



Fall 2021 Tax Controversy & Dispute Resolution Quarterly

Fall 2021 issue

- IRS Launches Large Partnership Audits
- An ICAP Primer
- Blocked Income Problem in Transfer Pricing
- CbC Survey of Global Secondary Adjustment Rules
- State Elective Pass-Through Entity Regimes

Fall 2021

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Contents





IRS enforcement





CTO Insights: Dealing with IRS Exam Challenges

The [October Edition of CTO Insights](#) provides an overview of new 2021 IRS reporting requirements that will likely increase the time and effort required to file 2021 federal income tax returns.



Temporary Relief for BBA Partnerships to File Amended Returns

By Greg Armstrong
Washington National Tax

Rev. Proc. 2021-29 offered certain partnerships subject to the Bipartisan Budget Act of 2015 (BBA) the opportunity to file an amended return by October 15, 2021, to effectuate certain depreciation-related changes to the partnership return in lieu of filing an administrative adjustment request (AAR) under section 6227. Allowing partnerships to file amended returns helped mitigate an issue that under the IRS's interpretation of the BBA rules could affect an individual or tax-paying partner required to take into account adjustments reported on an AAR, known as the "stranded overpayment" problem. This [article](#) in the August 18 issue of Bloomberg's *Tax Management Real Estate Journal*, explains that although Rev. Proc. 2021-29 offered a temporary reprieve from the stranded overpayment problem, the potential for partners in BBA partnerships to miss out on refunds attributable to AAR adjustments will continue to remain an issue.

IRS Launches Large Partnership Audits

By Greg Armstrong, Ossie Borosh, and Tom Greenaway, Washington National Tax

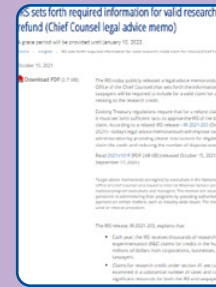
The structural changes to the audit rules, increased IRS enforcement resources, and a coordinated, data-driven approach to selecting returns for audit all further the IRS's commitment to auditing more partnerships. This November [article](#) in two Bloomberg Tax publications walks through the IRS focus on increasing the number of partnership audits for both partnerships that are subject to the centralized partnership audit regime and partnerships that have elected out of that regime. Partnerships, partners, and their advisors should be prepared.



IRS Memo Complicates Post-Altera Compliance

By Mark Martin, Thomas Bettge and Aaron Vaughan
Washington National Tax

This September 20 [article](#) in the *Tax Notes International*, examines a recently released legal advice memorandum instructing IRS examiners on how to respond to cost-sharing rules compliance, and they argue that the IRS's guidance will challenge the compliance strategy of many taxpayers.



CCA on Research Credit Refund Claims Requirements

The IRS Office of the Chief Counsel on October 15 publicly released a legal advice memorandum setting out the information that taxpayers will be required to include for a valid claim for a refund relating to the research credit. This October 15 [TaxNewsFlash](#) provides an overview.





Tax Enforcement Trends





Second U.S. Trial in *Medtronic v. Commissioner* May Point to Unspecified TP Method

▲ By Mark Martin and Thomas Bettge
📍 Washington National Tax

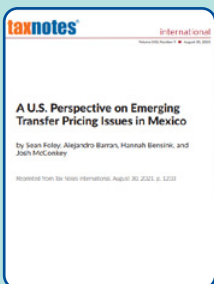
This Autumn 2021 [article](#) column in the Autumn issue of *International Tax Review* discusses the second U.S. Tax Court trial in *Medtronic v. Commissioner* and considers how the case may ultimately be resolved.



U.S. Tax Court Finds Limits to Treaty-Based Double Tax Relief

▲ By Mark Martin and Thomas Bettge
📍 Washington National Tax

This [article](#) in the Autumn issue of *International Tax Review US* discusses the U.S. Tax Court's recent decision in *Toulouse v. Commissioner* and its ramifications.



U.S. Perspective on Emerging Transfer Pricing Issues in Mexico

▲ By Sean Foley, Alejandro Barran, Hannah Bensink, and Josh McConkey
📍 Washington National Tax
Economic Valuation Services
📍 New York City
📍 KPMG Cardenas Dosal SC
Mexico City

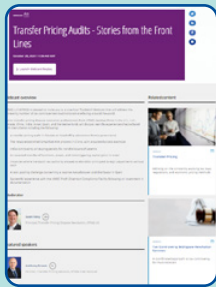
An [article](#) in the August 30 edition of *Tax Notes International* reviews recent changes to Mexico's domestic and international tax regimes and outlines emerging issues and potential paths that U.S. taxpayers may consider as they navigate Mexico's regulatory landscape.





Global tax disputes



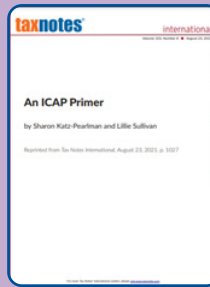


Webcast: Transfer Pricing Audits - Stories from the Front Lines

Senior transfer pricing dispute resolution professionals from KPMG firms in the United States, the United Kingdom, Canada, China, India, Israel, Spain, and the Netherlands discuss real-life experiences they've faced with their clients including the following:

- A transfer pricing audit in Canada on head office allocations from a parent bank
- The newly established Simplified Advance Pricing Agreement process in China, with a successful case example
- India controversy on levying penalty for nondisclosure of patents
- An asserted transfer of functions, assets, and risks triggering capital gains in Israel
- Instances where the Dutch tax authority allowed a refund for principled foreign adjustments without MAP
- A cash pooling challenge concerning a routine manufacturer and distributor in Spain
- Successful experience with the HMRC Profit Diversion Compliance Facility following an investment in documentation

Watch a replay of the [October 28 webcast](#).



An ICAP Primer

By Sharon Katz-Pearlman and Lillie Sullivan
Washington National Tax

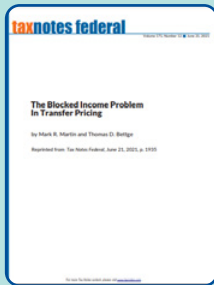
In this [article](#) in the August 23 issue of *Tax Notes International*, the authors detail the International Compliance Assurance Program (ICAP) process—from selection to risk assessment and issue resolution, through outcomes—and provide a framework for determining when and how ICAP can be most beneficial for taxpayers and revenue authorities.



Webcast: Unpacking the OECD International Compliance Assurance Program

In November 2020, the OECD's Forum on Tax Administration announced that ICAP had become a permanent program. After two pilots in which approximately 18 multinationals took part, ICAP has officially claimed its place in the dispute avoidance and resolution toolbox. The goal of ICAP is to provide a faster and more efficient path to improved multilateral tax certainty. The program has taken on increased importance as the number of disputes continues to rise across the world, offering participants the chance to simultaneously engage with multiple revenue authorities in a voluntary risk assessment process.

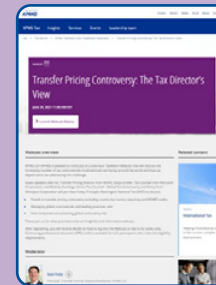
Watch a replay of the [July 13 webcast](#) featuring Debra Evans, OECD Policy Advisor and the OECD's ICAP Program Leader, and Greg Leathes, Head of EMA Tax at LEGO Group.



The Blocked Income Problem in Transfer Pricing

- By Mark Martin and Thomas Bettge
- Washington National Tax

The authors in this [article](#) in the June 21 issue of *Tax Notes Federal* analyze the blocked income problem in the 1994 U.S. transfer pricing regulations and how the *3M* case pending before the U.S. Tax Court might change the landscape.



Webcast: Transfer Pricing Controversy: The Tax Director's View

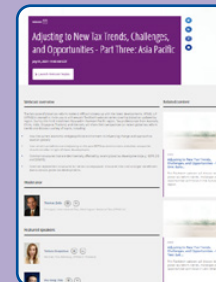
This June 29 webcast addressed the increasing number of tax controversies multinationals are facing around the world, and how tax departments are addressing this challenge.



Navigating Transfer Pricing in the World of Alternative Investments

- By Vinay Kapoor, Sherif Assef, Brett Fieldston, and Anthony Brown
- Economic Valuation Services, New York
- Washington National Tax
- International Tax, New York
- Transfer Pricing, KPMG Canada

An [article](#) in the September 3 edition of Bloomberg's *Tax Management International Journal* discusses transfer pricing issues for fund management companies and the funds they manage, as well as how certain changes in the transfer pricing environment are leading to an evolution in how intercompany transactions are viewed and priced in the alternative investments sector.



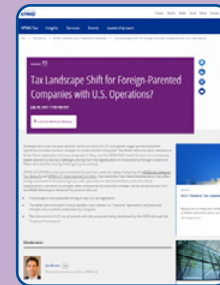
Webcast: Adjusting to New Tax Trends, Challenges, and Opportunities—Part Three: Asia Pacific

In this July 1 [webcast](#), speakers from KPMG Australia, India, Singapore, Thailand, and Vietnam focused on tax reform developments in the Asia-Pacific region and shared their perspectives on recent global tax reform trends.



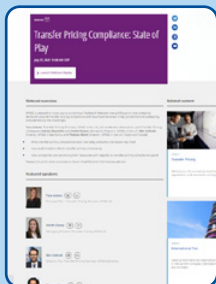
Digitalization Driving New Operating Models for Financial Services Industry: Transfer Pricing Considerations

Digitalization is driving new operating models and evolving existing ones in the financial services industry. This August KPMG [report](#) looks at how taxpayers are responding to this change and highlights certain issues to consider.



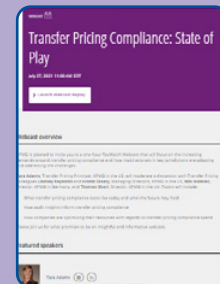
Webcast: Tax Landscape Shift for Foreign-Parented Companies with U.S. Operations

This July 30 webcast examines how the Biden Administration tax proposals and OECD/G20 developments on BEPS 2.0 may affect foreign-parented organizations.



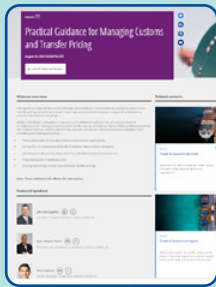
Webcast: Transfer Pricing Compliance: State of Play

Transfer pricing professionals from the United States, Germany, and the United Kingdom in this July 27 [webcast](#) addressed the increasing demands around transfer pricing compliance and how multinationals in key jurisdictions are adapting and addressing the challenges.



KPMG Global Transfer Pricing Review: Transfer Pricing Documentation Summaries by Jurisdiction

The latest country implementation update for BEPS Action 13 has been replaced by a new, enhanced summary report—in table format—that offers a snapshot of implementation of country-by-country (CbC) reporting, master file, and local file requirements as well as transfer pricing documentation requirements around the world.



Webcast: Practical Guidance for Managing Customs and Transfer Pricing

The regulatory requirements and challenges associated with simultaneously managing customs and transfer pricing compliance are well known, but what practical steps can companies undertake to actually improve their standing? This August 24 TradeWatch webcast explores practical considerations for managing customs and transfer pricing compliance.



Webcast: Managing Export Controls & Sanctions Compliance: An Industries View

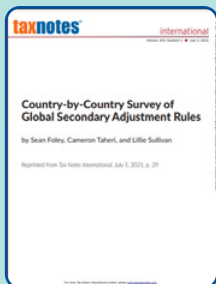
This October 14 [webcast](#) explores the results of a survey of over 100 multinational companies to understand how they are managing export compliance and sanctions risk, including how companies can help maximize the effectiveness of existing export controls and sanctions programs, and understand current and future risks.





OECD and BEPS





Country-By-Country Survey of Global Secondary Adjustment Rules

By Sean Foley, Cameron Taheri, and Lillie Sullivan

Washington National Tax

As multinational enterprises grapple with COVID-19's effects on the global marketplace, some may consider adjusting their transfer pricing to respond to changes in profitability or to manage cash. When taxpayers engage in self-initiated adjustments to their transfer pricing, it is important to keep in mind the potential second-level effects. Following a transfer pricing adjustment, some countries require secondary adjustments to reflect an inferred secondary transaction to resolve the discrepancy between the taxpayer's cash accounts and tax accounts. This [article](#) in the July 5 issue of *Tax Notes International* and *Tax Notes Federal* examines the complexities of secondary adjustment rules and details those regimes globally.



KPMG Report: OECD/G20 Inclusive Framework Agreement on BEPS 2.0

On October 8, in a historic agreement, 136 members of the OECD/G20 Inclusive Framework on base erosion and profit shifting (BEPS) approved an eight-page statement finalizing key aspects of a framework for reforming the international tax system.

- [KPMG report: OECD/G20 Inclusive Framework agreement on BEPS 2.0](#) provides an initial analysis of the October 2021 statement.
- A July 2021 [report](#) provides initial impressions and observations about the July 1 predecessor to the October statement.



Webcasts: BEPS 2.0: Update on the State of Negotiations

The OECD/G20 Inclusive Framework on BEPS (IF) continues to make progress toward a global and consensus-based solution to the tax challenges arising from the digitalization of the economy through its work on Pillars 1 and 2 .

- Part 1: [July 16 webcast](#) provides an update on the outcomes of recent negotiations regarding Pillars 1 and 2, and offers insights as to their implications.
- Part 2: [October 21 webcast](#) reviews the potential implications and impact of the latest IF statement showing final agreement on key parameters of Pillars 1 and 2.



Webcasts: Pillar 1 and Pillar 2

As the OECD/G20 Inclusive Framework on BEPS continues to gain traction around the world in terms of Pillar 1 and 2 implementation, there is much for multinational tax and other business leaders to unpack in terms of the implications for their organizations.

- A September 14 webcast, [Regional perspectives on Pillar 1 and Pillar 2 developments](#), provides regional views from the Asia Pacific, Africa and Latin America regions as to the latest developments around Pillar 1 and 2, how they are playing out in these jurisdictions, and what multinational tax leaders need to consider now.
- A July 22 webcast, [Insights into New Pillar 1 and Pillar 2](#), provides a global perspective with speakers from the United States, Europe, the United Kingdom, China and Australia.



Finding Consensus: BEPS 2.0 and Tax Certainty

- By Mark Martin and Thomas Bettge
- Washington National Tax

In this [column](#) in the Summer issue of *International Tax Review*, the authors examine the July statement on Pillars One and Two from the OECD/G20 Inclusive Framework on BEPS, and consider what it has to say about dispute prevention and resolution.





State and local tax





What Is the Meaning of 'Control' in the Context of Use Tax? Parts 1 & 2

- By Taylor A.F. Wolff, Spurgeon Green IV, and Robert E. Weyman
- State and Local Tax, New York

Sellers of certain types of specialized equipment or property may require the buyer to agree to certain terms and conditions concerning use of the property. These terms and conditions could be construed as sufficient control to constitute a taxable use by the seller. Courts will also look to the duration and degree of control to determine whether there was a taxable use.

This two-part article posits that while companies often think they are relinquishing control via a lease, gift, or distribution, they need to be careful not to retain some interest or control that could be used to say they are creating a taxable use. Courts in Michigan and elsewhere have examined this question and begun to develop a continuum of "control" that can be instructive to companies in evaluating their potential exposure. [Part 1](#) and [Part 2](#), which ran in the June 24 and 25 issues of *Bloomberg Tax*, examine how this issue has evolved in Michigan.



To Elect or Not to Elect: Elective Pass-Through Entity Tax Regimes Require Careful Consideration

A September [article](#) in *This Week In State Tax Quarterly* discusses the avalanche of state pass-through entity tax legislation attributable to the \$10,000 Tax Cuts and Jobs Act cap on the aggregate federal deduction for state and local taxes (SALT). The article covers how the IRS has responded, how elections are made, and summarizes key provisions in the regimes enacted in larger states with relatively high individual income tax rates.



Checklist of developments for the third calendar quarter of 2021

A [checklist](#) in *This Week In State Tax Quarterly* includes developments for the third calendar quarter of 2021 in a table format.

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KPMG LLP Tax Controversy & Dispute Resolution Services

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