



# Tax Alert

## Issue 01 | January 2017

In this issue, we bring you our Quarterly Global Tax Disputes Update (December 2016 Edition) highlighting the latest news in tax controversy around the world.

With tax audit and dispute activity rising in almost every country, keeping up with trends and developments is more important than ever. In this edition, you'll find briefings on key news, events and thought leadership submitted by Global Tax Dispute Resolution & Controversy professionals in KPMG member firms worldwide. Staying informed can be a crucial first line of defense as you manage your disputes around the globe.

Make sure to view our past issues of the [Global Tax Disputes Update](#).

### In this issue:

#### Global highlight:

##### **Global Tax Disputes Benchmarking Survey 2016**

This special report takes an in-depth look at the issues faced by those in charge of managing their company's tax disputes, and the processes, practices, and resources they have in place to meet these challenges.

[Read the report.](#)

##### **Tax Views Series: New developments in Ireland, Luxembourg and Switzerland**

As global organizations face challenges to protect against, prepare for and resolve disputes with tax authorities, a five-part webcast and article series from KPMG's Global Tax Dispute Resolution and Controversy Services visits key jurisdictions across the globe to provide you with what you need to know to stay current. The final article in this series tackles developments in tax disputes and controversy in Ireland, Luxembourg and Switzerland.

[Read the article.](#)

##### **OECD: Mutual agreement procedure (MAP) statistics for**

### Links to Recent Issues:

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**[Chiu Wu Hong](#)**

Head of Tax  
KPMG in Singapore



**[Mak Oi Leng](#)**

Head of Tax Risk and  
Dispute Management

KPMG in Singapore



**[Leung Yew](#)**

**[Kwong](#)**

Principal Consultant,  
Tax  
KPMG in Singapore

*Asia Tax Firm of  
the Year; Asia*

## 2015

The Organisation for Economic Co-operation and Development (OECD) has released mutual agreement procedure (MAP) statistics for 2015.

[Read the article.](#)

*International Tax Firm; Asia Indirect Tax Firm; Asia Global Executive Mobility Firm and National Firm for Transfer Pricing in Singapore - ITR Asia Tax Awards 2016. Ranked Tier 1 Firm for Tax Advisory – International Tax Review 2016".*

### Other insights from around the world:

Click on the links below to find out more about country and region specific updates:

<a href="#">Australia</a>	<a href="#">Belgium</a>	<a href="#">Brazil</a>	<a href="#">Bulgaria</a>	<a href="#">Canada</a>
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<a href="#">United Kingdom</a>	<a href="#">United States</a>	<a href="#">Vietnam</a>		

For more details of our tax services, please click [here](#).

### Australia

#### Long awaited update on general anti-avoidance rules

After much anticipation, the Australian Taxation Office has released a revised practice statement<sup>1</sup> on the application of Australia's general anti-avoidance rules.

Read the [article](#).

#### Royalty or business profits? Closer look at the Australia-India tax treaty

Australia's Full Court handed down its decision in *Tech Mahindra Limited v Commissioner of Taxation*.<sup>2</sup> The case concerns the Australia-India tax treaty and whether Australia had the right to tax payments for services rendered in India as royalties (at a capped rate on the gross amount) or as business profits (net basis taxation).

Read the [article](#).

#### Australian outbound investments: eligibility for dividend exemption

The Australian Taxation Office recently issued a draft ruling<sup>3</sup> addressing an interpretive issue on whether a taxpayer can claim an exemption for a dividend it receives from a foreign company.

Read the [article](#).

### **Is your unit trust fixed?**

The Australian Taxation Office has provided guidance<sup>4</sup> on when Australia's Commissioner of Taxation will exercise their discretion to treat a trust as fixed for purposes of the trust loss provisions.

Read the [article](#).

### **Settling with the ATO**

Recent statistics published by the Australian Taxation Office (ATO) show a 31 percent increase in the number of matters settled from 2014-15 to 2015-16. Of the 1,362 cases settled in 2015-16, 676 related to Project DO IT (Declare Overseas Income Today), a project that encouraged taxpayers to voluntarily declare undisclosed or incorrectly reported offshore financial activities and avoid steep penalties.

Read the [article](#).



## **Belgium**

### **CJEU Advocate General finds 'fairness tax' violates EU directive**

The Advocate General of the Court of Justice of the European Union (CJEU) issued an opinion in a pending case concerning whether the Belgian 'fairness tax' is, in part, contrary to European law. According to the opinion, the Belgian fairness tax violates article 4 of the European Union (EU) Parent-Subsidiary Directive.

Read the [article](#).



## **Brazil**

### **Initial BEPS guidance on dispute resolution; Country-by-country reporting consultation**

#### *Guidance on dispute resolution*

A recent ruling<sup>5</sup> aims to regulate dispute resolutions under Brazil's network of international tax treaties and conventions for the avoidance of double taxation, in accordance with BEPS Action 14 (making dispute resolution mechanisms more effective).

#### *Country-by-country reporting*

Brazil's federal revenue service concluded a public consultation regarding the implementation of the country-by-country reporting requirements in Brazil.

Read the [article](#).

Further information:

— [Marcos Matsunaga](#)

— [Felipe Maia](#)

— [Ricardo Sartorelli](#)

### **Brazilian tax authorities have 360 day deadline for issuing rulings**

The Brazilian federal government has legislated a new deadline<sup>6</sup> for federal tax authorities to respond to the tax ruling requests. The deadline is 360 days starting from the filing of the request. The provision does not impose an administrative penalty where tax authorities do not meet with the deadline, but it is expected to speed up the rulings process.

Further information:

— [Marcos Matsunaga](#)



## **Bulgaria**

### **Tax residency certificates; automatic exchange of tax rulings; country-by-country reporting**

The latest edition of E-News from the EU Tax Centre highlights recent tax developments of note in Bulgaria, including a change in tax residency certificate procedure and the introduction of draft bills on the automatic exchange of advance tax ruling information and country-by-country reporting.

Read the [article](#) in E-News from the EU Tax Centre (17 October 2016).



## **Canada**

### **Canada to be peer reviewed for dispute resolution mechanisms**

The Organisation for Economic Co-operation and Development (OECD) released key documents that will form the basis of the mutual agreement procedure peer review and monitoring process. Peer reviews will be conducted in batches starting in December 2016. Canada is in the first batch, along with the United Kingdom, the United States and other countries.

Read the [article](#).



## **China**

### **Customs audit regulations effective 1 November 2016**

New customs audit rules issued by China's General Administration of Customs provide guidelines for implementing customs audit regulations, and they specify and refine various items in their operation and implementation.

Read the [article](#).

### **Tax treaties and implications of OECD's multilateral instrument**

The OECD published on 24 November 2016 a 'multilateral instrument' to be used to implement tax treaty-related measures set out under the base erosion and profit shifting project. The changes are expected to profoundly affect the tax treatment of businesses operating and investing cross-border into and out of China.

Read the [article](#).

### **New APA administrative guidelines, effective December 2016**

China's State Administration of Taxation (SAT) published Announcement 64, which enhances the administration of advance pricing arrangements (APA). Announcement 64 will apply to APA applications that were not formally accepted by the tax authority before the announcement's implementation.

Read the [article](#).



## **Cyprus**

### **Circular on advance cross-border tax rulings**

On 16 August 2016 the Tax Department issued a circular that clarifies, among other things, that where an expedition fee is paid (double the normal tax ruling fee of EUR€1,000), tax rulings will be issued within 21 business days.

Read the [article](#) in E-News from the EU Tax Centre (17 October 2016).



## **Czech Republic**

### **High court disallows loss for 'toll manufacturer'**

The Supreme Administrative Court agreed with a tax adjustment made by the tax administration in a case involving a 'toll manufacturer' (contract manufacturer) that claimed losses due to unfavorable developments in the target market.

Read the [article](#).



## **Dominican Republic**

### **Recurring tax issues identified by tax authorities**

Information from the tax authorities of the Dominican Republic indicates that the most recently identified recurring issues relating

to tax obligations include transfer pricing; reasonableness and proportionality of exempt income; inconsistency in the exchange of information; and revision of the gross-up by taxpayers for tax withholdings on payments made abroad.

Read the [article](#)



## European Union

### **EU develops first common list of non-cooperative tax jurisdictions**

The European Commission announced it is working to draw up a first common European Union (EU) list of non-cooperative tax jurisdictions by presenting a pre-assessment (“scoreboard of indicators”) of all third countries based on key indicators.

Read the [article](#).

### **CJEU decision: exemption for teaching income earned in Switzerland**

The Court of Justice of the European Union (CJEU) held that legislation that denies a taxpayer a tax exemption in respect of teaching income from a public body solely because that public body is established in Switzerland is not permitted in cases where the exemption would have been available had the public body been established within the EU.

Read the [article](#) in E-News from the EU Tax Centre (17 October 2016).

### **Presidency compromise on tax authorities’ access to AML information**

The Council of the European Union issued a Presidency compromise on the European Commission’s proposal for a directive (amending the Mutual Assistance Directive [2011/16]) regarding access to anti-money laundering (AML) information by tax authorities. The main change would delay the deadline for implementation by one year to 1 January 2018.

Read the [article](#) in E-News from the EU Tax Centre (17 October 2016).

### **Recent referrals to the CJEU**

The latest edition of E-News from the EU Tax Centre highlights the referrals to the Court of Justice of the European Union (CJEU) from France’s Conseil d’État, Belgium’s tribunal de première instance de Liège, and Germany’s Finance Court of Rhineland-Palatia.

Read the [articles](#) in E-News from the EU Tax Centre (17 October 2016).

### **EC state aid developments**

The latest edition of E-News from the EU Tax Centre features the news briefs related to the European Commission’s state aid investigations:

— commission invites comments on Belgian and French tax exemptions for ports

US Department of the Treasury releases white paper on

- EC's state aid investigations into transfer pricing rulings
- commission decision that Ireland granted illegal state aid to Apple of up to EUR€13 billion
- in-depth investigations opened into Polish retail sales tax
- in-depth investigation opened into Luxembourg tax rulings issued to GDF Suez group companies.

Read the [articles](#) in E-News from the EU Tax Centre (17 October 2016).

**Initiatives on tax transparency, aggressive tax planning, corporate tax environment at ECOFIN meeting**

On 8 November 2016, the Economic and Financial Affairs Council of the EU (ECOFIN) discussed several initiatives regarding tax transparency, aggressive tax planning and the corporate tax environment in the European Union (EU).

On 9 November 2016, the European Commission announced a public consultation on possible action in respect of advisors and intermediaries who facilitate tax evasion and tax avoidance.

Read the [article](#).

**Update: multilateral convention on mutual administrative assistance in tax matters**

On 25 August 2016, the Organisation for Economic Co-operation and Development (OECD) announced that a further five countries – Burkina Faso, Malaysia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Samoa – signed the multilateral convention on mutual administrative assistance in tax matters, bringing the total number of participating jurisdictions to 103. Pakistan later became the 104th member, as announced by the OECD on 14 September 2016.

The OECD also announced that Andorra, Liechtenstein, Saint Kitts and Nevis, Israel and Senegal had deposited their instruments of ratification of the Convention, and thus the convention entered into force from 1 December 2016 in these countries.

Uganda, Uruguay and Switzerland also all formally ratified the Convention, which enters into force in these countries with effect from 1 January 2017.

Read the [article](#) in E-News from the EU Tax Centre (17 October 2016).



## Finland

### **German special investment fund, exempt Finnish dividend withholding tax**

The Finnish tax administration determined that a German special investment fund was exempt from Finnish withholding tax on dividends paid from sources in Finland.

Read the [article](#).

### **Income on mobile games received from China as royalties**

Finland's Supreme Administrative Court issued a decision concerning the income tax treaty between Finland and China. The issue is whether payments from a Chinese company to a Finnish company constituted royalties (under treaty Article 12) or business profits (Article 7) for tax purposes.

Read the [article](#).



## France

### **Exemption from 3 percent tax unconstitutional; French group dividend distributions**

The French Constitutional Court (*Conseil Constitutionnel*) concluded that an exemption from a 3 percent tax that normally is imposed on dividend distributions is unconstitutional. The exemption applies for dividends distributed within French tax groups.

Read the [article](#).

### **Tax Administration allowed to interview witnesses of international tax fraud\***

France's 2016 Amended Finance Bill, which is making its way through Parliament, contains new measures reinforcing the Tax Administration's audit powers by allowing its officials to interview witnesses of international tax fraud.

As part of its increasingly aggressive actions to combat fraud and tax evasion, the Tax Administration considers that its power to conduct interviews is very limited and does not extend to international tax evasion. The government's bill would give the Tax Administration the right to question third parties who hold useful information (e.g. clients, suppliers, professional advisors) in order to determine the location of certain activities in France or to furnish proof of the tax domiciliation in France of certain taxpayers.

As a result, the Tax Administration's officials could interview anyone, except the taxpayer concerned, who may be able to provide them with useful information for the performance of tax audits based on targeted provisions (i.e. Articles 4 B, 2 bis of Article 39, 57, 123 bis, 155 A, 209, 209 B or 238 A).

The interview request must be received by (or delivered to) the person at least 8 days before the date of the proposed interview. The request must specify, within the limits of Article L. 103, the purpose of the hearing and indicate that the person can seek help from an interpreter or refuse to be heard. The interview takes place in the Tax Administration's premises or, at the request of the person interviewed, in any place whatsoever, excluding premises used as a private domicile. A report of the interview would then be

drafted.

The final vote on these provisions is expected to take place at the end of December 2016.

Further information:

— [Laurence Mazevet, Fidal](#)

— [Audrey-Laure Illouz, Fidal](#)

\* Prepared by Fidal, a French law firm that is independent from KPMG and its member firms.

### **Process simplified for obtaining court's authorization to search and seize\***

France's 2016 Amended Finance Bill contains new measures reinforcing the Tax Administration's audit powers and will simplify the formalities for obtaining the court's authorization to search and seize.

The Tax Administration wants faster access to information and wishes to reduce the preparatory work for searches. Drawing inspiration from the searches implemented by the Competition Authority (Autorité des marchés financiers), the bill proposes three modifications to the current procedure under Article L16B:

- use of a single order, even where the premises to be searched fall within multiple jurisdictions
- simplification of the appointment of the judicial police officer
- allowing for the possibility, in the event of an emergency, of obtaining an authorization issued by the custody and liberties judge by any means during the discovery of a new place to visit.

The final vote on these provisions is expected to take place at the end of December 2016.

\* Prepared by Fidal, a French law firm that is independent from KPMG and its member firms.



## **Germany**

### **Withholding tax challenge; repayment of contributions; current expenses**

The KPMG member firm in Germany has prepared a report that summarizes the following recent tax developments:

- a tax court case from Lower Cologne was referred to the

Court of Justice of the European Union (CJEU), questioning the compatibility of the anti-treaty/-directive shopping rule under German tax law with the freedom of establishment and the Parent-Subsidiary Directive

- the federal tax court (BFH) concluded that a tax-neutral repayment of contributions can also be made by a corporation domiciled in a third country
- the federal tax court (BFH) determined that current expenses might have to be treated as selling costs within the meaning of the income tax law.

Read the [report](#)



## India

### **Applications to the Authority for Advance Rulings**

The Delhi High Court held that the Authority for Advance Rulings (AAR) cannot reject an AAR application notice because the 'scrutiny notice' issued by the Assessing Officer did not address any specific question or disclose items identified on the income tax return.

Read the [article](#).

### **Brand name acquired before amalgamation is eligible for depreciation**

The Chennai Bench of the Income-tax Appellate Tribunal held that a taxpayer is eligible to claim depreciation with respect to a 'brand value'. The tribunal found that a subsequent amalgamation was not a basis for finding the taxpayer had not acquired any brand name.

Read the [article](#).

### **Capital gains tax treatment, 150 year call option**

The Mumbai Bench of the Income-tax Appellate issued a decision on a transaction involving a Singapore resident that entered a 150 year 'call option' agreement with a Mauritian company.

Read the [article](#).

### **Depreciation of goodwill**

The Bangalore Bench of the Income-tax Tribunal held that the taxpayer cannot claim depreciation on assets acquired through an amalgamation, including goodwill, of more than the depreciation that would be allowable to the amalgamating company.

Read the [article](#).

### **Effects of arm's length price adjustment on taxable income**

The Delhi Bench of the Income-tax Appellate Tribunal found that application of an arm's length price adjustment to the taxpayer's intra-group services would lead to the corresponding reduction in the taxpayer's revenue, and thus deleted a transfer pricing adjustment in respect of the intra-group services.

Read the [article](#).

### **'Expeditious refunds' required of tax officer**

The Bombay High Court held that an assessing officer must decide a taxpayer's request for refund independently and directed the officer to consider and process the taxpayer's representation to process the return and refund request as expeditiously as possible, within a period of 8 weeks.

Read the [article](#).

### **FAQs on tax dispute resolution**

India's tax authorities (CBDT) issued a set of 'frequently asked questions' (FAQ) aimed at clarifying certain direct tax dispute resolution measures. KPMG in India welcomes the clarifications, saying taxpayers stand to benefit from more-timely disposal of their litigation, while the tax authorities stand to reduce their administrative costs.

Read the [article](#).

### **Implications of APA on pre-rollback transactions**

The Chennai Bench of the Income-tax Appellate Tribunal admitted the taxpayer's advance pricing agreement (APA) as additional evidence about the characterization of international transactions. Thus, the decision reflects possible implications of an APA on the characterization of international transactions in prior years.

Read the [article](#).

### **India and United States resolve MAP cases, agree on first bilateral APA**

India's Central Board of Direct Taxes announced on 17 November 2016 that India and the United States reached agreements to resolve more than 100 cases under the mutual agreement procedure (MAP). They also agreed the terms and conditions of the first bilateral advance pricing agreement (APA) involving India and United States.

Read the [article](#).

### **India-South Korea tax treaty would allow bilateral APAs, MAPs**

An income tax treaty between India and South Korea includes provisions that would allow for bilateral advance pricing agreements (APA) and mutual agreement procedures (MAP) to resolve transfer pricing issues was signed in May 2015.

Read the [article](#).

### **Lump-sum lease premium or upfront lease charges not 'rent'**

The Central Board of Direct Taxes issued guidance to clarify that lump-sum lease premiums and one-time upfront lease charges that are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property, are not 'rent', and thus are not subject to tax withholding (deduction) at source.

Read the [article](#).

### **Management support services under India-Finland tax treaty**

The Kolkata Bench of the Income-tax Appellate Tribunal held that no technology, knowhow or skills were made available by the taxpayer while rendering management support and other services to enable the Indian group company to function on its own without the taxpayer. Therefore, such services were not taxable as 'fees for technical services' under the India-Finland income tax treaty.

Read the [article](#).

### **Retroactive effect of change found to be ‘curative’**

The Ahmedabad Bench of the Income-tax Appellate Tribunal held that an amendment made to a provision of the tax law concerning the rules for determining the value of consideration for immovable property was ‘curative’ and therefore applies retroactively, effective from 1 April 2003 (the date when the change was introduced).

Read the [article](#).

### **Subsidiary's managing director gives rise to permanent establishment**

The Chennai Bench of the Income Tax Appellate Tribunal found that a taxpayer's subsidiary in India, as represented by its managing director, constituted a fixed place of business and thus a permanent establishment in India. Thus, the amount received by the taxpayer for a project was taxable in India.

Read the [article](#).

### **Tax treatment of sale of partnership assets**

India's Supreme Court held that a taxpayer, a partner, was liable for capital gains tax on the sale of a partnership because the partnership's assets were ‘capital assets’ as defined by India's tax law.

Read the [article](#).

### **Transfer pricing not applicable to transactions with branch office**

The Delhi Bench of the Income-tax Appellate Tribunal held that transfer pricing provisions cannot apply in respect of transactions between an Indian head office and its overseas branch office in Canada.

Read the [article](#).



## **Indonesia**

### **Overview of tax amnesty program**

A tax amnesty program in Indonesia allows taxpayers with undisclosed assets or tax liabilities to regularize their situations with the government.

Read the [article](#).



## **Italy**

### **New guidelines for amending returns, resolving tax liabilities**

The Italian government approved a decree<sup>Z</sup> that transfers tax collection activities to a department of the Italian revenue agency and implements other changes for amending tax returns and tax collection.

Read the [article](#).



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## Luxembourg

### **EC state aid investigation, tax treatment of French utility**

The European Commission (EC) opened an in-depth investigation into Luxembourg's tax treatment of a French electric utility, based on concerns that several tax rulings issued by Luxembourg may have given the taxpayer 'an unfair advantage' over other companies, in breach of European Union state aid rules.

Read the [article](#).

### **VAT treatment of directors' fees**

On 30 September 2016, the Luxembourg value added tax (VAT) authorities published a circular clarifying the treatment of directors' fees for VAT purposes. The document confirms that Luxembourg resident directors are to be considered as taxable persons for VAT purposes and that the management services they supply are generally subject to VAT.

Read the [article](#).

### **VAT exemption for group members, CJEU Advocate General's opinion**

The Advocate General of the Court of Justice of the European Union (CJEU) released an opinion in a case<sup>8</sup> brought against Luxembourg concerning an exemption from value added tax (VAT) for services provided by an 'independent group of persons' to its members.

Read the [article](#).



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## Mexico

### **Supreme Court addresses certain employment-related tax deductions**

A chamber of Mexico's Supreme Court determined that a limit on certain deductions imposed on employers in connection to payments made to their employees, and the related limited deductibility of payments that in turn represent non-taxable or exempt income at the employee level, are constitutional and thus applicable starting FY 2014.

Read the [article](#).

### **Federal law for administrative litigation procedure**

Mexico's executive branch presented the Mexican Congress an economic package for 2017 that includes reform proposals in various tax areas. Among other things, the package addresses federal law for administrative litigation procedure.

Read the [report](#) from KPMG in Mexico on these and other tax measures in the economic package for 2017.

### **Supreme Court addresses constitutional challenges to Tax Reform 2014**

In October 2016, a chamber of Mexico's Supreme Court issued

judgments resolving actions (amparo) brought by taxpayers challenging various provisions of the 2014 Tax Reform – specifically provisions under the income tax law and the special tax on production and services.

Read the [article](#).

### **Court challenges to limitations on deductions**

Taxpayer challenges (amparo) to certain provisions of Mexico's income tax law pending before the Mexico's Supreme Court take issue with, among other things, measures that limit income tax deductions for certain amounts that are paid to or on behalf of workers and that bar consideration of inflationary effects on the cost of sales.

Read the [article](#).



## **Myanmar**

### **Withholding tax update for large taxpayers**

On 28 November 2016, the 'large taxpayer office' of Myanmar's tax authority launched a newsletter that provides updates on Myanmar-related tax matters. The first edition focuses on withholding taxes.

Read the [article](#).



## **New Zealand**

### **Revised Inland Revenue position, feasibility expenditure deductions**

The Inland Revenue Department released a new draft 'Interpretation Statement' (IS) that reflects a revised position concerning the income tax deductibility of a feasibility expenditure. The draft IS confirms that an expenditure probably is deductible if it is part of the ordinary course of the taxpayer's business and does not add to the business structure or contribute to obtaining an enduring benefit.

Read the [article](#).

### **Inland Revenue focuses on tax governance**

The Inland Revenue Department formally launched its 2015/16 Multinational Enterprises Compliance Focus guide, providing insights into Inland Revenue's monitoring of all New Zealand businesses.

Read the [article](#).



## **Nigeria**

### **Update on activities, programs of the tax authorities**

On 18 November 2016 at a KPMG-sponsored event, the Executive Chairman of Nigeria's Federal Inland Revenue Service (FIRS)

commented on waivers of interest and penalties under a tax amnesty program; rules for carrying forward withholding tax and value added tax (VAT) credits; currency for withholding tax and VAT remittances; and FIRS' ongoing review of tax refunds

Read the [article](#).



## OECD

### Update on 'tax inspectors without borders'

The Organisation for Economic Co-operation and Development (OECD) issued an update on 'tax inspectors without borders' – an international program designed to enhance developing countries' ability to bolster domestic revenue collection by strengthening their tax audit capacities.

Read the [article](#).

### OECD releases details on MAP peer review and monitoring processes

The Organisation for Economic Co-operation and Development (OECD) has released numerous documents under base erosion and profit shifting (BEPS) Action 14 that will form the basis of the mutual agreement procedure (MAP) peer review and monitoring process with respect to effective dispute resolution mechanisms to resolve tax treaty-related disputes. These documents include:

- a **terms of reference** to translate the minimum standard approved in the final Action 14 report into a basis for peer review, along with an **assessment methodology** for peer reviewers, a **statistics reporting framework** and other **guidance** – read the [article](#)
- a **MAP peer review schedule** that calls for the reviews to be conducted in batches, with the first batch of reviews commencing in December 2016 – read the [article](#)
- a **questionnaire for taxpayers** to provide input into the Action 14 MAP proposal – read the [article](#).

### Five more jurisdictions agree to automatic exchange of country-by-country reports

The Organisation for Economic Co-operation and Development (OECD) announced that Brazil, Guernsey, Jersey, the Isle of Man and Latvia signed the multilateral competent authority agreement (MCAA) for the automatic exchange of country-by-country reports, bringing the total number of signatories to the MCAA to 49.

Read the [article](#).



## Oman

### Supreme Court rules on tax treatment of transaction costs

In a recent decision, the Supreme Court (SC) of Oman pronounced a ruling on the tax treatment of transaction costs incurred in raising long term project financing, such as mortgage charges and fees paid to advisors.

As the transaction costs were amortizable over the loan period under International Financial Reporting Standards (IFRS), the taxpayer had deducted them for tax purposes on an amortized basis. The Oman tax authorities disallowed the amortization, holding such expenses to be revenue in nature and fully deductible upfront when incurred.

The taxpayer contended that Oman tax law requires tax-deductible expenses to be necessarily incurred for production of yearly gross income, which implies matching of revenue and expense. Since the benefit of the transaction costs accrues over the entire loan period, the deduction should be amortized in line with IFRS.

The litigation travelled through all appellate levels up to SC, which disregarded the merits of taxpayer's contention and concluded that under Oman tax law, deduction by specific way of amortization is permissible only as depreciation on capital assets and not for loans, which are a financial obligation rather than a capital asset.

Further information:

— [Ashok Hariharan](#)



## Pakistan

### **Pakistan signs exchange of tax information agreement**

The Organisation for Economic Co-operation and Development announced that Pakistan signed the multilateral agreement for mutual administrative assistance in tax matters.

Read the [article](#).



## Panama

### **Tax, compliance audits of multinational enterprises**

Panama's tax administration has reportedly implemented an audit and supervision program for entities registered under the regime for multinational enterprises,<sup>9</sup> as required by Law 41 of 24 August 2007. The program aims to verify entities' compliance with tax obligations and other formal measures under Panama law.

Read the [article](#).



## Poland

### **EC opens state aid investigation, retail sector taxation**

The European Commission opened an in-depth investigation into a Polish tax on the retail sector. The EC is concerned that the

progressive rates based on turnover breach European Union state aid rules. The EC issued an injunction requiring Poland to suspend the application of the tax until the EC concludes its investigation.

Read the [article](#).

### **Corporate tax rate for small taxpayers; transfer pricing audit activity; R&D tax credits; tax transparency**

The latest edition of E-News from the EU Tax Centre highlights recent tax developments of note in Poland, including the Polish government's release of:

- a bill to amend income tax laws, which includes a lower tax rate for small taxpayers
- a summary of the results of tax audits conducted in the first half of 2016, which reveals an increase in the number of transfer pricing audits conducted in Poland
- a bill to increase the tax incentives for research and development (R&D) expenditure
- a bill that amends income tax laws in relation to corporate tax transparency and anti-avoidance measures, with effect from 1 January 2017.

Read the [article](#) in E-News from the EU Tax Centre (17 October 2016).



## **Portugal**

### **Insufficient description on invoice, VAT recovery not barred**

The Court of Justice of the European Union (EU) recently concluded the lack of sufficient description on an invoice does not override a taxpayer's entitlement to value added tax (VAT) recovery.

Read the [article](#).



## **Puerto Rico**

### **Rulings, administrative determination letters to be published anonymously**

In the interest of sound public policy, the Treasury Department of Puerto Rico issued a circular<sup>10</sup> that establishes general procedures for the public release of private taxpayer rulings and administrative determination letters on a 'no name' or anonymous basis.

Read the [article](#).



## Serbia

### **Tax authorities take aggressive stance to income of foreigners assigned to Serbia**

For the past several months, Serbia's tax authorities have supported the radical interpretation that Serbian companies to which foreign workers are assigned are required to calculate and pay personal income tax in Serbia on behalf of the assigned workers. This practice is creating uncertainty for companies in Serbia to which foreign workers who are assigned without concluding an employment contract and who perform their jobs based on intercompany agreements.

Despite the apparent unlawfulness of this practice, it has been confirmed by the tax authorities in a tax administrative procedure related to a filed appeal. Companies will likely need to protect their interests by appealing to the Administrative Court.

Further information:

— [Igor Loncarevic](#)



## Singapore

### **Singapore: Anti-avoidance provision applied in income tax case**

Singapore's Income Tax Board of Review agreed with the tax authorities to disregard a taxpayer's arrangement under the anti-avoidance provisions based on a finding that one of the arrangement's main subjective purposes was to avoid tax.

Read the [article](#).



## South Africa

### **Special voluntary disclosure program launched**

South Africa has launched a special voluntary disclosure program for income tax, donations tax, estate duty and exchange control regularization of offshore assets, which runs from 1 October 2016 to 30 June 2017.

For tax purposes, the South African Revenue Services (SARS) is seeking to tax 40 percent of the high-water market value mark of assets held between 1 March 2010 and 28 February 2015. Interest is payable over and above the tax due. For exchange control purposes, the SARS will impose levies on South African rand-denominated amounts illegally taken offshore of:

- 5 percent of the amount in contravention if the funds are repatriated
- 10 percent if the funds are to be retained offshore
- 12 percent if the levy is paid fully or partly from South African funds.

These levies are based on the value of assets as at 29 February 2016.

As an alternative, taxpayers can also regularize their tax affairs through the permanent tax voluntary disclosure program.

Further information:

— [Melissa Duffy](#)



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## Switzerland

### **Mutual administrative assistance in tax matters agreement ratified**

The Organisation for Economic Co-operation and Development announced that Switzerland has deposited its instrument of ratification for the multilateral convention on the mutual administrative assistance in tax matters. The convention will enter into force for Switzerland on 1 January 2017.

Read the [article](#).



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## Thailand

### **Information sharing between customs, revenue departments results in assessments**

Thailand's customs department and revenue department have started sharing their taxpayer databases. Each department can now access the other's database to obtain taxpayers' tax and duty payments records, primarily for use in tax audits.

Read the [article](#) on assessments resulting from shared database access.

Read a second [article](#) describing some sample cases.



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## United Arab Emirates

### **New tax authority established; VAT scheduled for 2018**

A new law establishes a new tax authority in the United Arab Emirates (UAE) to govern taxes (including value added tax (VAT)) in the UAE. This reflects the intention to implement a VAT system in the UAE by January 2018 and to align UAE laws with international tax developments, such as tax treaties, tax information exchange agreements and global tax information exchange programs.

Read the [article](#).



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## Ukraine

### **20 percent withholding tax contradicts treaty non-discrimination clause**

The KPMG member firm in Ukraine helped a Ukrainian subsidiary of a multinational broadcasting group prove in the first-level court that a 20 percent withholding tax (WHT) does not apply to the fees paid to a UK company for airtime slots. Among other things, the taxpayer argued the WHT contradicts the tax treaty's non-discrimination clause.

The Ukrainian subsidiary received a tax ruling stating that a 20 percent WHT should apply to payments for airtime slots purchased from a UK company. The Ukrainian subsidiary appealed the tax ruling to the Ukrainian court.

On 27 July 2016, the Circuit Administrative Court of Kyiv City determined that a 20 percent WHT does not apply if airtime slots are purchased from a Ukrainian company but would apply if they were purchased from the UK company. The court found this treatment to be inconsistent with, among other things, the Ukraine-UK tax treaty's non-discrimination clause.

Further information:

— [Oleg Chayka](#)



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## United Kingdom

### **Update on HMRC's Tax Assurance Commissioner's 2015-16 Annual Report**

On 20 September 2016, HM Revenue and Customs (HMRC) Tax Assurance Commissioner, Edward Troup and Jim Harra, head of HMRC's new Customer Strategy and Tax Design Group, presented the highlights from the 2015-16 report *How we resolve tax disputes* and answered questions from the audience.

Read the [article](#).

### **CFC and dividend GLO litigation**

The UK's High Court recently ruled on a restitutionary claim from a taxpayer enrolled in the Controlled Foreign Companies (CFC) and Dividend Group Litigation Order (GLO). The decision concerns issues arising on quantifying the level of credit to apply in light of the taxpayer's particular facts.

Read the [article](#)

### **Statutory interest paid to creditors in insolvency proceedings not 'yearly interest'**

The UK's High Court recently ruled that statutory interest paid to creditors in insolvency proceedings does not constitute 'yearly interest' and thus is not subject to a deduction of basic rate income tax.

Read the [article](#)

### **Court decision on historic ‘bad debt relief’ rules**

The UK Court of Appeal has mainly allowed the taxpayer’s appeal in a case concerning the UK’s historic Bad Debt Relief (BDR) rules. The taxpayer’s claim relied on its directly effective right under European Union (EU) law to claim BDR on the basis that the certain conditions were disproportionate and therefore domestic courts should shape UK legislation to conform with EU law and provide a remedy.

Read the [article](#)

### **Updated HMRC guidance on APAs**

HM Revenue and Customs (HMRC) updated Statement of Practice 2 (2010), which updates and clarifies the process for obtaining advance pricing agreements (APA).

Read the [article](#)

### **Evolving approach to penalties in the UK**

Since the modernized regime for the application of penalties for errors in tax returns was introduced in Finance Act 2007, UK penalties legislation has not changed significantly. However, because of an apparent change in approach by HM Revenue and Customs (HMRC), UK taxpayers are experiencing far more challenges regarding ‘behavior’ that leads to inaccuracies in tax returns.

A few years ago, the UK Public Accounts Committee challenged HMRC as to why so few large businesses seemed to be charged penalties when HMRC uncovered errors, sometimes for significant amounts. The increased tax disputes governance that HMRC implemented following a review of significant tax settlements has made it mandatory for HMRC officers to include details of taxpayer behavior, and the penalty consequences, in submissions of settlement proposals to disputes resolution boards.

These developments, coupled with rising HMRC scrutiny of taxpayer behavior, have produced a situation in which all taxpayers with an inaccuracy in a tax return are asked to explain why the inaccuracy occurred, how and when it was detected, and what (if anything) has or could be done to prevent similar inaccuracies. These questions aim to test whether the taxpayer took reasonable care in preparing their tax return and, in more serious cases, whether the tax return was deliberately inaccurate.

It can be difficult to convince HMRC that reasonable care was taken after HMRC has uncovered an inaccuracy. This would be easier where the taxpayer makes an unprompted disclosure and fully cooperates in providing information or documents to help quantify the inaccuracy’s extent.

Where reasonable care was not taken, HMRC can impose a penalty of between 0 – 30 percent of the potential lost revenue. Such penalties can be suspended and then cancelled if conditions for improved compliance can be successfully implemented for an agreed period.

Penalty challenges carry more serious consequences for UK taxpayers where HMRC asserts a tax return is deliberately inaccurate. In the most serious cases where an inaccuracy is deliberate and concealed, a penalty of up to 100 percent of the potential lost revenue can be imposed. There is no ability to

suspend a deliberate penalty and, where the potential lost revenue exceeds GBP£25,000, taxpayers also can be named on a published list of deliberate defaulters. For a large business, GBP £25,000 is not a particularly high threshold, and the threshold applies whether the inaccuracy affects understated profits or overstated losses.

Further information:

— [Kevin Elliott](#)



## United States

### **IRS legal advice memo: Legal responsibilities to protect return information, under OECD's transmission system**

The IRS publicly released a legal advice memorandum to IRS personnel concerning legal responsibilities to protect tax return information in the context of electronic data transmitted through the 'common transmission system' being developed by the Organisation for Economic Co-operation and Development (OECD).

Read the [article](#).

### **EC state aid investigations show need for tax reform**

In a *Wall Street Journal* opinion editorial, US Treasury Secretary Jacob Lew addresses how the European Commission's state aid investigations present a new opportunity for the US Congress to act on business tax reform and infrastructure investment.

Read the [article](#).

### **Guidance for IRS agents, applying arm's length standard**

The IRS Large Business and International (LB&I) division publicly released guidance for IRS agents comparing the arm's length standard with other valuation approaches to outbound and inbound transactions.

Read the [article](#).

### **IRS position on unilateral APA applications involving maquiladoras**

The IRS announced that US taxpayers with maquiladora operations in Mexico will not be exposed to double taxation if they enter a unilateral advance pricing agreement with the Large Taxpayer Division of Mexico's Servicio de Administración Tributaria.

Read the [article](#).

### **No section 901 credit, amounts paid to Virgin Islands**

The US Tax Court issued an opinion concluding that individuals who did not file federal income tax returns for 2001 – but filed income tax returns with the Virgin Islands Bureau of Internal Revenue – were not allowed to credit the amounts paid as tax to the Virgin Islands against their US income tax liabilities under section 901.

Read the [article](#).

### **LB&I audit guide under tangible property regulations**

The IRS Large Business and International (LB&I) operating division has issued an 'audit techniques guide' providing guidance to IRS examination teams auditing taxpayers' implementation of the tangible property regulations.

Read the [article](#).

### **Updated 'fast track' SB/SE mediation program in collection cases**

The IRS released an advance version of Rev. Proc. 2016-57, which creates a new fast track mediation program – SB/SE Fast Track Mediation-Collection – allows taxpayers an opportunity to resolve certain cases pending in IRS Collection on an expedited basis.

Read the [article](#).



## **Vietnam**

### **More post-customs clearance audits expected**

Because of a downturn in the Vietnam government's collection of revenue in the third quarter of 2016, the General Department of Customs has taken several actions to increase the collection of customs revenue.

Read the [article](#).



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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

## **Key links**

- Learn more about the [Global Tax Dispute Resolution and Controversy network](#)
- Learn about the [KPMG LINK 360 Global Disputes Management Module](#)
- See past issues of our [Quarterly Global Tax Disputes Update](#)
- Join the [KPMG Global Tax discussion on LinkedIn](#)

<sup>1</sup> Law Administration Practice Statement (PSLA) 2005/24.

<sup>2</sup> [2016] FCAFC 130 (22 September 2016).

<sup>3</sup> TR 2016/D2.

<sup>4</sup> On 26 October 2016 the ATO issued [Draft Practical Compliance Guideline](#) (PCG) 2016/D16.

<sup>5</sup> Normative Ruling (NR) 1.669/2016 (published 10 November 2016)

<sup>6</sup> Article 2 of Decree No. 8,853, issued 22 September 2016.

<sup>7</sup> Law Decree no. 193 (22 October 2016).

<sup>8</sup> C-274/15.

<sup>9</sup> Sede de Empresas Multinacionales (SEM).

<sup>10</sup> Circular Letter of Tax Policy No. 16-06 (October 3, 2016).

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