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Fall 2020

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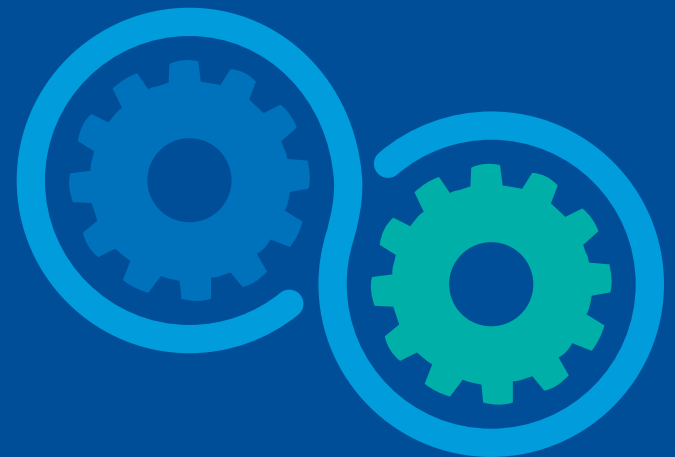
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IRS practice and procedure





[Navigating IRS Fax Rules to Expedite NOL and Minimum Tax Refunds](#)

By Gregory T. Armstrong, Timothy J. McCormally, and Lauren G. Roberts, Washington National Tax

This June 8 [article](#) in *Tax Notes Federal* summarizes the benefits and discusses the requirements of the expedited tentative refund procedure for net operating loss (NOL) carrybacks and unused alternative minimum tax credits (MTCs). It also describes the IRS's new temporary procedures for filing Forms 1139 via fax, including different rules for adapting existing forms depending on whether the taxpayer's situation involves NOLs, MTCs, both, or years involving an income inclusion under section 965(a). Finally, it offers practical suggestions for monitoring the IRS's handling of submitted Forms 1139 — especially in a processing environment that has been disrupted by the coronavirus — and provides tips for ensuring that an application for tentative refund will not be delayed or possibly rejected because of taxpayer errors and omissions.

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[Employee payroll tax deferral memo and Notice 2020-65](#)

President Trump signed an executive action on August 8 in the form of a memorandum directing Treasury to defer certain payroll tax obligations on amounts paid from September 1, 2020, through December 31, 2020, as well as to consider whether such obligation may be forgiven through legislative or other action.

- An August 10 KPMG [report](#) provides initial impressions on the presidential memorandum.

The IRS and Treasury Department on August 28 released an advance version of Notice 2020-65 providing guidance on the employee payroll tax deferral as directed by President Trump's August 8 memorandum.

- An August 31 KPMG [report](#) highlights some of the technical and practical implementation issues.



[IRS Launches BBA Centralized Partnership Audit Regime Webpage](#)

The IRS September 1 launched a “Bipartisan Budget Act” (BBA) centralized partnership audit regime webpage intended to be a “one-stop location for anything BBA-related.” The [webpage](#) includes regulations and other guidance and instructions:

- For partnership representatives
- How to elect out of the centralized audit regime
- About administrative adjustment requests (AARs)
- What to expect during a BBA administrative proceeding



Compliance Campaigns

The IRS Large Business & International (LB&I) division continues to expand its list of compliance campaigns:

- [Success-based fee allocation, life insurance reserve computations, FIRPTA reporting for nonresident aliens](#) – Sep 17
- [Section 965 under TCJA](#) – July 6



Chief Counsel Advice on Treatment of Unrelated Trade or Business NOLs

The IRS publicly released a Chief Counsel Advice (CCA) memorandum that addresses the treatment under section 512(a)(6) of a net operating loss (NOL) arising from an unrelated trade or business of a tax-exempt organization and carried back to a tax year beginning before January 1, 2018 (pre-2018 year) and to a tax year beginning after December 31, 2017 (post-2017 year). The conclusions reached in the CCA memo generally reflect the position of the IRS in previously announced “frequently asked questions” concerning the treatment of NOL carrybacks by certain exempt organizations.



IRS Expands List of Forms and Returns Available for Digital Signature

The IRS has expanded the list of forms and returns for which the use of digital signatures will be allowed temporarily. [IR-2020-206](#) (September 10, 2020) adds six more forms and returns that cannot be filed electronically but are allowed to be signed digitally in an effort to reduce in-person contact and lessen the risk to taxpayers and tax professionals during the coronavirus (COVID-19) pandemic.



IRS Practice Units

The IRS Large Business and International (LB&I) division publicly releases “practice units”—part of a series of IRS examiner “job aides” and training materials intended to describe for IRS agents leading practices about tax concepts in general and specific types of transactions.

- Foreign-earned income for purposes of section 911 – Aug. 27
- LIFO pooling requirements; distributions not from accumulated earnings and profits – Aug. 19
- Concept unit on accuracy-related penalties, tax professionals urge caution – July 30
- Receipts from related CFC; accuracy-related penalties – July 29
- Foreign tax credit limitation and computation – July 20
- Section 179D, E&P, property distribution, LIFO – July 14
- Reasonable cause and good faith – July 6

Tax enforcement trends





Practical Implications of Denial of Review in *Altera v. Commissioner*

By Sean Foley, Global Transfer Pricing Dispute Resolution, Mark Martin, Tom Zollo, and Jack O'Meara, Washington National Tax; Thomas Sites, Business Tax Services, Saurabh Dhanuka and Thomas Bettge, Global Transfer Pricing Services; and Aaron Vaughan and Tom Greenaway, Tax Controversy Services

On June 22, the U.S. Supreme Court denied the taxpayer's petition for *certiorari* in *Altera Corp. v. Commissioner*, leaving intact a Ninth Circuit opinion that upheld Treasury Regulations requiring the sharing of stock-based compensation costs (SBC) between parties in a qualified cost sharing arrangement. The Tax Court had previously found the regulations invalid, and the Tax Court's unanimous opinion remains a valid authority outside the Ninth Circuit.

An [article](#) in the June 22 edition of *Bloomberg Tax* addresses how the denial of *certiorari* raises many issues for taxpayers both within and outside the Ninth Circuit. Importantly, taxpayers must determine whether a filing position exists for a position that the regulations at issue are

invalid, and address the accounting implications of any such position under Accounting Standards Codification 740. Other issues include how to make contractually mandated reverse clawback payments to share SBC costs from prior years, and how the requirement to share SBC costs affects the valuation of platform contribution transactions that were determined based on forecasts that excluded SBC costs.

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Tax Court to decide on foreign taxpayer's right to deductions in *Adams Challenge*

By Mark Martin, Washington National Tax, and Thomas Bettge, Economic Valuation Services

In January 2020, the U.S. Tax Court issued a decision on the U.S. taxability of the foreign taxpayer's Outer Continental Shelf (OCS) income in *Adams Challenge (UK) Ltd. v. Commissioner*. The IRS victory on that issue was just the first stage of a larger fight. After the Tax Court determined that the taxpayer's OCS charter income was taxable in the U.S., it must now decide whether the taxpayer is entitled to take deductions against that income, an issue on which the parties have submitted competing motions for summary judgment.

Whether treaty provisions may trump section 882(c)(2) and the regulations is an important issue that has received scant consideration until now. This [column](#) in the Summer 2020 issue of *International Tax Review* explains why taxpayers and practitioners should watch the developments in *Adams Challenge* with interest.

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[IRS Interim Guidance on Designating Cases for Litigation](#)

The IRS released a [memorandum](#) on August 24 that provides interim guidance for IRS field personnel on the criteria to be applied and the process to be used when considering requests for designation of issues (cases) for litigation made to the Office of Chief Counsel.



[Tax Court Rules Timely E-filed Return Triggers Limitations Period](#)

The U.S. Tax Court in a “reviewed opinion” held that a properly filed income tax return triggers the statute of limitations for a deficiency notice, even though the return—electronically filed—lacked a required personal identification number. *Fowler v. Commissioner*, 155 T.C. No. 7 (September 9, 2020). Read the Tax Court’s [opinion](#) (no dissenting or separate concurring opinions).



[Tax News Flash–Tax Dispute Resolution](#)

KPMG LLP’s new [TaxNewsFlash-Tax Dispute Resolution](#) alert aggregates summaries of the latest tax dispute resolution news and developments being reported by KPMG firms from around the world.

To get started, please [click here](#) to subscribe now.

State and local tax





Home Rule Jurisdictions Make Their Move

By Jasmine Gandhi, Allen Storm, and Harley Duncan, Washington National Tax

In the wake of *South Dakota v. Wayfair* overturning the longstanding rule requiring that an out-of-state seller have a physical presence in a state before that state could require a seller to collect sales and use tax on sales delivered into the state, all but two states have adopted economic nexus requirements.

In musing about whether an undue burden claim might be made against some state regimes, most observers have focused on the four home rule jurisdictions in which many individual local governments collect and administer their own local sales and use taxes, separate and apart from the state tax. This [article](#) in the August 21 issue of *Bloomberg Tax* reviews the approaches in Alabama, Alaska, Colorado, and Louisiana with an emphasis on how the tax on remote sellers is collected and administered.

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Delaware Court Quashes Enforcement of Unclaimed Property Subpoena

The Delaware Court of Chancery in July held that enforcement of an administrative subpoena issued by the Delaware Department of Finance to a company undergoing an unclaimed property audit would constitute abuse. Although ultimately recognizing that the state has broad authority to seek records, the court expressed significant concerns over the scope of the records being requested and the audit methodology being used.

Delaware Department of Finance v. AT&T Inc., C.A. No. 2019-0985-JTL (July 10, 2020). Read the [decision](#).



September State and Local COVID-19 Tax Relief Summary

This September 14 KPMG *Tax News Flash* provides a summary of how state and local governments continue to address tax matters stemming from the coronavirus (COVID-19) pandemic.

Global tax disputes





[A New Era for Secondary Transfer Pricing Adjustments?](#)

By Mark R. Martin, Washington National Tax; Mark J. Horowitz, Thomas D. Bettge, and Lillie Sullivan, Economic Valuation Services

Taxpayers faced with transfer pricing adjustments have long relied on repatriation to shift funds in order to comply with regulatory requirements under section 482. However, the Tax Cuts and Jobs Act and other developments have prompted changes in this area that may make secondary adjustments involving deemed transactions—long considered to be fraught with adverse tax consequences—a more favorable alternative in some cases.

An [article](#) in the August 24 issue of *Tax Notes Federal* examines the mechanisms for and the tax consequences of secondary adjustments and analyzes how taxpayers should conform their accounts following transfer pricing adjustments.

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[COVID-19 Disruption: International Tax and Transfer Pricing Issues](#)

By Kimberly Majure, Prita Subramanian, and Brett Bloom, Washington National Tax

This [article](#) in the July 2020 issue of the *Journal of International Taxation* highlights some of the significant international tax and transfer pricing issues arising from companies' disruption activities. It first discusses the tax implications of cash flow planning, with a primary focus on the interaction of provisions in the CARES Act and the TCJA. Then it focuses on common international tax and transfer pricing issues related to R&D, supply chain, and remote workforce responses to the COVID-19 pandemic.

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[Revisiting Transfer Prices and Intercompany Contracts in Light of COVID-19](#)

By Mark R. Martin, Washington National Tax; Mark J. Horowitz and Thomas D. Bettge, Economic Valuation Services

This June 22 *Tax Notes Federal* [article](#) examines the considerations that should be taken into account in evaluating potential changes to related-party arrangements under the OECD transfer pricing guidelines (the guidelines) and Treasury regulations (the regulations). It addresses the common law doctrines of rescission, which may allow a party to unwind a contract, and *force majeure*, which may excuse performance under a contract. Finally, the article discusses the taxpayer-initiated adjustment rules of reg. section 1.482-1(a)(3), which provide taxpayers latitude to report transfer prices other than those actually charged, and thus may allow taxpayers to arrive at arm's-length results without modifying contracts.

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U.S. Trade Court Strikes Down Trump Turkish Steel Tariff Proclamation

The U.S. Court of International Trade held that a 2018 proclamation issued by the U.S. president violated statutory and constitutional guarantees. The trade court found that there must be strict adherence to statutory timelines when setting section 232 tariffs, and the tariffs cannot be subsequently modified or adjusted beyond the legal deadlines without conducting another formal investigation.



Webcast: Transfer Pricing Considerations Resulting from COVID-19: Focus on Financial Services

The unexpected outbreak of COVID-19 has significantly affected the global marketplace. As a result, transfer pricing issues are emerging that should be proactively considered.

During the [July 10 webcast](#), the third in a series, speakers focused on the Financial Services industry. The panel included KPMG Financial Services Transfer Pricing leaders, as well as special guest Gemma Parrott, Managing Director, Goldman Sachs, discussing:

- COVID and Financial Services Transfer Pricing – practical implications from a banking, insurance and asset management perspective
- BEPS 2.0 – why this topic has become more important than ever, with a specific focus on Pillar 2 and control over risk
- Business model changes driven by the current environment and associated transfer pricing implications.



Future of Global Tax Disputes, Tax Authority Reactions, Guidance and Expectations

On a recent webcast, “*Global disputes in a COVID-19 era: Revenue authority reactions, guidance and what to expect going forward,*” Sharon Katz-Pearlman, head of KPMG Global Tax and Dispute Resolution & Controversy Services, was joined by tax revenue authority officials from the U.S., UK, and Australia, as well as KPMG member firm colleagues, to discuss the current environment for tax disputes and trends they think are here to stay in the future. This August 19 KPMG report summarizes the discussion of how tax administrations are adapting to the current conditions and what to expect in the future.

OECD and BEPS





The State of Country-by-Country Reporting

By Sean Foley, Mark R. Martin, Michael H. Plowgian, John DerOhanesian, Washington National Tax; Henrik Lund, Global Transfer Pricing Services, Raj Bodapati and Josh McConkey, Economic Valuation Services

This August 31 *Tax Notes International* article provides an update on the status of the CbC reporting process and an overview of the regulatory landscape while highlighting the movement toward increased transparency and how that translates into additional compliance burdens.

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International and U.S. Digital Services Taxes — *Qui Vivra Verra*

By Jeff Cook and Philippe Stephanny, Washington National Tax

This May 4 article in *Tax Notes State* provides a high-level overview of digital services taxes, some of the criticisms and practical issues regarding their application, and legal challenges they may face.

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Transfer Pricing Substance in Flux— DEMPE, BEPS 2.0, and COVID-19

By Mark R. Martin, Washington National Tax; Mark J. Horowitz and Thomas D. Bettge, Economic Valuation Services

The OECD's Base Erosion and Profit Sharing (BEPS) project is not done bringing significant developments in the role of substance in transfer pricing. The rules concerning development, enhancement, maintenance, protection, and exploitation (DEMPE) are affecting taxpayers directly and indirectly. As tax authorities begin to implement substance concepts, the OECD is moving beyond substance concepts with its approach to taxing the digital economy and consumer-facing businesses. An July 31 article in *Bloomberg Tax* discusses how developments like the DEMPE rules, BEPS 2.0, and the disruption caused by the COVID-19 pandemic will have important consequences for substance and the role it plays in the international tax system.

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[Tax challenges of digitization](#)

The challenge of how to tax the digital economy was identified in the OECD's BEPS initiative as Action 1: Addressing the Tax Challenges of the Digital Economy. While intergovernmental groups, including the OECD, are trying to build a consensus around taxation of the digital economy, some countries are taking unilateral actions, such as imposing digital services taxes. As the digitization tax debate continues, multinational companies will need to stay abreast of both short- and long-term developments to navigate and prepare successfully for the resulting changes to the global tax landscape.

This [website](#) contains insights from KPMG about the potential impact of proposed reforms on the taxation of the digital economy.



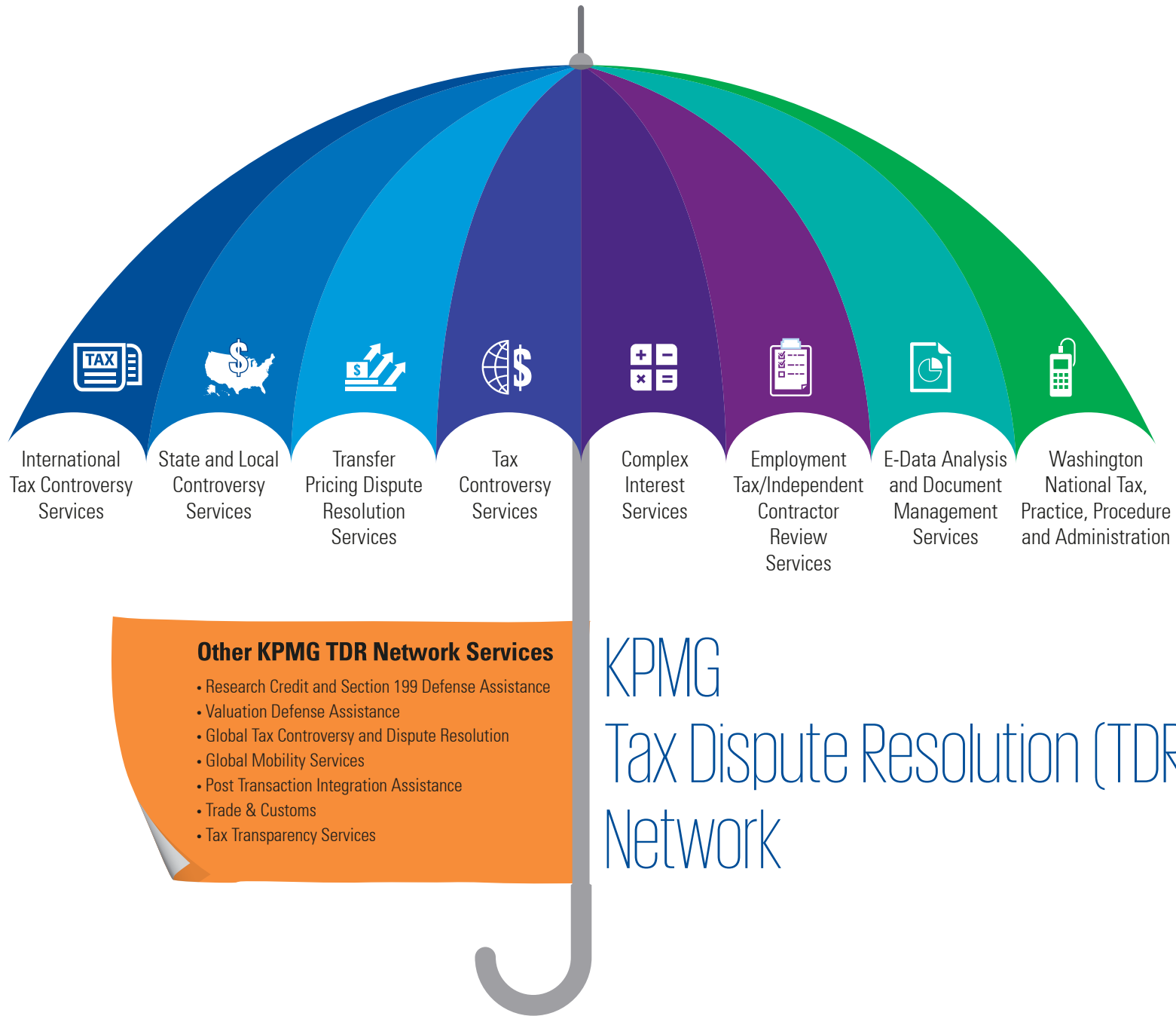
[EU Country Profiles](#)

KPMG's European Tax Centre publishes a yearly profile on tax systems of most European countries, useful for understanding of local direct tax rules.



[BEPS Action 13: Latest country implementation update](#)

Updated weekly, this summary [report](#) in table format offers a snapshot of implementation of country-by-country (CbC) reporting and Master file/Local file documentation requirements around the world.





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Sharon Katz-Pearlman is the national principal in charge of KPMG LLP's Tax Dispute Resolution practice in the U.S., as well as the global head of KPMG International's Tax Dispute Resolution & Controversy practice, overseeing a network of dispute resolution specialists from KPMG's member firms around the world. Sharon's client work at KPMG is focused primarily on representation before the IRS of multinational corporate clients and financial institutions, both domestic and international. She spends much of her time dealing with transfer pricing issues and cross-border disputes. Prior to joining KPMG, Sharon was a special litigation attorney with the IRS Office of Chief Counsel, U.S. Department of the Treasury. Sharon is an adjunct professor of law at the New York University School of Law, where she teaches civil tax controversies and litigation in the LLM (Tax) program. She also serves on the U.N. Committee of Experts on International Cooperation in Tax Matters – Subcommittee on the Mutual Agreement Process, Dispute Avoidance and Resolution. Sharon is a frequent speaker at tax conferences in the U.S. and abroad, and is listed in the International Tax Review's Tax Controversy Leaders, The Comprehensive Guide to the World's Leading Tax Controversy Advisors, ITR's Women in Tax Leaders Guide, and the Expert Guide, Women in Business Law.

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KPMG LLP's Tax Dispute Resolution Services

KPMG's Tax Dispute Resolution Services network helps companies prevent, prepare for, and respond to challenges by the varying tax authorities. The network is a national team of tax professionals, who assist companies in identifying, managing, and mitigating potential tax risks and exposures.

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