



# Tax Alert

## Issue 13 | April 2018

In this Issue, we bring you our Quarterly Global Tax Disputes Update (March 2018 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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## Australia

### **ATO guideline on cross-border related-party financing arrangements, transactions**

The Australian Taxation Office (ATO) released a 'practical compliance guideline' on its approach to tax issues associated with cross-border related-party financing arrangements and related transactions.

Read the [article](#).

### **Opportunity for reduced penalty and interest for India-based companies providing technical services**

For taxpayers identified by the Australian Taxation Office (ATO) as being affected by the Full Federal Court's decision in the *Tech Mahindra Limited* case, the deadline is nearing for engaging with the ATO and benefiting from the considerable tax concessions on offer.

Read the [article](#).

Ranked Tier 1 Firm in Singapore - World Tax and World Transfer Pricing 2018, *International Tax Review*  
Asia Tax Firm of the Year - Asia Tax Awards 2017 & 2018, *International Tax Review*  
Best Advisor in Real Estate Tax Globally - Real Estate Awards 2017, *EuroMoney*

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## Belgium

### **Constitutional Court's decision on 'fairness tax'**

The Belgian Constitutional Court issued a decision that 'cancels' provisions of the law that introduced the 'fairness tax'. However, the court upheld the consequences of the law for assessment years 2014 to 2018 (except for provisions that are in breach of the European Union Parent-Subsidiary Directive on redistributed dividends).

Read the [article](#).

### **Introduction of the innovation income deduction regime**

Belgium's new innovation income deduction regime complies with the Organisation for Economic Co-operation and Development's (OECD) Action Plan on Base Erosion and Profit Shifting. The regime foresees a deduction of 85 percent of qualifying income. The regime applies not only to patents, including product and production process patents, but also to copyright-protected software.

The regime has been subject to an increasing number of tax and transfer pricing audits, and a significant number of companies seeking to use the regime have opted to obtain an advance unilateral ruling with the Belgian tax administration. Applying for a ruling avoids lengthy and time-consuming disputes with the Belgian tax authorities and offers legal certainty to the taxpayers concerned.

KPMG in Belgium has assisted and advised numerous companies in a variety of industries seeking rulings, guiding them through the ruling process and delivering the necessary economic and transfer pricing analysis to support their proposed innovation income deduction claims.

Further information:

[Dirk Van Stappen](#)



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## Brazil

### **Corporate income tax and taxability of state tax incentives**

The First Section of the Superior Court of Justice (STJ) has clarified whether incentive tax credits (i.e. ICMS presumed credits) granted to taxpayers by the Brazilian states should be as part of the tax basis for Brazil's corporate income tax (IRPJ) and social contribution on net profits (CSLL).

The court ruled (RESP Nº 1.517.492 – PR) that tax incentives granted by the states cannot be taxed by the federally since this would damage the Federation Principle. The court also ruled that taxpayers are entitled to refunds of tax paid on such incentives in the last 5 years.

However, since the tax authorities are not bound by this decision, taxpayers need to claim these refunds through an administrative or judicial proceeding.

Further information:

[Marcos H M Matsunaga](#)

### **PIS and COFINS tax credits: court win for taxpayers**

On 22 February 2018, the Superior Court of Justice (STJ) extended the concept of 'inputs' for calculating PIS and COFINS (valued added tax) credits. The court decided that the tax credits should be calculated on all acquisitions of goods and services that are essential for producing goods or for rendering services. The court also ruled that the Normative Instructions n. 247 and 404, which provided the tax authorities' understanding regarding the PIS and COFINS tax credits, are illegal.

The controversy over PIS and COFINS tax credits is a major cause of tax disputes and litigation in Brazil at the federal level. Although there is still room for discussion about the meaning of 'essential' in specific situations, the STJ ruling provides guidance and represents a major win for taxpayers.

Further information:

[Marcos H M Matsunaga](#)

### **Changes to 'tax haven' and 'privileged tax regimes' lists, transfer pricing implications**

Costa Rica, Madeira and Singapore have been removed from the list of 'tax havens' in Brazil. However, certain specific regimes within those jurisdictions are listed as 'privileged tax regimes'.

Read the [article](#).



## Canada

### **New 'education' audits of charities by Canada Revenue Agency**

The Canada Revenue Agency has initiated a new educational program to help charities comply with their tax obligations and avoid common errors.

Read the [article](#).



## China

### **Interim customs administrative measures on advance rulings**

China's General Administration of Customs issued new guidance on its advance rulings program:

- One announcement summarizes interim administrative measures on advance rulings that are effective 1 February 2018. Read the [article](#).
- A second announcement, issued 31 January 2018, clarifies further details of the interim administrative measures. Read the [article](#).



## Czech Republic

### **Binding rulings, determining tax base of permanent establishments**

Beginning 1 January 2018, taxpayers may ask the tax administrators for binding rulings on the manner of determining the tax base of a permanent establishment (or a registered branch of a foreign entity) located in the Czech Republic.

Read the [article](#).

### **Proposed changes to income tax law for 2019**

The first draft of an amendment to the income tax law, released by the Ministry of Finance for comments, would implement certain tax law changes expected to be effective in 2019.

Read the [article](#).

### **Changes in VAT law expected in 2019**

The Czech Ministry of Finance submitted a draft amendment to the value added tax (VAT) law that would take effect in January 2019. Among other things, the amendment would transpose new European Union (EU) regulations into Czech legislation and harmonize existing Czech regulations with EU legislation and interpretations of the Court of Justice of the EU.

Read the [article](#).



## Denmark

### **Cross-border loss relief rules; deductibility of losses from foreign permanent establishments**

An advocate general of the Court of Justice of the European Union (EU) issued an opinion on the compatibility with EU law of the Danish rules on the deductibility of losses from foreign permanent establishments.

Read the [article](#).

### **Deductibility of losses from Danish permanent establishment when head office not Danish tax resident**

An advocate general of the Court of Justice of the European Union (EU) issued an opinion on the compatibility with EU law of the Danish rules on the deductibility of losses from a Danish permanent establishment whose head office is not tax resident in Denmark.

Read the [article](#).

### **'Beneficial owner' when back-to-back financing by non-resident parent company**

An advocate general of the Court of Justice of the European Union (EU) issued three milestone opinions regarding the interpretation of the beneficial owner concept in cases where the Interest and Royalties Directive and the Parent-Subsidiary Directive are applicable.

Read the [article](#).



## European Union

### **Review of CJEU judgments, CJEU Advocate General opinions, infringement procedures and referrals**

The 17 January 2018 edition of *e-News* from the *EU Tax Centre* offers a round-up of Court of Justice of the European Union (EU) decisions and opinions and other tax developments that can have both a domestic and a cross-border impact.

Read the [article](#).



## France

### **Tax audit trends**

In the last few years, France's International Tax Audit Department appears to have sharpened its focus on financing schemes, with particular attention to interest rates, thin capitalization and substance. KPMG in France is now seeing more and more tax disputes on financing schemes, most recently involving the French anti-hybrid mechanism introduced in 2013.

Under this mechanism, interest is not tax-deductible in France where it is not subject to corporate income tax in the lender's country at a rate equal to at least 25 percent the French corporate income tax. This mechanism covers not only hybrid instruments but

also standard loans granted by lenders located in a low-tax jurisdiction.

This matter is likely to be subject to litigation if the French Tax Authorities maintain their broad interpretation of the rules.

Further information:  
[Audrey-Laure Illouz](#)

#### **Draft of law for creating a trust relationship**

The French Parliament is considering a draft law for creating a trust relationship between the state and citizens. If it is passed by Parliament, some of the draft law's provisions will have tax impacts.

One purpose of the draft law is to officially recognize the right to make mistakes. For tax matters, in cases of spontaneous regularization, interest for late payment would be reduced by 50 percent and penalties would not be applied.

If enacted, the law would also entitle taxpayers to a written opinion from tax inspectors on the topics they investigated during a tax audit and enhance taxpayers' ability to request rulings to obtain certainty on proposed tax positions.

Further information:  
[Audrey-Laure Illouz](#)

#### **Tax waiver on capital reclassification held 'state aid'**

The General Court of the European Union upheld a decision of the European Commission for France to recover approximately 1.37 billion euros (EUR) from Électricité de France. The amount recovered represents 'state aid' in the form of a waiver of the tax on the reclassification of rights in capital.

Read the [article](#).

#### **Decision expected to address constitutionality of anti-avoidance tax provision**

The French Constitutional Court is expected to issue a decision on the constitutionality of an anti-avoidance tax provision concerning the rules on the recapture of financial expenses of a French tax group on acquiring a corporation. The decision could affect the application of other French tax avoidance rules.

Read the [article](#).



## **Germany**

#### **Participation exemption, dividends originating in third countries**

An advocate general of the Court of Justice of the European Union (EU) issued an opinion concluding that the German participation exemption regime for dividends originating in third countries is contrary to the free movement of capital.

Read the [article](#).



## India

### **First bilateral APA signed with United States**

Tax officials in India signed the first bilateral advance pricing agreement (APA) with the United States.

Read the [article](#).

### **APAs on treatment of advertising, marketing, and promotion expenses**

The Central Board of Direct Taxes announced the conclusion of two advance pricing agreements (APA) addressing the treatment of advertising, marketing and promotion expenses.

Read the [article](#).



## Malaysia

### **Revisions, updates to APA rules and MAP guidelines**

The Malaysia Inland Revenue Board amended the rules applying to advance pricing arrangements (APA) and revised the mutual agreement procedure guidelines.

Read the [article](#).



## Netherlands

### **EC state-aid investigations, whether tax rulings provide 'unfair advantage'**

The European Commission (EC) opened an in-depth investigation concerning two Dutch tax rulings and whether they may have allowed a company to pay less tax and provided an 'unfair advantage' over other companies, in breach of European Union state aid rules.

Read the [article](#).

### **Bonus shares not under fixed exemption as work-related costs**

In a case concerning whether the allocation of bonus shares falls under the fixed exemption of the work-related costs rules, the Amsterdam Court of Appeals held that the allocation of bonus shares to a select group of employees was 'unusual' and therefore not within the standard criterion under generally accepted standards for purposes of the work-related costs rules.

Read the [article](#).



## New Zealand

### **BEPS implementing legislation would affect related-party loans, transfer pricing rules**

A bill concerning base erosion and profit shifting (BEPS) has been introduced in New Zealand that would implement the government's policies concerning BEPS matters.

Read the [article](#)

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## Nigeria

### **Voluntary assets and income declaration scheme and responsible tax**

Nigeria's Voluntary Assets and Income Declaration Scheme (VAIDS), launched as of 1 July 2017, gives defaulting taxpayers the opportunity to make up their outstanding tax obligations from 2011 to 2016 in return for waiver of penalty and interest and criminal prosecution.

Read the [article](#).

### **Summary of 2017 tax developments**

Nigerian Tax Journal 2018 provides a round-up of 2017 tax developments, including tax cases, regulatory changes and administrative pronouncements.

Read the [article](#).

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## Norway

### **Guidelines for mutual agreement procedure**

The Ministry of Finance in Norway published mutual agreement procedure guidelines that apply under Norway's network of income tax treaties.

Read the [article](#).

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## Oman

### **Court decisions: finance leases, tax loss carryforwards; new withholding tax regime**

KPMG in Oman summarizes the outcome of recent tax litigation involving:

- the classification of finance leasings for tax purposes
- the ability to carry forward of tax losses incurred in a period in which the taxpayer is tax-exempt

KPMG in Oman also summarizes changes to the country's withholding tax regime.

Read the [article](#).



## Poland

### **EC opens investigation of tax incentive for Polish shipyards**

The European Commission opened an investigation into a Polish tax incentive that gives shipyards operating in Poland the option of paying a 1 percent flat-rate tax on sales from the building and conversion of ships, instead of paying the generally applicable corporate or personal income tax rates.

Read the [article](#).



## Turkey

### **Rules of origin for EU-originated goods, customs duties**

The rules for certificates of origin for goods imported into Turkey from the European Union have been simplified with measures that took effect 28 February 2018.

Read the [article](#).



## United Kingdom

### **Penalties for inaccuracies in returns and documents**

A policy change of HM Revenue and Customs (HMRC) regarding the penalty for inaccuracies in returns and documents is important for employers who are subject to HMRC reviews of their PAYE/benefit records.

Read the [article](#).

### **Redenomination of qualifying corporate bonds**

The UK Court of Appeal found that provisions allowing bonds to be redenominated to euros if the UK changed its lawful currency do not prevent bonds from being qualifying corporate bonds.

Read the [article](#).

### **Loan notes received by employees not restricted securities**

The Upper Tribunal held that loan notes received by employees are not restricted securities for UK income tax purposes.

Read the [article](#).

### **Proposed profit apportionment of taxpayers in oil and gas sector**

The First-tier Tribunal ruled that a proposed profit apportionment for oil and gas companies was just and reasonable.

Read the [article](#).

### **HMRC interpretation of termination payment rules**

HM Revenue & Customs confirmed its interpretation of the commencement provisions for the new rules on non-contractual pay in lieu of notice. The new rules apply to payments made on or after 6 April 2018 where the employment ended on or after 6 April 2018.

Read the [article](#).

### **Updated MAP statement of practice and associated guidance**

The new Statement of Practice and guidance from HM Revenue & Customs on the mutual agreement procedure gives further assistance to UK taxpayers seeking relief from double taxation.

Read the [article](#).

### **HMRC guidance on end-use relief**

New guidance from HM Revenue & Customs on the application of end-use relief will affect businesses importing goods when the use or end destination is not known.

Read the [article](#).



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## **United States**

### **Foreign tax credits for 'compulsory levies' paid by Mexican branch**

The US Tax Court held that Mexican taxes paid by a US taxpayer's Mexican licensee were 'compulsory levies' eligible for foreign tax credits.

Read the [article](#).

### **No capital gains treatment of royalties, “all substantial rights” in patents not transferred**

The US Court of Appeals for the Ninth Circuit affirmed a US Tax Court decision that a taxpayer was not entitled to capital gains treatment on patent-generated royalties because the taxpayer had not transferred ‘all substantial rights’ in the patent.

Read the [article](#).

### **Statute of limitations for certain omissions of gross income**

The US tax court held that the 6-year statute of limitations period, expanded in 2010 for reporting requirements for ‘specified foreign financial assets’, has effect only for tax years to which the reporting requirement is applicable.

Read the [article](#).

### **IRS practice units: Adjustments to debt basis, stock basis ordering rules**

The Internal Revenue Service’s (IRS) Large Business and International division publicly released two ‘practice units’ part of a series of IRS examiner ‘job aides’ and training materials intended to describe for IRS agents leading practices about tax concepts in general and specific types of transactions. The new practice units address:

- adjustments to debt basis – read the [article](#)
- stock basis ordering rules – read the [article](#)

### **Certiorari granted in South Dakota case seeking to overturn *Quill***

The US Supreme Court granted certiorari in a case in which South Dakota seeks to have the court uphold a statute imposing economic nexus standards on remote sellers. In its petition for certiorari, South Dakota asked the court to revisit and abrogate the sales and use tax physical presence nexus requirement upheld in *Quill v. North Dakota*.

Read the [article](#).

### **LB&I directives on transfer pricing examinations**

The Internal Revenue Service’s Large Business and International (LB&I) division publicly released a set of five directives as guidance for examinations of transfer pricing issues.

Read the [article](#).

### **IRS concludes some foreign currency agreements are not insurance**

The IRS publicly released a Chief Counsel Advice memorandum that determines an arrangement involving foreign currency fluctuations between an affiliated group and a related captive insurer does not constitute insurance for federal income tax purposes.

Read the [article](#).

### **False Claims Act violations: Cautionary tales when customs declarations are falsified**

An announcement from the US Justice Department warns US companies of their potential liability when they or their business partners or suppliers falsify customs declarations.

Read the [article](#).

### **Loan guarantees by CFCs includible in taxpayer's gross income**

The US Tax Court found that a US shareholder of two controlled foreign corporations (CFC) that had in turn guaranteed loans made to a US person must include the CFCs' applicable earnings in its gross income and that the amount so included is taxable as ordinary income.

Read the [article](#).

### **Adequate disclosures to reduce accuracy-related penalty**

The Internal Revenue Service's new Revenue Procedure 2018-11 identifies circumstances when a disclosure on a taxpayer's income tax return with respect to an item or position is adequate for reducing the accuracy-related penalty under section 6662(d) of the Internal Revenue Code and avoiding the tax return preparer penalty under section 6694(a).

Read the [article](#).

### **Effects of tax returns filed with Virgin Islands' tax bureau**

The US Tax Court released a 'reviewed opinion' in which the court – noting that a non-resident of the US Virgin Islands having both US and Virgin Island income must file a return with the Virgin Islands Bureau of Internal Revenue (VIBIR) and also with the IRS to satisfy the requirement to file a return under the Internal Revenue Code – concluded that the VIBIR's sharing of information with the IRS amounts to filing a return.

Read the [article](#).

### **Adjusting tax attributes under centralized partnership audit regime**

The US Treasury Department and Internal Revenue Service proposed regulations addressing how partnerships and their partners adjust tax attributes to take into account partnership adjustments under the centralized partnership.

Read the [article](#).

### **US company settles alleged false statements on customs declarations**

The US Justice Department announced that a company headquartered in Tennessee agreed to pay 500,000 US dollars (USD) to resolve allegations that it violated the False Claims Act by making false statements on customs declarations in an effort to avoid paying antidumping duties on wooden bedroom furniture imported from China.

Read the [article](#).



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