



Tax Alert

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In this Issue, we bring you our Quarterly Global Tax Disputes Update (March 2017 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](#).

Insights from around the world:

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Argentina

Court characterizes intercompany loan as capital contribution

A recently published decision of the Argentine tax court (*Tribunal Fiscal de la Nación*) concerns a challenge from the tax authorities (AFIP) of the terms and conditions – and economic substance – of an intercompany loan between an Argentine taxpayer and a foreign related party.

Links to Recent Issues:

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Tax
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Asia Tax Firm of the Year; Asia International Tax Firm; Asia Indirect Tax Firm; Asia Global Executive Mobility Firm and National Firm for Transfer Pricing in Singapore – Asia Tax Awards 2016, International Tax Review.

Australia

Back to the Future to support company residency

In *Bywater/Hua Wang Bank*, the High Court held that companies incorporated overseas had their “central management and control” in Australia on the basis that the companies’ real business was undertaken by an accountant in Sydney, whose instructions were rubber-stamped by the overseas board of directors.

Read the [article](#).

High Court rules on unit trusts

In *ElecNet*, the High Court considered the meaning of ‘unit trust’ in the context of the tax law and confirmed that the ordinary meaning should be attributed to the term.

Read the [article](#).

Tax governance: A matter of justifying trust

The Australian Tax Office’s new approach to effective tax governance aims at reinstating public trust in the corporate tax system.

Read the [article](#).

ATO releases draft Infrastructure Framework for consultation

The Australian Tax Office’s (ATO) newly released draft of its Australian Tax Framework sets out the ATO’s views on the key tax risks associated with common infrastructure and privatization transactions.

Read the [article](#).

Diverted Profits Tax headed for Australia

The Australian government introduced legislation¹ that seeks to impose a 40 percent diverted profits tax (DPT) on ‘significant global entities’ carrying on business in Australia. The DPT aims to prevent companies from diverting profits offshore and to ensure that the tax paid reflects the economic substance of business activities carried on in Australia.

Under the proposed rules, the Australian Taxation Office (ATO) could make a DPT assessment at any time within 7 years after issuing a notice of assessment to a taxpayer for an income year. If an assessment is made, the DPT amount would need to be paid within 21 days of receipt of the assessment, even if in dispute. Additional proposals effectively require taxpayers to provide all potentially relevant information to the ATO within 12 months and prevent them from relying in court on any information not provided to the Commissioner.

Broadly, the DPT may apply where:

- an international company has global revenue over AUD\$1 billion and annual Australian income of more than AUD\$25 million

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- the foreign tax payable is less than 80 percent of the tax that would be payable in Australia (in effect, where there is a tax rate of 24 percent or less)
- the ATO is not satisfied that the company passes a 'sufficient economic substance test', which requires arrangements to properly reflect the economic substance of the company's activities in all relevant countries
- there is a 'principal purpose' of obtaining a tax benefit.

Further information:

- [Angela Wood](#)
- [Angelina Lagana](#)
- [Sarah Blakelock](#)
- [Sarah Dunn](#)

¹ Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017 and the Diverted Profits Tax Bill 2017, introduced on 9 February 2017.



Brazil

Brazil enacts tax installment program for tax debts

The Federal Executive Branch issued legislation² to enact a new Tax Regularization Payment Program (PRT) that gives Brazilian taxpayers an opportunity to settle federal tax debts.

The program does not allow amnesty from penalties (e.g. fines, interest). Rather, it opens the possibility of settling federal tax debts through installments in certain special conditions. The PRT covers debts that are in administrative or judicial dispute. It also covers federal overdue debts up to November 2016, allowing these debts to be partially settled with tax credits, such as carried forward tax losses.

Taxpayers must apply to enroll within 120 days of the issuance of additional regulations, which should be enacted by 30 days after the issuance of the PRT legislation.

This gives Brazilian taxpayers – especially those ones with accumulated tax losses and tax credits – a window to reassess their administrative and judicial tax disputes and tax liabilities and decide whether to apply to take part in the program.

Further information:

- [Marcos Matsunaga](#)
- [Felipe Maia](#)

Provisional Measure 766, introduced on 4 January 2017 and published the next day with the force of law.



Canada

Arbitration agreement with UK enters into force

A Canada-UK agreement on arbitration provisions under the mutual agreement procedure set out in their tax treaty is now in force.

Read the [article](#).



Cyprus

Back-to-back loans to require transfer pricing study

Officials with the tax department of Cyprus have advised the Institute of Certified Public Accountants of Cyprus that the minimum profit margins that the tax authorities would be willing to accept in back-to-back loan transactions – i.e. the 'back-to-back finance regime' – will no longer apply, effective 1 July 2017.

Read the [article](#).



Denmark

Exemption for interest income, interaction with thin capitalization rules

The Court of Justice of the European Union issued a judgment in a case concerning the Danish corporate tax rules that provide a tax exemption from tax for interest income on loans provided by a Danish resident company to its Danish affiliated companies. The case considers situations where the debtor is denied the corresponding interest expenditure deduction because of the thin capitalization rules.

Read the [article](#).



Egypt

VAT introduced; new rules for settling tax disputes

KPMG in Egypt provides an overview of significant changes to Egypt's tax laws, including the introduction of a new VAT law and new rules for settling tax disputes.

Read the [article](#).



France

Decree limiting judicial review does not affect tax claims

The French Supreme Tax Court (*Conseil d'Etat*) clarified that a November 2016 decree that limits judicial review when a claim is tacitly rejected by the administrative authority does not apply to tax claims.

Read the [article](#).

Country-by-country public financial reporting held unconstitutional

The French Constitutional Court (*Conseil Constitutionnel*) decided that a provision that imposes a country-by-country (CbyC) public financial reporting requirement is unconstitutional.

Read the [article](#).

'Desk' tax audits available under new law

France recently enacted measures regarding tax audits, including the introduction of:

- 'desk audits', which are conducted in the offices of the tax authorities by means of an on-desk review of the company's computerized accounting data
- a new procedure to accelerate the review of claims for VAT reimbursements
- new tools to help the tax authorities address and counter international tax fraud.

Read the [article](#) about the new tax audit measures.

Read a second [article](#) about the new desk audit procedure.



Germany

Court concludes invoices can be corrected with retroactive effect

Germany's federal tax court (BFH) recently concluded that invoices can be corrected with retroactive effect for value-added tax purposes.

Read the [article](#)

'Restructuring decree' rejected by court; tax benefits uncertain

Germany's federal tax court (BFH) rejected a 'restructuring decree' issued by the Finance Ministry (BMF). The court concluded that tax benefits granted by a decree on the treatment of 'restructuring profits' violated a constitutional principle for administrative actions.

Read the [article](#)



India

Loss-making companies as comparables

The Ahmedabad Tribunal held that companies that consistently make losses cannot be rejected as comparables unless the functional profile is different and various comparability adjustments (e.g. for capacity, volume or warranty cost) are allowed.

Read the [article](#).

Update on APAs

India's advance pricing agreement (APA) program is part of the country's efforts to reduce litigation and foster an environment of tax cooperation and certainty. How well is the program meeting these goals? Take part in a survey by KPMG in India that aims to measure experiences and expectations on various parameters of India's APA regime.

Read the [article](#)

Permanent establishment, agency under tax treaty with United States

The Delhi Bench of the Income-tax Appellate Tribunal held that the liaison office of an overseas taxpayer group constitutes a fixed place permanent establishment in India under the India-US tax treaty.

Read the [article](#).

Profits attributed to permanent establishment; transfer pricing study rejected

The Delhi Bench of the Income-tax Appellate Tribunal held that, in the absence of a 'correct' transfer pricing study report, an assessing officer correctly determined the profits attributable to a branch for marketing activities related to direct sales made by the head office. The tribunal found that 30 percent of the profits were attributable to the branch for its marketing activities in India.

Read the [article](#).



Ireland

EC state aid investigation of transfer pricing rulings

The European Commission published its final decision on its state aid investigations into transfer pricing rulings granted by Ireland to a US multinational group.

Read the [article](#).



Mauritius

Apportionment of expenses attributable to non-taxable capital gains

The Supreme Court of Mauritius held that common expenses that are attributable to non-taxable capital gains are disallowed under the apportionment rules.

Read the [article](#).



Mexico

Taxpayer challenges information reporting requirement for 'relevant operations'

Mexico's high court has decided in favor of taxpayers in two challenges (*amparo*), ruling that certain information reporting requirements do not comply with constitutional principles.

Read the [article](#)



Monaco

Convention on Mutual Administrative Assistance in Tax Matters ratified

Monaco ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which implements the common reporting standard for the exchange of tax information among tax authorities.

Read the [article](#).



Netherlands

CJEU judgment, individual taxpayer's deduction of 'negative income' when two EU countries involved

The Court of Justice of the European Union (CJEU) rendered its decision in a case concerning a taxpayer whose total income was split between two states, neither of which were his state of residence. At issue was whether one of the two states should take into account the negative income arising from his dwelling in his member state of residence.

Read the [article](#).

CJEU judgment, EU Treaty 'standstill clause' and extended assessment period for tax on foreign income

The Court of Justice of the European Union (CJEU) rendered its decision in a case concerning the derogation from the prohibition on restrictions to the free movement of capital (known as the 'standstill clause') and its application to the Dutch extended period for recovering third-country tax debts.

Read the [article](#).



New Zealand

Tax administration transformation proposals released

New Zealand released a package of proposals designed to provide legislative support for Inland Revenue's Business Transformation

and improve its administration of the tax system.

Read the [article](#).



Nigeria

Tax rulings, guidance and outlook for 2017

A report from KPMG in Nigeria features discussions about:

- recent decisions and rulings concerning tax disputes
- policy pronouncements by the Federal Inland Revenue Service
- articles on tax, transfer pricing and regulatory issues across various sectors of the Nigerian economy.

Read the [article](#).



OECD

Status of CRS exchange network

In an update on the common reporting standard (CRS), the Organisation for Economic Co-operation and Development (OECD) reported that a further 350 bilateral automatic exchange relationships were established, with over 50 jurisdictions committed to exchanging information automatically pursuant to the CRS, starting in 2017.

Read the [article](#).

Mutual agreement procedure statistics for 2015

The Organisation for Economic Cooperation and Development (OECD) released mutual agreement procedure (MAP) statistics for 2015. For reporting periods 2006 through 2014, MAP inventories in OECD member countries show a continuous increase from 2006 to 2015, with a slight decrease in 2010.

Read the [article](#).

Peer reviews of BEPS Action 14 (dispute resolution)

The Organisation for Economic Cooperation and Development (OECD) has requested input for the Stage 1 peer reviews of Austria, France, Germany, Italy, Liechtenstein, Luxembourg, and Sweden on specific issues involving access to the mutual agreement procedure.

Read the [article](#).



Panama

Customs court replaces tariff commission

A new executive decree establishes Panama's customs court

(*Tribunal Aduanero*) as an autonomous body and replacement for the tariff commission (*Comisión Arancelaria*).

Read the [article](#).



Poland

Significant increase in revenue collections, following transfer pricing audits

Since late 2015, the tax authorities in Poland have focused on transfer pricing, resulting in reports of increased tax revenue collections from transfer pricing audits.

Read the [article](#).



Portugal

Exit tax not compatible with EU law, CJEU judgment

In response to a European Commission challenge of Portugal's exit tax for individuals, the Court of Justice of the European Union (CJEU) ruled that the exit tax infringes on the free movement of persons and the free movement of establishment, and that the provisions are not justified.

Read the [article](#).



Serbia

Tax procedure and administration provisions effective in 2017

Legislation enacted in Serbia in late December 2016 amends the tax procedure and administration provisions of Serbian tax law in several areas, including authority for tax appeals, tax audit procedures and taxpayer identification numbers.

Read the [article](#).



South Africa

Special voluntary disclosure program for offshore assets and income

On 24 February 2016, the South African Minister of Finance introduced a special voluntary disclosure program, giving another opportunity for non-compliant South African taxpayers and Exchange Control residents with undisclosed assets abroad to regularize those assets and the income derived from them.

Read the [article](#).



United Kingdom

Court of Appeal - Test claimants in the *FII Group Litigation v HMRC*

The UK Court of Appeal released the latest judgment in a long-running group litigation saga regarding the UK's tax treatment of inbound EU-sourced dividends received from group subsidiaries

Read the [article](#).

HMRC's accelerating counter avoidance activity

The UK government announced it is investing further in HM Revenue & Customs (HMRC) to increase their activity on countering avoidance and taking cases forward for litigation.

Read the [article](#).

Preparing for new corporate offence, failing to prevent tax evasion

The UK's Criminal Finances Bill contains provisions for a new corporate offence for failing to prevent tax evasion, coming into force in September 2017. What should companies do now to prepare?

Read the [article](#).

Exchange of information rules, HMRC guidance

HM Revenue & Customs (HMRC) published new guidance on the exchange of information rules, setting out the information to be exchanged and noting that 'rulings', for these purposes, may include HMRC's views on the likely tax treatment of a transaction given as part of 'real-time working'.

Read the [article](#).

Upper Tribunal decision on 'unallowable purposes rule'

The UK's Upper Tribunal has dismissed the taxpayer's appeal in a recent case concerning the unallowable purposes rule.

Read the [article](#).

Revised HMRC guidance, no transfer pricing discussions outside APAs

HM Revenue & Customs (HMRC) published revised guidance preventing any transfer pricing discussions with taxpayers outside advance pricing agreements (APA) or enquiries.

Read the [article](#).



United States

Proposed regulations – Centralized partnership audit regime

The US Treasury Department and Internal Revenue Service (IRS) reportedly have sent for publication in the Federal Register proposed regulations regarding implementation of the centralized partnership audit regime that, in general, assesses and collects tax at the partnership level.

Read the [article](#).

LB&I launches 13 ‘campaigns’ focusing on issue identification, audit guidance

The Internal Revenue Service’s Large Business & International division announced detailed information on the first tranche of issues to be addressed using a new method for audits of large corporate taxpayers.

Read the [article](#).

Sixth Circuit – IRS’s application of substance-over-form doctrine rejected

The US Court of Appeals for the Sixth Circuit today reversed a decision of the US Tax Court that had upheld a deficiency determination based on application of the ‘substance-over-form doctrine’ by the Internal Revenue Service.

Read the [article](#).



Vietnam

Insurer’s transfer pricing audit closed with no adjustment

In the last quarter of 2016, KPMG’s member firm in Vietnam helped one of the world’s largest global insurers succeed in having the tax authority’s initial transfer pricing adjustment dismissed on technical grounds based on the nature of the taxpayer’s business.

Vietnam’s regulations require taxpayers to prepare comprehensive transfer pricing documentation with detailed information about its operation, strategies and financial performance. In this case, however, the taxpayer only submitted simplified transfer pricing documentation. The Vietnamese tax inspection team challenged the taxpayer, issuing a deluge of inquiries for information to support the conclusions in submitted TP documentation within a tight timeline. Further, the complicated nature of insurance business and the characteristics of the tax audit case made it difficult for the tax inspection team and taxpayer to reach a common ground.

With support from KPMG in Vietnam, the case was resolved within a month in the taxpayer’s favor.

Further information:

— [Hoang Thuy Duong](#)

— [Tran Thi Thuy Ha](#)

Tax authority withdraws transfer pricing adjustment based on secret comparables

In Vietnam’s first court case on transfer pricing adjustments to date, the issue was settled using comparables in KPMG benchmarking reports, rather than the tax authority’s secret comparables.

Ambiguities in Vietnam’s transfer pricing regulations are not clarified through any official guidance or rulings. As a result, the tax authority often rejects comparables from commercial databases and imposes adjustments based on comparables in its own secret database.

When a global shoe manufacturer’s transfer prices for a 7 year period

were assessed on this basis – resulting in a significant additional tax liability – KPMG in Vietnam advised the company to proceed with an administrative appeal and then litigation.

In court, a robust financial and industry analysis and a reasonable interpretation on the regulation's spirit put the company on sound footing. After 3 years, including a final mediation, the tax authority agreed to withdraw the assessment and recalculate the tax liability using KPMG's benchmarking reports.

Further information:

— [Hoang Thuy Duong](#)

— [Tran Thi Thuy Ha](#)

Vietnam's first APA completed

Vietnam's first advance pricing arrangement (APA) is now complete, with assistance from KPMG in Vietnam as the taxpayer's adviser.

KPMG in Vietnam was involved throughout the APA process, from initial discussions with the Ministry of Finance, General Department of Taxation (GDT), which is responsible for the APA program, through advising on strategy and execution and preparing comprehensive APA submission dossiers, to drafting responses to the GDT's questions and supplying requested documentation in cooperation with the taxpayer.

As a result, the taxpayer and the GDT could negotiate an outcome that was agreeable to both sides.

Further information:

— [Hoang Thuy Duong](#)



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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

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- Learn about the [KPMG LINK 360 Global Disputes Management Module](#)
- See past issues of our [Quarterly Global Tax Disputes Update](#)
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