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KPMG LLP along with other professional services firms in the United States filed an amicus curiae brief in August 2019 in support of the taxpayer’s request for en banc review by the Ninth Circuit’s majority opinion in *Altera Corp. v. Commissioner*.

In June 2019, the U.S. Court of Appeals for the Ninth Circuit reversed a 2015 decision of the U.S. Tax Court, which had invalidated a Treasury regulation under section 482 that requires participants in a qualified cost-sharing arrangement to share the cost of employee stock-based compensation.

The Ninth Circuit case was decided by a majority panel of two judges, and included a dissenting opinion. (Read a KPMG report providing initial impressions about the Ninth Circuit’s decision in June 2019.)

In general, the amicus brief notes:

— The case concerns the validity of regulations requiring the sharing of stock-based compensation costs in qualified cost-sharing arrangements.

— The panel majority decision by the Ninth Circuit (which upheld the challenged regulations) overturned a unanimous U.S. Tax Court opinion, leaving the law unsettled nationally. Due to the lack of uniformity arising from these opinions, an en banc rehearing would create further certainty in that the ultimate decision in this case—whatever that may be—would reflect the full court’s consideration and analysis.

— Certain aspects of the majority opinion raise questions regarding the meaning and application of the arm’s length standard. An en banc rehearing would allow the full Ninth Circuit to better clarify its interpretation and application of the arm’s length standard.
IRS practice and procedure
CAP updates bring transfer pricing issues to the fore

By Mark Martin, Washington National Tax, Cameron Taheri, Lillie Sullivan, and Thomas Bettge, Transfer Pricing Dispute Resolution Services

A July 22 issue of Tax Notes Federal article examines two changes to the IRS’s compliance assurance process program that involve transfer pricing: Taxpayers applying for CAP must complete a template of material intercompany transactions; and for some issues, an advance pricing agreement may be required for the taxpayer to remain in CAP.

Clarity provided for timing of revenue under the accrual method

By Carol Conjura, Washington National Tax, Joseph R. Hainly, Accounting Methods and Credit Services, and Matthew A. Morris, Tax Controversy Services

The proposed regulations and administrative guidance issued by Treasury and the IRS provide much-needed clarity regarding the proper application of section 451(b) and (c), which were added to section 451 as part of the Tax Cuts and Jobs Act. The amendments require taxpayers in some situations to recognize revenue sooner than under prior law. Many taxpayers, especially those that receive revenue under multiyear contracts for services, products, licenses, and leases, have been eagerly awaiting specific guidance from Treasury and the IRS to determine how much (if any) additional income must be accelerated under section 451 and how to request approval for a change in accounting method to comply with the new income recognition requirements. Despite the clarity that the proposed regulations and administrative guidance offer in many areas, several unanswered questions remain.

This October article analyzes proposed regulations and administrative guidance under section 451(b) and (c), and identifies questions that should be addressed in the final regulations.

Application season for 2020 CAP program

The IRS announced in September the opening of the application period for the 2020 Compliance Assurance Process (CAP) program. The application period began September 16, 2019, and ended October 31, 2019. No new taxpayers have been accepted into CAP for the last three tax years, but announcement includes instructions for those new large corporate taxpayers that may wish to apply for the 2020 CAP program.

According to the IRS release—IR-2019-154—the IRS will inform taxpayers if they are accepted into the program by approximately January 31, 2020.
**State opioid taxes**

By Nikki Bossert, Harley Duncan, Deborah Gordon, Washington National Tax, and Nick Saye, State and Local Tax

In an effort to deter opioid use and defray some of the costs resulting from the abuse of both prescription and illicit opioids, state legislatures are considering new laws that impose a tax or substantial fee on opioid manufacturers and distributors. An article in the September 16, 2019, issue of *Tax Notes State* discusses those taxes and fees that states have implemented or considered.

**Purchaser considerations in post-Wayfair world**

By Justin C. Stringfield, State and Local Tax

*Wayfair* affected both sellers and purchasers alike when it opened the door for states to require more sellers to collect sales tax. For purchasers, it placed a much greater emphasis on the need to monitor and manage vendor-billed tax because of the growing financial impacts of this tax on the business. As *Wayfair* continues to change the world of sales tax, it is imperative that businesses analyze the impact of those changes to both the sales side and purchase side of their business. This article in the October 28 issue of *Tax Notes State*, explains why it is more important now for businesses to not only have insight into sales tax paid to vendors on purchases but also to establish processes to monitor, track, validate, and account for this tax.

**2019, third quarter summary of state, local tax changes**

This report, prepared by KPMG’s State and Local Tax practice, provides a summary of state and local tax developments for the third quarter of 2019 in table format.
Global tax disputes
By François Vincent, Economic Valuation Services, and Allison Rasko, Washington National Tax

The Organisation for Economic Cooperation and Development’s Base Erosion and Profit Shifting action plan is expected to significantly increase transfer pricing controversy. The August 29 and 30 issues of Bloomberg BNA’s *Daily Tax Report*, published a two-part article authored by transfer pricing experts with KPMG LLP (U.S.) and KPMG member firms throughout Europe. In this combined report, the authors provide a historical overview and current statistics of advance pricing arrangements (APAs) in European jurisdictions, as well as summarizes recent developments and key takeaways in APAs in those European jurisdictions.

With tax audit and dispute activity rising in almost every country, keeping up with developments is more important than ever. In this edition of *Global Tax Dispute Update*, you’ll find briefings on key news, events, and thought leadership from Global Tax Dispute Resolution & Controversy professionals in KPMG member firms worldwide. Staying informed can be a crucial first line of defense as you manage your disputes around the globe. Make sure to view our past issues of *Global Tax Disputes Update*.

**Sharon Katz-Pearlman**  
Head of KPMG’s Global Tax Dispute Resolution & Controversy

Tax authorities and businesses view technological improvements as an opportunity to improve VAT/GST reporting processes. In recent years, tax authorities across the globe have introduced new indirect tax compliance requirements such as using e-invoicing, imposing real time reporting for sales transactions, and adopting specific electronic accounting formats. The United Kingdom, with the adoption of the Making Tax Digital requirement for VAT purposes is one of the latest examples of countries moving towards the digitalization of VAT reporting. At the same time, companies can leverage a broad range of tools that allows them to not only automate the indirect tax compliance process, but also facilitate the tax determination process.

On this August 27 TaxWatch webcast, professionals from KPMG’s US and Global Indirect Tax practices discuss global trends in indirect tax compliance.

On this November 6 TaxWatch webcast, professionals from KPMG’s U.S. Indirect Tax practice discussed new indirect tax rules based on the challenges of the digital economy and how U.S. businesses can prepare and comply.
During this October webcast, several senior tax officers from multinational entities join KPMG transfer pricing professionals to discuss the increasing number of tax controversies multinationals are facing around the world and how tax departments are addressing this challenge.

Guest speakers John Benoit, Senior Vice President, Tax and Treasury from Parexel International; Scott Schulof, Transfer Pricing Senior Director from Zoetis; and Tim Tincknell, Vice President Tax Planning from AECOM joined professionals from KPMG’s Transfer Pricing and Washington National Tax practices to discuss:

- Trends in transfer pricing controversy including country-by-country and DEMPE audits
- Managing global controversies and leading practices
- How to proactively prepare for the increasing wave of controversy

In this October podcast, Sean Foley, KPMG Head of Transfer Pricing Disputes, discusses how data and analytics are affecting audits and the changing tax landscape, how country-by-country reporting is triggering audits, and how changing business models affect transfer pricing risk. He also provides his thoughts on the OECD’s release of the Digital Economy Action Plan, as well as advice for the future of transfer pricing.

This KPMG report takes an in-depth look at the issues faced by those who manage their company’s tax disputes, and the processes, practices, and resources they have in place to meet these challenges. KPMG’s Global Tax Disputes benchmarking report is part of KPMG International’s broader tax benchmarking initiative. This research offers inside views of the structure, governance, priorities, and performance measures of tax departments today and delivers insights on how leading tax departments expect to transform in the next 5 years.

The 2019 survey tells us that companies are seeing a significant rise in tax audits and disputes, and all signs point toward even more intense tax authority activity in the future. The pace at which tax authorities have changed and intensified their approach—both unilaterally and cooperatively—has been surprising.

This report presents an overview key findings from this year’s survey, together with insights from senior leaders of KPMG’s Global Tax Dispute Resolution & Controversy Services network. The report also presents key takeaways for tax dispute management leaders to help them prepare for the challenging times ahead.
By Robert Van der Jagt, Marie Audrain, and Raluca Enache, KPMG Meijburg & Co, and Jesse Eggert, Washington National Tax

The anti-tax avoidance directive (ATAD), first presented in January 2016 and adopted by all European Union (EU) Member States six months later in July 2016, builds upon the OECD’s Action Plan on Base Erosion and Profit Shifting (BEPS) Action 3 for strengthening controlled foreign company (CFC) rules.

This October KPMG report provides an overview of and implementation status for the ATAD, which is intended to strengthen protection against aggressive tax planning in the EU and lays down common minimum rules in the areas of interest limitation, exit taxation, general anti-abuse rules (GAAR), CFCs, and hybrid mismatches. These standards, which should generally apply as of January 1, 2019, are intended to provide a minimum level of protection to Member States.
When it comes to tax planning, a major challenge facing chief tax officers is uncertainty regarding how the international tax rules will change to address the digital economy as governments are discussing proposals that would change the allocation of profits for all companies, regardless of how digital.

The September edition of *CTO Insights—Issue Spotlight* discusses the digital tax debate, who it might affect, progress toward a multilateral consensus, and how tax audit activity is coming into play.

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.

In particular, check out the [Taxation of the Digitalized Economy Country Developments Summary and Map](#), which provides an overview of how countries around the world are responding to the tax challenges arising from the digitalized economy.
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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.