



# Tax Alert

## Issue 36 | October 2017

In this Issue, we bring you our Quarterly Global Tax Disputes Update (September 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

### Tax audit investigation and inquiry – managing broad information requests

In today's world of government shortfalls and deficits, corporate taxpayers in many jurisdictions are seeing ever more requests for information from local tax authorities. Companies need to think differently to mitigate any potential information-gathering issues and/or difficulties that may arise during an audit with their local tax authority.

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

## Insights from around the world:

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KPMG in Singapore

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

## Australia

### Senate Inquiry provides update on anti-avoidance progress

An August 2017 hearing of the Senate Corporate Tax Avoidance Inquiry delivered insights on the interaction over the past 2 years between the Australian Taxation Office and major companies, including Apple, Microsoft, Facebook and Google.

Read the [article](#).

### Tax residency – a burning platform to get it right

In *Bywater/Hua Wang Bank*, Australia's High Court found that various foreign-incorporated entities had been centrally managed and controlled in Australia and also carried on business in Australia, and thereby had become Australian residents.

Read the [article](#).

### Taxpayer withdraws appeal; transfer prices and related-party loans

A taxpayer has decided to withdraw its appeal to the High Court concerning an assessment by the Australian Taxation Office of AUD\$340 million in tax and penalties for interest payments made to related offshore parties.

Read the [article](#).



## Belgium

### Foreign tax credits, French-sourced dividends distributed to Belgian individuals

The Belgian Supreme Court (*Cour de Cassation*) ruled that the French withholding tax on dividends attributed to a Belgian individual resident must be (partially) credited against the Belgian tax due on those dividends.

Read the [article](#).

### State aid: Commission requires Belgium and France to abolish corporate tax exemptions for ports

Following a formal state aid investigation procedure, the European Commission issued a decision on 27 July 2017, requiring France and Belgium to put an end to corporate tax exemptions granted to their ports.

Read the [article](#).



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## Brazil

### **Installment program for resolving ICMS liability (São Paulo)**

The Brazilian state of São Paulo has established a program that allows for the settlement of state value-added tax (ICMS) liabilities with reductions in penalty and interest assessments.

Read the [article](#).

### **Tax amnesty would allow settlement using tax losses**

Changes to a proposed tax amnesty program, if finalized, would allow Brazilian taxpayers to resolve outstanding tax liabilities using a combination of cash and net operating losses.

Read the [article](#).



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## Canada

### **Draft guidelines; voluntary disclosure relief restricted for large corporations, curtailed for GST/HST**

New guidelines proposed by the Canada Revenue Agency (CRA) would restrict the use of a voluntary disclosure program as follows:

- The draft guidelines would no longer allow large Canadian companies to take part in the program for income tax matters.

Read the [article](#).

- The CRA is also consulting on guidelines that would restrict relief available under the program for Canada's Goods and Services Tax/Harmonized Sales Tax (GST/HST).

Read the [article](#).



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## Czech Republic

### **Case law expands when expenses are tax-deductible**

New case law may afford more opportunities for claiming tax-deductible expenses in the Czech Republic.

Read the [article](#).



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## European Union

### **European Parliament plenary session – double tax dispute resolution, public country-by-country reporting**

At plenary sessions in July 2017, the European Parliament adopted reports setting out its recommended amendments to the European

Commission's proposal on public country-by-country reporting and the proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms.

Read the [article](#).

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## France

### **No permanent establishment found of Irish entity**

An administrative court in Paris – in a proceeding initiated when the French tax authorities alleged 'tax evasion' – determined that an Irish entity did not have a permanent establishment in France for purposes of either corporate income tax or value-added tax.

Read the [article](#).

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## Finland

### **Finnish exit tax and restriction on freedom of establishment**

The Advocate General of the Court of Justice of the European Union delivered an opinion in a case concerning the exit tax provisions under Finnish tax law, finding that the Finnish tax provisions requiring the immediate recovery of the exit tax are in breach of the freedom of establishment.

Read the [article](#).

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## India

### **R&D expenditure eligible for deduction prior to approval**

The Delhi High Court held that research and development (R&D) expenses of a facility were eligible for weighted deduction before the Department of Scientific and Industrial Research had approved the facility.

Read the [article](#).

### **Profits from offshore, onshore services attributable to PE**

The Delhi Bench of the Income-tax Appellate Tribunal held that profits relating to services rendered inside and outside of India by the taxpayer for Indian projects were taxable in India. The court found the profits were attributable to a supervisory permanent establishment (PE) because the taxpayer and the PE were effectively connected with each other.

Read the [article](#).

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## Italy

### **Demerger followed by transfer of shares, not abusive transaction**

The Italian tax authority (*Agenzia delle Entrate*) issued a tax ruling that addresses the application of the 'abuse of law' rule to a demerger that is followed by a sale of shares in the demerging company by its shareholders.

Read the [article](#)

### **Opportunity to resolve judicial tax disputes without interest, penalties**

Newly enacted measures provide taxpayers in Italy with an opportunity to settle tax disputes pending before the Italian courts by paying only the amount of the tax liability (but not interest and penalties).

Read the [article](#)



## **Kenya**

### **Voluntary disclosure by taxpayers, under tax amnesty program**

Kenya recently introduced a tax amnesty program that bars the tax authority from levying taxes, penalties and interest on foreign income earned before 31 December 2016, if that income is voluntarily declared under the amnesty.

Read the [article](#).



## **Mexico**

### **Tax implications of 'nonexistent transactions'**

Transactions with entities that allegedly engage in 'nonexistent transactions' present risks to companies in Mexico. Under Mexican law, the tax administration can presume the nonexistence of certain transactions if the tax officials find that the subject business does not have assets, personnel or infrastructure required to provide services or to produce, market or deliver goods covered by the receipts, or that such businesses cannot be located.

Read the [article](#).



## **Nigeria**

### **Tax amnesty program**

The Federal Ministry of Finance has been authorized to establish a 'voluntary assets and income declaration scheme' for taxpayers with unpaid tax liabilities – that is, a tax amnesty program.

Read the [article](#).



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## Organisation for Economic Co-operation and Development

### Third batch of BEPS 'dispute resolution' peer reviews

The Organisation for Economic Cooperation and Development announced that it is currently gathering input for mutual agreement procedure peer reviews under Action 14 of the base erosion and profit shifting (BEPS) project.

Read the [article](#).

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## Taiwan

### Tax audits of representative offices of foreign companies

The National Tax Bureau of Taipei recently initiated tax audits for representative offices focused on their compliance with their value-added tax obligations.

Read the [article](#).

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## United Kingdom

### Companies incorporated in Jersey; residents of UK?

The First-tier Tribunal's decision in a recent case on whether Jersey-incorporated companies were resident in the UK raises some difficult questions about the present state of the UK law on company residence.

Read the [article](#).

### Corporate criminal offence – final HMRC guidance published

HM Revenue & Customs has finalized its guidance on the new corporate criminal offence of failing to prevent the facilitation of tax evasion

Read the [article](#).

### Successful representations against Accelerated Payment Notices

KPMG in the UK helped a company make representations against Accelerated Payment Notices (APN) and succeeded in convincing HM Revenue & Customs (HMRC) that the APNs should be withdrawn.

APNs are relatively new to UK tax legislation and tax disputes procedures. The 2014 Finance Act introduced rules that permit HMRC to issue APNs in certain cases requiring taxpayers to pay the tax before the disputed matter is resolved. Specifically, APNs can be issued in cases where the disputed matter arose from the use of an avoidance scheme that was notifiable under the 2004 Disclosure of Tax Avoidance Schemes (DOTAS) regulations. Previously, any outstanding tax became payable when the disputed matter was finally determined, either by agreement between HMRC and the taxpayer or by a court following litigation.

It is not possible to 'appeal' APNs but representations can be made to HMRC, which can consider whether the APN was validly issued or should be amended or withdrawn. Since APNs were introduced, APNs have been challenged in numerous Judicial Review proceedings against HMRC but with little success. HMRC has accepted representations and withdrawn APNs in a few cases but has usually rejected the representations, so most APNs have been upheld.

In the case at hand, a company had undertaken transactions that were similar to but not the same as a relatively common avoidance scheme. In line with common practice at the time, the transaction was treated as falling within the DOTAS rules. When the company submitted the tax return that included the results of the transactions, the company included the DOTAS scheme reference number. HMRC considered this inclusion to justify issuing APNs to the company. However, KPMG in the UK submitted to HMRC that even though the DOTAS scheme reference number had been provided to HMRC, the relevant transactions were not in fact notifiable as an avoidance scheme. HMRC accepted KPMG's representations and withdrew the APNs.

Further information:

— [Kevin Elliott](#)

### **Supreme Court finds for HMRC in *Rangers EBT* case**

The UK Supreme Court considered whether amounts paid to an Employee Benefit Trust (EBT) by an employer for the benefit of an employee were taxable on the employee as earnings.

Read the [article](#).

### **Tax deadlock: What is mediation and when can it be helpful?**

In the 10 August 2017 edition of Taxation, Kevin Elliott and Suzie Moore of the Tax Disputes team of KPMG in the UK highlight the benefits of mediation in bringing entrenched tax disputes to resolution.

Read the [article](#). (reproduced with permission).



## **United States**

### **Cancellation of APAs by IRS, abuse of discretion**

The US Tax Court issued a memorandum opinion that concluded, in part, that cancellation by the Internal Revenue Service (IRS) of advance pricing agreements (APA) was an abuse of discretion.

Read the [article](#).

### **Foreign company's capital gain not effectively connected income**

The US Tax Court issued an opinion holding that a capital gain realized by a foreign company on the redemption of its interest in a US limited liability company was not US-sourced income and that it was not effectively connected with a US trade or business.

Read the [article](#).

**Foreign partners: Tax Court rejects IRS's position; implications for private equity funds**

In *Grecian Magnesite Mining Co. v. Commissioner*, the US Tax Court rejected the Internal Revenue Service's (IRS) position that a foreign partner's capital gain from the sale of an interest in a partnership that is engaged in a US trade or business is treated as a gain that is effectively connected to a US trade or business and therefore subject to US federal income tax.

Read the [article](#).

The decision in *Grecian Magnesite Mining Co.* may have significant implications for private equity fund sponsors.

Read the [article](#).

**Ninth Circuit: Disregarded entities can be pass-through partners, under TEFRA**

The US Court of Appeals for the Ninth Circuit affirmed the US Tax Court's dismissal of a petition challenging a notice of Final Partnership Administrative Adjustment for lack of jurisdiction. As a result, the partnership was subject to audit procedures under the Tax Equity and Fiscal Responsibility Act (TEFRA).

Read the [article](#).

**Third Circuit: Taxpayer not allowed deductions under loss duplication rule**

The US Court of Appeals for the Third Circuit affirmed a decision of the US Tax Court that US\$199 million of losses claimed by a taxpayer for 2001 and for 2002-2003 were deducted for the same underlying economic loss in the form of an underlying decline in the value of subsidiaries.

Read the [article](#).



**Vietnam**

**Foreign contractor tax liability, goods imported before October 2014**

The General Department of Taxation issued guidelines that may be viewed as an effort to require companies to declare and pay foreign contractor tax on all imported goods with 'warranty terms attached' in periods before October 2014.

Read the [article](#).



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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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