament followed the recommendations of the ECON Committee to widen the scope of taxable services to cover the supply of digital content, to lower the threshold of taxable revenues realized in the EU and to include a sunset clause for the Digital Services Tax.

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



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### **OECD**

#### Tax revenue in advanced economies continue to increase

According to new OECD research, tax revenue in advanced economies continues to increase. The 2018 edition of the OECD's annual Revenue Statistics publication shows that the OECD average tax-to-GDP ratio rose from 34% in 2016 to 34.2% in 2017, its highest ever average. According to the statistics, the tax-to-GDP increased in nineteen OECD countries and decreased in fifteen countries.

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

#### OECD peer reviews show transparency on tax rulings exceeds BEPS Action 5 minimum standard

The Inclusive Framework on BEPS has assessed the progress of ninety-two jurisdictions in spontaneously exchanging information on tax rulings, in accordance with Action 5 of the BEPS package. According to the reports, the peer review process successfully helped increase transparency and over 60% of last year's recommendations have been implemented. The Framework will continue its review as there is still work to be done in this area and many recommendations still need to be addressed.

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



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## Local Law and Regulations

### Austria

#### CFC tax rules addressed

As of December 11, 2018, the draft regulation on controlled foreign companies (CFC) taxation includes measures concerning the possible assessment of low taxation regarding the determination of income, relevant taxes and temporary differences in the tax burden. Other rules in the draft CFC regulation provide an escape clause, a substance escape clause and a “switch-over” provision from the previous CFC rules.

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

### Belgium

#### Extended scope of tax on offshore investments

On December 3, 2018, the Decree amending the list of EEA entities targeted by the “Cayman tax” was published. Under the Decree, the list of EEA entities that are treated as transparent for income tax purposes has been extended to include collective investment entities held by one individual or by several related individuals, hybrid entities, and entities not effectively subject to income tax in the residence state, or that pay tax which is less than 1% of the income realized.

### Bulgaria

#### Interest deduction limitation rule and taxation of CFC profits implemented

Legislative changes in Bulgaria include measures that reflect the implementation of EU rules addressing tax avoidance. The new tax law measures limit certain deductible borrowing costs for tax purposes, affect the taxation of profits of controlled foreign companies (CFC), focus on the tax treatment of leases in relation to International Financial Reporting Standard (IFRS) 16 Leases and reflect changes in respect of reporting and payment requirements of tax liabilities in the event of liquidation and deregistration.

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

### Czech Republic

#### APA guidance issued

On November 9, 2018, the General Financial Directorate released new guidance on advance pricing agreements (APAs). The guidance applies to taxable years beginning on or after January 1, 2018, and includes requirements for applying for APAs; the general process of

issuing APAs; issues on APAs defining transfer pricing methodology within related parties; and issues concerning APAs determining the taxable base of permanent establishments (PEs).

## **Denmark**

### **Public consultation on MLI launched**

On November 30, 2018, Denmark launched a public consultation on a draft Bill to implement the Multilateral Instrument (MLI). The consultation runs until January 4, 2019.

## **Finland**

### **Rules for implementation of DTDRM Directive presented to Parliament**

On December 13, 2018, the Finish government presented a bill to Parliament concerning rules for international tax disputes, which will transpose the EU Directive on Double Taxation Dispute Resolution Mechanisms (2017/1852) into national law.

### **New tax rules for investment funds presented to Parliament**

On December 13, 2018, the government presented a draft amendment of the tax legislation on investment funds to Parliament. The draft confirms the tax exemption for investment funds and clarifies the definition of a foreign investment fund by introducing objective criteria. A foreign investment fund benefits from a tax exemption if it is established under a contractual agreement, has at least 30 investors, is open to the public and is open-ended. There are additional conditions for investment funds located in a non-EEA state. The new rules will apply from 2020.

## **Germany**

### **Guidance on application of transfer pricing published**

On December 6, 2018, the German Ministry of Finance published formal guidance in reaction to the CJEU's decision in Hornbach-Baumarkt (case C-382/16) dated May 31, 2018. The guidance specifies that adjustments based on the German transfer pricing regime will not be made as long as the resident taxpayer can prove objective economic reasons that justify a non-arm's length agreement.

### **Guidance on mutual agreement and arbitration procedures issued**

On December 12, 2018, the German Ministry of Finance published guidance on the international mutual agreement procedures under tax treaties and the EU Arbitration Convention. The Guidance includes a detailed explanation of the procedure under both mechanisms.

## **Guernsey, British Virgin Islands, Cayman Islands**

### **Introduction of substance requirements for resident companies**

Guernsey, the British Virgin Islands and the Cayman Islands took steps to meet their international commitments to introduce substance requirements for resident companies as of January 1, 2019:

- On December 13, 2018, Guernsey issued regulations enforcing new substance requirements as of January 1, 2019.
- On December 6, 2018, the Cayman Islands announced that the Economic Substance Bill 2018 will introduce an economic substance test for certain entities.
- On December 4, 2018, the British Virgin Islands presented a bill on substance requirements for registered and tax-resident companies and limited partnerships.

## Iceland

### [Proposal to amend CFC and interest limitation rules](#)

On December 5, 2018, the Minister of Finance and Economic Affairs proposed amending the current controlled foreign companies (CFC) rules and interest limitation rules. The proposal is a response to international developments such as the BEPS Actions and the ATAD1 directive.

## Luxembourg

### [New tax measures released](#)

At the beginning of December, the new Luxembourg government issued amendments to the transposition bill of the Anti-Tax Avoidance Directive (ATAD 1), released the bill on ratification of the new double tax treaty with France, and announced its vision on the future tax landscape in Luxembourg (in its political coalition agreement).

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

## Malta

### [Publication of legislation implementing EU anti-tax avoidance directives into domestic law](#)

On December 11, 2018, the Maltese government published legislation transposing EU Directive 2016/1164 (ATAD1) into domestic law. The regulation introduces interest limitation rules, controlled foreign companies (CFC) rules, a general anti-avoidance rule (GAAR) and exit taxation rules in accordance with ATAD1. The new rules will apply as of January 1, 2019 with the exception of the provisions on exit taxation, which will apply as of January 1, 2020.

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

## The Netherlands

### [Implementation of the Fifth Anti-Money Laundering Directive – consultation open](#)

On December 11, 2018, the Ministry of Finance announced that it had opened an online public consultation on draft legislation implementing the Fifth Anti-Money Laundering Directive. Documents made available for consultation include the draft legislation and an explanatory memorandum.

## Slovenia

### Amendments to the Corporate Income Tax Law implementing ATAD published

On December 7, 2018, the amendments to the Corporate Income Tax Law were published. They will enter into force on January 1, 2019. The amendments implement the ATAD in respect of the general anti-abuse rule (GAAR) and the controlled foreign companies (CFC) rules.

## Sweden

### Tax Agency Opinion on the significance of TP documentation

On December 3, 2018, the Tax Agency issued an Opinion on the impact of transfer pricing (TP) documentation when assessing tax surcharges for incorrect information filed in the tax return. The Swedish tax authorities assert that if the TP documentation was not submitted with the tax return it cannot be part of the assessment. However, if the tax return and the TP documentation were filed simultaneously, the latter may only be relevant in the assessment if the taxpayer draws the tax authorities' attention to a specific point in the documentation.



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## Local Courts

### The Netherlands

### Dutch Supreme Court updates status of the Köln Aktienfonds Deka and X cases

In November 2018, the Dutch Supreme Court provided an update on the current status of the questions referred to the CJEU in the Köln Aktienfonds Deka ([C-156/17](#)) and X ([C-157/17](#)) cases. In the Köln Aktienfonds Deka case, the first question was withdrawn, while the second and third questions remain unchanged. The questions raised in the English Fund case (C-157/17) were all withdrawn.



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