



# Tax Dispute Resolution Quarterly

Winter 2018

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# IRS practice and procedure

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## Partnership disguised sale rules may be changing...again

**By Rich Blumenreich, Jon Finkelstein, Beverly Katz, Andrew Lau, and Jason Dexter, Washington National Tax**

The longevity of the most recent rules for the allocation of partnership liabilities and disguised sales is uncertain, but unless the rules are revoked, they restrict certain transactions involving partnerships. A [December 2017 report](#) explains the partnership disguised sale rules—both new and old—focusing on leveraged partnerships and preformation capital expenditures.

## Fast track settlement on flawed R&D study: Win-win for company and IRS

KPMG conducted a 2016 R&D study for a company, at the same time the company was under audit for a prior year study (2013) done by another firm. The IRS challenged the methodology used in that earlier study, and the client asked KPMG to step in to help with the audit. The client engagement team of Heather Rice and Christine Tauchen brought in Washington National Tax's Mike Dolan to assist.

The KPMG team identified a client solution that combined a transparency strategy with the IRS Fast Track settlement process. The team acknowledged that the earlier study's methodology was problematic but was also able to effectively poke holes in the IRS arguments. Because the client had used the same flawed methodology in the intervening years—2014 and 2015—KPMG brought those to Appeals' attention and negotiated an agreement covering all three years—the one under exam and the two years in Appeals.

This client-focused solution enabled the company to release its financial reserves for all three years, saved time and money by not having to defend itself for the open years, and saved credibility with the IRS to work together in future years.

## Accounting for U.S. tax reform under IFRS

A January 2018 KPMG report in question-and-answer format addresses certain frequently asked questions about the IFRS financial reporting implications of U.S. tax reform, and includes a comparison to U.S. GAAP.

## LB&I directives on transfer pricing examinations

In January, the IRS Large Business and International (LB&I) division publicly released a set of five LB&I directives as guidance for examinations of transfer pricing issues.

## Webcast: A deep dive into IRS R&D ASC 730 directive—What it means for you

Watch a [replay](#) of a November 30 webcast in which the authors of an [article](#) in the October 25, 2017, edition of Bloomberg BNA's *Daily Tax Report*, "[A practical analysis of the new IRS research credit directive](#)," joined other senior-level professionals from KPMG LLP's Washington National Tax and Research Credit Services practices to discuss the directive.

## New section 1446(f) withholding—A possible outline for public guidance

**By David Chan, Washington National Tax**

The recently enacted tax law created new withholding rules for U.S. and foreign partnerships that are engaged in a trade or business in the U.S. and for U.S. and foreign investors in those partnerships. The new rules trigger a barrage of questions that require guidance from the government. This [article](#) in the February 8 issue of Bloomberg BNA's *Daily Tax* reviews the new rules, discusses some implementation issues, and suggests an outline for future guidance.

## Letter ruling on F reorganization of foreign branch of U.S. life insurance company

**By Seth Green and Mark Hoffenberg, Washington National Tax, and Stuart Katz, International Tax**

In a noteworthy private letter ruling released in November 2017, the IRS ruled on whether the transfer a U.S. life insurance company's Country A business from a Country A branch to a newly formed Country A corporation—which then made an election under section 953(d)—was an F reorganization under section 368(a)(1)(F). This KPMG [Tax News Flash](#) gives an overview of the ruling and makes some observations on how the taxpayer was permitted to continue to calculate its reserves as determined by the Country A regulator under section 807(e)(4).

## Medical device excise tax moratorium extended again—through 2019

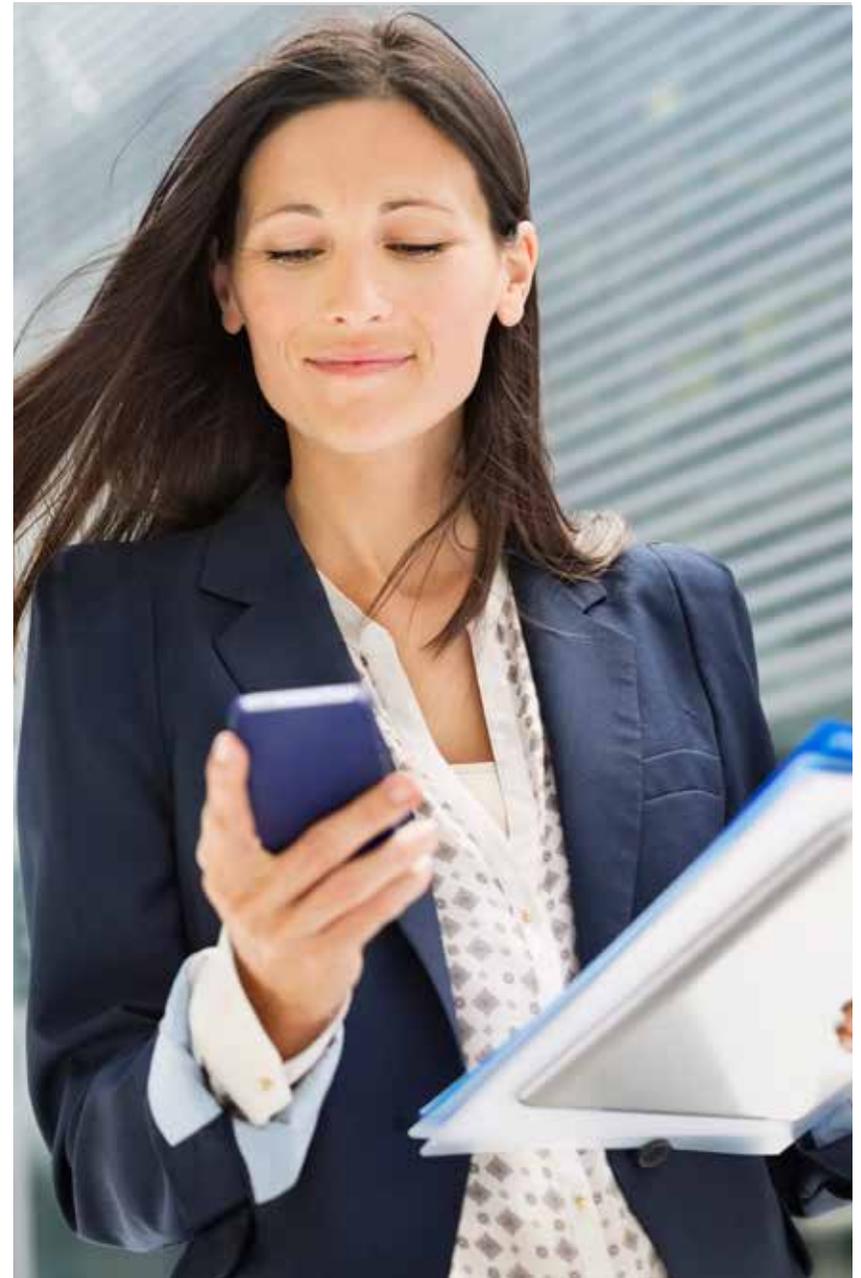
The Bipartisan Budget Act of 2018, enacted on February 9, extended the moratorium on the medical device excise tax contained in Code section 4191(c) for two years—through December 31, 2019—for sales after December 31, 2017.

This retroactive extension of the moratorium on the medical device excise tax obviates the need for manufacturers and importers to begin making semi-monthly deposits of tax and filing excise tax returns.

## IRS practice units

The IRS Large Business and International (LB&I) division has publicly released the following “practice units”—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.

02-08-2018	Definition of Foreign Personal Holding Company Income and the Common Exceptions
02-02-2018	Adjustments to Debt Basis
01-11-2018	Stock Basis Ordering Rules
01-10-2018	U.S. Territories - Self-Employment Tax
01-02-2018	Substantial Contribution Test for CFC Manufacturing Exception
12-14-2017	Initial Stock Basis
12-13-2017	Calculation of the IRC 956 Inclusion
12-7-2017	Employee Share of Employment Taxes - U.S. Citizens and Resident Aliens Working Abroad
12-7-2017	U.S. Persons Residing Abroad Claiming Additional Child Tax Credit
11-21-2017	Common Ownership or Control Under IRC 482 – Inbound
11-21-2017	Common Ownership or Control Under IRC 482 – Outbound
11-20-2017	Adjustments to Stock Basis



# Enforcement trends

## ► The IRS and the APA: Denial is not a strategy

### **Tom Greenaway, Tax Controversy Services**

This [article](#), published in the January 8, 2018 issue of *Tax Notes*, surveys many recent Administrative Procedure Act challenges to Treasury regulations and urges the IRS and Treasury to take a hard look at vulnerable regulations.

### Webcast: The IRS and the Administrative Procedure Act

In this January 22 [webcast](#), KPMG LLP tax professionals provided an introduction to the Administrative Procedure Act's (APA) notice and comment requirements, surveyed APA current challenges to IRS rules and regulations, and considered the role APA plays in the world of tax controversy.



# State & local tax

- ▶ The U.S. sales and use tax landscape: Why non-U.S. businesses need to care  
Sales and use tax laws in the United States are increasingly becoming an acceptable topic of dinner conversation, ([Read more](#))
- ▶
- ▶ Will the Supreme Court overturn 'Quill'?  
In this brief January column in Bloomberg BNA's Daily Tax Report: State, ([Read more](#))
- ▶ College tuition paid for out-of-state online courses by Indiana-based students not sourced in state  
In a case of first impression, the Indiana tax court recently rejected the Department of Revenue's position ([Read more](#))
- ▶ A tale of two jurisdictions: Differing approaches to taxing digital goods  
This brief column in the November 8, 2017 issue of Bloomberg BNA's Daily Tax Report: State, ([Read more](#))



## The U.S. sales and use tax landscape: Why non-U.S. businesses need to care

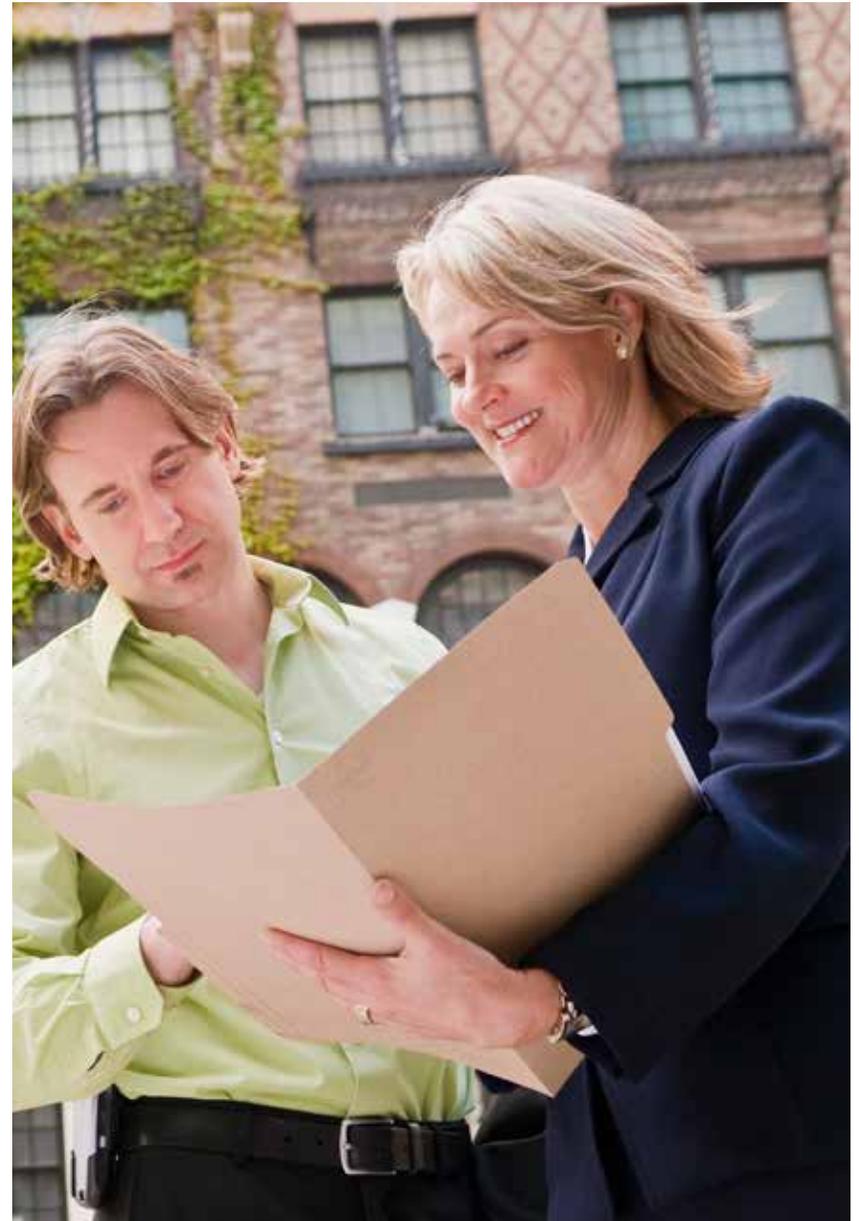
Sales and use tax laws in the United States are increasingly becoming an acceptable topic of dinner conversation, and not just for those in the business of understanding them. States are making headlines for new laws and regulations related to remote sellers and marketplace platform providers in an effort to collect tax on sales to customers in their state. The uncertainty around who is responsible for collecting and remitting tax on internet sales affects both domestic US and international online marketplaces and sellers.

This January 2018 [article](#) is intended to assist non-U.S. businesses understand developments in state sales and use tax nexus standards, and consequently, their potential collection and remittance obligations, as well as to highlight the states in which collecting tax without a true, in-state physical presence may be necessary.

## Don't forget the SALT: State and local tax implications of federal tax reform

**By Harley Duncan, Dan De Jong, Marianne Evans, and Sarah McGahan,  
Washington National Tax**

With 2018 comes new challenges and opportunities for U.S. taxpayers. On December 22, 2017, President Trump signed into law H.R. 1, originally known as the "Tax Cuts and Jobs Act." This sweeping federal tax reform law significantly affects the computation of federal taxable income and revises how multinational business are taxed. And, while federal taxpayers and practitioners now simply must digest the federal changes, their state counterparts are further challenged. For state purposes, it is necessary to understand the federal changes and how they currently apply in each state, while understanding that there will be much legislative activity this year as states respond to the new federal laws.



## Will the Supreme Court overturn 'Quill'?

In this brief January [column](#) in Bloomberg BNA's *Daily Tax Report: State*, SALT professionals in KPMG LLP's Washington National Tax practice discuss the U.S. Supreme Court's decision to review the *Wayfair* case and its impact on *Quill*.

## College tuition paid for out-of-state online courses by Indiana-based students not sourced in state

**By Sarah McGahan, Washington National Tax**

In a case of first impression, the Indiana tax court recently rejected the Department of Revenue's position that an out-of-state service provider's receipts from Indiana customers should be sourced to the state. A brief [column](#) in the Dec. 20, 2017 edition of Bloomberg BNA's *Daily Tax Report: State*, provides an overview and brief analysis of the case, including the suggestion that there may be opportunities to apply the court's reasoning to effect an assignment of sales to states other than Indiana.

## A tale of two jurisdictions: Differing approaches to taxing digital goods

**By Raj Lapsiwala, Washington National Tax**

This brief [column](#) in the November 8, 2017 issue of Bloomberg BNA's *Daily Tax Report: State*, discusses how the taxing authorities in Colorado and the District of Columbia apply sales and use tax to various types of digital goods.

## 2017 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 2017 in table format.

# Global tax disputes

- ▶ Global Tax Disputes Update – December 2017  
With tax audit and dispute activity rising in almost every country, keeping up ([Read more](#))
- ▶ How does your Tax Dispute Resolution function compare to your peers?  
Stay informed by participating in KPMG's Tax Dispute Resolution Benchmarking ([Read more](#))



## Global Tax Disputes Update – December 2017

With tax audit and dispute activity rising in almost every country, keeping up with trends and 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](#).

## 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.



**Sharon Katz-Pearlman**

Head of KPMG's Global Tax Dispute Resolution & Controversy

## KPMG's 2018 Global Tax Disputes and Controversy client event coming soon

Today's tax landscape is challenging for global organizations to protect against, prepare for, and resolve disputes with tax authorities. We continue to experience new, expansive global revenue authority initiatives that are changing the ways multinationals approach tax disputes. These, in conjunction with recent legislative changes in the U.S., ensure that this landscape will present challenges well into the future.

In response, KPMG is pleased to host the 2018 Global Tax Disputes & Controversy Client Event on April 12 for lively and interactive discussions on the current landscape and how the changes and challenges may affect organizations.

For more information about the event, including the program agenda and details on how to RSVP for it, please contact Chris Sawusch at [csawusch@kpmg.com](mailto:csawusch@kpmg.com).

## Webcast: Customs liability and the False Claims Act update

The *Trek Leather* decision and recent False Claims Act customs cases may increase both liability and potential penalties for U.S. importers. *Trek Leather* found that individuals, in addition to the importer of record, may be responsible for inaccurate information provided to U.S. Customs and Border Protection even when the person was not the importer of record. Individuals and the government are increasingly using the False Claims Act to pursue importers who intentionally make false declarations to the government.

Watch a [replay](#) of professionals from KPMG LLP's Trade & Customs Services practice discussing *Trek Leather* and the False Claims Act and what they may mean for U.S. importers as well as approaches to mitigate risk.

## Webcast: International trade landscape under Trump Administration

Trade policy is one of the ways the U.S. administration is trying to further the economic goals of the United States. In many instances, the changes represent a significant departure from the past.

During this one-hour January 9 [webcast](#), KPMG LLP's Trade & Customs professionals cover:

- Renegotiation of the NAFTA, including potential key changes
- Various executive and statutory tools being used by the Trump administration to obtain trade objectives, including remedies that may impact custom duties and the flow of goods
- Enforcement trends.

## Webcast: VAT 2017 year in review and 2018 outlook

2017 was marked by India's implementation of a goods and services tax (GST), which replaced multiple federal, state, and local taxes. In addition, the six member states of the Gulf Cooperation Council agreed on a historic VAT framework. In Brazil, federal and state reforms as well as court decisions significantly modified the country's complex indirect tax rules. Moreover, countries continued adopting new VAT/GST sourcing rules for sales of digital services to final consumers requiring nonresident vendors to register for and collect VAT/GST in the country where the consumer is established. This trend is expected to continue in 2018. Finally, throughout the year, countries have introduced new VAT/GST compliance requirements.

Watch a replay of a February 22 [webcast](#) for a discussion summarizing the major developments in 2017 and providing an outlook of what to expect in 2018.

# OECD & BEPS

- ▶ How does U.S. BEAT apply to inbound companies?  
The new U.S. base erosion and anti-abuse tax (BEAT) may be imposed on U.S. subsidiaries and branches of foreign companies. [\(Read more\)](#)



# How does U.S. BEAT apply to inbound companies?

**By Sean Foley, Washington National Tax; Craig Myers and Atsushi Shibata, Economic and Valuation Services**

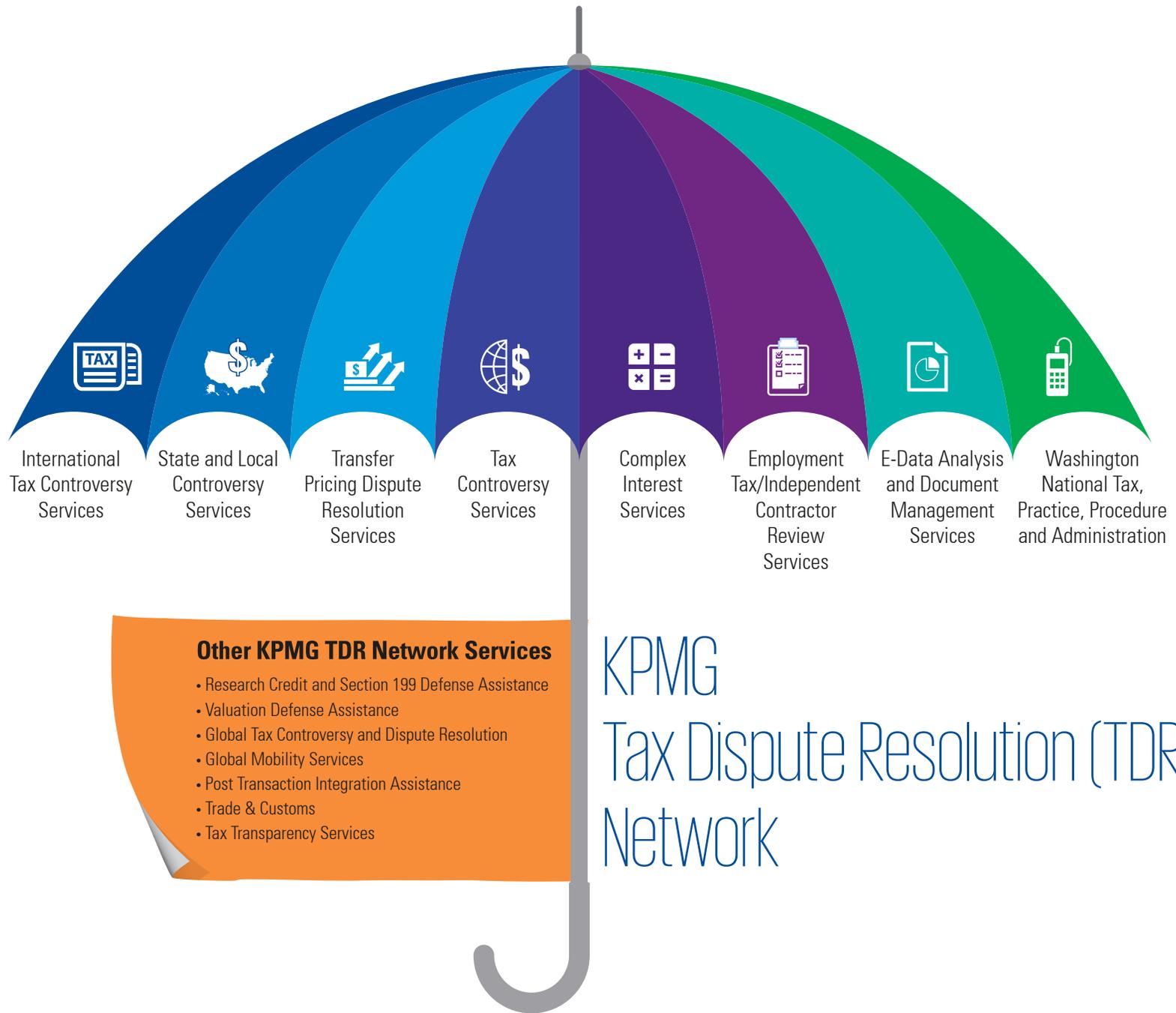
The new U.S. base erosion and anti-abuse tax (BEAT) may be imposed on U.S. subsidiaries and branches of foreign companies. This February [article](#) considers how related companies will be aggregated to determine whether the BEAT applies, and highlights new related reporting requirements.

## 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.

## Updated FAQs and information on country-by-country reporting

On January 18, the IRS issued a release announcing updates and information concerning country-by-country reporting requirements in the United States.



**Other KPMG TDR Network Services**

- Research Credit and Section 199 Defense Assistance
- Valuation Defense Assistance
- Global Tax Controversy and Dispute Resolution
- Global Mobility Services
- Post Transaction Integration Assistance
- Trade & Customs
- Tax Transparency Services

**KPMG**  
**Tax Dispute Resolution (TDR)**  
**Network**

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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.*