



Tax Controversy & Dispute Resolution Quarterly

Winter/Spring 2022 issue

- Underpayment Interest and Use of Money Argument
- Transfer Pricing and the New R&D Capitalization Rules
- The Basics of Managing Multilateral Controversy
- Tax Certainty in BEPS 2.0 World
- States Taxing Non-fungible Token Sales

Winter/Spring 2022

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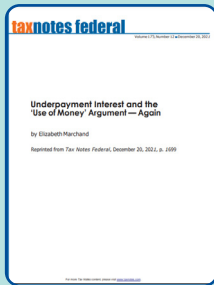
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IRS enforcement





Underpayment Interest and the 'Use of Money' Argument – Again

- By Elizabeth Marchand, Complex Interest Services
- Washington National Tax

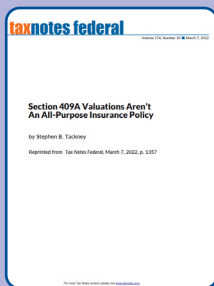
In a December 20 **article** in *Tax Notes Federal*, Elizabeth Marchand examines how credit-elect overpayments are treated when there are subsequent tax assessments. In particular, the article discusses the Fifth Circuit's recent taxpayer-favorable decision in the *Goldring* case.



New Regulations Apply Nexus Rule Restricting Eligibility for US Foreign Tax Credits

- By Mark Martin and Thomas Bettge
- Washington National Tax

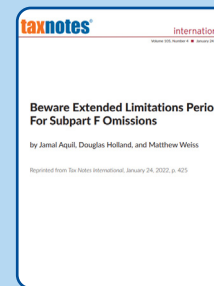
The United States **column** in the February issue of *International Tax Review* discusses certain aspects of recent US Treasury final regulations regarding foreign tax creditability.



Section 409A Valuations Aren't An All-Purpose Insurance Policy

- By Stephen B. Tackney
- Washington National Tax

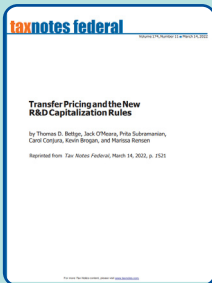
An **article** in the March 7, 2022, issue of *Tax Notes Federal*, examines various aspects of the section 409A private corporation stock valuation regulations, and explains why businesses may be tempted to adopt an overbroad reading of the rules.



Beware Extended Limitations Period for Subpart F Omissions

- By Jamal Aquil, Douglas Holland, and Matthew Weiss
- Washington National Tax

An **article** in the January 24 issue of *Tax Notes International* considers the implications of a recent IRS legal memorandum concerning the statute of limitations on assessments involving subpart F and how that could affect a taxpayer's overall return.



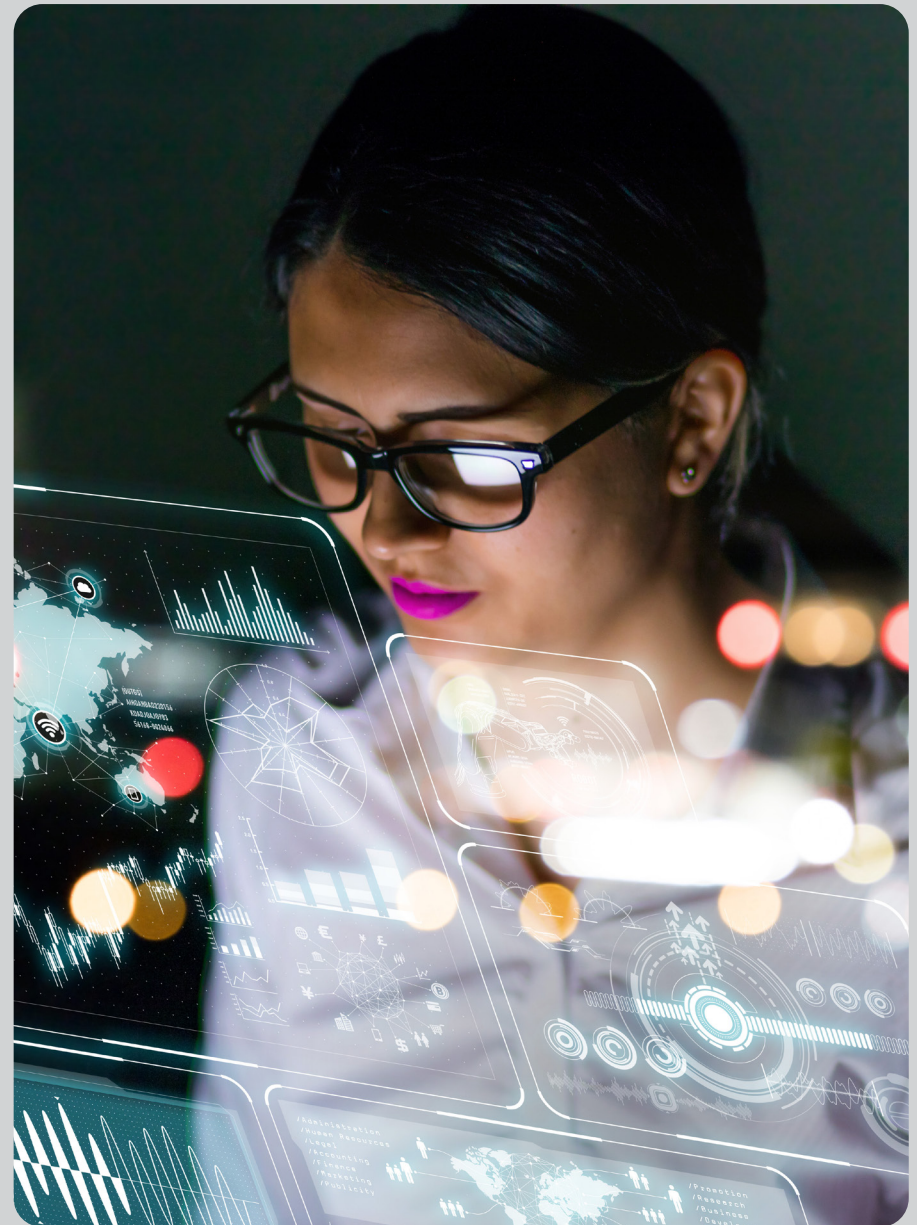
Transfer Pricing and the New R&D Capitalization Rules

- By Thomas D. Bettge, Jack O'Meara, Prita Subramanian, Carol Conrath, Kevin Brogan, and Marissa Rensen
- Washington National Tax

The March 14, 2022, **issues** of *Tax Notes Federal*, *Tax Notes International* and *Tax Notes State* featured an article examining significant developments with the section 174 amendments and how they affect common transfer pricing arrangements.

Research & Development Tax Credit 2021 Year in Review

This March 29 **webcast** covers research and development (R&D) tax credit and other R&D tax treatment developments. KPMG professionals discuss legislative updates; TCJA changes to sections 174, 41 and 280C; IRS refund CCM and procedures; IRS examinations and appeals hot topics; state and international R&D updates; and technology trends.





Tax enforcement trends





Tax Certainty: The March Goes On

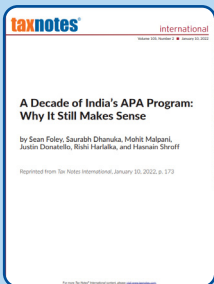
- ▲ By Mark Martin and Thomas Bettge
- 📍 Washington National Tax

This **article** in the December 2021 edition of *International Tax Review* reviews mutual agreement procedure statistics for 2020 released by the OECD.



2022 Chief Tax Officer Outlook

The new survey report, the **2022 Chief Tax Officer Outlook**, shares views of 126 CTOs about challenges and opportunities facing tax functions today and tomorrow. **Read the report.**



A Decade of India's APA Program: Why It Still Makes Sense

- ▲ By Sean Foley, Saurabh Dhanuka, Mohit Malpani, Justin Donatello, Rishi Harlalka, and Hasnain Shroff

An **article** in the January 10 issue of *Tax Notes International* provides an overview of India's advance pricing agreement program, including key benefits to taxpayers and some of the difficulties being addressed by tax authorities.



Other tax enforcement news

Sixth Circuit denies rehearing en banc denied in subpart F income case

Whirlpool Financial Corp. has 90 days from the date its rehearing request was denied to petition for certiorari with the U.S. Supreme Court. [TaxNewsFlash](#) (March 3)

U.S. Tax Court: Constructive transfer of intangible property in reorganization

The U.S. Tax Court granted the government's motion for summary judgment in a case concerning whether the taxpayer was required to recognize ordinary income under section 367 from a constructive transfer of intangible property to a Swiss corporation. [TaxNewsFlash](#) (January 31)

U.S. Tax Court: Compute foreign tax credit using same method that CFC used to apportion interest expense

In *AptarGroup, Inc.*, the Tax Court concluded that the taxpayer must use the same method to characterize its controlled foreign corporation (CFC) stock for purposes of computing its foreign tax credit under section 904 as the method used by the CFC for interest expense apportionment. [TaxNewsFlash](#) (March 16)

IRS revokes REIT private letter ruling

IRS signals tightened view on types of adjustments to rental formulas that are consistent with rent constituting qualifying income. See [TaxNewsFlash](#) (February 4).

Liability-waiver payments received from tenants, relating to self-storage facilities, deemed rents from real property for REIT income tests

Private letter ruling concerning real estate investment trust leased self-storage space to tenants to store tenants' property. [TaxNewsFlash](#) (March 18)



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Global tax disputes



The Basics of Managing Multilateral Controversy— Parts 1 and 2

By Mark Horowitz, Cameron Taheri, Theresa Kolish, Thomas Bettge,
and Addisen Reboulet

Washington National Tax

With multilateral controversies on the rise, it is important for taxpayers to understand how to effectively engage with tax authorities on these issues. **Part 1** of the article, which ran in the December 16 edition of *Bloomberg Tax*, considers the context of these controversies, and discusses the need for multilateral engagement by the tax authorities. **Part 2** in the December 17 edition of *Bloomberg Tax* takes a deeper dive into procedures and best practice recommendations.



2021: US Transfer Pricing Year in Review

By Mark Martin and Thomas Bettge

Washington National Tax

An **article** in the Winter 2022 (January 26) issue of *International Tax Review* provides a brief recap of and reflections on U.S. transfer pricing developments from 2021.

More Global Tax News

These *TaxNewsFlash* KPMG reports summarize and link to the full reports prepared by KPMG member firms.

- **Benefits of shared service centers in tax processes such as transfer pricing** (Switzerland)
- **Transfer pricing documentation viewed as ongoing process, not a short-term project** (Switzerland)
- **Uneven transfer pricing implications of pandemic** (UK)
- **Building an effective transfer pricing risk control framework** (Switzerland)

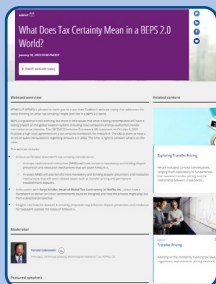


Subscribe to *TaxNewsFlash—Global* for summaries of the latest tax developments being reported by KPMG firms from around the globe.



OECD and BEPS





What Does Tax Certainty Mean in a BEPS 2.0 World?

BEPS 2.0 guidance is still evolving, but there is little doubt that what is being contemplated will have a lasting impact on the global taxation system, including how companies and tax authorities handle international tax disputes. The Organization for Economic Cooperation and Development (OECD)/G20 Inclusive Framework (IF) statement on October 8, 2021 finalized a high-level agreement on a tax certainty framework for Amount A. The OECD plans to have a series of public consultations regarding Amount A in 2022.

This one-hour January 18 KPMG TaxWatch **webcast** included:

- A focus on the October statement's tax certainty commitments;
- A discussion with Sonja Schiller, head of Global Tax Controversy at Netflix, Inc., about how a framework to deliver on these commitments could be designed and how the process might play out from a practical perspective.
- Insights into how the Amount A certainty proposals may influence dispute prevention and resolution for taxpayers outside the scope of Amount A.



BEPS 2.0: Issues and Implications for Latin America

By Juan Martin Jovanovich, Roberto Salles, Juan Infante, Ricardo A. Ruiz, Cristina Sansonetti, Jose Manuel Romero, Armando Lara Yaffar, Jair Montufar, Roberto Casanova-Regis, Kimberly Tan Majure and Luis Aisenberg

An **article** featured in the January 2022 issue of Bloomberg's *Tax Management International Journal* provides an overview of the OECD Pillars 1 and 2, and describes some of the most immediate issues implicated by BEPS 2.0 in Latin America as identified by authors in Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Mexico, Panama, Peru, and Uruguay.

For more on BEPS 2.0, see

- **KPMG report: Top concerns for tax leaders on the path forward for BEPS 2.0**, summarizing and linking to a report prepared by the KPMG member firm in Australia.





Pillar One's Amount A: A Revolution in TP Controversy

By Mark Martin and Thomas Bettge
Washington National Tax

An [article](#) in the November issue of *International Tax Review* discusses the Amount A tax certainty process in the OECD/G20 Inclusive Framework on BEPS and how it turns traditional transfer pricing dispute resolution on its head for in-scope taxpayers.

More OECD News

These *TaxNewsFlash* reports summarize and link to full reports prepared by KPMG member firms.

Pillar One KPMG reports:

- [Updated analysis of Pillar Two model rules for 15% global minimum tax following release of commentary](#) (March 18)
- [Comments in response to EC public consultation on proposal for minimum tax directive](#) (Euro Tax Flash, March 8)
- [Initial analysis of Pillar Two model rules for global minimum tax under OECD/G20 Inclusive Framework](#) (December 22)





State and local tax



States Will Soon Be Looking to Collect on NFT Sales

By Jeff Cook, Madeleine Smith, and Harley Duncan
Washington National Tax

An [article](#) in the March 21 edition of *Tax Notes State*, examines the concept of non-fungible tokens (NFTs), analyzes some of the key sales and use tax issues that have emerged regarding their sale, and provides first steps for NFT marketplaces and sellers to take to protect themselves in potential sales tax disputes.

Other State Tax News

[Year-End Checklist of State and Local Tax Legislative Developments for 2021](#)
[State, local tax changes \(first quarter 2022 in table format\)](#)



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KPMG LLP Tax Controversy & Dispute Resolution Services

KPMG Tax Controversy & Dispute Resolution professionals are here to help clients prevent disputes before they arise, manage controversies that may arise, and resolve challenges by tax authorities in an efficient and effective manner. Our professionals combine their years of experience with data analytics and cloud-based technologies to assist clients who are dealing with tax audits.

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