E-News from the EU Tax Centre
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Latest CJEU and ECHR
Netherlands – AG opinion in the X BV and TBG Limited case (joined cases C-24/12, C-27/12) – Overseas Countries and Territories (OCT), third countries and standstill provision
On January 16, 2014, the Advocate General (AG) of the Court of Justice of the European Union (CJEU) issued an opinion on Dutch dividend withholding tax suffered by parent companies established in the former Netherlands Antilles.
The parent companies argued that the dividend withholding tax liability was contrary to the free movement of capital and claimed that the Dutch domestic dividend withholding tax exemption for EU parent companies also applies to a parent company resident in the former Netherlands Antilles.
According to the AG, the former Netherlands Antilles constitute a third country, so that the free movement of capital applies. The AG also concluded that withholding tax should not apply in all situations.
Read a February 2014 report prepared by the KPMG member firm in the Netherlands: Important advice by Advocate General at CJEU on the dividend withholding tax on dividends distributed to a parent company resident on Curacao.

Germany – CJEU decision in the DMC case (C-164/12) - Exit taxation
In a recent judgment, the Court of Justice of the European Union (CJEU) addressed the effect of the German exit tax rules on reorganizations and whether these exit tax rules were compatible with EU law.
The CJEU concluded that the German exit tax rules—specifically, a provision allowing the taxation of hidden reserves to be spread over five years if the transfer takes place within the EU—are compatible with EU law.

Read a February 2014 report prepared by the KPMG member firm in Germany

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EU Institutions

EU - Practice directions to parties concerning cases brought before the Court

On January 31, 2014 new practice directions for parties concerning cases brought before the CJEU were published in the Official Journal.

On September 25, 2012, the CJEU adopted new Rules of Procedure. The new Rules are intended, inter alia, to ensure that the structure and content of the Rules of Procedure of the Court reflect the changes in its caseload and, in particular, the increasing number of references for a preliminary ruling made by the courts and tribunals of the Member States.

For the full text of the practice directions, see document: “Rules of procedure: practice directions to parties concerning cases for the Court”, see also document: “Rules of procedure: supplementary rules of the Court of Justice”.

EU - European Commission presents "Thin Capitalization Rules and Multinational Firm Capital Structure"

On 7 February 2014, the European Commission published working paper N.42, entitled "Thin Capitalization Rules and Multinational Firm Capital Structure" that examines the impact of thin capitalization rules limiting the tax deductibility of interest on the capital structure of the foreign affiliates of US multinationals.

The study is construed on a new data set on thin capitalization rules in 54 countries for the period 1982-2004. The study shows that thin capitalization rules significantly affect multinational firm capital structure.

EU - Financial Transaction Tax: Time to engage, compromise and deliver

OECD

OECD - Questions presented by transfer pricing documentation, country-by-country reporting
On January 30, 2014, the OECD released an initial draft of revised guidance on transfer pricing documentation and country-by-country reporting, pursuant to Action 13 of the Base Erosion and Profit Shifting (BEPS) Action Plan.
The OECD has set a short (three weeks) window for comments, before the consultation closes on February 23, 2014.
Read a February 2014 report provided by KPMG International that addresses these questions: The OECD discussion draft on transfer pricing documentation and country by country reporting: 3 weeks to have your say

OECD - Single global standard for automatic exchange of information
On February 13, 2014, the OECD released a document—Standard for Automatic Exchange of Financial Account Information—that is the latest step towards the global automatic exchange of information (AEOI) on bank accounts and other financial assets held offshore.
Read dedicated TaxNewsFlash.

Local Courts

Spain - Spanish Supreme Court finds rules on capital gains tax discriminatory
On October 25, 2013, the Spanish Supreme Court (Tribunal Supremo) (SC) rendered its judgment in the Brambles France case (Recurso de Casación 5227/2013).
While a Spanish resident company may apply a tax credit to avoid double economic taxation on capital gains derived from the sale of shares, this tax credit is not available to non-resident taxpayers.
The case concerned a French company that realized a capital gain on the transfer of the shares of its Spanish subsidiary. Under the tax treaty concluded between Spain and France, this gain is taxable in Spain. The French entity claimed the tax credit, but this was rejected by the Spanish tax authorities. The French entity appealed
to the SC on the grounds that the freedom of establishment and the free movement of capital had been restricted and also invoked the France - Spain treaty. The SC concluded that non-resident taxpayers were being discriminated against. The SC ruled that this was a restriction of the free movement of capital and not the freedom of establishment, even though the non-resident taxpayer held a substantial participation in the Spanish subsidiary.

Netherlands Supreme Court – redeemable preference shares considered equity
On February 7, 2013, the Supreme Court rendered judgment in two cases that dealt with whether a payment on redeemable preference shares should be regarded as interest or as an exempted participation dividend. In both judgments, the Supreme Court gave precedence to the civil law qualification of the shares. The Supreme Court formulated three exceptions to the rule for loans, whereas no exceptions were made for share capital. If share capital is regarded as such from a civil law perspective, then it is also regarded as capital for tax purposes. The Supreme Court also ruled that taxpayers who wish to finance a company in which the taxpayer participates and thereby invoke the freedom of choice provided by law is not contrary to the aim and the spirit of the law. Read a February 2014 report prepared by the KPMG member firm in the Netherlands: [Qualification capital contribution explained in more detail by the Supreme Court](https://www.kpmg.com/en_US/viewpoint/daily-report/2014/02/qualification-capital-contribution-explained-in-more-detail-by-supreme-court).
proposed amendments, though the general anti-avoidance rule could be more detailed.

**Finland - Guidance on the possibility for non-resident employees to opt for taxation by assessment**
On January 29, 2014, the Finnish tax authorities issued guidance on the possibility for non-resident employees to opt for taxation by assessment instead of withholding tax on gross income. Previously, this option was only available to employees resident in another EEA state, who derived at least 75% of their income from Finland. This has been extended to cover:
– residents of countries that have concluded an agreement on mutual assistance and exchange of information in tax matters with Finland;
– persons to whom Finnish residence permits have been issued based on the EU Directive on a specific procedure for admitting third-country nationals for the purposes of scientific research (2005/71/EC).

**Iceland - New rules on cross-border mergers**
The Icelandic parliament recently approved new provisions regarding cross-border mergers. The changes are a response to the opinion of EFTA Surveillance Authority (ESA) dated November 28, 2012, in which it concluded that Icelandic tax legislation breached the EEA agreement by allowing domestic tax-free mergers, but taxing cross-border mergers. The approved changes do not fully eliminate the difference in tax treatment.

**Jersey - Regulations on EU savings tax agreements**
On January 29, 2014, the Taxation (Agreements with European Union Member States) (Amendment No. 2) (Jersey) Regulations 2014 entered into force amending the 2005 Regulations. Under the new Regulations, as of January 1, 2015, the requirement to withhold 35% tax on interest payments made to an EU resident will be replaced with the requirement to report such interest payments.

**Lithuania - Loss carry forward limitations**
As of 2014, the ability of corporations to carry forward tax losses for corporate income tax purposes, has been limited. In calculating their corporate income tax for 2014 and subsequent tax periods, entities may carry forward tax losses, as long as they do not exceed 70% of the taxable profit for a tax period. Read a January 2014 report prepared by the KPMG member firm in Lithuania: [Tax, Legal, and Accounting Newsletter](#).

**Malta - “Recipient” re-defined for investment income, income**
tax provisions
In order to bring Maltese legislation vis-a-vis application of the resident tax rates in line with EU law as clarified by the Court of Justice of the European Union, a number of amendments have been proposed to the Income Tax Act.

Netherlands – clarifications on opposition to proposed amendments to Parent-Subsidiary Directive
On January 27, 2014, the Dutch Deputy Minister of Finance presented the government's position on the proposed introduction of a general anti-abuse rule (GAAR) in the Parent-Subsidiary Directive. The Dutch government supports the proposed amendments regarding mismatches generated by hybrid loans. However, the proposed GAAR is too general and subject to interpretation. Also, transferring legislative jurisdiction in this area from the Member States to the European Union may have a negative impact on the flexibility of Member States to combat new forms of abuse.

Netherlands - New substance requirements take effect
On January 1, 2014, new substance requirements for financial holding companies took effect.

More TaxNewsFlash – Europe can be found here
Click here for German Tax Monthly (February 2014)
Read Weekly Tax Matters prepared by KPMG member firm in the United Kingdom: February 7, 2014; February 14, 2014.

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Recommended News Articles
*For some articles you may need to be subscribed to FACTIVA. If you are not already subscribed you will have to sign up to access these articles or otherwise contact KPMG’s EU Tax Centre to receive a copy. Note that FACTIVA is free of charge for KPMG member firms.

Interview with Xavier Bettel, Prime Minister of Luxembourg: Savings Taxation: "I'm tired of hearing that it's Luxembourg
holding things up" ... click here to continue reading the article.

**Tax rules tightened in new blitz on offshore profits**
The Sunday Times, Kathryn Cooper, February 2, 2014
*OECD releases discussion draft on Transfer Pricing (TP) documentation and "Country-by-Country" reporting under BEPS Action Plan; Suggests two-tiered approach to TP documentation containing master file and local file; Information in master* ... click *here* to continue reading the article.

**Financial Transaction Tax: Commission sounds alarm over FTT**
Europolitics, 06 February 2014
*The fourth debate by members of the European Parliament, on 4 February, on the introduction of a financial transaction tax (FTT) in 11 eurozone member states was not particularly reassuring to proponents of the project. It is "in danger,"* ... click *here* to continue reading the article.

**Greece seeks enhanced co-operation on financial transaction tax**
European Voice, Nicholas Hirst, February 6, 2014
*France and Germany have renewed their efforts to clinch a deal on a financial transaction tax, aiming to agree a joint position at a Franco-German ministerial summit in Paris on 19 February* ... click *here* to continue reading the article.

**Country-by-Country Reporting**
Coopération Internationale pour le Développement et la Solidarité (CIDSE), February 6, 2014
*Country-by-Country reporting requirements for corporations - a contribution to strengthening public finances in countries in the Global South. A Working Paper by Misereor, Global Policy Forum and Brot für die Welt* ... click *here* to view the summary of the report in English - full report available in German.

**Yahoo! move a blow to France; Tax, data secrecy and “ambiance” factors in Yahoo!’s move to Ireland**
The Irish Times, Lara Marlowe, February 7, 2014
*In a move that is likely to heighten tension between French authorities and the internet giants, Yahoo! has announced that it is transferring its continental European operations - including French - to Yahoo! EMEA Limited in Ireland...click here to to continue reading the article.

**CEOs understand need to be seen to play fair on tax**
The Irish Times, Feargal O'Rourke, February 11, 2014
*Any company planning tax arrangements on the basis that a tax
administration authority "mightn't be aware of them" is living in the dark ages. It's a message that is clearly understood at CEO level, according to the latest annual survey of ...click here to to continue reading the article.

Ten extractive industry giants own at least 6,038 subsidiaries
GhanaWeb, Elizabeth Alampae Ayamga, February 11, 2014
From trawling filings made in British company registers and in United States and Canadian stock exchanges, Publish What You Pay (PWYP-Norway) has investigated: How many subsidiaries ten of the most powerful Extractive Industry Companies ...click here to to continue reading the article.

UK Government lagging behind business leaders on transparency
Ekklesia, February 10, 2014
The UK government is lagging behind business leaders in its support for corporate transparency, a new survey suggests.
The survey, by PricewaterhouseCoopers (PwC), found evidence that most chief executives support reforms which would make it ... click here to to continue reading the article.

Beyond BEPS: The Problem of Double Taxation
Tax Analysts, Mindy Herzfeld, February 11, 2014
GAFA, for those of us not up on high-tech acronyms, stands for Google-Apple-Facebook-Amazon, and represents a host of large Internet-based companies that have big pools of accumulated foreign earnings with low effective tax rates. The OECD ... click here to to continue reading the article.

OECD BEPs work for consultation in March
accountancylive, January 24, 2014
The OECD is set to release a series of discussion documents on its action plan on Base Erosion and Profit Shifting (BEPS) and will be holding public consultations in the spring on topics including the digital economy, transfer pricing and harmful tax practices before drawing up its recommendations to be presented to the G20 in September 2014. In an update on its work, the OECD’s Committee of Fiscal Affairs (CFA) said it would be making the reports available at the end of February or early March, with consultations scheduled for April ... click here to to continue reading the article.