



Tax Alert

Issue 47 | December 2017

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

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Australia

ATO change in audit procedures, 'real-time compliance'

The Australian Taxation Office (ATO) is shifting its audit procedures toward 'real-time compliance' with an aim of greater tax certainty in Australia through measures such as annual compliance

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arrangements, pre-lodgment compliance reviews and the reportable tax position schedule.

Read the [article](#).

ATO on life sciences: 'One size does not fit all'

The Australian Taxation Office (ATO) is currently examining 21 pharmaceutical companies through advance pricing arrangements, risk reviews or audits. The ATO will also focus on 200+ life sciences and medical devices companies.

Read the [article](#).

Tax
KPMG in Singapore

Asia Tax Firm of the Year - *Asia Tax Awards 2016 & 2017, International Tax Review*.
Ranked Tier 1 Firm in Singapore - *World Tax 2017, International Tax Review*.
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.

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

Austria

Interpretation of 'income from debt-claims with participation in profits'

The Court of Justice of the European Union rendered its decision in *Austria v Germany*, which involved the interpretation of the phrase 'income from debt-claims with participation in profits' within the tax treaty between the two countries. (See also the article under "Germany" below.)

Read the [article](#).

High court addresses corporate group taxation rules

The Austrian Administrative Supreme Court issued judgments that address the application of the Austrian corporate group taxation regime rules.

Read the [article](#).

Belgium

Treatment of interest payments, exempt dividends under Parent-Subsidiary Directive

The Court of Justice of the European Union (EU) ruled on the compatibility of the EU Parent-Subsidiary Directive with Belgian rules that disallow interest deduction to the extent that, in the same tax year, a taxpayer received exempt dividends from shares held for less than 1 year, regardless of whether the interest payments relate to the holding.

Read the [article](#).

Canada

Increased penalties for 'aggressive tax planning' in Quebec

Penalties assessed under Quebec's general anti-avoidance rule (GAAR) will increase to address what has been perceived to be "aggressive tax planning", and the start of the normal reassessment period will be suspended in certain GAAR-related situations. Changes are also being made to Quebec's 'tax informant reward'

program.

Read the [article](#).



European Union

New rules, process for resolving tax treaty-related disputes

The European Commission announced that the EU member states have given a “green light” for new rules to “better resolve tax disputes.”

Read the [article](#).



Finland

Transfer of foreign permanent establishment, taxation of unrealized gains

The Court of Justice of the European Union issued a judgment in a case concerning the immediate taxation in Finland of the unrealized gains of a permanent establishment on its transfer to a company, when both are located in another EU member state.

Read the [article](#).



France

Dividends distribution tax (3 percent) held unconstitutional; possible refund opportunities

The French Constitutional Court (*Conseil Constitutionnel*) held that the 3 percent tax imposed on distributions of dividends is unconstitutional. The court further concluded its decision would have an immediate effect and apply to all currently pending litigation.

Read the [article](#).

Advocate General’s opinion on French mechanism for deferred taxation of capital gains

Advocate General Wathelet of the Court of Justice of the European Union (EU) published his opinion in two income tax cases dealing with the compatibility of the EU Merger Directive with a national rule providing for the deferral of taxation of capital gains on an exchange of shares falling within the directive’s scope.

Read the [article](#).



Germany

Court decisions on corporate participations, unused losses, transfers of reserves, deductible expenses

Recent court decisions on German corporate taxation involve:

- interpretation of the term “income from debit-claims with participation in profits” and resulting in withholding in Germany under the tax treaty between Germany and Austria (also see the article under “Austria” above)
- constitutionality of rules denying unused losses in certain cases
- transfer of reserves to a foreign permanent establishment within the European Union
- application of the general non-deductibility of business expenses of 5 percent to tax-exempt dividend payments of a foreign company that have already been subject to controlled foreign company taxation in Germany.

Read the [article](#).



India

Permanent establishment under India-US tax treaty

The Supreme Court of India held that the outsourcing of work to an Indian subsidiary of a US company that provides back-office support services does not constitute a fixed-place permanent establishment in India under the India-US tax treaty.

Read the [article](#)

Anti-avoidance provisions when assets are transferred from a non-resident to a resident

The Mumbai Bench of the Income-tax Appellate Tribunal ruled that no capital gains addition is required under anti-avoidance provisions where assets are transferred from a non-resident to a resident.

Read the [article](#)



Japan

Tax agency's Q&A guidance on mutual agreement procedure

The Japanese tax agency released guidance for taxpayers on the mutual agreement procedure in the form of questions and answers on the tax agency's website.

Read the [article](#).



Luxembourg

Transfer pricing rulings granted multinational entity group; EC

investigation

The European Commission (EC) announced a final decision in its state aid investigations into transfer pricing rulings granted by Luxembourg to a multinational group. The EC found that the rulings may underestimate the taxable profits of the group by deviating from the arm's length principle and therefore constitute illegal state aid.

Read the [article](#).



OECD

First reviews, implementation of BEPS tax dispute resolution mechanisms

The Organisation for Economic Cooperation and Development (OECD) released the first peer reviews – analyses of efforts by Belgium, Canada, the Netherlands, Switzerland, the United Kingdom and the United States – on their implementation of the base erosion and profit shifting (BEPS) minimum standards for improving tax dispute resolution mechanisms.

Read the [article](#).



Singapore

Direct link required for money borrowed and income produced

The High Court of Singapore affirmed that for interest deductibility purposes, there must be a direct link between the money borrowed and the income produced.

Read the [article](#).



South Africa

Extended scope of anti-avoidance provisions to trusts, companies

The South African Revenue Service is seeking to expand the scope of anti-avoidance rules by linking certain transactions of individuals, trusts and companies.

Read the [article](#)



United Kingdom

EC investigation, treatment of multinational groups under CFC regime

The European Commission (EC) is investigating a UK group financing exemption scheme that allows certain transactions by multinational groups to be exempt from anti-avoidance rules targeting controlled foreign corporations (CFC).

Read the [article](#).

Marathon Oil UK LLC v HMRC – First-tier Tribunal decision

The First-tier Tribunal rejected an appeal for capital allowances on a fee paid for future decommissioning services.

Read the [article](#).



United States

Ninth Circuit: Debt versus equity implications for foreign tax credits

The US Court of Appeals for the Ninth Circuit affirmed a decision of the US Tax Court, finding that a taxpayer's transaction was debt and thus could not be treated as equity qualifying for foreign tax credits.

Read the [article](#).



Vietnam

Transfer pricing audits of related-party royalty, service fee payments

Following new laws and guidance issued earlier in 2017, provincial tax authorities have enhanced their focus on reviewing and challenging what were – until now – “historical” corporate income tax deductions for royalties and service fee payments made to related parties of Vietnamese taxpayers.

Read the [article](#).



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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](#)
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