



# Tax Alert

## Issue 30 | June 2017

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

## Global highlights

### Around the world with KPMG's Global Tax Dispute Resolution and Controversy network – New developments in Canada, the US and the UK

Around the world, taxpayers continue to face tax disputes on a variety of issues. A recent webcast led by Sharon Katz-Pearlman, Head of KPMG's Global Tax Dispute Resolution and Controversy Services, zeroed in on recent tax developments in Canada, the UK and the US.

- [Replay the webcast](#).
- [Read the article](#).

## Insights from around the world:

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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,

[Netherlands](#)

[Nigeria](#)

[Pakistan](#)

[Singapore](#)

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Africa](#)

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[Sri  
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## Australia

### Former judges appointed to review court settlements between taxpayers and ATO

Taxpayers' settlements recently reached with the Australian Taxation Office (ATO) may come under scrutiny following an announcement that the ATO has appointed three former Federal Court Judges to review out-of-court settlements reached between taxpayers and the ATO.

Read the [article](#).

### Foreign companies with 'central management and control' in Australia; new guidance issued

Following the decision in *Bywater/Hua Wang Bank*, the Australian Commissioner of Taxation has released updated guidance on central management and control in Australia, with potential impact on foreign incorporated companies.

Read the [article](#).

### Increased administrative penalties for significant global entities

Among several Australian legislative changes aimed at significant global entities (SGE) – changes that include multinational anti-avoidance legislation, a diverted profits tax, Country-by-Country reporting and general purpose finance statements – legislation has now been passed to materially increase administrative penalties for SGEs with effect from 1 July 2017.

Read the [article](#).

### Transfer pricing implications of related-party loans; appellate court decision

The Full Federal Court decided in favor of the Commissioner of Taxation in a case about transfer prices used for certain cross-border related-party loans. The decision has implications not only for taxpayers with cross-border related-party financial dealings but also for taxpayers with other 'broader' cross-border related-party dealings.

Read the [article](#).

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## Austria

### CJEU Advocate General's opinion; income from debt-claims with participation in profits

Advocate General Mengozzi of the Court of Justice of the European Union (CJEU) issued his opinion in a dispute between Austria and Germany ([C-648/15](#)) over the interpretation of the phrase "income from (...) debt-claims with participation in profits" in the tax treaty between the two countries.

Read the [article](#).



## Belgium

### **Dividend withholding tax exemption, Dutch UCITS under Parent-Subsidiary Directive**

The CJEU issued a judgment in a case concerning application of the EU Parent-Subsidiary Directive to a withholding tax imposed by Belgium on dividends paid by a Belgian subsidiary to its parent companies located in the Netherlands that were investment funds (i.e. Dutch undertakings for collective investment in transferable securities (UCITS)).

Read the [article](#).

See also the CJEU decision in *Belgische Staat v. Comm. VA Wereldhave* Belgium concerning the dividend withholding tax exemption for Dutch UCITS under the Parent-Subsidiary Directive.

Read the [article](#).

### **Advocate General's opinion on the EU Parent-Subsidiary Directive**

Advocate General Kokott of the CJEU issued her opinion in a case concerning Belgian rules that disallow deductions for interest payments to the extent that in the same tax year the taxpayer had received exempt dividends from shares held for less than 1 year. At issue was whether these rules are compatible with the EU Parent-Subsidiary Directive.

Read the [article](#).



## Brazil

### **Non-inclusion of ICMS on PIS/COFINS tax basis; points of interest and opportunities**

The Brazilian Supreme Court (STF) ruled<sup>1</sup> that the ICMS (state VAT) amount charged on sales does not fit with the concept of revenue in the Brazilian Federal Constitution and, thus, cannot be included on the taxable basis of PIS and COFINS (i.e. social contributions on gross revenues).

However, there are some points that companies should assess before filing an administrative refund claim or lawsuit, or taking any action regarding its PIS and COFINS tax basis. The Supreme Court is still considering whether to limit the effects of the decision (*modulação de efeitos*). There are three possible scenarios:

1. The court might decide that no limitations should be

applied, in which case all taxpayers would be entitled to apply for a refund.

2. The court might determine that the decision only applies for periods after the trial date (15 March 2017), in which case taxpayers would only be entitled to refunds of amounts collected after that date.
3. The court might make the same determination in scenario 2, except for companies that had filed lawsuits for refunds before 15 March 2017. This approach was applied recently by the Supreme Court in similar situation.

Companies that have already filed a lawsuit for refund should review the scope of their claims and the impact of a recent change in the law<sup>2</sup> modifying the concept of gross revenue for PIS and COFINS.

KPMG in Brazil says this decision marks a turning point in the case law regarding the Brazilian tax system. The decision could favorably affect other important judicial discussions, such as the non-inclusion of ISS (tax on services) on the PIS and COFINS tax basis and the non-inclusion of ICMS and ISS in the tax basis of CPRB (other Brazilian social contribution, also levied on gross revenue).

Further information:

— [Marcos Matsunaga](#)

— [Felipe Maia](#)

— [Ricardo Sartorelli](#)

<sup>1</sup> Decision No. 574,706.

<sup>2</sup> Law No. 12,973/2014.



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## Canada

### **CRA holds refunds for GST non-compliance**

In the past, the Canada Revenue Agency (CRA) has put some holds on refunds for non-compliance with the Goods and Services Tax and Harmonized Sales Tax (GST/HST). Now, according to a recent announcement, the CRA is applying non-compliance holds to all GST/HST registrants having outstanding GST/HST tax returns, beginning May 2017.

Read the [article](#).

### **CRA reviews voluntary disclosures program**

The CRA is reviewing its voluntary disclosures program and has acknowledged that it would consider recent recommendations made by the federal government's Offshore Compliance Advisory

Committee to restrict relief in certain circumstances.

Read the [article](#).

### **IRS targets Canadian corporations operating in the US**

Canadian corporations that operate in the United States through a sales and distribution subsidiary (i.e. commissionaire structure) may be singled out for US tax audits under the Internal Revenue Agency's new corporate audit approach. Taxpayers using these common structures should ensure the accuracy of their transfer pricing documentation.

Read the [article](#).



## **Channel Islands**

### **Tax measures concerning financial services sector**

The UK's Budget 2017 includes numerous measures of interest to the financial services companies in the Channel Islands, including a focus on tax evasion and tax avoidance, requirements to correct previous non-compliance and disguised remuneration avoidance schemes.

Read the [article](#).



## **China**

### **SAT announcement on special tax investigations and adjustments**

China's State Administration of Taxation (SAT) released *Special Tax Investigations and Adjustments* (Announcement 6), which integrates into domestic regulations some of the Organization for Economic Co-operation and Development's (OECD) work on base erosion and profit shifting, including the recommendations on intangibles. Other changes address self-adjustments, outbound payments, transfer pricing audits and mutual agreement procedures.

Read the [article](#).



## **Czech Republic**

### **Amendment significantly expands reporting duties to tax authority**

The Ministry of Finance submitted an amendment to the tax procedure rules that would provide access to information about taxable entities and their bank accounts to taxation and other government authorities. The change responds to a decision of the Supreme Administrative Court on the scope of banks' reporting duties.


Read the [article](#).

### **Discussion paper on anti-tax avoidance rules**

The Ministry of Finance released a discussion paper on implementing the EU Anti-Tax Avoidance Directive into Czech law. The paper focuses on new interest deduction limitations, exit taxation, controlled foreign companies and hybrid mismatches.

Read the [article](#).

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## **Egypt**

### **New rules for settling tax disputes**

KPMG in Egypt provides an overview of significant changes to Egypt's tax laws, including new rules for settling tax disputes.

Read the [article](#).

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## **European Union**

### **Summary of recent CJEU judgments; infringement procedures and referrals to CJEU**

The May 2017 edition of E-News from KPMG's EU Tax Centre provides updates on EU tax developments that can have both a domestic and a cross-border impact, including summaries of Court of Justice of the EU cases that may have implications for your country.

Read the [article](#).

### **ECOFIN addresses dispute resolution and common corporate tax base**

At its meeting on 23 May 2017, the Economic and Financial Affairs Council (ECOFIN) of the EU agreed to adopt a council directive on double taxation dispute resolution mechanisms in the EU. ECOFIN also debated the European Commission's proposals for a directive on a common corporate tax base.

Read the [article](#).

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## **France**

### **Anti-abuse rules applied in context of EU Merger Directive**

The CJEU issued a judgment in a case concerning a determination by the French tax authority not to defer the taxation of capital gains realized on a French company's assets at the time of its merger with a company established in another EU member state.

Read the [article](#).

### **Criteria for tax information requests of EU Member States**

The CJEU issued a judgment in a case concerning the legality of requests for tax information sent by one EU member state to another member state.

Read the [article](#).

### **CJEU judgment concerning 3 percent tax on distributions of profits**

The CJEU ruled that the 3 percent tax on certain distributions of profits made by French companies is not compatible with article 4 of the EU Parent/Subsidiary Directive when the parent company redistributes dividends received from its subsidiaries.

Read the [article](#).



## **Germany**

### **'Restructuring decree' rejected by court; tax benefits uncertain**

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

Read the [article](#).

### **Deduction of refinancing costs as business expenses**

The federal tax court (BFH) addressed a situation in which a Dutch corporation held an ownership interest in a German partnership from which the Dutch entity received profit shares. The profit shares were subject to limited tax liability in Germany.

Read the [article](#).

### **Binding rulings applying to several taxpayers**

The Federal Ministry of Finance (BMF) published a draft bill that would amend the regulation governing the issuance of binding rulings. The proposal would aim to clarify the rules when a binding ruling affects several taxpayers, for example, a tax group or in instances of a uniform assessment of the profit of partners of a partnership.

Read the [article](#).



## **Ghana**

### **Ghana: Tax measures in budget for 2017**

Ghana's budget for 2017 proposes to strengthen the transfer pricing unit of the Ghana Revenue Authority so they can undertake more rigorous audits of entities in the extractive sector.

Read the [article](#)



## **India**

### **Permanent establishment, agency under tax treaty with US**

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 income tax treaty.

Read the [article](#).

#### **Application of foreign tax credit under US tax treaty**

The Ahmedabad Bench of the Income-tax Appellate Tribunal held that the taxpayer can claim and apply a foreign tax credit (FTC) for taxes withheld in the United States against dividend income as long as conditions set out in the India-US income tax treaty are met. Further, when tax is withheld at a higher rate than the rate prescribed in the treaty, the taxpayer can claim an FTC up to the amount computed based on the treaty's prescribed rates.

Read the [article](#).

#### **Income of a foreign shipping company not taxable in India under 'place of effective management' test**

The Rajkot Bench of the Income-tax Appellate Tribunal held that under the India-Denmark income tax treaty, income earned by a foreign company from operations of ships in international traffic is not taxable in India because the foreign company's place of effective management is outside India.

Read the [article](#).

#### **40 percent profit attributed to Indian operations of taxpayer**

The Bengaluru Bench of Income-tax Appellate Tribunal held that where the liaison office of a multinational company carries out activities that are not "preparatory or auxiliary", the office constitutes a permanent establishment. Thus, the tribunal ruled that 40 percent of a liaison office's global profit was attributable to the Indian permanent establishment, based on functions performed, assets deployed and risk assumed.

Read the [article](#).

#### **Race car circuit constitutes 'fixed place PE' under the India-UK tax treaty**

The Supreme Court of India held that an international Formula One race car circuit constitutes a fixed place of business, and thus a permanent establishment (PE), under the India-UK tax treaty since the international circuit was under the control and at the disposal of the taxpayer.

Read the [article](#).

#### **Penalty assessment for related-party transactions deleted**

The Delhi High Court agreed to remove a penalty imposed on a taxpayer for allegedly concealing income from certain related-party transactions even though the taxpayer had accepted the related transfer pricing adjustment. The High Court held that because the taxpayer had entered a new line of business (manufacturing), the taxpayer's failure to disclose certain benefits and advantages from related-party services could not have triggered the penalty's automatic presumptive application.

Read the [article](#).





## Ireland

### Preparing for audits of R&D tax credits

Revenue audits of research and development (R&D) tax credit claims are necessary and to be expected. KPMG in Ireland outlines the steps you can take to mitigate uncertainty and risks by ensuring you are well prepared for such audits.

Read the [article](#).



## Italy

### Non-resident holding company, 'beneficial owner' of dividends from Italian subsidiary

A decision of the Italian Supreme Court sets out guidance on the criteria to be considered when deciding whether a non-resident holding company qualifies as the 'beneficial owner' of dividends distributed by an Italian subsidiary.

Read the [article](#).

### Court decisions on royalties taxation, reduced withholding tax rate

A court in Milan held that payments made by an Italian distributor to foreign suppliers for the right to distribute copies of software, but with no rights to exploit and reproduce the program, represent business income, not royalties. Accordingly, such payments are subject to withholding tax (at a rate of 30 percent).

Read the [article](#).



## Korea

### Decisions on information returns, holding companies, tax-exempt business income

KPMG in South Korea has prepared a report that collects news of recent tax developments, including summaries of Supreme Court decisions on:

- foreign corporations' requirement to file information returns under a former tax law
- qualifying holding companies involved in corporate reorganizations
- the determination of tax-exempt business income.

Read the [article](#).



## Luxembourg

## Luxembourg to support Ireland's appeal over the Apple tax ruling

Luxembourg plans to intervene in support of Ireland in its appeal against the European Commission's decision on unlawful state aid concerning the Apple group. In addition to Ireland, the Apple group has also lodged an action for annulling the Commission's decision.

Read the [article](#).



## Mauritius

### Alternative tax dispute resolution panel

The Mauritius Revenue Authority announced that an alternative tax dispute resolution panel has been established to deal with taxpayer challenges to tax assessments.

Read the [article](#).

### Tax authority issues tax claims for returns not filed

The Mauritius Revenue Authority has updated its policy for companies that fail to file an income tax return. In these cases, the tax authority may automatically issue a 'tax claim' to the company, and the amount of the tax claim must be paid within 28 days of its date of issuance.

Read the [article](#).



## Mexico

### Taxpayers must file information declaration of 'preferential tax regimes'

Individuals who are tax residents of Mexico must file an information declaration of preferential tax regimes in 2017 for fiscal year 2016. The information statement is required when the taxpayer:

- generates income from any 'tax haven' territories, as listed in the transitional provisions of the income tax law
- conducts transactions through transparent foreign legal entities and certain other entities.

Read the [article](#).



## Netherlands

### Dividend withholding tax refunds for foreign investment funds

The Dutch Supreme Court has referred questions to the CJEU for a preliminary ruling in two cases concerning foreign investment funds reclaiming Dutch withholding tax based on discrimination under EU law. Meijburg & Co. acted as legal counsel for the taxpayer in both cases.

Read the [article](#).

### **Commission decisions in Starbucks and Fiat Finance published**

The European Commission announced its final decisions on its state aid investigations into transfer pricing rulings granted by the Netherlands and Luxembourg to companies in the Starbucks and Fiat Finance groups, respectively. These decisions confirm the Commission's preliminary view that the rulings in question involved state aid.

Read the [article](#).



## **Nigeria**

### **Review of pioneer status and tax incentives**

An investigation by a Nigerian legislative committee will examine issues related to 'pioneer status', a fiscal incentive offered to companies operating in designated pioneer industries and/or producing pioneer products that can provide an income tax holiday for up to 5 years.

Read the [article](#).

### **Tax authority in Rivers State restricts abilities of revenue agents**

The Rivers State tax authority has taken steps to address issues of multiple taxation and issues that taxpayers have faced in the state.

Read the [article](#).



## **Pakistan**

### **Transfer pricing audit, penalty provisions in budget 2017**

Pakistan's federal budget for 2017-18 and the related finance bill include provisions establishing an office responsible for conducting transfer pricing audits (Directorate-General of Transfer Pricing). Also proposed are penalties for taxpayer failures such as failing to maintain or produce transfer pricing documentation and failing to file a Country-by-Country report on time.

Read the [article](#).



## **Singapore**

### **Interest expense from capital restructuring disallowed**

The Income Tax Board of Review disallowed a tax deduction for interest expense from shareholder bonds issued by the taxpayer. The bonds were a restructured form of capital from equity interests previously held by the shareholders.

Read the [article](#).



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## South Africa

### **Tax dispute settled for 1 percent of initial ZAR6 billion assessments**

KPMG's member firm in South Africa reports that its proactive management of the audit process, deep technical knowledge and strategic approach helped a company achieve a favorable result in a recent tax dispute.

The company was acquired and taken private as part of a leveraged buy-out transaction in 2007. In 2013, the South African Revenue Service (SARS) began to audit the transaction, issuing additional assessments in 2016 totaling over 6 billion South African rand (ZAR).

In 2017, KPMG in South Africa helped the company object to the disputed amount and file an appeal with the Tax Court. The KPMG member firm also helped the company institute judicial review proceedings against SARS in the High Court. KPMG in South Africa then facilitated discussions with SARS that culminated in the settlement of the entire tax dispute for a cash payment of less than 1 percent of the disputed amount, including the reversal of all interest and penalties – a highly successful result.

Further information:

— [Roula Hadjipaschalis](#)

— [Elle-Sarah Rossato](#)

### **Changes to dispute resolution process**

The South African Revenue Service (SARS) issued important changes to dispute resolution procedures on the SARS electronic filing platform that apply from 12 May 2017. The changes concern requests for reasons for a reassessment, requests for late submissions of a dispute, electronic suspension of payments applications, and the ability to request corrections electronically.

Read the [article](#).

### **South African SVDP and exchange control residents**

South Africa's Special Voluntary Disclosure Program (SVDP), now underway, gives another opportunity for non-compliant South African exchange control residents with undisclosed assets abroad to regularize those assets.

Read the [article](#).



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## Spain

### **CJEU judgment on amortization of goodwill for shareholdings in foreign companies**

The CJEU rendered its decision in two cases addressing whether the Spanish provisions allowing Spanish tax-resident companies to amortize goodwill arising on the acquisition of foreign holdings (as opposed to Spanish holdings) are in breach of EU state aid rules.

Read the [article](#).

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## Sri Lanka

### **Dispute resolution panel introduced for transfer pricing**

On the advice of the International Monetary Fund (IMF), Sri Lanka is introducing a new Inland Revenue Act that aims to modernize and simplify the tax system. One significant change is the introduction of a dispute resolution panel for resolving transfer pricing disputes.

The panel will comprise six members, including the chair and secretary, who will be appointed by the Commissioner General for a term not exceeding 2 years.

Any person who is dissatisfied with an interim order issued by a transfer pricing officer/assessor may communicate their dissatisfaction in writing to the Commissioner General within 14 days from the date of the interim order's receipt. Within 6 months of the communication, the Dispute Resolution Panel will make a final order.

Further information:

— [Suresh Perera](#)

— [Rifka Ziyad](#)

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## Sweden

### **Judgments on taxation of 'carried interest'**

The Stockholm Kammarrätten (tribunal) announced 85 judgments concerning the taxation of income, such as 'carried interest', from venture capital funds.

Read the [article](#).

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## Thailand

### **Potential criminal liability of company representatives**

Legislation amending 76 provisions under Thai law – including the tax law – reflects measures concerning the potential criminal liability of company representatives.

Read the [article](#).

### **Penalties not deductible expenses**

A Board of Taxation ruling confirmed that all penalties, criminal fines and surcharges imposed under any tax laws can no longer be claimed as a deductible expense.

Read the [article](#).



## UK

### **Permission to appeal granted in Prudential case**

The Supreme Court granted HM Revenue & Customs permission to appeal in the *Prudential* case, which is test case in the *CFC & Dividend GLO*. The *Prudential* case concerns the UK's historical tax treatment of dividends received from overseas portfolio holdings.

Read the [article](#).

### **Chancellor reverses decision on National Insurance contributions for self-employed**

In an open letter to members of Parliament, the UK Chancellor announced that a planned rise in Class 4 National Insurance for the self-employed will not go ahead.

Read the [article](#).

### **Transfer pricing dispute resolution, new remedies reflecting BEPS recommendations**

Action 14 of the OECD Action Plan on Base Erosion and Profit Shifting (BEPS) seeks to improve dispute resolution mechanisms for relieving double taxation. Following on the OECD's Action 14 proposals, multiple announcements from the OECD, the European Commission and HM Revenue & Customs are changing the landscape for transfer pricing dispute resolution.

Read the [article](#).



## US

### **Government appeals Tax Court's decision, section 482 adjustment**

The US government filed a notice of appeal with the US Tax Court, appealing that court's finding in a 2016 case that the Internal Revenue Service's section 482 adjustments of US\$548 million for 2005 and US\$810 million for 2006 were "arbitrary, capricious and unreasonable".

Read the [article](#).

### **Employee tax return information is discoverable to absolve employer**

The US Tax Court issued a 'reviewed opinion' in a case concerning the disclosure of third-party taxpayer information to absolve an employer of its tax liabilities.

Read the [article](#).

### **Lawsuits challenging activities leading to a US federal tax assessment**

The US Court of Appeals for the Tenth Circuit held that lawsuits challenging 'activities leading up to and culminating in' a US federal tax assessment are barred by the Anti-Injunction Act and the

Declaratory Judgment Act.

Read the [article](#).

**US Supreme Court: Certiorari denied in state tax cases, retroactive tax changes**

The US Supreme Court issued orders denying petitions for certiorari (i.e. higher court review) in several cases challenging the constitutionality of retroactive state tax law changes.

Read the [article](#).



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- Learn about the [KPMG LINK 360 Global Disputes Management Module](#)
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