



Tax Dispute Resolution Quarterly— Winter 2021 issue

[Transfer Pricing Remains Crucial as IRS CAP Program Opens for 2021](#)

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Winter 2021

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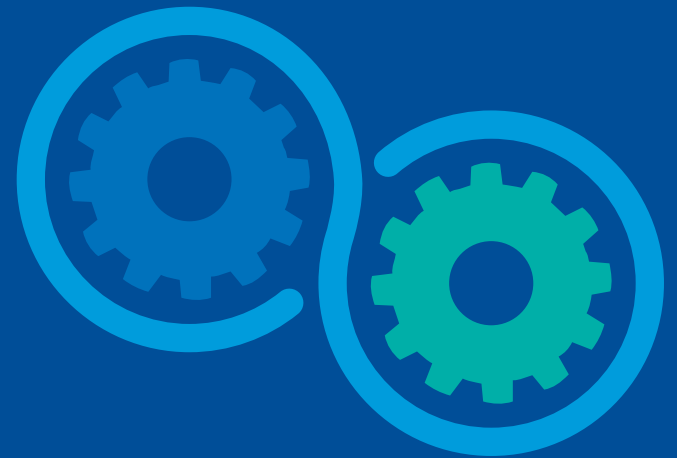
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IRS practice and procedure





[Transfer Pricing Remains Crucial as IRS CAP Program Opens for 2021](#)

By Mark Martin and Thomas Bettge, Washington National Tax

This September 2020 [column](#) in the *International Tax Review* notes the opening of applications for the IRS's Compliance Assurance Process program's 2021 year, and reflects on how the program's approach to transfer pricing has shifted in recent years.

mrmartin@kpmg.com

tbettge@kpmg.com



[IRS Guidance on Daily Fantasy Sports Raises the Stakes for Operators](#)

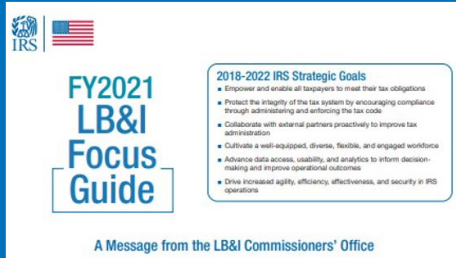
By Jeff Cook, Taylor Cortright, Shirley Sicilian, and Curt Wilson, Washington National Tax

The IRS issued nonbinding guidance—a general legal advice memo and a private letter ruling—on daily fantasy sports in 2020. An [article](#) in the November 30 issue of *Tax Notes Federal* describes the mechanics of daily fantasy sports, current federal laws regulating gambling, and the federal excise tax on wagering and the regulations thereunder, as well as the recent IRS guidance. The article also identifies arguments the IRS did not consider that may support a contrary conclusion to that taken by the IRS.

jmcook@kpmg.com

tcortright@kpmg.com

ssicilian@kpmg.com



LB&I Focus Guide for FY 2021

The IRS Large Business and International (LB&I) division released its annual “Focus Guide” broadly outlining its strategic goals for FY2021. The LB&I Focus Guide includes new initiatives and also highlights activities started in FY2020 (and prior years) and continuing into FY2021, such as launching new compliance campaigns, improving the Compliance Assurance Process, implementing the 2017 tax reform (Tax Cuts and Jobs Act or TCJA) and partnership audit procedures (Bipartisan Budget Act of 2015 or BBA) measures, and expanding the size of the LB&I workforce.

Specific strategic goals include:

- Continue efforts to improve case selection to focus on taxpayer noncompliance
- Expand coverage of pass-through entities, high-wealth taxpayers, and high-income individuals
- Mature data analytics to measure progress in all compliance activities to improve future selection of cases and issues
- Continue to expand data analytics tools and improve strategies to combat abusive transactions and promoter schemes
- Identify taxpayer strategies and compliance with the TCJA
- Closely monitor and respond to the impact of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on LB&I taxpayer positions
- Continue to enhance the Large Corporate Compliance program using feedback and data analytics and expand the program to partnerships.
- Continue to monitor the impact of the Compliance Assurance Process (CAP) recalibration.

Tax enforcement trends



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IRS Partnership Enforcement Ramps Up



IRS Partnership Enforcement Ramps Up

By Greg Armstrong, Ossie Borosh, and Tom Kane, Washington National Tax; and Thomas Greenaway, Tax Controversy Services

The IRS is moving into the next generation of partnership audits and enforcement following the enactment of the Bipartisan Budget Act of 2015 (BBA) and repeal of its predecessor, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This November 30 [article](#) in Bloomberg Tax *Daily Tax Report* outlines some of the issues under TEFRA, several of the key elements of the BBA, how the new IRS enforcement push differs from past efforts, what the IRS is looking for, and what partnerships and their professional advisors can do now.

gregoryarmstrong@kpmg.com

oborosh@kpmg.com

tgreenaway@kpmg.com

thomaskane@kpmg.com



Tax News Flash — Tax Dispute Resolution

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State and local tax





Looking Back, but Thinking Forward: Reflections on a Very Unusual Year in SALT

From a state tax standpoint, 2020 was a particularly busy year. At the beginning of 2020, it was expected that certain states would continue to refine their policies around the TCJA. No one anticipated a new federal tax bill, the CARES Act, that states would need to address. Nexus activity post-*Wayfair* is nothing new; however, in 2020, states had to deal with physical presence nexus again in the form of telecommuting—or in some cases stranded—employees, as well as a host of other issues associated with organizations rapidly switching to a remote workforce. Finally, many states had just finished—or were winding down—their sessions when the COVID-19 pandemic forced lawmakers to adjourn; other states had just started to get to work putting together 2021 budgets. When legislators were able to reconvene, or call a special session, the budget picture had changed significantly, and priorities had shifted.

In this December [article](#), leaders of the KPMG State & Local Tax (SALT) Income Franchise and Washington National Tax practices share their reflections on 2020 and what state taxpayers should be thinking about in 2021.



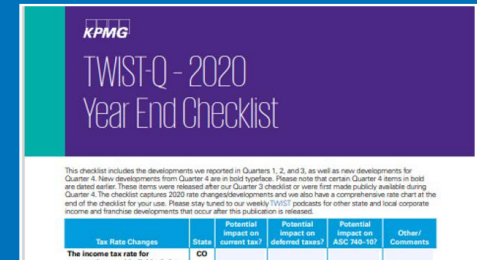
State Transfer Pricing Trends and Opportunities Accelerated by COVID-19

By Shirley Sicilian, Nikki Bossert, Washington National Tax, and Stephen Snyder, Economic Valuation Services

A November 16, 2020 [article](#) in *Tax Notes Federal* discusses recent state transfer pricing trends and how they have been affected by the COVID-19 pandemic. State fiscal pressures created by the COVID-19 pandemic are expected to continue at least through fiscal 2021. These fiscal pressures will affect audit and appeal activity, and may accelerate state transfer pricing trends, including opportunities for early resolution.

The article explains how the confluence of declining state revenue and increasing professionalism of state transfer pricing capabilities could lead states to focus more effort on not only transfer pricing audits, but also transfer pricing dispute resolution. The programs in Indiana and North Carolina indicate that at least some states are looking for ways to resolve transfer pricing issues in bulk, and the article anticipates other states adopting similar programs. Even some states without defined programs have been willing to attempt resolution on a case-by-case basis.

ssicilian@kpmg.com
nbossert@kpmg.com
stephensnyder@kpmg.com



Year-end summary of state, local tax changes for 2020

This [report](#), prepared by the KPMG SALT practice, provides a summary of state and local tax developments for 2020 in table format.

Global tax disputes





Disrupting Tax Processes with Artificial Intelligence Technology

By Michel Braun, KPMG in Germany; Steven Galginaitis and Brian Shea, Washington National Tax; Rebecca Reitz and Jillian Schleicher, KPMG Data & Analytics

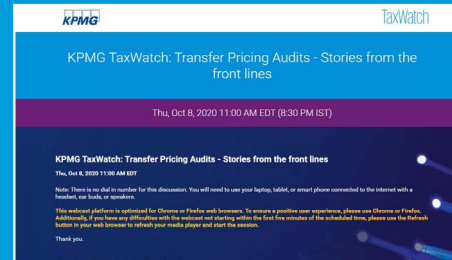
Artificial intelligence (AI) is redefining the future of business and is substantially helping companies to deliver robust intelligent automation solutions. While AI—an area of computer science dealing with the simulation of intelligent behavior in a computer—is relevant to any business field, applying AI to tax processes is in its early stages. This September 24 [article](#) in *Bloomberg Tax* includes a discussion of the application of AI to the development of benchmarking sets used for transfer pricing is a joint, multiyear effort of professionals involved in transfer pricing and data and analytics.

mbraun@kpmg.com

brianshea@kpmg.com

rreitz@kpmg.com

jillianschleicher@kpmg.com



Webcast: Transfer Pricing Audits—Stories from the front lines

This one-hour October 8, 2020 TaxWatch [webcast](#) addresses the increasing number of tax controversies that multinationals are facing around the world. Senior transfer pricing dispute resolution professionals from member firms of KPMG International in the U.S., U.K., Germany, India, Sweden, Mexico, and Poland discuss real-life experiences they've faced with their clients including the following:

- U.S. MNE's CbyC report triggers audit in Taiwan
- Indian Revenue's new approach to marketing intangibles
- CbyC report prompts HMRC audit
- Senior R&D role in Germany leads to DEMPE challenge
- How the ATO's new inbound distributor benchmarks are playing out audits
- U.S. grants unilateral MAP relief
- Mexico challenges use of Berry Ratio
- Sweden asserts massive postacquisition exit charge
- Poland makes TP adjustment for company without related-party transactions.



Global Tax Dispute Resolution and Controversy Webcast Series

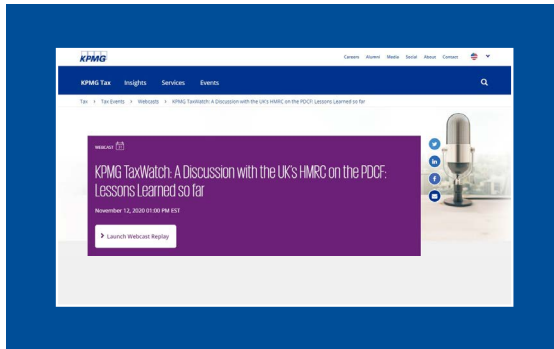
Exploring How Jurisdictions are Operating Mid-Pandemic

In this webcast series, members from KPMG's Global Tax Dispute Resolution & Controversy Network from across the globe provide updates on the initiatives and trends relating to disputes and controversy in their jurisdictions and provide a practitioner's perspective on what taxpayers might expect in the future.

Australia, China, India, and Singapore—
November 13 [webcast](#)

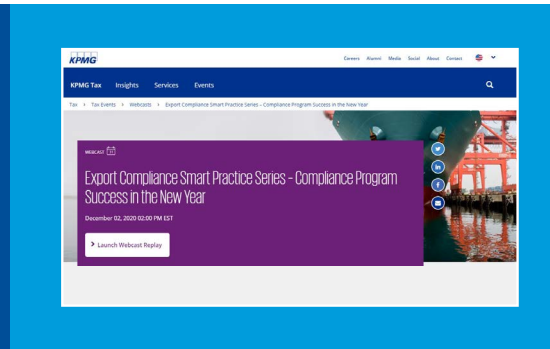
Brazil, Canada, Mexico, and the U.S.—
October 28 [webcast](#)

France, Germany, Netherlands, and the U.K.—
October 21 [webcast](#)



TaxWatch: Lessons Learned from UK's Profit Diversion Compliance Facility

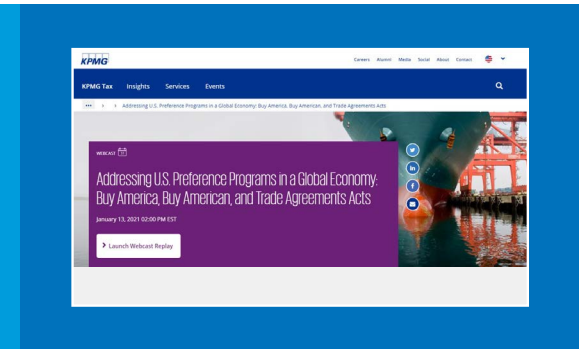
The UK's Profit Diversion Compliance Facility (PDCF) is intended to be an innovative approach to fostering compliance with UK tax legislation, particularly focused on transfer pricing and the Diverted Profits Tax. This one-hour November 12 TaxWatch [webcast](#) presents a discussion with specialists from Her Majesty's Revenue and Customs (HMRC) in the U.K., and senior transfer pricing dispute resolution professionals from KPMG LLP (U.S.) and KPMG in the U.K. to explain PDCF and discuss practical experiences from the initial cases to go through the process.



Webcast: Export Compliance Smart Practice Series—Compliance Program Success in the New Year

For export compliance and sanctions professionals, 2020 was an eventful year with regulatory changes that have reshaped the compliance landscape. In 2021, it will be important for companies to develop strategic plans that will help set up their compliance program for success into the new year and beyond.

In this one-hour December 2 [webcast](#), KPMG Global Export Controls & Sanctions professionals discuss the changes they are seeing both to export controls and sanctions, and what to expect from a new U.S. administration.



TradeWatch webcast: Addressing U.S. Preference Programs in a Global Economy: Buy America, Buy American, and Trade Agreements Acts

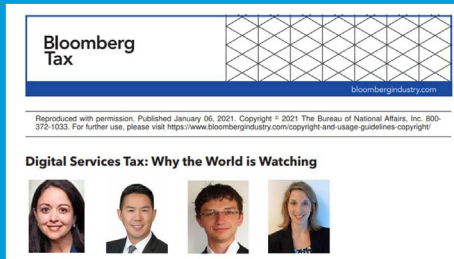
Today's leaders are under pressure to maintain an adequate compliance program for government contracts that keeps up with evolving regulations. It is important to have a comprehensive framework in place to mitigate risks to business performance, reputation, and ultimately the ability to participate in the government contracting process. With a new administration expected to increase the focus on domestic preference programs, there will likely be greater scrutiny of compliance requirements and waivers associated with government contracting, raising the bar for companies that participate in these programs.

During this one-hour January 13 webcast, professionals from KPMG Government Contractor Services and Trade & Customs practices provided an overview of requirements for Buy America Act, Buy American Act and Trade Agreements Act, and discussed:

- Building out a strong compliance program
- Leveraging leading technologies to support compliance obligations
- Looking ahead to the next administration.

OECD and BEPS





Digital Services Tax: Why the World is Watching

By Amie Ahanchian and Elizabeth Shingler, Trade & Customs; Donald Hok and Philippe Stephanny, Washington National Tax

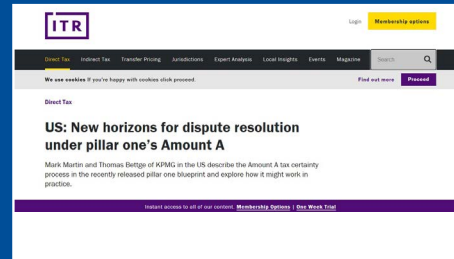
The U.S. has threatened to impose retaliatory tariffs on digital services tax proposals that the U.S. believes unfairly target U.S. multinationals. This [article](#) in the January 6 issue of *Bloomberg Tax* summarizes the various digital services tax proposals globally and discusses potential duty mitigation strategies should the U.S. choose to respond with retaliatory tariffs.

aahanchian@kpmg.com

eshingler@kpmg.com

dhok@kpmg.com

philippestephanny@kpmg.com



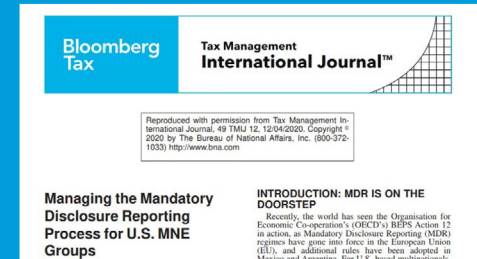
New Horizons for Dispute Resolution under Pillar One's Amount A

By Mark Martin and Thomas Bettge, Washington National Tax

The focus of the tax certainty chapter of the recently released OECD's Pillar One "blueprint" is the prevention and resolution of disputes regarding Amount A, which allocates taxing rights on a portion of in-scope companies' profits to market jurisdictions. This November [article](#) in the *International Tax Review* describes the blueprint's Amount A tax certainty process and explores how it might work in practice.

mrmartin@kpmg.com

tbettge@kpmg.com



Managing the Mandatory Disclosure Reporting Process for U.S. MNE Groups

By Kimberly Tan Majure, John DerOhanesian, and Federica Porcari, Washington National Tax; Juan Martin Jovanovich, KPMG in Buenos Aires; and Armando Lara Yaffar, KPMG in Mexico City

Mandatory Disclosure Reporting (MDR) regimes under OECD base erosion and profit shifting (BEPS) project Action 12 have gone into force in the European Union, and additional rules have been adopted in Mexico and Argentina. This article in the December 4 issue of Bloomberg's *Tax Management International Journal* discusses taxpayers' most frequently asked questions about MDR implementation, and the considerations surrounding the best practice answers.

kmajure@kpmg.com

jderohanesian@kpmg.com

fporcari1@kpmg.com

mjovanovich@kpmg.com.ar

armandolara@kpmg.com.mx



Mandatory Disclosure Rules in the European Union and Mexico

By Kimberly Tan Majure and John DerOhanesian, Washington National Tax, and Armando Lara Yaffar, Head of International Tax Services of KPMG Mexico

The Organisation for OECD developed a framework to help curb tax avoidance and ensure that multinational enterprises pay their “fair share” of the global tax burden. Specifically, the BEPS project identified 15 actions, structured around three key pillars: consistency in domestic legislation affecting cross-border activities, reinforcing substance requirements in the existing international standards, and improving global transparency. This October 2, 2020 [article](#) in Bloomberg’s *Tax Management International Journal* focuses on the third pillar of the (BEPS) project: global transparency, and in particular, Action 12—Mandatory Disclosure Rules (MDR, as recently adopted in in the European Union including the United Kingdom) and Mexico. The two regimes illustrate the potential breadth of MDR and signal the challenges that multinational taxpayers will face as MDR proliferates in various forms.

kmajure@kpmg.com

jderohanesian@kpmg.com

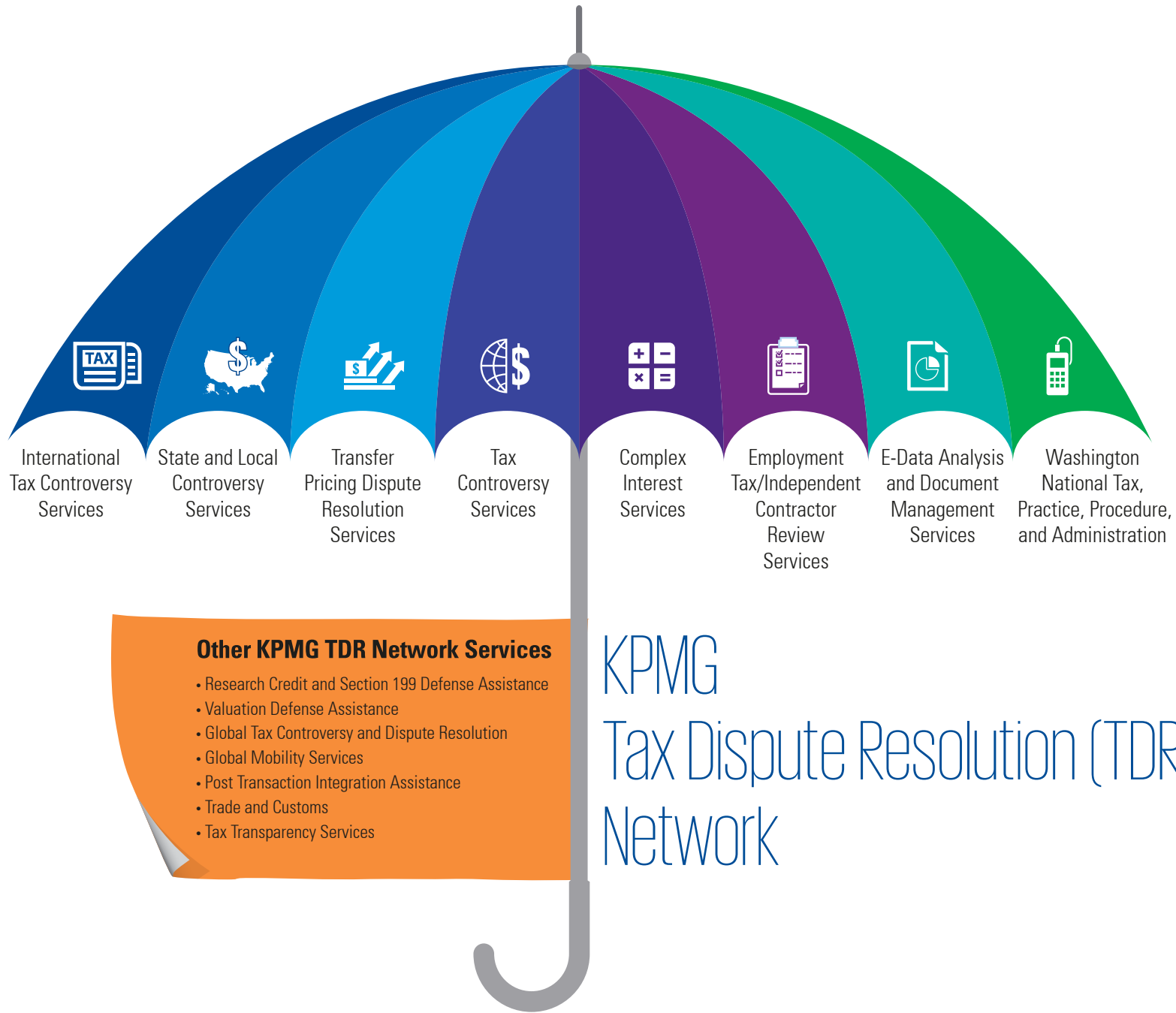
armandolara@kpmg.com.mx



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.





Sharon Katz-Pearlman

**Global Head of Dispute
Resolution & Controversy**

KPMG in the U.S.

T: 212-872-6084

E: skatzpearlman@kpmg.com

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 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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