

# Recent CJEU tax related case law (2/13/18)

This article highlights tax-related rulings of the Court of Justice of the European Union (CJEU) in four recent cases.

Transfer pricing adjustments may not form the basis for establishing customs value

On 20 December 2017 the CJEU ruled in case [C 529/16](#) (*Hamamatsu Photonics Deutschland GmbH*) that the transaction value agreed between related parties and comprising an amount initially invoiced and an adjustment made at the end of the accounting period may not form the basis for establishing customs value.

Taxable amount of sales through non-taxable resellers

In case [C-305/16](#) (*Avon Cosmetics Ltd*) the CJEU found that the taxable amount of goods sold by a direct sales company through independent non-taxable resellers may be the open market value at the stage of final consumption (to individuals). The CJEU found that this applies even where input VAT on goods acquired by independent resellers is not deducted.

Tax law denying relief on profit distribution to parent meeting only one anti-avoidance condition is prohibited

According to the CJEU ruling of 20 December 2017 in joint cases C 504/16 (*Deister Holding AG*) and C 613/16 (*Juhler Holding A/S*) the fact that a company's business is managing assets of its subsidiaries, or that its income results only from such management, cannot *per se* indicate the existence of a wholly artificial arrangement that does not reflect economic reality.

Indicating the existence of a wholly artificial arrangement requires, on a case-by-case basis, an overall assessment of the relevant situation and an evaluation of economic or other substantial features, structures and strategies of the group to which the parent company belongs.

Defence rights are not infringed where an appeal does not suspend a judgment given in the absence of a prior hearing of the person concerned

On 20 December 2017 the CJEU stated in case C 276/16 (*Prequ' Italia Srl*) that in the light of the EU's general interest to recover customs income as soon as possible, a taxpayer's right of defence is not infringed where an appeal against a judgment given in the absence of a prior hearing of the person concerned does not automatically stop enforcement of that judgment. This interpretation applies where the addressee of amended tax assessments has the possibility of suspending the implementation of those measures and there are reasons to doubt that the contested decision complies with customs legislation or that irreparable damage is to be done to the person concerned.