



# E-News from KPMG's EU Tax Centre



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

### **Issue 107 – September 20, 2019**

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 may develop and how to leverage opportunities and reduce 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**

### [AG opinion on Hungarian advertising tax in the Google Ireland case](#)

On September 12, 2019, Advocate General (AG) Kokott of the Court of Justice of the European Union (CJEU) gave her opinion in the case of Google Ireland Limited v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vámigazgatósága (C-482/18). The AG concluded that the fines for non-registration imposed by Hungary under Hungarian advertisement tax disproportionately affects non-Hungarian tax residents and therefore constitutes a disproportionate restriction of the freedom to provide services. The AG concluded that the limited means for legal redress in relation to the fines also constitutes an unjustified restriction of the freedom to provide services.

### [Advocate General Opinion in Brussels Securities case](#)

On September 5, 2019, AG Saugmansgaard Øe rendered his opinion in the case of Brussels Securities SA v. Belgian State (Case C-389/18). The AG opined that Belgian provisions that limit the possibility for a parent company to deduct 95% of the qualifying dividends received before another domestic tax benefit, the transfer of which is limited in time, is contrary to the Parent-Subsidiary Directive.

### [Advocate General Opinion on tax refund for non-resident investment fund](#)

On September 5, 2019, AG Pitruzzella rendered his opinion in the Köln-Aktienfonds Deka case (C-156/17) concerning the compatibility with EU law of the Dutch withholding tax on dividends distributed to non-resident investment funds. The AG concluded that the shareholders and distribution requirements imposed by the Dutch legislation to benefit from a tax refund may be contrary to the free movement of capital.

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



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## State aid

### [European Commission launches investigation into individual Belgian “excess profit” tax rulings](#)

On September 16, 2019, the European Commission launched an investigation into whether the “excess profit” tax rulings granted to 39 companies by Belgium constitute State aid within the meaning of EU law (See the European Commission's [press release](#)). This investigation is a response to the General Court's decision in case T-131/16 annulling the Commission's initial decision that these rulings formed part of a Belgian aid scheme that was incompatible with EU law (see [Euro Tax Flash 395](#)).

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



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## EU Institutions

### EUROPEAN COMMISSION

#### [Evaluation of Mutual Assistance Directive published](#)

On September 16, 2019, an evaluation of the Mutual Assistance Directive [on administrative cooperation in the field of taxation] (2011/16) was published by the European Commission. The evaluation indicates that the automatic exchange of information rules aided Member States' ability to introduce measures to tackle tax avoidance. The report shows that the volume of information received by Member States has significantly increased and notes that Member States are currently determining how to process the information in an efficient manner.

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

#### [Report on the evaluation of the Energy Taxation Directive published](#)

On September 12, 2019, the European Commission published a report evaluating the Energy Taxation Directive (2003/96). The report concludes that EU rules are no longer efficient and explores how more environmentally friendly policies could better support the EU's wider commitments on climate change.

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

#### [EU fiscal rules assessment published](#)

On September 11, 2019, an assessment of the EU fiscal rules was published by the European Fiscal Board. The Board examined the effectiveness of the current set of EU fiscal rules and considered how they may evolve in the future. The European Fiscal Board proposes to simplify the rules and improve the governance of the fiscal framework. A reformed EU Stability and Growth Pact is also being advocated.

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

#### [New candidates proposed to be the next European Commissioners](#)

On September 10, 2019, a list of the candidates proposed to be the next members of the European Commission was presented. The former Italian Prime Minister, Paolo Gentiloni, would receive the Economy portfolio, while Margrethe Vestager is nominated to retain her current position as Competition Commissioner and is proposed to assume the role of the European Commission's executive vice president for digital issues. A vote of consent by the European Parliament is scheduled to take place on October 23, 2019.

For more information, please refer to the [list of candidates](#) and [calendar](#).

## **INTERNATIONAL MONETARY FUND**

#### [Simplify withholding taxes to foster capital market investment according to IMF](#)

In September 2019, a new discussion note was released by the IMF regarding how capital market integration in Europe can be best fostered. In the discussion note, the IMF highlights that streamlining cross-border withholding tax procedures is one measure that would foster cross-border investment.

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

#### [Tax optimization acting as the incentive for a third of FDI](#)

In September 2019, the IMF published a new article, *The Rise of Phantom Investments*, in which the IMF argues that tax optimization may have been a key driver of global foreign direct investment (FDI), with approximately one third of global FDI being "phantom investments", passing through shell companies in 'tax haven' jurisdictions.

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



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## OECD

### MAP statistics for 2018 released

On September 16, 2019, the OECD issued a release announcing dispute resolution statistics as part of “Tax Certainty Day”, during which tax policymakers, tax administrations, business representatives, and other stakeholders from over fifty countries considered ways to make further improvements in both dispute prevention and dispute resolution. The 2018 MAP statistics released cover eighty-nine jurisdictions and almost all MAP cases.

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

### France joins the OECD International Compliance Assurance Programme (ICAP)

On September 16, 2019, it was announced that France has become the eighteenth country to join the OECD International Compliance Assurance Programme (ICAP). The program provides a co-operative platform for tax authorities to assess tax positions adopted by multinationals and to perform risk assessments and assurance procedures of associated tax risks.

### Tax Morale drives people and businesses to pay tax

On September 11, 2019, a new report, “*Tax Morale: What Drives People and Businesses to Pay Tax?*” was published by the OECD. The report identifies some important socio-economic and institutional drivers of tax morale across developing countries, including, the impact of public services on tax morale. The report also puts forward suggestions for further work on tax morale and how tax morale considerations can be integrated into holistic tax compliance strategies.

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

### Uruguay submits MLI Position

On September 10, 2019, the Uruguayan Chamber of Representatives approved the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). Uruguay submitted its MLI position at the time of signature, listing its reservations and notifications and including 20 tax treaties that it wishes to be covered by the MLI.

### OECD annual tax policy reforms report published

On September 5, 2019, the OECD published its annual report highlighting tax reform and tax policy developments across OECD countries. The report highlights that overall corporate tax rates have continued to decline in 2019 but that the rate of overall tax reform has slowed in 2019, compared to 2018. The report also highlights the progress made through the Base Erosion and Profit Shifting (BEPS) project, acknowledges the challenges that still exist around

the digitalization of the economy and points out that despite global environmental preservation objectives the pace of environmentally related tax reform efforts have slowed in 2019.

For more information, please refer to the [Tax Policy Reforms 2019](#).

### [British Virgin Islands and Seychelles sign the Multilateral Competent Authority Agreement on automatic exchange of country-by-country reports](#)

On July 8 and July 9, 2019, the British Virgin Islands (BVI) and Seychelles signed the Multilateral Competent Authority Agreement on automatic exchange of country-by-country reports becoming the eighty-first and eighty-second jurisdictions to be covered by the convention.



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## Local Law and Regulations

### Austria

#### [Fiber optic network qualified as immovable property by the Austrian Ministry of Finance](#)

An opinion published by the Austrian Ministry of Finance on September 11, 2019, states that, for the purposes of Austria-United Kingdom Income Tax Treaty, a fiber optic network that has been added to the Austrian nationwide network should be regarded as immovable property. A capital gain made in respect of the sale of shares in a company developing fiber optic network in Austria, by a UK resident investor, may be taxable in Austria as a result.

### Czech Republic

#### [Additional information on the Czech digital services tax bill](#)

On April 30, 2019, the Czech Ministry of Finance announced plans to increase state revenues by introducing a 7% digital services tax (DST) applicable for companies that have worldwide revenues in excess of EUR 750 million. In addition, the proposed DST will only apply to companies whose revenue from the Czech Republic exceeds CZK 50 million (approximately EUR 2 million). The company must also have reached certain thresholds for the specific services which are within the scope of the proposed DST (including online advertising, transmission of users' data and provision of multi-sided digital interface services).

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

### Denmark

#### [Public consultation on the amendment of CFC rules and PE definition](#)

On September 12, 2019, proposed amendments to the definition of permanent establishment and to Danish controlled foreign companies (CFC) rules were issued for public consultation. The proposals are intended to transpose the requirements under the EU Anti-Tax Avoidance Directive (ATAD) into Danish law. The proposals will result in Danish CFC rules applying where

it is established that more than one third of the annual income of a subsidiary is CFC income. Amendments to the PE definition are intended to align with OECD BEPS Action 7 recommendations. The consultation period concludes on October 10, 2019. The new rules will apply from January 1, 2020.

## **Estonia**

### [Public consultation launched for ATAD 2 implementation](#)

On July 31, 2019, a public consultation was launched concerning draft legislation implementing anti-hybrid mismatches rules with third countries. The draft bill includes anti-hybrid rules that are in line with the Anti-Tax Avoidance Directive 2 (2017/952), and amends the previously adopted exit tax. The proposed bill would enter into force on January 1, 2020, however, the provisions related to reverse hybrid mismatches would enter into force on January 1, 2022.

### [Draft DAC 6 implementation bill published](#)

On July 3, 2019, a draft bill implementing EU Directive 2018/822 on mandatory disclosure rules (DAC 6) was published by the Ministry of Finance. The proposed amendments are in accordance with the requirements of DAC 6, which impose an obligation of reporting on any person designing, marketing, organizing or making available for implementation, or managing the implementation of, a reportable cross-border arrangement.

## **Greece**

### [Circular issued on the application of GAAR](#)

On September 13, 2019, the Greek tax authorities issued a circular clarifying the scope of application of the General Anti-Abuse Rule (GAAR). The guidance refers to the case law of the CJEU and to the European Commission's 2012 recommendations and lists a number of cases that should not be considered abusive. The circular also confirms that tax treaty provisions such as the principal purpose test should only take precedence over the GAAR if the objective of the wholly artificial arrangement is the obtaining of an advantage that is provided by the treaty.

### [Circular issued on the application of anti-abuse provisions to company reorganizations](#)

On September 13, 2019, the Greek tax authorities issued a circular clarifying the scope of application of the Specific Anti-Abuse Rule (SAAR) to company reorganizations. In particular, the SAAR will only apply to specific tax incentives, in cases where the principal (or one of the principal) objectives of the reorganization is tax avoidance. Referring to the case law of the CJEU, the circular further states that the tax authorities will have to examine transactions on a case-by-case basis and lists a number of transactions that may be considered to have valid economic reasons.

### [Publication of clarifications on the change of control rules](#)

On September 13, 2019, a circular was published by the Greek Public Revenue Authority providing clarification on the change of control rules under Greek income tax law. The change of control rules are a specific anti-abuse clause targeted against the trading of loss-making

companies. The circular clarifies the scope of the provisions and provides detail on the 50% change of activity ratio test. The circular also clarifies that the rules are considered *lex specialis* to Greek GAAR.

#### [Decrease in corporate income tax rate announced](#)

On September 7, 2019, the Greek government announced new tax measures, including a reduction of the corporate income tax rate from 28% to 24% and a reduction of the dividend withholding tax rate from 10% to 5% for 2020. The draft legislation is expected to be submitted to the parliament in October 2019.

### **Iceland**

#### [Iceland releases the final version of its regulation of country-by-country reporting](#)

On September 6, 2019, it was reported that the Ministry of Finance and Economic Affairs of Iceland released the finalized country-by-country reporting regulations. The regulations introduce the requirements to delineate the income, taxes and economic activities of MNE groups, and also provide a reporting exemption for domestic parent companies with total group revenue less than EUR 750 million.

### **Italy**

#### [Italian patent box regime amended](#)

On September 9, 2019, the Italian Tax Authorities issued clarifications on how taxpayers that do not have a calendar fiscal year may notify, in their tax return, that they opted to calculate the income qualifying for the new patent box regime themselves.

### **The Netherlands**

#### [Presentation of the 2020 taxation proposals](#)

On September 17, 2019 a tax reform package was presented to the Dutch Parliament. The proposals include a reduction of the Dutch corporate income tax (CIT) rate to 21.7% in 2021, as well as the introduction in 2021 of a new conditional withholding tax at a rate of 21.7% on interest and royalty payments made to low-tax jurisdictions. In the context of the MLI, the definition of “permanent establishment” will be updated. Amendments to the tonnage tax regime will also be introduced and, from 2021, the tax rate under the Dutch innovation box regime will be raised from 7% to 9%.

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

#### [Netherlands announced the establishment of a commission on taxation of multinationals](#)

On September 12, 2019, Decree nr. 2019 0000149369 on the establishment of a commission on the taxation of multinationals was released in the Dutch Official Gazette. The commission is expected to examine issues including the importance of multinationals and head offices to the Dutch economy, a review of the level of tax competition and tax evasion in the Dutch corporate

tax system and a comparison of the manner in which multinationals are taxed in other economically comparable countries. A report is expected to be issued before the end of 2019.

## **Poland**

### [Article on the impact of Mandatory Disclosure Rules published](#)

The September 2019 issue of *Frontiers in Tax*, a publication by KPMG in Poland, highlights the impact that regulations introducing reporting obligations under the Mandatory Disclosure Rules into the Polish tax system have had. The article focuses on the treatment of dividends as reportable tax arrangements and discusses the consequences of incorrect classification of transactions by tax promoters.

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

## **Portugal**

### [Amendments gazetted for real estate investment and asset management companies regime](#)

On September 4, 2019 a law, concerning the real estate investment and asset management companies' regime was gazetted. The law clarifies that investment income, rental income and capital gain derived by a qualifying company are expressly excluded from corporate income tax; and income distributed to non-resident shareholders will be subject to a reduced withholding rate of 10%.

## **Romania**

### [Romania implementing EU Tax Dispute Resolution Directive](#)

On August 22, 2019, Romanian government ordinance no. 19/2019 implementing the EU Tax Dispute Resolution Directive (2017/1852) was released. The provisions will apply to complaints that are related to disputes over income or capital earned in a tax year commencing on or after January, 2018 and that are submitted from July 1, 2019 and onwards.

## **Switzerland**

### [Working paper concerning tax treatment on cryptocurrencies published by Swiss tax authority](#)

On August 27, 2019, a working paper examining the tax treatment of cryptocurrencies was published by the Federal Tax Administration. This working paper addresses the treatment of cryptocurrencies acting as sole digital means of payment, "asset-backed" tokens and the issuance of utility tokens at both the investor and token issuer level.

For more information, please refer to the [working paper \(in German\)](#).

## **United Kingdom**

### [New regulations amending hybrid mismatch rules for capital instruments, capital securities](#)

On September 9, 2019, new regulations amending hybrid capital instruments rules, for corporation tax relief on coupon payments on regulatory capital securities, used by banks and insurers were published. Since January 1, 2019, the “hybrid capital instruments” rules are relied upon by banks and insurers to give corporation tax relief for the coupon payments on regulatory capital securities. These rules were amended by the Taxation of Hybrid Capital Instruments Regulations. In addition, the Hybrid and Other Mismatches Regulations exempt “regulatory capital securities” from being “financial instruments” for purposes of the hybrid and other mismatches rules.

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



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## Local Courts

### France

#### [French Court of Audit publishes tax treaty policy recommendations](#)

On September 5, 2019, a letter regarding the negotiation and application of tax treaties was published by the French Court of Audit (*Cour des comptes*). The Court letter noted that the analysis made prior to the conclusion of tax treaties is currently insufficient and recommended that a new "strategic monitoring unit" comprised of members of the French tax administration, the French Treasury and the French central bank be established to make improvements in this area. The Court also suggested increasing the number of staff tasked with the application of tax treaties to improve the processing time of double tax treaties.

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

#### [French ruling concerning the subject-to-tax requirement](#)

On September 4, 2019, a French ruling concerning the subject-to-tax condition on interest paid to related companies was issued. The existing rule states that interest paid to a related company is not deductible unless it is, at the level of recipient, subject to a minimum level of taxation corresponding to 25% of the French corporate income tax (CIT). The newly issued ruling clarifies that for this purpose it is the CIT rate applicable that shall be assessed, instead of the effective taxation of the recipient. Therefore, deductions granted to the recipient should not be taken into account when determining whether the recipient is subject to the minimum level of taxation prescribed by the law.





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