



# Tax Dispute Resolution Quarterly

Spring 2018

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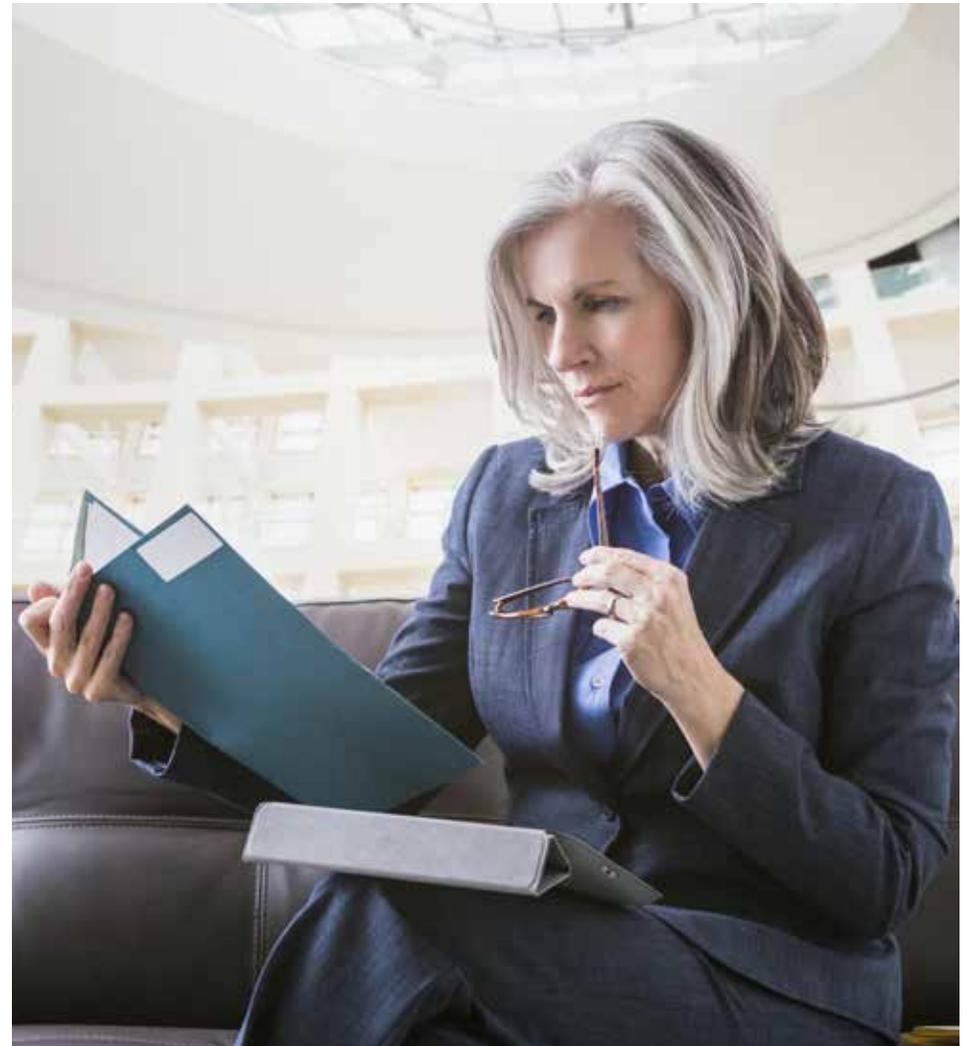
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# IRS practice and procedure

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- ▶ Tax reform and investment in U.S. real estate  
The Tax Cuts and Jobs Act creates a new paradigm through which one must view investment in real estate. ([Read more](#))



## Refreshing prior-year earnings and profits: Is there a downside?

**By G. Paul Glunt, International Tax**

While many taxpayers are refreshing their prior-year earnings and profits calculations to report and pay tax under the Tax Cuts and Jobs Act's mandatory repatriation rules, they could be uncovering prior-year errors that have real effects today. In many cases, according to an [article](#) in the March 26 issue of *Tax Notes*, relatively minor errors could have significant and costly consequences that may be difficult to avoid under traditional taxpayer remedies for failure to report.

## IRS position on online computer software needs a reboot

**By Curtis Wilson, Washington National Tax, and Stephen P. Borman,  
Accounting Methods and Credit Services**

The IRS has adopted a narrow approach to the availability of section 199 deductions for gross receipts derived from online software. That approach, as reflected in recent Chief Counsel Advice, rests on the conclusion that the online software arrangements by the taxpayers involved the provision of online services rather than a disposition of the software through a lease, rental, license, or other disposition. The failure to look to the substance of the arrangements rather than applying what appears to be a *per se* presumption that the arrangements constituted online services contradicts the express language of section 199 and the associated regulations. The IRS may not treat a disposition as a service simply because it occurs online.

An [article](#) in the February 5 issue of *Tax Notes* explains why it is time for the IRS to reboot its approach to online software under section 199.

## Are AMT credit refunds subject to limitation?

**By Mark R. Hoffenberg and Stephen M. Marencik, Washington  
National Tax**

Tax reform eliminated the alternative minimum tax (AMT) for corporations while embracing the continued use of existing AMT credit carryforwards and allowing a refundable credit under new section 53(e). Using AMT credit carryforwards and generating cash refunds may be hampered by the section 383 limitation for some taxpayers, however. This February 26 *Tax Notes* [special report](#) reviews the new law and provides a series of illustrations to demonstrate why it might be difficult for corporations with AMT carryforwards and section 383 limitations to benefit fully.

## Initial impressions of Notice 2018-26 and guidance under section 965

**By Doug Holland, Washington National Tax**

On April 2, the IRS released an advance version of Notice 2018-26, addressing forthcoming guidance under the section 965 "transition tax" as added to the Code by the new tax law (Pub. L. No. 115-97, enacted December 22, 2017).

[Notice 2018-26](#) describes a wide-ranging series of new rules and procedures relating to computations of certain items relevant to the transition tax, anti-abuse rules, certain special elections under or relevant to section 965, and the mechanics of how taxpayers report and pay the transition tax.

This April KPMG [report](#) provides initial impressions and a high-level review of certain issues presented by the IRS notice.

# IRS identifies five new LB&I compliance campaigns

**By Mike Dolan, Timothy McCormally and Larry Mack, Washington National Tax**

On March 13, the IRS Large Business and International (LB&I) division added five new “compliance campaigns” to the list of issues addressed as part of LB&I’s issue-based compliance initiative. These 5 new items bring the total number of compliance campaigns to 24.

The LB&I campaigns are a byproduct of new approach to identify and address targeted compliance risks. A key focus of many campaigns are issue-based examinations but they can also involve other “treatment streams” such as new forms, instructions, or other guidance and “soft letters” that encourage taxpayers to voluntarily correct their treatment of particular items or transactions. The compliance campaigns reflect IRS efforts to redefine large business compliance work and build a supportive infrastructure inside LB&I.

The March [release](#) (posted on the IRS website) lists the topics of the five campaigns as:

- Costs that facilitate a section 355 transaction
- SECA tax (specifically concerning partnerships and limited liability companies)
- Sale of partnership interest
- Partnership “stop filer”
- Partial disposition election for buildings

This new group of campaigns, much like the first 24 campaigns, are focused somewhat narrowly, and 3 of the 5 concern passthrough entities. While several of the new campaigns suggest the potential for “tailored treatments” other than examinations, the list does not specify what other techniques the IRS might use to validate or mitigate the compliance risks that might be associated with these five identified issues.

In its announcement, the IRS describes campaigns as the “culmination of an extensive effort to redefine large business compliance work.” However, since the IRS last updated the list of compliance campaigns, there had been only limited action and visibility associated with the first two groups of campaigns. With the most recent release, it remains to be seen how and when taxpayers might encounter these 5 new campaigns, though the new campaigns might have relevance both for taxpayers currently under audit and for other taxpayers with tax returns containing the issues covered in the particular campaigns.



## Tax reform: And the winner is ... R&D

**By Michael S. Brossmer, Edward J. Jankun, Tyrone Montague, Jaime Park, Ross Reiter, and Scott Vance, Washington National Tax and Accounting Methods and Credit Services**

Tax reform changed the playing field for taxpayers engaged in research and development (“R&D”) activities. This March 12 KPMG [article](#) highlights new and modified provisions of the tax law that taxpayers engaged in R&D activities should consider, whether or not the taxpayers claimed the R&D tax credit in the past.

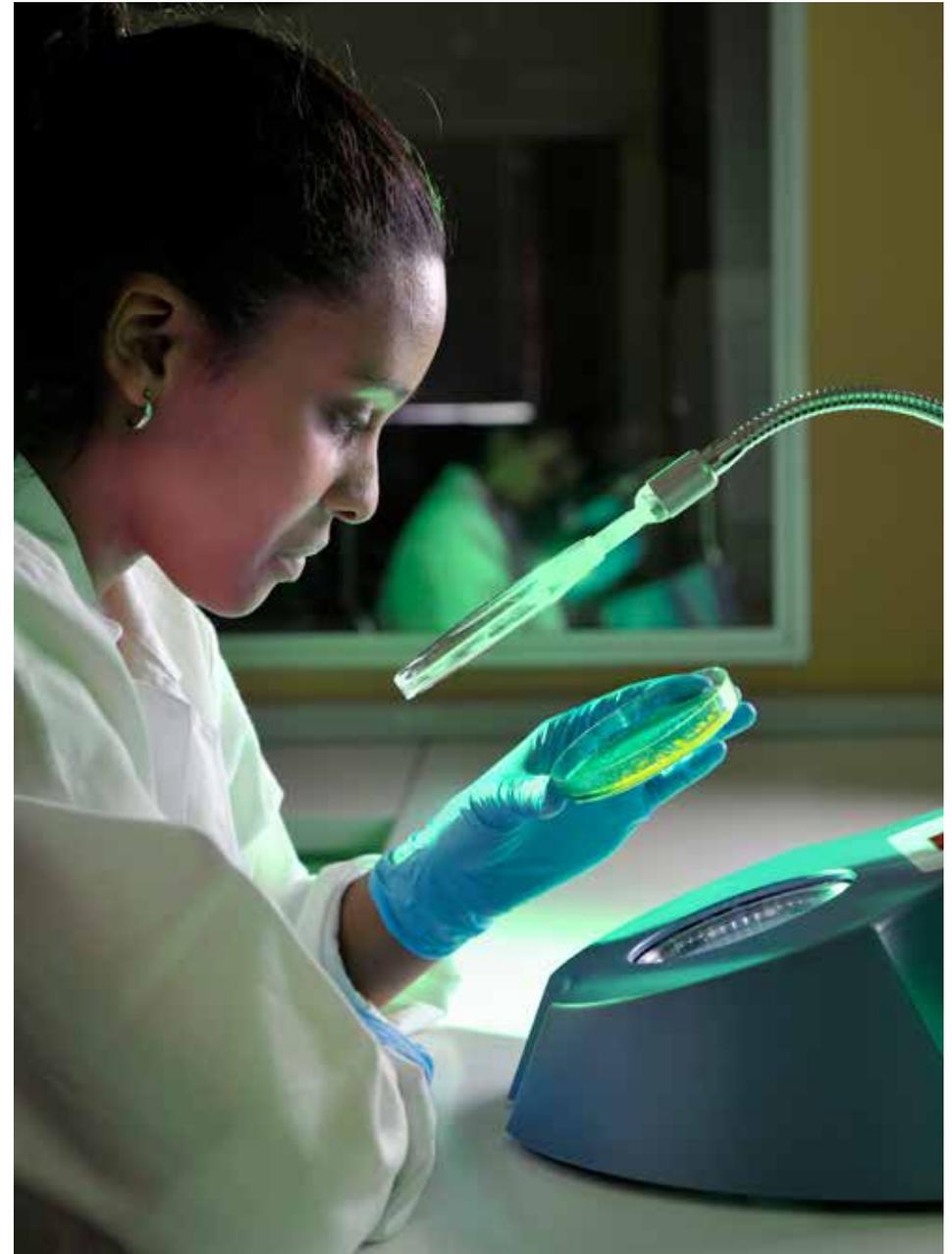
## Tax reform and investment in U.S. real estate

**By James B. Sowell and Jon G. Finkelstein, Washington National Tax**

The Tax Cuts and Jobs Act creates a new paradigm through which one must view investment in real estate. Rate dynamics for investors have changed, calculation of taxable income is now different, and investor sensitivities to different kinds of income have been altered. To compound the difficulties in planning under the new rules, ambiguities and outright mistakes permeate the legislation. While awaiting guidance from Treasury and the IRS, this April 16 [special report](#) in *Tax Notes* explains how taxpayers can act on what they know (or anticipate) and gather information in preparation for taking action when the answers become clearer.

## Webcast: Key tax developments affecting the energy industry

The KPMG Global Energy Institute hosted an April 3 [webcast](#) focusing on aspects of the new tax reform law that are relevant to the energy industry, and highlighting unique areas of the different sectors.



# Enforcement trends

- ▶ **FBAR update—No new rules, but enforcement threat looms**  
The Bank Secrecy Act is a potent tool in the U.S. government's campaign to ferret out hidden assets and tax noncompliance. ([Read more](#))
- ▶ **IRS exam teams to hold transfer pricing documentation to higher standard**  
Exam teams reviewing transfer pricing documentation have been told to strictly enforce existing section 6662 regulations when considering the imposition of transfer pricing penalties. ([Read more](#))



## FBAR update—No new rules, but enforcement threat looms

**By Steven M. Friedman and Timothy J. McCormally, Washington National Tax**

The Bank Secrecy Act is a potent tool in the U.S. government's campaign to ferret out hidden assets and tax noncompliance. Among other things, the Bank Secrecy Act requires the filing of FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR). Because of its broad reach, the Bank Secrecy Act can potentially ensnare taxpayers who fully report income from their foreign accounts but inadvertently neglect to satisfy technical reporting requirements.

This March 12 [article](#) explains why it is critical that owners of foreign financial accounts and individuals holding signatory authority over these accounts remain up to date on the FBAR rules. Taxpayers need to be aware of the filing deadline for FBAR reports, limited exceptions to the annual filing requirements, possible relief from penalties for previous failures to file, and proposed changes for future FBAR filings.

## IRS exam teams to hold transfer pricing documentation to higher standard

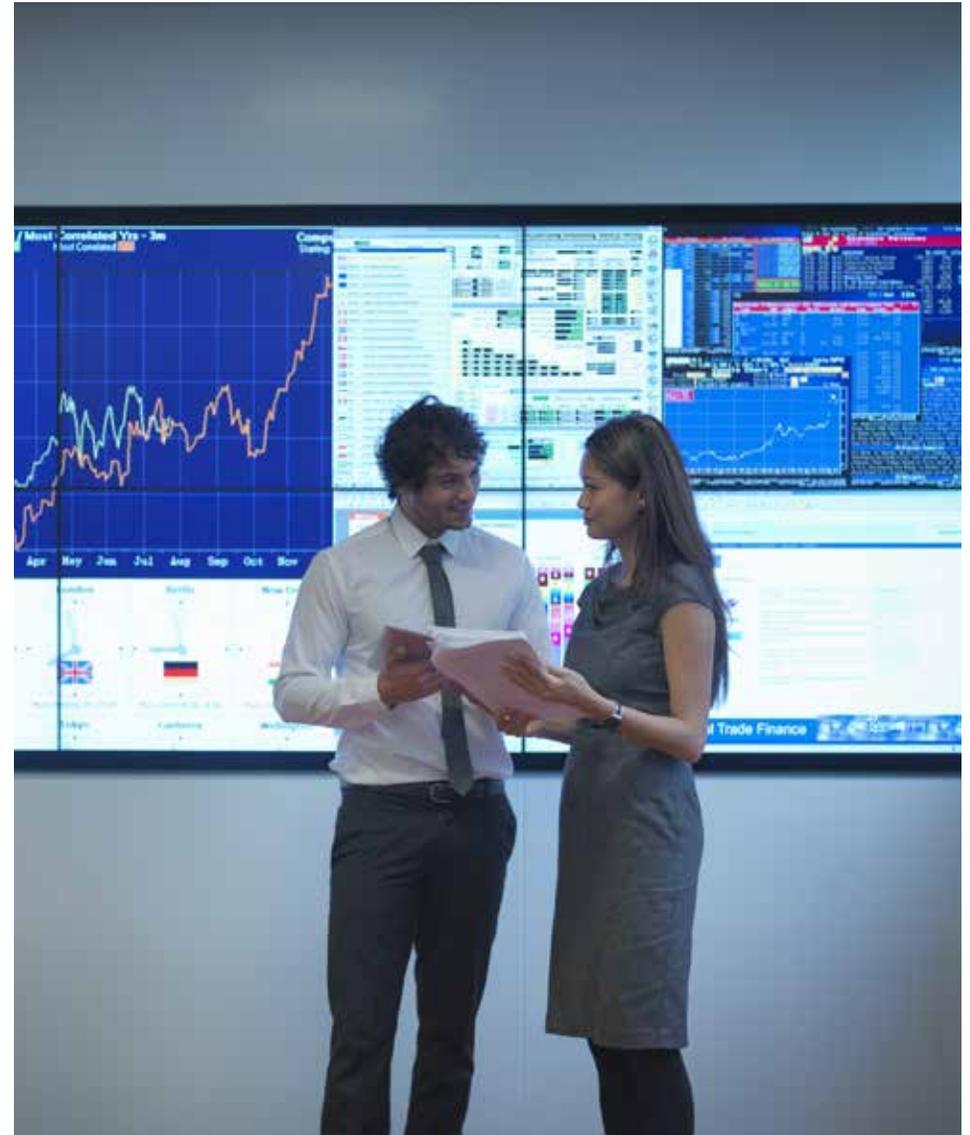
**By Mark Martin, Mark Horowitz, Sean Foley, and Katy Leung, Economic Valuation Services**

Exam teams reviewing transfer pricing documentation have been told to strictly enforce existing section 6662 regulations when considering the imposition of transfer pricing penalties. This March KPMG [report](#) explains the recent guidance and what it may mean for transfer pricing documentation and examinations.



# State & local tax

- ▶ State conformity post tax reform  
In this brief column in the April 4, 2018 issue of Bloomberg BNA's Daily Tax Report: State, the authors ([Read more](#))
- ▶ To conform or not to conform: An overview of 2018 corporate conformity bills  
The March 2018 edition of the quarterly version of This Week in State Tax known as TWIST-Q, ([Read more](#))
- ▶ Tennessee business tax—An outdated law in a modern economy  
The Tennessee business tax has brought more questions, consternation, ([Read more](#))



## State conformity post tax reform

**By Marianne Evans and Jackson Butler, Washington National Tax**

In this brief column in the April 4, 2018 [issue](#) of Bloomberg BNA's *Daily Tax Report: State*, the authors discuss state conformity to the Internal Revenue Code in the wake of federal tax reform.

## To conform or not to conform: An overview of 2018 corporate conformity bills

**By the State and Local Tax group, Washington National Tax**

The March 2018 [edition](#) of the quarterly version of *This Week in State Tax* known as TWIST-Q, features an article summarizing state bills and any provisions in the bills that specifically address key federal corporate tax reform changes.

## Tennessee business tax—An outdated law in a modern economy

**By Loren L. Chumley, State and Local Tax**

The Tennessee business tax has brought more questions, consternation, and heartburn for clients—sometimes for what can be immaterial amounts of money—than any other area of Tennessee tax. An [article](#) in the June 2018 issue of the *Journal of Multistate Taxation and Incentives* (Thomson Reuters/Tax & Accounting), explains why the Tennessee Business Tax Act is ripe for a reevaluation and possibly a complete overhaul.

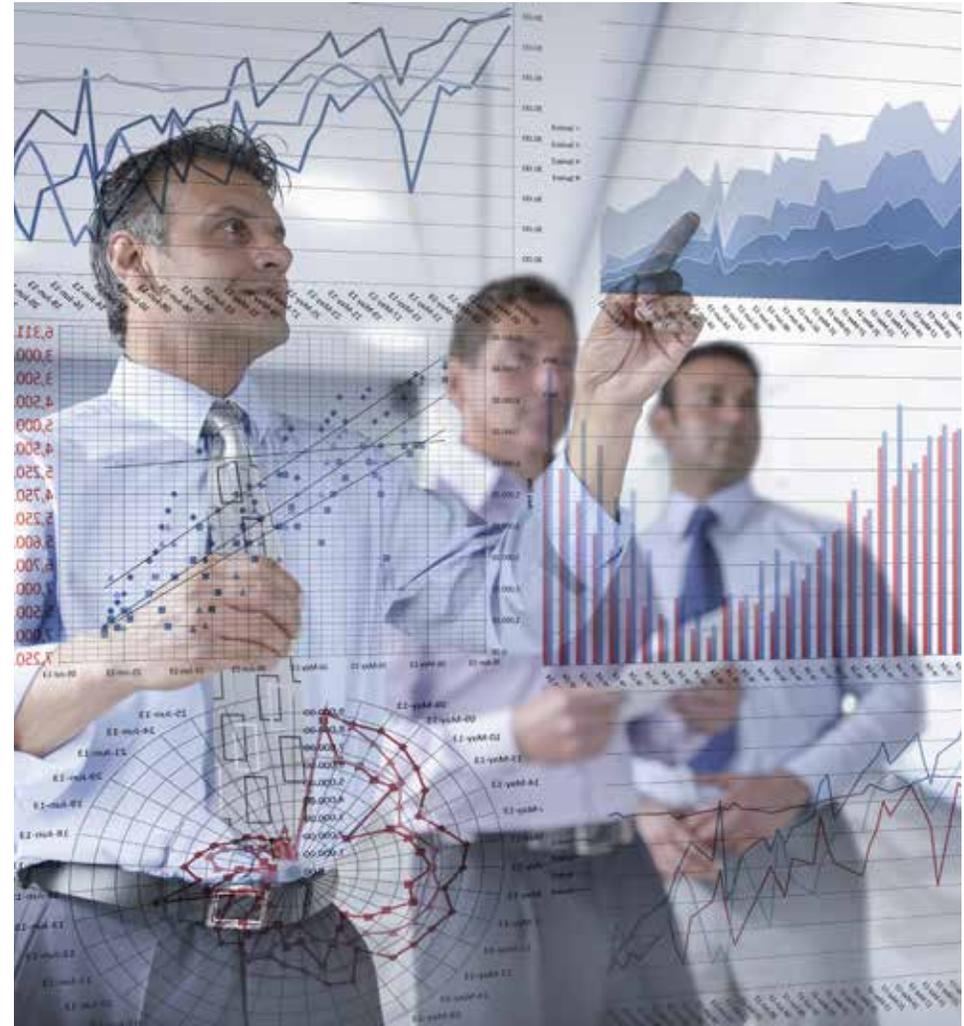
## 2018 first quarter summary of state, local tax changes

This report, prepared by KPMG's State and Local Tax practice, provides a summary of state and local tax developments for the first quarter of 2018 in table format.



# Global tax disputes

- ▶ **Global Chief Tax Officer Outlook**  
This publication features articles of interest to chief tax officers and heads of tax of multinational ([Read more](#))
- ▶ **How does your tax dispute resolution function compare to your peers?**  
Stay informed by participating in KPMG's Tax Dispute Resolution Benchmarking Survey ([Read more](#))
- ▶ **2018 Global Tax Dispute Resolution and Controversy Conference**  
On 12 April, KPMG LLP's Global Tax Disputes Resolution & Controversy network hosted a client conference examining the complexity of today's tax landscape and the challenges for global organizations to protect against, prepare for, and resolve disputes with tax authorities. ([Read more](#))
- ▶ **Global Tax Dispute Resolution Network Presents at KPMG's Recent U.S. Cross-Border Tax Conference**  
On May 15th, the Global TDR Network presented at a specialty session at the firm's annual Cross-Border Tax Conference, revealing the challenging disputes landscape facing multinationals today. ([Read more](#))



# Global Chief Tax Officer Outlook

This publication features articles of interest to chief tax officers and heads of tax of multinational organizations. The April [edition](#) includes:

- The evolving role of the CTO
- Transforming tax workforce models
- Navigating cross-border confusion
- Tax risk management: transparency matters
- Intelligent automation

## Global tax disputes update—March 2018

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

## Webcast: New era of trade enforcement—Update on post-TFTEA trade enforcement trends

The Trade Facilitation and Trade Enforcement Act was signed by President Obama on February 24, 2016. Two years later, KPMG LLP's most senior Global Trade professionals reflected on its effect and what they and their clients are seeing from U.S. Customs and Border Protection in terms of regulatory audit focus, investigations and other enforcement activities. Watch a [replay](#) of this February 13 webcast during which they shared industry specific enforcement examples and illustrations to help bring clarity to the current trade enforcement environment and direction.



## How does your tax dispute resolution function compare to your peers?

Stay informed by participating in KPMG's [Tax Dispute Resolution Benchmarking Survey](#).

KPMG's Tax Dispute Resolution Benchmarking Survey focuses on how in-house tax disputes professionals meet their range of responsibilities and how tax leaders are responding—and expect to respond—to controversy challenges in today's dynamic disputes environment.

Participate in this survey to receive key information on your tax function's dispute management performance based on relevant, up-to-date benchmarking data. Through an analysis of the aggregate findings, you can:

- gain insight into how you are managing your disputes-related tax organizational structures and competencies compared to other companies; and
- assess how changes you may make today can help prepare your organization for the challenges and opportunities it may face tomorrow.

There is no cost to participate. [This survey](#) will take approximately 20 minutes to complete. All responses will remain confidential, with summary results from all survey responses being reported in the aggregate only for benchmarking purposes. Only one tax professional per company may participate.

## 2018 Global Tax Dispute Resolution and Controversy Conference

On April 12, KPMG LLP's Global Tax Disputes Resolution & Controversy network hosted a client conference examining the complexity of today's tax landscape and the challenges for global organizations to protect against, prepare for, and resolve disputes with tax authorities. The recent major tax legislation in the U.S was discussed, and how it affects the global tax landscape for multinational entities.

It was evident that developing an understanding of the overall landscape and creating a process to manage disputes across the globe are critical undertakings for today's MNEs. Tax executives heard from the global head of controversy at a major MNE followed by a panel discussion with KPMG country experts, and two senior representatives from HRMC's international division.

## Global Tax Dispute Resolution Network Presents at KPMG's Recent U.S. Cross-Border Tax Conference

On May 15th, the Global TDR Network presented at a specialty session at the firm's annual Cross-Border Tax Conference, revealing the challenging disputes landscape facing multinationals today. During the session, TDR professionals from across the global network touched on key developments in several critical jurisdictions (including an E.U. update) and discussed best practices on what multinationals are doing today to get ready for an even more difficult tomorrow and the increasing volume of disputes in the coming years.

The event was one of the most popular sessions at the conference, with over 100 clients and KPMG professionals from across the world in attendance.

# OECD & BEPS

- ▶ BEAT's impact on transfer pricing alternative dispute resolution  
The new base erosion and anti-abuse tax (BEAT) focuses on cross-border related party payments, bringing groups with international operations and transfer pricing arrangements into its sights. ([Read more](#))
- ▶ BEPS Action 13: Latest country implementation update  
Updated weekly, this summary report in table format offers a snapshot of implementation ([Read more](#))



## BEAT's impact on transfer pricing alternative dispute resolution

**By Mark Martin, National Leader, Transfer Pricing Dispute Resolution Services, Sean Foley, Global Leader, Global Transfer Pricing Dispute Resolution Services, and Thomas Bettge, Economic Valuation Services**

The new base erosion and anti-abuse tax (BEAT) focuses on cross-border related party payments, bringing groups with international operations and transfer pricing arrangements into its sights. This [article](#) in the February 16 edition of Bloomberg BNA's *Daily Tax Report* examines the options for groups bound by now-unfavorable advance pricing agreements with the United States and for other taxpayers subject to tax treaties with mutual agreement procedure articles.

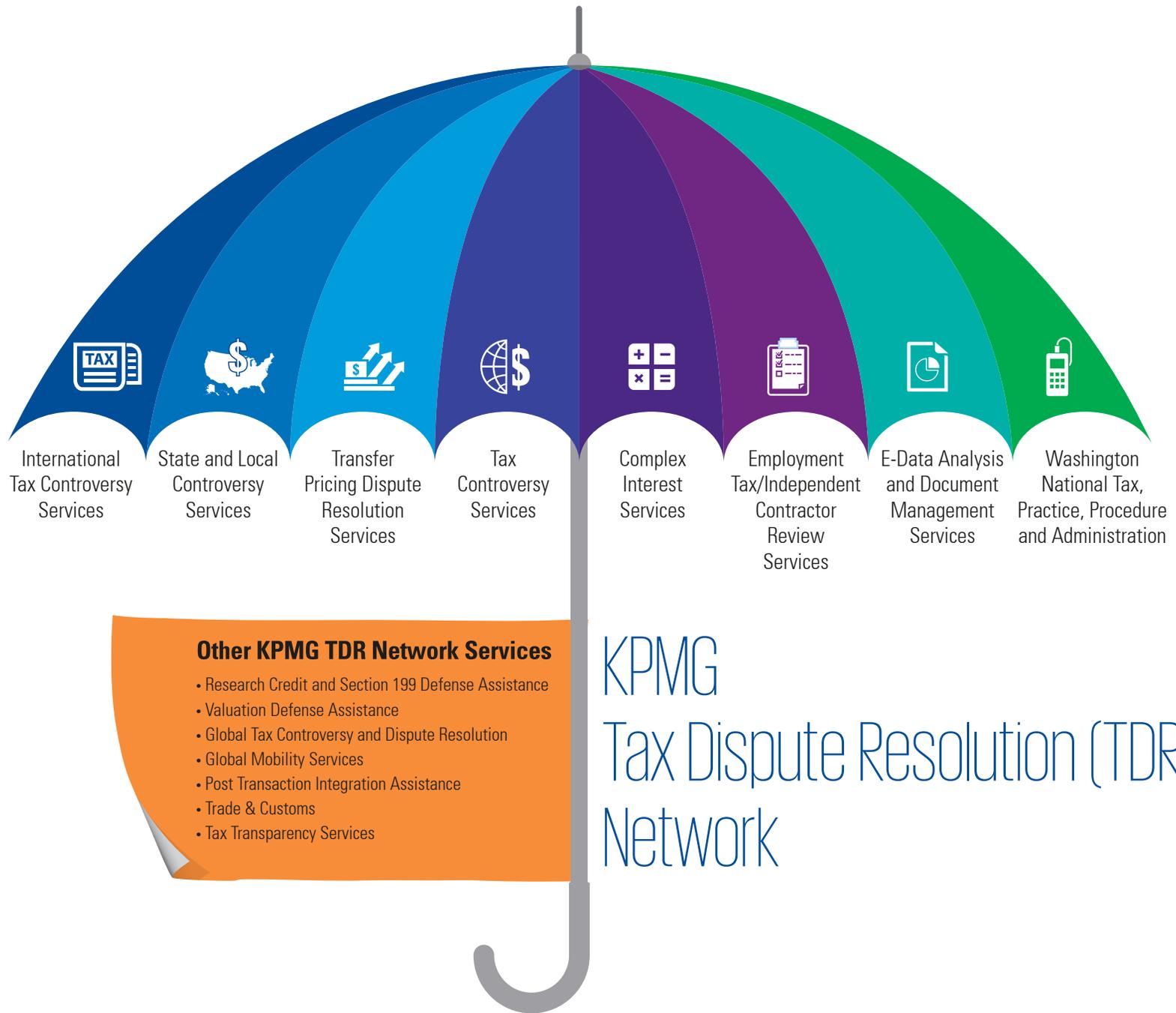
## BEPS Action 13: Latest country implementation update

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.

## Webcasts: Digital Economy and EU mandatory disclosure requirements

An April 5 [webcast](#) examined two major developments on the global tax reform front—recent OECD proposals on taxing the digital economy and the European Union's recently released mandatory disclosure requirements for certain tax strategies.

An April 24 [webcast](#) addressed international developments in digital economy taxation, including the EU's digital package, global consensus initiative, and a transfer pricing approach to permanent establishment.



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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.*