



# Tax Controversy & Dispute Resolution Quarterly

**Summer 2021 issue**

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# Contents





# From the Editors



Sharon Katz-Pearlman and Mark Martin, co-leaders of the newly formed Tax Controversy & Dispute Resolution Services group in the Washington National Tax practice of KPMG LLP.

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

We are pleased to bring you the Summer 2021 edition of *Tax Controversy & Dispute Resolution Quarterly*, featuring tax controversy news from around the world.

The [Quarterly](#) includes links to interesting articles, webcasts and other content across a wide variety of controversy topics, including recent IRS and global tax enforcement developments, as well as updates on pertinent global, federal, state and local tax developments, including materials addressing ICAP and the controversy elements of BEPS 2.0.

We also want to highlight the item on the availability of real-life audit stories collected from our KPMG Global Tax Controversy Dispute Resolution Network. Our clients have found these stories to be interesting and helpful. In particular, the proposed adjustments addressed in the stories provide insight into tax authority positions. Our clients use this information to identify areas within their international tax framework that may require remediation or incremental planning. The stories also allow clients to assemble the information and analysis necessary to respond to potential tax authority inquiries. This advance preparation can shorten the time invested by the company and tax authorities in tax examinations.

We are excited about our new tax controversy practice structure because it pulls together all of our firm's controversy professionals from across the controversy landscape, creating one cohesive practice that provides a broad range of controversy services across federal, state, and global lines. By situating the group in the Washington National Tax practice of KPMG LLP, we are better positioned to align with each other and with the firm's outstanding professionals in Washington National Tax. We view our practice as one large circle, surrounded by concentric circles of other Washington National Tax professionals bringing their extensive knowledge to the table. Among these professionals are some who wrote the regulations and negotiated the treaties that form the basis of so much of what we do. What better way to face the market and serve you, our clients than as one fully aligned team? The diverse cross-section of global controversy content in *Summer 2021 Quarterly* reflects this new approach.



# Audit stories offer insights into global dispute resolution

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

In collaboration with our global member firms, KPMG LLP is collecting real-life audit experiences from our Global Controversy Dispute Resolution Network and making these anonymized stories available to clients.

KPMG professionals can meet with you to discuss a selection of stories that are most applicable to your company's footprint and issues. If this is something that you would be interested in, KPMG can work with you to curate the stories most relevant for your organization and host a virtual session to provide you insights into managing your potential controversy issues.

See below for sample audit stories from Taiwan, Sweden and Spain.

The sessions are interactive—the KPMG team welcomes questions and comments on the audit stories presented. CPE credit is available.

If you are interested, please contact Sean Foley to set up a call to discuss the stories that might be most appropriate for your company.



**Sean Foley**  
**Global Head of Transfer Pricing Dispute  
Resolution Services**  
sffoley@kpmg.com

## Sample taxing authority audit stories



# IRS enforcement





## Remarkably unremarkable results for APAs in midst of COVID-19

▲ Mark Martin and Thomas Bettge  
📍 Washington National Tax



A [column](#) in the May edition of *International Tax Review* discusses the IRS's advance pricing agreement (APA) statistics for 2020 and considers how the APA program has prospered in the midst of the COVID-19 pandemic.



## Webcast: Tax controversy and tax dispute resolution for individuals and family offices: Partnership focus



As taxpayers and revenue authorities have settled into this “new normal” way of working, living, and doing business in a COVID-19 environment, there’s been an increase in enforcement activity. Disputes are again on the rise, and taxpayers are dealing with inquiries from revenue authorities at the state and local, federal, and global level. Taxpayers continue to grapple with a heightened IRS focus on partnership matters, the application of the new partnership audit regime under the Bipartisan Budget Act (BBA), and the impact of the challenging Administrative Adjustment Request (AAR) process.

During this March *TaxWatch* webcast, members of our Washington National Tax office discuss recent IRS campaigns to increase the number of audits of high-wealth taxpayers, review recent IRS audit activity in general, as well as provide an overview of the BBA audit rules and the AAR process as they affect individual taxpayers and family offices.





# State and local tax





## Webcast series: State transfer pricing trends and opportunities accelerated by COVID-19

### Part 1 [↗](#)

The February 18 episode discusses the state tax impact of transfer pricing audit disruptions caused by COVID-19 and explores implications for taxpayers, trends in audits at the state level, SALT lessons to be considered from the recent Coca-Cola decision, and leading practices for risk management.

### Part 2 [↗](#)

The March 11 webcast focuses on lessons learned from transfer pricing controversy, addresses the current landscape, and explores how business strategy and a dispersed workforce will affect state transfer pricing.



## TWIST-Q

- TWIST-Q aggregates all the hot topics we address weekly in our [This Week in State Tax \(TWIST\) podcast series](#) with a focus on the last quarter to provide readers with select state judicial, legislative, and regulatory updates that can help you stay current in the fast-changing world of state and local tax.
- A June [report](#) discusses the Biden administration's proposed tax changes for FY 2022 most likely to affect state corporate taxpayers.
- The summary [chart](#) is a checklist for developments for the second calendar quarter of 2021.







# Global tax disputes





## U.S. tax reform 2.0—BEAT down, SHIELD up?

▲ Danielle Rolfes, Jonathan Galin, and Marcus Heyland

📍 Washington National Tax



In early April 2021, the Biden Administration released a description of its “Made in America” tax plan. One aspect of the plan would replace the base erosion and anti-abuse tax (BEAT) imposed on certain large corporate taxpayers for certain payments made to foreign related parties with a new regime that would deny corporate deductions for payments to foreign related persons that are subject to a low effective tax rate, unless the income is subject to an acceptable minimum tax regime.

This proposal—referred to as SHIELD (stopping harmful inversions and ending low-tax developments)—is intended to more effectively target profit shifting to low-taxed jurisdictions, relative to the existing BEAT, while simultaneously providing a strong incentive for other nations to enact global minimum tax regimes. This KPMG [article](#) in the May 17 issue of *Bloomberg Tax* outlined the authors’ then-current understanding of the proposal, flagging key open questions. More details have since been released in the Treasury Department’s annual report on the administration’s revenue proposals (commonly referred to as the Greenbook). See a May 31 KPMG [report](#) containing analysis and observations of the tax proposals in the Biden Administration’s FY 2022 budget.





## Coca-Cola TP case: Takeaways for taxpayers

- ▲ Mark Martin and Thomas Bettge
- 📍 Washington National Tax



A column in the March edition of *International Tax Review* discusses the recent IRS victory in the *Coca-Cola* case and explores its implications for other businesses.



## India takes a giant leap with faceless audits

- ▲ Sean Foley and Justin Donatello
- 📍 Washington National Tax
- ▲ Hasnain Shroff, Ajit Jain, Anuradha Rathod, and Karnik Kansara
- 📍 BSR & Co. LLP (KPMG's member firm in India)



Over the past several years, the Indian government has taken concrete measures to change its image from an aggressive tax jurisdiction to a taxpayer- and investor-friendly regime. An [article](#) in the May 3 issue of *Tax Notes International* outlines India's recently overhauled audit system, discusses some of its potential advantages and disadvantages, and highlights some important factors taxpayers operating in India should consider when preparing for an audit.



## Survey of global secondary adjustment rules

- ▲ Sean Foley, Cameron Taheri, and Lillie Sullivan
- 📍 Washington National Tax



An [article](#) in the January 4 issue of *Tax Notes International* discusses the complexities inherent in the rules for transfer pricing secondary adjustments in the United States and other jurisdictions.





## Major proposal to reform intercompany services arrangements in Mexico

- ▲ Marcela Calderon, Armando Lara Yaffar
- 📍 KPMG Mexico
- ▲ Kimberly Tan Majure
- 📍 Washington National Tax



The current Mexican administration presented a major initiative on November 12, 2020, to reform several pieces of Mexican legislation, including various aspects of the Federal Labor Law and the Federal Tax Code. The primary objective of the initiative is to eliminate services arrangements for outsourcing personnel in Mexico and modify the related labor and tax consequences. A February 2 [article](#) in *Bloomberg Tax Management's International Journal* discusses the most relevant aspects of the initiative.



## Destination Country X podcast series



This podcast series features current tax and trade developments affecting cross-border business. Professionals from KPMG in the United States and KPMG International member firms discuss potential benefits and practical challenges for multinational enterprises and provide insights to help taxpayers navigate the investment landscape.

- [The DST "Trade Off": The Biden Administration's Balancing Act](#) (May 18)
- [Mexico's Labor Reform Redux](#) (April 28)
- [Public Country-by-Country Reporting: Opening Pandora's Box](#) (April 15)
- [Brexit Finally Here! \(Did You Miss It?\)](#) (March 18)
- [Mexico and Argentina Mandatory Disclosure Rules Revisited](#) (March 1)
- [Remote and Mobile Workforce Tax Issues: Work Anywhere, Tax Somewhere\(s\)](#) (January 22)



## US Tax Court holds UK treaty does not protect right to deductions

- ▲ Mark Martin and Thomas Bettge
- 📍 Washington National Tax



A column in the winter edition of *International Tax Review* explores the conclusion to the Tax Court litigation in the *Adams Challenge* case, and notes key takeaways for other companies.



### Webcast: Managing tax disputes in an increasingly aggressive enforcement landscape



While the pandemic may have brought a temporary suspension in tax dispute activity in certain jurisdictions, activity has again been on the rise, and in some cases, the enforcement landscape is becoming increasingly aggressive. In this April 14 KPMG International webcast, a panel of professionals from the KPMG Global Tax Dispute Resolution & Controversy Services network explores the increasingly aggressive tax disputes landscape focusing on certain jurisdictions where the revenue authorities' approach seems to be blurring the historically bright line between civil and criminal. The panel also offers practical advice on managing difficult examinations and queries from the tax authorities.



### Webcast: Global indirect tax & digital economy: Overview of recent developments in Mexico, Canada, and beyond



More than 80 jurisdictions have adopted specific VAT/GST rules to tax digital services in the country of consumption. In general, foreign vendors and online marketplaces are required under these rules to register for, collect, and remit VAT/GST on sales made to local consumers. As most of the tax rules differ among the various jurisdictions, businesses that remotely sell goods and digital services face a complex patchwork of tax obligations. Mexico and Canada are among the most recent countries to adopt such rules. This January 29 webcast provides an overview of the rules and how they may affect businesses.





## TradeWatch webcast: Managing export control risk in the A&D industry



In this February 22 webcast, KPMG Global Export Controls & Sanctions and Cyber Security Services leaders explore the practical impact of export controls on the Aerospace and Defense (A&D) industry.



## Webcast: Mitigating cross border trade challenges post-Brexit



The UK has left the European Union and the transition period is over. An EU-UK Trade and Cooperation Agreement exists. As of January 2022, traders moving any goods will have to make full customs declarations at the point of importation and pay relevant duties.

This April 28 webcast focuses on how an organization can mitigate the impact of customs procedure changes at the UK border.





## Global Tax Dispute Resolution & Controversy Network: New virtual meeting series

Even before COVID-19, tax disputes were a top-of-mind issue for taxpayers. While the pandemic may have brought a temporary suspension in activity in certain jurisdictions, activity is again on the rise, and multinationals are focused on understanding what is happening in various countries around the world. The KPMG Global Tax Dispute Resolution & Controversy Network (the Network) can help you on this journey with a complimentary 90-minute virtual meeting delivered by Network professionals who will share insights across specific jurisdictions of interest to you into today's disputes environment and answer questions about what you can expect in the coming months.





# OECD and BEPS





## Misalignment of CbC reporting and value in modern business

- ▲ Paul Glunt
- 📍 National Value Chain Management Practice
- ▲ Sean Foley
- 📍 Global Head of Transfer Pricing Dispute Resolution Services
- ▲ John DerOhanesian and Josh McConkey
- 📍 Washington National Tax

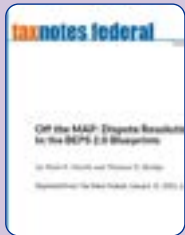
This [article](#) in the May 24 issue of *Tax Notes International* highlights potential misuse and misunderstandings associated with country-by-country reporting data from a theoretical perspective and offers insight into CbC-related audit activity based on real-life examples. In describing ways a CbC report can be misinterpreted or offer an incomplete picture of a multinational group, this article suggests ways for taxpayers to address and potentially mitigate audit risks and BEPS-related tax exposure emanating from their CbC reporting positions.



## MAP: Past, present and future

- ▲ Mark Martin, Sean Foley, Sharon Katz-Pearlman, and Thomas Bettge
- 📍 Washington National Tax

The OECD's BEPS Action 14 has crafted the mutual agreement procedure (MAP) into an extremely effective tool for dispute resolution between most treaty partners. In the face of robust statistical reporting and peer reviews, most jurisdictions now resolve MAP cases successfully, although there remains room for improvement with respect to the duration of cases and other issues. This [article](#) in the April 12 issue of *Tax Notes International* discusses the evolution of MAP post-Action 14 and explains why MAP is actually even more successful than the OECD's published statistics indicate. The authors also describe the practical implications of seeking MAP relief, including its ramifications for foreign tax creditability and ASC 740 matters.



## Off the MAP: Dispute resolution in the BEPS 2.0 blueprints

- ▲ Mark Martin and Thomas Bettge
- 📍 Washington National Tax



Effective dispute prevention and resolution is a key component of BEPS 2.0. The Pillar One blueprint lays out an intricate proposal for centralized Amount A dispute prevention, but less attention has been devoted to dispute prevention resolution in other areas, including Pillar Two. This [article](#) in the January 11 issue of *Tax Notes Federal*, explains the details of the Amount A proposal and notes areas where the proposed design is likely to create issues. The article also explores how the blueprint mechanism has evolved from earlier calls for mandatory binding arbitration, providing context for the complex proposal.



## OECD hybrid rules vs. U.S. DCL rules: Achieving tax harmony

- ▲ Guy A. Bracuti
- 📍 Washington National Tax



A March 29 [article](#) in *Tax Notes International* examines how U.S. rules on dual consolidated losses interact with OECD recommendations. It argues that without careful international coordination, the U.S. rules could create stranded losses in the relevant jurisdictions.



## ICAP: Taking disputes off the MAP

- ▲ Mark Martin and Thomas Bettge
- 📍 Washington National Tax



A [column](#) in the April edition of *International Tax Review* looks at the International Compliance Assurance Programme as a tool for preventing disputes that would otherwise need to be resolved through traditional mechanisms.



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### **KPMG LLP Tax Controversy & Dispute Resolution Services**

*The KPMG Tax Controversy & Dispute Resolution Services group in the Washington National Tax practice is a large, highly visible team in which those who work in the controversy space operate as one, with a common vision, common strategy, common goals and common rewards.*

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