



# Tax Alert

## Issue 09 | July 2019

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

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## Australia

### Taxation of limited partnerships (Full Federal Court decision)

A recent Full Federal Court decision was a comprehensive victory for the Australian Taxation Office on how income of a corporate limited partnership is taxed and other important tax areas.

[Read the article.](#)



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## Canada

### MAP program summary, statistics for 2017

The Canada Revenue Agency's 2017 Mutual Agreement Procedure Program Report shows that the majority of the cases processed found full relief from double taxation.

[Read the article.](#)



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## Cyprus

### EU directive on earnings stripping, general anti-abuse, and CFC rules transposed into Cypriot law

In April 2019, provisions of the EU Anti-Tax Avoidance Directive on earnings stripping, anti-abuse and controlled foreign companies (CFC) were transposed into the Cypriot law.

[Read the article.](#)



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## European Union

### Updates about CJEU judgments, referrals; other tax developments

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:

- [8 March 2019](#) edition
- [22 March 2019](#) edition
- [22 April 2019](#) edition
- [3 May 2019](#) edition
- [17 May 2019](#) edition

- [31 May 2019](#) edition

- [14 June 2019](#) edition

### **Status of digital advertising tax**

The Economic and Financial Affairs Council of the EU did not reach agreement on the digital advertising tax during its 12 March 2019 meeting.

[Read the article.](#)

### **Taxation of digital economy; considering possible outcomes**

The European Union (EU) member states have not yet agreed on an EU-wide tax measure for taxing the digital economy. The Organisation for Economic Co-operation and Development is discussing four proposals for a solution at the international level.

[Read the article.](#)

### **European Parliament adopts recommendations on financial crimes, tax evasion, tax avoidance**

The European Parliament adopted in plenary a report on financial crimes, tax evasion and tax avoidance. The report emphasizes the urgent need for tax reform to strengthen the fight against financial crimes and aggressive tax planning.

[Read the article.](#)

### **Joint Transfer Pricing Forum, report on profit-split method**

The European Union (EU) Joint Transfer Pricing Forum, which assists and advises the European Commission on transfer pricing tax matters, agreed to a report on the application of the profit-split method within the EU.

[Read the article.](#)

### **Dispute resolution tribunal under free trade agreement with Canada upheld (CJEU opinion)**

The Court of Justice of the European Union (CJEU) found that a mechanism for resolving disputes between investors and EU Member States under the free trade agreement between the EU and Canada is compatible with EU law.

[Read the article.](#)

### **Digital tax, EU “blacklist” updates (ECOFIN meeting)**

In May 2019, the Economic and Financial Affairs Council of the EU (ECOFIN) exchanged views on the taxation of the digitalized economy, in anticipation of debates scheduled to take place at the G20 summit in June 2019.

[Read the article.](#)



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## **France**

### **Appeals court (Paris) affirms, no permanent establishment for Irish entity**

The Administrative Court of Appeal of Paris affirmed that an Irish entity of a multinational corporation did not have a permanent establishment in France because of the activities of a French related entity.

[Read the article.](#)



## Hong Kong

### **Inland Revenue's guidance on R&D tax incentive; qualifying activities and deductible expenditures clarified**

The Hong Kong Inland Revenue Department released a practice note regarding the research and development (R&D) tax concession in Hong Kong.

[Read the article.](#)



## India

### **No transfer pricing adjustment, profit margin greater than comparables**

The Mumbai Bench of the Income-tax Appellate Tribunal issued a decision concerning the taxability of agency commission relating to the services rendered outside India.

[Read the article.](#)

### **Income tax notices issued to multinational companies**

India's income tax department has been issuing notices to certain multinational companies for allegedly having escaped tax assessment over previous years.

[Read the article.](#)

### **Permanent establishment thresholds, profit attribution rules**

The Mumbai Bench of the Income-tax Appellate Tribunal made a decision on how to determine the 90-day period for ascertaining whether employees constitute a permanent establishment of a non-resident under the India-UK income tax treaty.

The Central Board of Direct Taxes formed a committee with the aim of bringing greater clarity and predictability to India's rules for attributing profit to PEs.

[Read the article.](#)



## Isle of Man

### **Competent authority agreement signed with UK**

The Isle of Man's income tax division published a competent authority agreement signed with the UK on the automatic exchange of financial account information under the common reporting standard.

[Read the article.](#)



## Italy

### **Ruling request process, certainty on permanent establishments**

Large multinational entities that directly sell into Italy may ask the Italian tax authorities for a ruling on whether their activities give rise to a permanent establishment in Italy.

[Read the article.](#)



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## Luxembourg

### **EC investigates Luxembourg tax rulings on interest-free loans**

The European Commission (EC) launched an investigation to evaluate whether the tax rulings granted by Luxembourg to a Finnish food and drink packaging group constitute state aid.

[Read a report from KPMG's EU Tax Centre.](#)

[Read a report from the KPMG member firm in Luxembourg.](#)

### **Taxpayer rights restored, exchange of information requested by foreign tax authorities**

A law amendment restores the right of Luxembourg taxpayers to defend themselves against information orders from the Luxembourg tax authority to provide information under the threat of a penalty of up to 250,000 euros (EUR).

[Read the article.](#)



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## Netherlands

### **Residence requirement for dividend withholding tax refunds (CJEU judgment)**

The Court of Justice of the European Union (CJEU) rendered a decision concerning state aid as it relates to a Dutch dividend withholding tax refund claim.

[Read the article.](#)



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## New Zealand

### **Case reveals Inland Revenue's approach to investigating corporate restructures and funding arrangements**

A recent High Court decision case is the first win for New Zealand taxpayers on a tax avoidance matter in nearly 9 years. It represents a significant shot across the bow to Inland Revenue's current approach to investigating corporate restructures and funding arrangements.

[Read the article.](#)

**High Court's decision in tax avoidance case**

The High Court ruled that an individual used a web of entities to avoid paying non-resident withholding tax of 15 percent on loans to other controlled entities in the Cayman Islands.

[Read the article.](#)



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## Nigeria

### **MAP guidelines, resolving double taxation disputes**

The Federal Inland Revenue Service released guidelines concerning the mutual agreement procedure (MAP) for resolving income tax treaty-related disputes.

[Read the article.](#)

### **Federal and state joint tax audits**

The Federal Inland Revenue Service announced plans to conduct joint tax audit exercises with the tax authorities of the various Nigerian states.

[Read the article.](#)



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## OECD

### **Compliance ratings of seven jurisdictions, beneficial ownership toolkit**

The Organisation for Economic Cooperation and Development published documents relating to the common reporting standard, including seven peer review reports and a beneficial ownership toolkit.

[Read the article.](#)

### **KPMG comments concerning consultation on tax challenges of digitalization**

In March 2019, the Organisation for Economic Cooperation and Development (OECD) moved toward implementing its Policy Note Addressing the Tax Challenges of the Digitalized Economy with a 2-day public consultation on its proposals.

[Read the article.](#)

KPMG tax professionals submitted comments in response to the OECD's consultation.

[Read the article.](#)

### **Plan for resolving tax challenges of digital economy, taxing multinational entities**

In May 2019, the Organisation for Economic Cooperation and Development (OECD) reported that there is an agreement for a "road map" for resolving the tax challenges arising from the digitalization of the economy and a commitment to work toward a consensus-based long-term solution by the end of 2020.

[Read the article.](#)

### **New rules endorsed, collection of VAT/GST from online marketplaces**

The Organisation for Economic Cooperation and Development (OECD) reported that delegates from over 100 jurisdictions have unanimously endorsed new rules that will ensure the collection of additional value added tax/goods and services tax (VAT/GST)

revenues.

[Read the article.](#)

#### **Tenth edition of Model Tax Convention published**

The Organisation for Economic Cooperation and Development (OECD) published the tenth edition of the full version of the OECD Model Tax Convention on Income and on Capital.

[Read the article.](#)

#### **Transfer pricing and governance implications for lessors**

As intra-group cross-border trade has increased, the impact of transfer pricing rules has become more significant for businesses and tax administrations around the world.

[Read the article.](#)

#### **Updated CRS frequently asked questions**

The Organisation for Economic Cooperation and Development updated its frequently asked questions for implementing the common reporting standard (CRS).

[Read the article.](#)



## **Poland**

#### **Proposals for “simplified APA”**

The government of Poland published a draft bill that addresses dispute resolution of double taxation issues and advance pricing agreements (APAs).

[Read the article.](#)

#### **Taxation of retail sector held not state aid (General Court of EU judgment)**

The General Court of the European Union found that the European Commission incorrectly classified the Polish tax on the retail sector as illegal state aid.

[Read the article.](#)



## **Qatar**

#### **Tax authority guidance, new income tax law provisions**

Qatar introduced a new income tax law that includes, among other things, a unified withholding tax rate of 5 percent for contracts concluded on or after 13 December 2018.

[Read the article.](#)



## Serbia

### **Tax audits planned, employer payments for employee commuting costs**

The Tax Authorities are preparing audit guidelines to clarify how they will audit the payment of employees' costs of transportation to and from work.

[Read the article.](#)



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## Slovakia

### **EC investigation of special tax on food retail sector**

The European Commission is investigating a tax on the food retail sector in Slovakia because of concerns that certain exemptions from the tax give some retailers an advantage over their competitors, in breach of EU state aid rules.

[Read the article.](#)



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## South Africa

### **Expanded use of taxpayer inquiries anticipated**

The South Africa Revenue Service missed its revenue collection targets for the financial year ended 31 March 2019. Given the additional pressure on revenue collection, SARS may make more use of its information gathering authority.

[Read the article.](#)



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## Sweden

### **Reduced property tax on wind turbines, state aid issue (Supreme Administrative Court decision)**

The Supreme Administrative Court held that the European Union state aid rules prohibit Sweden from providing a reduced rate of property tax for wind turbines.

[Read the article.](#)



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## Switzerland

### **First AEOI audits planned by Swiss tax administration**

The Swiss federal tax administration is planning to conduct automatic exchange of information (AEOI) audits involving Swiss financial institutions.

[Read the article.](#)

## United Kingdom

### **HMRC profit-diversion compliance facility; verifying transfer pricing and BEPS compliance**

HM Revenue & Customs (HMRC) recent introduction of a new Profit Diversion Compliance Facility clearly signals their commitment to implementing the Base Erosion and Profits Shifting (BEPS) agenda.

[Read the article.](#)

In February 2019, KPMG in the UK hosted the Future of Tax Authority Engagement seminar for clients with the participation of HMRC. One day later, HMRC held a webinar to answer questions about their new Profit Diversion Compliance Facility.

[Read the article.](#)

### **Court decision, legislation expand HMRC's extraterritorial authority for taxpayer data**

A recent Court of Appeal decision, coupled with the new Crime (Overseas Production Orders) Act 2019, consolidates — if not extends — the powers of HM Revenue & Customs (HMRC) to request information and data that is outside the jurisdiction, or possessed or controlled by taxpayers who are offshore.

[Read the article.](#)

### **Courts take different approaches to tax treatment of multi-step transactions**

A recent *Tax Journal* article examines the different approaches taken by UK courts to the tax treatment of multi-step transactions.

[Read the article.](#)

### **CFC finance company exemption not state aid in certain instances, EC concludes**

The European Commission (EC) published its decision on whether the UK's controlled foreign company (CFC) finance company exemption constitutes state aid.

[Read the article.](#)

### **Tribunal decision on stamp duty land tax rules; may affect commercially driven transactions or structuring**

The First-tier Tribunal held that Stamp Duty Land Tax anti-avoidance legislation can apply regardless of whether there is avoidance in the conventional sense, or whether the transactions are commercially motivated.

[Read the article.](#)

### **Non-UK pension fund, exempt from tax on property investment income (tribunal decision)**

The First-tier Tribunal found that a German pension scheme that had not registered in the UK was entitled to exemption from tax on its property investment income.

[Read the article.](#)

### **HMRC no longer accepting email submissions, short-term business visitors**

HM Revenue & Customs (HMRC) has confirmed that it will no longer accept Short Term Business Visitor (STBV) reports by email.

[Read the article.](#)

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## United States

### **“Functional cost diagnostic model” for review of APA requests**

The IRS Advance Pricing and Mutual Agreement program has developed a “functional cost diagnostic model” (an Excel program) to facilitate its review of advance pricing agreement (APA) requests.

[Read the article.](#)

### **Treasury policy statement on tax regulatory process**

The US Treasury Department and Internal Revenue Service released a policy statement on the tax regulatory process, the use of notice-and-comment rulemaking, the limited use of temporary regulations, and limitations on notices announcing an intent to propose regulations.

[Read the article.](#)

### **IRS transfer pricing teams must consult competent authority**

Internal Revenue Service (IRS) exam teams are now required to confer with competent authority for audits that could end up in the mutual agreement procedure because of transfer pricing adjustments with a country that is a US treaty partner.

[Read the article.](#)

### **US Tax Court: S corporation liable for section 6699 penalty; extension application not filed**

The US Tax Court held that an S corporation was liable for a penalty under section 6699 for failing to file its tax return on time.

[Read the article.](#)

### **IRS practice unit: Automatic exchange of information**

The IRS Large Business and International (LB&I) division released a “practice unit” - part of a series of IRS examiner “job aides” and training materials - that provides an introduction to traditional automatic exchange of information.

[Read the article.](#)

### **Agreement between US and India, exchange of country-by-country reports**

The governments of India and the United States finalized a bilateral competent authority arrangement and an intergovernmental agreement that allow for the exchange of country-by-country reports.

[Read the article.](#)

### **Foreign-initiated adjustments, competent authority guidance**

The IRS Large Business and International (LB&I) division released a “practice unit”— part of a series of IRS examiner “job aides” and training materials — that provides guidance on competent authority revenue Procedure 2015-40 for foreign-initiated adjustments.

[Read the article.](#)

### **APMA program, APA statistics for 2018**

The Internal Revenue Service released an advance version of its annual report on the advance pricing and mutual agreement (APMA) program for 2018.

[Read the article.](#)

### **IRS Appeals guidance on partnership audit procedures under Bipartisan Budget Act (BBA)**

The Internal Revenue Service (IRS) provided interim guidance to IRS Appeals

employees on the Bipartisan Budget Act of 2018 partnership audit procedures.

[Read the article.](#)

**KPMG report: New tool for APA submissions**

Taxpayers making advance pricing agreement (APA) submissions to the Internal Revenue Service may be asked to use the new "functional cost diagnostic model" - a taxpayer information data analytics tool.

[Read the article.](#)

**Second Circuit: Tax refund jurisdiction of Tax Court**

The US Court of Appeals for the Second Circuit held that a taxpayer who has been granted a 6-month extension to file an income tax return, but who had not filed the tax return before the IRS mailed a notice of deficiency, is allowed a statutory 3-year look-back period.

[Read the article.](#)

**IRS practice units: Interest capitalization, accounting for developers and subcontractors**

The Internal Revenue Service's (IRS) Large Business and International (LB&I) division publicly released three "practice units"—part of a series of IRS examiner "job aides" and training materials — on Interest capitalization and accounting methods for developers and subcontractors.

[Read the article.](#)

**Federal Circuit: Tariff classification of imported hand tools; trade court's decision affirmed**

The US Court of Appeals for the Federal Circuit affirmed the US Court of International Trade's finding regarding the tariff classification of imported hand tools as "pliers."

[Read the article.](#)

**Tax Court: Captive does not qualify as insurance company, premiums paid not deductible**

The US Tax Court found that a corporation was not an insurance company and invalidated the company's election under section 831(b). As a result, premiums received must be recognized as income and premiums paid were not deductible.

[Read the article.](#)

**Pricing method, services cost method eligibility under US BEAT provision**

If related-party services meet certain eligibility requirements for the use of the services cost method US taxpayers could qualify for an exception to the base erosion and anti-abuse tax (BEAT).

[Read the article.](#)

**JCT overview of "BEAT" provisions under section 59A**

The staff of the Joint Committee on Taxation (JCT) released a presentation that provides an overview of the US base erosion and anti-abuse tax (BEAT)

[Read the article.](#)

**IRS compliance campaign, arm's length price payments to captive services provider**

The Internal Revenue Service's (IRS) Large Business & International (LB&I) division continued to expand its list of compliance campaigns with three new campaigns, bringing the total to 53 campaigns identified and selected to date.

[Read the article.](#)

**IRS practice unit: Taxation of shipping and air transport income**

The Internal Revenue Service's (IRS) Large Business and International released a

“practice unit” — part of a series of IRS examiner “job aides” and training materials — that examines the tax treatment of shipping and air transport.

[Read the article.](#)

### **US Supreme Court: States retain sovereign immunity in other state courts (tax audit-related civil action)**

The US Supreme Court held, in a five-to-four decision, that the US states retain their sovereign immunity from private suits brought in courts of other states, in a case triggered by torts allegedly committed during a tax audit.

[Read the article.](#)



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## **Zambia**

### **First judicial guidance, arm’s length arrangements between related parties**

The Tax Appeals Tribunal issued a decision generally finding for the Zambia Revenue Authority in a case concerning transfer prices used for certain cross-border related-party transactions and business models.

[Read the article.](#)



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## **Key links**

- [Past issues of Tax Alert](#)
- [Dispute Resolution & Controversy](#)
- [KPMG LINK 360](#)
- [KPMG Global Tax discussion on LinkedIn](#)

Ranked Tier 1 Firm in Singapore – World Tax, World Transfer Pricing and Tax Transactional 2019, *International Tax Review*

National Transfer Pricing Firm of the Year – Asia Tax Awards, 2018 & 2019, *International Tax Review*

Withholding Tax Team of the Year – Asia Tax Awards 2019, *International Tax Review*

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