



Tax Alert

Issue 05 | April 2019

In this issue, we bring you our Quarterly Global Tax Disputes Update (April 2019 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.

Insights from around the world:

Australia	Belgium	Botswana
Brazil	Costa Rica	Czech Republic
Denmark	European Union	Finland
France	Germany	Global
India	Italy	Netherlands
Nigeria	Oman	Qatar
South Africa	Spain	Sweden
United Kingdom	United States	



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Australia

ATO's updated simplified transfer pricing recordkeeping practical compliance guideline

The Australian Taxation Office (ATO) recently updated its Practical Compliance Guideline on simplified transfer pricing recordkeeping options.

[Read the article.](#)

Court decision, CFC rules and definition of associates, "sufficient influence"

The Commissioner of Taxation succeeded in an appeal to the Full Federal Court that tested the concept of "sufficient influence" in the controlled foreign affiliate rules.

[Read the article.](#)

Court decision, customs treatment of vitamins and weight-loss supplements, "medicine or foodstuff"?

The Full Federal Court of Australia found that vitamins and weight loss supplements marketed as chewable gummies are classified as medicaments for customs purposes and therefore duty-free.

[Read the article.](#)

Court decision, foreign income tax offset and capital gains

The Federal Court found in favor of the Australian Tax Office when interpreting the foreign income tax offset provisions as they relate to capital gains.

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Worldwide gearing ratio under thin capitalization rules

Two-part article from KPMG in Australia explores the worldwide gearing ratio under Australia's thin capitalization rules.

[Read the Part 1.](#)

[Read the Part 2.](#)

"Permanent place of abode" outside Australia (court decision)

The full bench of the Federal Court of Australia found that a taxpayer was a non-resident of Australia because they had established a permanent place of abode in Bahrain.

[Read the article.](#)



Belgium

Advance rulings concerning tax on excess profits (General Court judgment annuls EC action)

The General Court of the Court of Justice of the European Union annulled a European Commission (EC) decision that the Belgian "excess profit" tax ruling system is a state aid scheme.

[Read the article.](#)



Botswana

Transfer pricing rules, effective July 2019

Botswana's income tax law has been amended to introduce transfer pricing rules and international tax anti-avoidance measures.

[Read the article.](#)



Brazil

Updated MAP rules, guidelines

Brazil has aligned its mutual agreement procedure (MAP) rules with the Organisation for Economic Co-operation and Development's base erosion and profit shifting recommendations under Action 14.

[Read the article.](#)



Costa Rica

Tax reform law enacts new VAT regime

New tax reform legislation in Costa Rica includes rules addressing the taxation of capital gains, interest expense deduction hybrid mismatch arrangements and tax havens, and also introduces a new value added tax (VAT) regime.

[Read the article.](#)



Czech Republic

Transfer pricing and audits of financial statements

The start of each calendar year entails intensive work on financial statement audits of financial statements. For multinational corporations, accounting issues often relate to an audited entity's cooperation with related parties.

[Read the article.](#)



Denmark

Landmark transfer pricing decision from Supreme Court

The Supreme Court of Denmark issued a decision for the taxpayer in a landmark case addressing several substantial transfer pricing matters in Danish tax law.

[Read the article.](#)

"Beneficial owner" concept under EU directives; dividend distributions to EU intermediate holding company (CJEU judgment)

The Court of Justice of the European Union (CJEU) rendered two landmark decisions interpreting the beneficial owner concept in cases where the Interest and Royalties Directive and Parent-Subsidiary Directive apply.

[Read the article.](#)



European Union

Proposal to limit scope of digital services tax considered by ECOFIN

The Economic and Financial Affairs Council (ECOFIN) of the European Union (EU) discussed but failed to agree on a proposal for an EU digital services tax. The ECOFIN also approved amendments to the EU grey list of uncooperative tax jurisdictions and welcomed recent progress of the Code of Conduct Group.

[Read the article.](#)

Update on status of mandatory disclosure requirements

Mandatory disclosure requirements for intermediaries and relevant taxpayers entered into force in the European Union on 25 June 2018. Member states must implement them before 31 December 2019, to be applied as of 1 July 2020.

[Read the article.](#)

Directive addressing corporate tax avoidance takes effect

The European Commission issued a reminder that new rules to eliminate common corporate tax avoidance practices took effect 1 January 2019.

[Read the article.](#)

EC decisions recommending taxation of ports in Italy and Spain

The European Commission has requested that Italy and Spain align their taxation of ports with state aid rules.

[Read the article.](#)

Tax rulings granted by Netherlands to multinational corporation, EC state aid investigation opened

The European Commission (EC) is investigating whether Dutch tax rulings granted to a multinational corporation breach the European Union's state aid rules. The rulings involve the calculation of royalties for the use of intellectual property.

[Read the article.](#)

CJEU referrals relating to VAT, indirect tax (Germany, Italy, UK)

The European Commission referred two cases to Court of Justice of the European Union (CJEU) related to value added taxes (VAT) involving Germany and the UK, as well as third case involving Italy's property registration tax.

[Read the article.](#)

Updates on EU tax developments, CJEU judgments and their 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 (CJEU) decisions and other proceedings that could have implications in your country.

Recent editions:

- [25 January 2019](#) edition
- [8 February 2019](#) edition
- [22 February 2019](#) edition

New version of EU customs data model

A new version of the European Union (EU) customs data model reflects all recent changes in customs legislation that affect data requirements for trans-European customs systems.

[Read the article.](#)

Brexit “no-deal” preparedness and customs, indirect tax implications

The European Commission issued a release for EU businesses in the event of a “no-deal” Brexit — i.e. the risk that the UK may leave the EU without a deal.

[Read the article.](#)



Finland

Insurance premium tax, location of risk (CJEU judgment)

The Court of Justice of the European Union (CJEU) considered a case on the location of risk for insurance premium tax purposes for insurance related to M&A transactions

[Read the article.](#)



France

VAT recovery on basis of cross-border use costs (CJEU judgment)

The Court of Justice of the European Union (CJEU) issued a judgment in a case concerning the value added tax (VAT) recovery of costs incurred by a fixed establishment that are also applied to the turnover of a foreign head office.

[Read the article.](#)



Germany

Free movement of capital with non-EU countries (“Standstill Clause”) and German CFC rules (CJEU judgment)

The Court of Justice of the European Union (CJEU) rendered a decision on the derogation from the prohibition on restrictions to the free movement of capital with non-EU countries (the “Standstill Clause”) and its application to the German controlled foreign company (CFC) rules.

[Read the article.](#)



Global

Comparisons of corporate tax revenue, tax rates

The Organisation for Economic Co-operation and Development issued a report providing internationally comparable statistics and analysis on corporate tax revenues, rates and incentives from approximately 100 countries.

[Read the article.](#)

Progress report on harmful tax practices (BEPS Action 5)

The OECD issued a report on progress that certain jurisdictions have made toward complying with the standard on harmful tax practices under Action 5 of the base erosion and profit shifting (BEPS) project.

[Read the article.](#)

Updates on digital economy work; arm’s length implications

The OECD recently released two papers as part of its work on to gain consensus on taxing the digital economy.

In January 2019, the OECD released a policy note on addressing the tax challenges of the digital economy.

[Read the article.](#)

In February 2019, the OECD released a consultation paper setting out some possible solutions for these challenges.

[Read the article.](#)



India

Service tax audit allowed, despite enactment of GST law

The Calcutta High Court held that the tax authority could conduct a service tax audit pursuant to measures of the service tax law, even though the goods and services tax (GST) law took effect as of July 2017.

[Read the article.](#)



Italy

Interest limitations, exit tax among ATAD provisions

A decree to transpose two EU Anti-Tax Avoidance Directives (ATAD) into Italian law was published in late December 2018 in Italy's official gazette.

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Tax amnesty to settle tax audits, tax liabilities

The Italian tax authorities have issued regulations to implement certain tax amnesty programs.

[Read the article.](#)



Netherlands

Costs related to acquisition or disposal of participations (Dutch Supreme Court judgment)

The Dutch Supreme Court issued a judgment that sets out detailed guidelines and rules for corporate income tax purposes on non-deductible costs related to the sale or purchase of shares covered by the participation exemption.

[Read the article.](#)



Nigeria

Appeals court decision, taxation of company providing educational services

Nigeria's Court of Appeal held that a company providing educational services in Nigeria was subject to companies income tax.

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Oman

Measures concerning withholding tax, procedural rules clarified

A ministerial decision was published that clarifies certain Oman's tax law provisions, including the scope, applicability and exemption from Oman's withholding tax for interest, dividends and services.

[Read the article.](#)



Qatar

Qatar signs BEPS multilateral instrument

Qatar has signed the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (BEPS).

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South Africa

Allowance for future expenditures (court decisions)

Two court decisions in South Africa concern an income tax provision that allows taxpayers to deduct an expenditure to be incurred in future tax years for their performance of obligations under a contract.

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Competition law amendments, foster growth of certain segments

Extensive changes to South Africa's competition law give broad authority to the Competition Commission to foster the inclusion of small and medium enterprises and historically disadvantaged persons in various markets.

[Read the article.](#)



Spain

Special tax regime for football clubs (CJEU judgment)

The General Court of the Court of Justice of the European Union (CJEU) rejected the European Commission's decision to classify a tax regime applicable to four Spanish professional football clubs as "state aid."

[Read the article.](#)



Sweden

Deductibility of losses from foreign subsidiaries; CJEU Advocate General concludes losses were not final

An Advocate General of the Court of Justice of the European Union (CJEU) rendered opinions in two cases concerning the compatibility with EU law with the Swedish rules on the deductibility of losses from foreign subsidiaries.

[Read the article.](#)



United Kingdom

Court decision could affect pension obligations

A decision of the UK High Court may increase the pension obligations of companies that sponsor UK pension plans.

[Read the article.](#)

Change in functional currency resulting in foreign exchange loss (Upper Tribunal decision)

The Upper Tribunal held that a change in functional currency used in a taxpayer's statutory accounts was in not in accordance with UK generally accepted accounting practice.

[Read the article.](#)

Possible tax implications of employment law proposals

The UK government proposed changes to the employment law following its consultations in response to an independent review of modern working practices.

[Read the article.](#)

Tribunal decision, capital allowances and acquisition of second-hand fixtures

The First-tier Tribunal released a decision on the value attributable to second-hand property fixtures on the sale of a property for capital allowances purposes.

[Read the article.](#)

Tribunal decision, capital allowances on construction of a silo provided for temporary storage

The First-tier Tribunal decided that the costs of constructing a silo for temporary storage are eligible for capital allowances.

[Read the article.](#)

Upper Tribunal decision addresses VAT-exempt financial services and asset management businesses

An Upper Tribunal decision raises important issues for businesses that are partly exempt from value added tax (VAT) and for asset management businesses in particular.

[Read the article.](#)

Upper Tribunal, issues relating to refund claims of direct tax

The Upper Tribunal issued a ruling on practicalities and procedural issues for claiming repayments of direct tax.

[Read the article.](#)



United States

Summary judgment denied; “deposit method” for customer payment

The US Tax Court denied a motion by the Internal Revenue Service for summary judgment in a case concerning a taxpayer's income tax liability for 2008. The Tax Court found “genuine disputes of material fact” as to whether the taxpayer had adopted the deposit method of accounting for a customer payment.

[Read the article.](#)

Adequate disclosures to reduce accuracy-related penalty

The Internal Revenue Service released guidance on when a disclosure of an item or position on a taxpayer's income tax return is adequate for reducing accuracy-related and tax preparer penalties.

[Read the article.](#)

Regulations address centralized partnership audit regime

In December 2018, the Internal Revenue Service (IRS) announced that the IRS and Treasury Department intended to issue proposed regulations for centralized partnership audits.

[Read the article.](#)

The regulations were released in February 2019.

[Read the text of the regulations.](#)

Implementing US tax law changes

The Internal Revenue Service posted final versions of forms and instructions for implementing certain US tax law changes enacted in December 2017.

[Read the article.](#)

IRS addresses partial government shutdown impact on Tax Court cases

The Internal Revenue Service issued a release addressing implications of the partial government shutdown on operations of the US Tax Court.

[Read the article.](#)

Possible penalty exposure, cost-sharing agreements and stock-based compensation

Taxpayers are waiting to see whether the US Court of Appeals for the Ninth Circuit sustains or reverses a lower court decision on the US cost-sharing regulations. Taxpayers that have not been sharing the costs of stock-based compensation may be exposed to penalties.

[Read the article.](#)

German company penalized USD5.5 million, Cuban sanction violations

The US Treasury Department, Office of Foreign Assets Control, announced a civil penalty of approximately 5.5 million US dollars (USD) against a German company for violations of the Cuban Assets Control Regulations.

[Read the article.](#)

Tax Court decision, hockey team's pregame meals as de minimis fringe benefit

The Internal Revenue Service released an "Action on Decision" about a case that concluded pregame meals provided by a professional hockey team to its players and personnel at away-city hotels were fully deductible.

[Read the article.](#)

Upper-tier CFC partners' E&P increased by partnership's section 951(a) income inclusions

The US Tax Court issued a "reviewed opinion" in which the majority concluded that the earnings and profits of upper-tier controlled foreign corporation partners of a US domestic partnership must increase as a result of the partnership's section 951(a) income inclusions.

[Read the article.](#)

Tariff classification of pharmaceutical packaging system

The US Court of International Trade granted summary judgment for an importer of

pharmaceutical equipment on the tariff classification of its “automated pharmacy system” machine (i.e. a pill dispensing and packaging system).

[Read the article.](#)

US Tax Court: Determination of and IRS supervisory approval for penalties

The US Tax Court held that when the Internal Revenue Service asserts multiple penalties, an initial determination of all penalties is not required to be made at the same time or by the same IRS person, and that supervisory approval is not required for a particular form.

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