



# Tax Alert

## Issue 20 | October 2018

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

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## Australia

**ATO continued focus on identifying high-risk transfer pricing**

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## arrangements

The Australian Taxation Office (ATO) released the 2018 International Dealings Schedule stationery and instructions for 2018 tax years, with updates focused on identifying topical transfer pricing risks.

Read the [article](#).

### **ATO ruling when foreign-incorporated entity is Australian tax resident**

The Australian Taxation Office (ATO) released a much-anticipated Taxation Ruling on central management and control test of residency. The ruling covers the circumstances in which a foreign-incorporated entity may be an Australian tax resident.

Read the [article](#).

### **Federal Court decision regarding interest on overpaid GST**

The Federal Court ruled that in determining an entitlement to any delayed refund interest, the relevant date in calculating the interest owing was when the entitlement to a refund arose. This was a date earlier than when the taxpayer gave notice of the overpayment of goods and services tax (GST).

Read the [article](#).

Ranked Tier 1 Firm in Singapore – World Tax, World Transfer Pricing and Tax Transactional 2018, *International Tax Review*  
Asia Tax Firm of the Year – Asia Tax Awards 2016, 2017 & 2018, *International Tax Review*  
National Transfer Pricing Firm of the Year and National Tax Disputes & Litigation Firm of the Year – Asia Tax Awards 2018, *International Tax Review*  
Best Advisor in Real Estate Tax Globally – Real Estate Awards 2017, *EuroMoney*

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## Austria

### **Court decisions on tax groups, loss recognition, VAT**

The KPMG member firm in Austria has prepared summaries of the recent court or administrative actions on tax groups, loss recognition, value added tax (VAT) and other tax issues.

Read the [article](#).

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## Belgium

### **Civil penalties for transfer pricing documentation compliance failures**

A Royal Decree published in July 2018 establishes the civil penalties to be imposed for failures to comply with the transfer pricing documentation requirements.

Read the [article](#).

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## Canada

### **Statistics from 2017 APA program; record number of APA cases**

The CRA's 2017 Advance Pricing Arrangement (APA) Program Report shows that it closed a record number of APA cases in calendar year 2017. However, almost an equal number of cases remained under consideration for acceptance into the program by

December 31, 2017.

Read the [article](#).

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## Chile

### **Customs allows transfer pricing valuation, as established by APAs**

An amendment to Chile's customs rules allows the value of imported goods to be determined according to the valuation established by an advance pricing agreement (APA) as granted under the transfer pricing measures.

Read the [article](#).

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## Czech Republic

### **What to expect in a transfer pricing inspection**

The Czech tax authorities have heightened their focus on transfer pricing issues, turning their attention to corporations that generate losses or incur significant expenses for intra-group services.

Read the [article](#).

### **Burden of proof, VAT exemption on cross-border supplies (Supreme Administrative Court decision)**

The Supreme Administrative Court addressed the burden of proof in a matter in which the value added tax (VAT) exemption of a cross-border supply of goods was challenged by the tax administrator. The high court held that the supplier could not plead good faith when it was "passive" and did not make any efforts to verify information provided by the customers.

Read the [article](#).

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## Denmark

### **Deductibility of losses from certain foreign permanent establishments (CJEU judgment)**

The Court of Justice of the European Union (CJEU) rendered its decision in a case involving the compatibility with EU law of the Danish rules on the deductibility of losses from foreign permanent establishments.

Read the [article](#).

### **Withholding tax on dividends paid to foreign investment funds (CJEU judgment)**

The Court of Justice of the European Union (CJEU) rendered its decision a case concerning the compatibility with EU law of the Danish withholding tax on dividends distributed to non-resident investment funds. The CJEU concluded that the Danish legislation is contrary to the free movement of capital.

Read the [article](#).

**Losses from permanent establishment with non-Danish head office (CJEU judgment)**

The Court of Justice of the European Union (CJEU) published its decision in a case concerning 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](#).



## European Union

**Updates on EU tax developments, domestic and cross-border implications; summaries of CJEU judgments and implications for taxpayers**

New editions of E-News from KPMG's European Union (EU) Tax Centre feature updates on EU tax developments that can have both a domestic and a cross-border impact, as well as Court of Justice of the EU decisions and other proceedings that could have implications for your country.

Read the July 2018 [edition](#).

Read the August 2018 [edition](#).



## France

**Withholding tax on dividends paid to non-resident loss-making companies, not compatible with EU law (CJEU Advocate General opinion)**

An Advocate General of the Court of Justice of the European Union (CJEU) rendered an opinion in a case concerning the compatibility with EU law of the French withholding tax levied on dividends paid by French companies to non-resident loss-making companies.

Read the [article](#).



## Germany

**Transfer pricing adjustments, involving non-resident related company relationships not at arm's length**

The Court of Justice of the European Union (CJEU) issued a judgment in a case concerning the German tax law rules on income of a German taxpayer resulting from its business relationships with non-resident related companies.

Read the [article](#).

**CFC rules, interaction with "Standstill Clause" (CJEU Advocate General opinion)**

An Advocate General of the Court of Justice of the European Union

(CJEU) ruled in a case concerning the derogation from the prohibition on restrictions to the free movement of capital with non-EU countries (i.e. the ‘Standstill Clause’), and its application to the German controlled foreign company (CFC) rules.

Read the [article](#).

#### **Input VAT deduction, court decision on timing of supply**

The German Federal Tax Court (BFH) issued a judgment in a case concerning the input value added tax (VAT) deduction when the invoice did not provide specific details about the time of the supply.

Read the [article](#).

#### **Tax loss carryforward allowed companies in financial difficulties (CJEU judgment holds not state aid)**

The Court of Justice of the European Union (CJEU) rendered its decision in a case regarding the compatibility with EU state aid rules of German legislation that may allow a company in financial difficulties to carry forward tax losses despite changes in its shareholder structure.

Read the [article](#).



## **India**

#### **“Substantive revision” of bilateral APA with UK**

The Central Board of Direct Taxes agreed to a “substantive revision” of an India-UK bilateral advance pricing agreement (APA) due to certain changes in the way a particular transaction was being conducted.

Read the [article](#).



## **Luxembourg**

#### **First steps in process to transpose EU ATAD 1, ratify MLI**

The Luxembourg government’s council approved bills for the transposition of the EU Anti-Tax Avoidance Directive (ATAD 1) into domestic tax law and for the ratification of the multilateral instrument (MLI).

Read the [article](#).

#### **EC finds illegal tax benefits granted in tax rulings**

The European Commission(EC) issued a release stating that Luxembourg allowed two group companies to avoid paying taxes on almost all their profits for about a decade. This was found to be “illegal” under EU state aid rules because the rulings provided an undue advantage. Luxembourg must now recover about 120 million euros (EUR) in unpaid tax.

Read the [article](#).



## Mexico

### **Burden of proof, economic substance of transactions**

A Mexican tax measure on the burden of proof for certain transactions gives taxpayers 30 days to demonstrate the economic reality or substance of a transaction.

Read the [article](#).

### **Tax considerations for corporate management in second half 2018**

The Bank of Mexico projects the rate of inflation for 2018 could be between 4.5 percent and 5 percent, and the gross domestic product could increase 2.5 percent. Corporate management of Mexican entities may want to consider the implications of these projections on their tax situations.

Read the [article](#).

### **New authority for taxpayer on-site visits, presumptive determinations of income**

Changes to Mexico's tax law grant new authority to the tax administration to make on-site inspections of taxpayers to verify information. With information obtained from these on-site visits, the tax administration may presumptively determine a taxpayer's gross income.

Read the [article](#).



## Netherlands

### **Standard securitization transactions, advance tax rulings no longer available**

The Financial Institutions Department (FID) of the Amsterdam tax office historically has provided advance certainty for a "standard" securitization transaction intended to finance the originator. Going forward, however, the FID will no longer provide advance certainty for the corporate income tax aspects of these transactions.

Read the [article](#)

### **Implications of Dutch transfer pricing decree on OECD discussion draft on transfer pricing of financial transactions**

The Organisation for Economic Cooperation and Development (OECD) published a discussion draft on the transfer pricing of financial transactions. A Dutch transfer pricing decree (2018) may have served as a source of inspiration for some parts of the discussion draft.

Read the [article](#)



## Nigeria

### **Tax Appeal Tribunal is reorganized**

Nigeria's Tax Appeal Tribunal has been reorganized to reflect the

six geopolitical zones in Nigeria. Taxpayers seeking review of rulings by any tax authority in Nigeria now have an option to seek judicial review by the tribunal.

Read the [article](#).



## OECD

### **Guidance on hard-to-value intangibles, transactional profit split method (BEPS Actions 8 and 10)**

The Organisation for Economic Co-operation and Development (OECD) released new guidance on the application of the approach to hard-to-value intangibles and the transactional profit split method under Action 8 and Action 10, respectively, of the base erosion and profit shifting (BEPS) project.

Read the [article](#).

### **Database of comparable tax revenue data**

The Organisation for Economic Co-operation and Development (OECD) launched a new database providing detailed and comparable tax revenue information for 80 countries around the world.

Read the [article](#).

### **KPMG report: Initial impressions of OECD discussion draft on transfer pricing for financial transactions**

The Organisation for Economic Co-operation and Development (OECD) released a public discussion draft on transfer pricing for financial transactions. Given the complexity and difference in views surrounding financial transactions, the draft was released as a non-consensus document.

Read the [article](#).

### **BEPS Action 14 peer review reports, tax dispute resolution**

The Organisation for Economic Co-operation and Development (OECD) published the fourth round of stage one peer review reports under the base erosion and profit shifting (BEPS) project. These reports cover Australia, Ireland, Israel, Japan, Malta, Mexico, New Zealand and Portugal.

Read the [article](#).



## South Africa

### **SARS' authority to gather information on taxpayers, transactions**

A high court decision concerns the ability of the South African Revenue Service (SARS) to gather information from taxpayers. In this case, the taxpayer had undertaken complex transactions, and the court held that SARS had satisfied the jurisdictional requirements for enforcing requests for information.

Read the [article](#).

### **Tax and empowerment transactions or arrangements**

A memorandum of understanding between the South African Revenue Service and the Broad-Based Black Economic Empowerment (B-BBEE) Commission has implications from B-BBEE and tax compliance perspectives during its applicable period of 3 years.

Read the [article](#).

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## **Spain**

### **Tax lease system, maritime shipping (CJEU judgment)**

The Court of Justice of the European Union (CJEU) set aside a decision of the General Court concerning the Spanish tax lease system. The General Court had annulled a determination by the European Commission that the system as applied to ships constructed in Spanish shipyards constituted state aid.

Read the [article](#).

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## **United Kingdom**

### **Liability for stamp duty land tax despite claims of alternative financing arrangements**

The Supreme Court has allowed HM Revenue & Customs' appeal in this decision on the stamp duty land tax due on a Sharia-financed land purchase.

Read the [article](#).

### **Company must withhold tax on interest paid to non-resident entity (Court of Appeal)**

The Court of Appeal found in favor of HM Revenue & Customs in a case regarding whether a source of interest arose within the UK and whether a company was obliged to withhold income tax on payments of interest.

Read the [article](#).

### **HMRC international manual, updated CFC section and finance company exemptions**

HM Revenue & Customs (HMRC) are updating the controlled foreign companies (CFCs) section of their international manual. The changes relate to the finance company exemptions, which exclude from the CFC regime certain profits of a CFC from its 'qualifying loan relationships'.

Read the [article](#).

### **HMRC guidance; VAT digital records and returns using functional compatible software**

HM Revenue & Customs (HMRC) issued guidance on the requirements for businesses to keep digital records for value added tax (VAT) purposes and submit returns using functional compatible software.

Read the [article](#).

## **Tax on overseas portfolio dividends and compound interest (Supreme Court case)**

The Supreme Court's latest decision in the test case of CFC and Dividend GLO was released on 25 July 2018, concerning tax on overseas portfolio dividends and compound interest.

Read the [article](#).

## **HMRC report on transfer pricing and DPT statistics for 2017-2018**

HM Revenue & Customs (HMRC) published the most recent transfer pricing and diverted profits tax (DPT) statistics, which provide useful insight into HMRC's compliance and dispute resolution work in this critical area of large business taxation.

Read the [article](#).



## **United Nations**

### **Model double tax agreement updated**

The United Nations (UN) continued its efforts to eliminate double taxation with its release of a newly revised *UN Model Double Taxation Convention between Developed and Developing Countries*.

Read the [article](#).



## **United States**

### **IRS again updates FAQs, transition tax under Code section 965; penalty relief and filing information**

The Internal Revenue Service (IRS) has again updated a list of frequently asked questions (FAQs) about return filing and tax payment obligations relating to the transition tax under new section 965 of the Internal Revenue Code.

Read the [article](#).

### **Third Circuit: No capital gains treatment, taxpayer retained technology rights**

The US Court of Appeals for the Third Circuit affirmed a US Tax Court decision that had determined that, because the taxpayer had not transferred "all substantial rights" to certain pharmaceutical technology, the royalties received by the taxpayer constituted ordinary income.

Read the [article](#).

### **Insurance: Tax Court sides with IRS, rejects captive's insurance company status**

The US Tax Court found that a corporation was not a captive insurance company, but rather a foreign corporation subject to the 30% withholding tax on its "fixed or determinable annual or periodical" income.

Read the [article](#).

### **US Supreme Court: Decision issued in Wayfair case concerning state tax treatment of remote sellers**

The US Supreme Court found in favor of the state in *South Dakota v. Wayfair, Inc.* – a sweeping decision in which the court concluded that the physical presence sales and use tax nexus rule last articulated by the US Supreme Court in *Quill* is “unsound and incorrect.”

Read:

- [Text](#) of the Supreme Court’s decision
- [“Initial impressions” analysis](#) from KPMG LLP in the US
- [Compilation of state tax authorities’ responses](#) to the decision

### **US Supreme Court: Employee stock options not taxable “compensation” under RRTA**

The US Supreme Court issued a decision (five to four) holding that employee stock options are not taxable “compensation” under the Railroad Retirement Tax Act (RRTA) because they are not “money remuneration.”

Read the [article](#).

### **Final regulations: Corporate inversions and related transactions (text of regulations)**

The US Treasury Department and Internal Revenue Service released final and temporary regulations concerning transactions that “are structured to avoid the purposes of sections 7874 and 367” and certain post-inversion tax avoidance transactions.

Read the [article](#).

### **Transfer pricing in the age of tax reform**

A report from KPMG LLP in the US considers how multinational entities (especially small to midsized ones) can take a fresh look at their transfer pricing policies to avail themselves of some of the new planning opportunities arising from US tax reform.

Read the [article](#).

### **IRS practice unit: Treatment of transaction costs of business transactions**

The Internal Revenue Service’s (IRS) Large Business and International (LB&I) division released a “practice unit” providing insights into the IRS position on the tax treatment of legal fees, accounting fees, consulting fees, investment advisory service fees, and other transaction or facilitation costs when a taxpayer executes a business transaction.

Read the [article](#).

### **IRS updates CbC reporting guidance, information**

The Internal Revenue Service (IRS) issued a release with new content on country-by-country (CbC) reporting in the United States, as well as new guidance and resources.

Read the [article](#).

### **D.C. Circuit: Exclusions from gross income of foreign corporations; regulations (2003) held invalid**

The US Court of Appeals for the D.C. Circuit reversed a decision of the US Tax Court that upheld the then-applicable Treasury regulations as valid. The D.C. Circuit reversed finding that the regulations “unreasonably interpreted” the US tax law.

Read the [article](#).

### **Final regulations: Information returns, extension of time**

The US Treasury Department and Internal Revenue Service released final regulations concerning automatic and non-automatic extensions of time to file certain information returns.

Read the [article](#).

### **U.S. Tax Court: Repatriation allowed using plan of intercompany debt with return-of-capital distribution**

The U.S. Tax Court released a memorandum opinion finding for the taxpayer for its repatriation of 356.8 million US dollars (USD) from its European affiliates by using a plan that combined intercompany debt with a return-of-capital distribution.

Read the [article](#).

### **Ninth Circuit withdraws decision in cost-sharing arrangements case, new panel to consider appeal**

The US Court of Appeals for the Ninth Circuit withdrew a July 2018 decision in a case concerning the validity of the US Treasury regulations on employee stock compensation and cost-sharing arrangements “to allow time for the reconstituted panel to confer on this appeal.”

Read the [article](#).

### **Second Circuit: Special 10-year limitations period applies for credit, not deduction, of foreign taxes paid**

The US Court of Appeals for the Second Circuit affirmed the judgment of a federal district court that the special 10-year statute of limitations for refunds claimed under section 6511(d)(3)(A) applies only to credits, and not deductions, relating to the foreign taxes paid.

Read the [article](#).

### **Eighth Circuit vacates Tax Court’s determination of transfer pricing method**

The U.S. Court of Appeals for the Eighth Circuit vacated an opinion of the US Tax Court concerning the transfer pricing method for determining income from intercompany licenses for intangible property required to manufacture certain medical devices and leads. The case was remanded to the Tax Court for further development of the findings.

Read the [article](#).

### **U.S. Federal Circuit: Customs classification of compression hosiery upheld**

The US Court of Appeals for the Federal Circuit today affirmed the holding of the US Court of International Trade that the subject merchandise (compression hosiery) did not qualify for duty-free treatment.

Read the [article](#).

## Combined reporting upheld; different treatment of interstate, intrastate businesses

The California Court of Appeal, Fourth District, held that California's differential treatment of interstate and intrastate businesses (i.e. requiring interstate unitary businesses to file combined, but allowing intrastate unitary businesses to elect to file separately or combined) does not violate the Commerce Clause.

Read the [article](#).



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