



Tax Dispute Resolution Quarterly— Summer 2020 issue

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Summer 2020

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Contents



IRS practice and procedure



Webcast: A COVID-19 conversation with IRS LB&I Commissioners

This April 21 KPMG TaxWatch webcast features guest speakers from the IRS Large Business & International Division—Commissioner Douglas O’Donnell and Deputy Commissioner Nikole Flax—who review the IRS’s efforts to assist taxpayers through the COVID-19 situation, the guidance that has been issued, and what taxpayers can expect as the COVID-19 situation continues to unfold.

Considerations for modifying or unwinding related-party transactions

By Mark Martin, Sean Foley, Tom Zollo and Thomas Bettge, Global Transfer Pricing Services

A March KPMG [article](#) addresses U.S. taxpayers with existing related-party transactions who may want to consider adjusting or terminating certain related-party transactions that may not make economic or business sense, given the business climate resulting from the coronavirus (COVID-19) pandemic.

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IRS memo describes partnership audit procedures and confirms IRS Appeals’ role

By Greg Armstrong, Washington National Tax
Recent IRS guidance has provided more detail on the examination and appeals procedures under the new Bipartisan Budget Act of 2015 (BBA) partnership audit regime.

A March [article](#) in Bloomberg Tax’s Tax Management Memorandum discusses how the guidance is important in implementing the new BBA regime and how it sheds much needed light on the involvement of IRS Appeals within the BBA. While it remains to be seen how well the new provisions work in practice, the confirmation that Appeals’ review will be available for both substantive issues and modification disputes is both welcome and encouraging for BBA partnerships that may find themselves liable for a BBA imputed underpayment.

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[Reading the tea leaves in the IRS's Fiscal 2021 Budget](#)

By Timothy J. McCormally, Washington National Tax

The portions of the Trump administration's fiscal 2021 budget concerning the IRS signal much about the IRS's priorities and offer hints about what might lie ahead for tax administration. Among other things, this [article](#) in the April 6 *Tax Notes Federal* highlights proposed legislative changes and the budget's explication of the IRS's short-term plans for implementing the Taxpayer First Act of 2019.

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[2020 FBAR update: Revisit the rules while relief is available](#)

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

U.S. owners of certain foreign financial accounts (and U.S. individuals with authority over the accounts) are required to file annual reports—on FinCEN Form 114, "Report of Foreign Bank and Financial Accounts (FBAR)."

In light of potential penalties for FBAR noncompliance and continuing efforts to enforce the Bank Secrecy Act by the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) and the IRS, owners of foreign financial accounts and individuals holding signatory authority over these accounts must remain diligent.

This [March 2020 report](#) reminds that relief is available in certain circumstances, but coronavirus-related relief from the IRS is not currently expected to delay FBAR filing due dates.

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[LBI directive: Centralized risking of cases with research issues](#)

By Mike Dolan and Tyrone Montague, Washington National Tax

The IRS Large Business and International (LBI) division publicly released a directive as guidance for LBI examiners concerning the requirements and process for centralized risking of cases with potential research issues under Code sections 41 and 174. This [March Tax News Flash](#) provides a brief overview of and context for the directive.

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Changes in MAP requests and APA procedures and reports

In May, IRS officials announced changes to the procedures for filing documents under Rev. Proc. 2015-40 (mutual agreement procedure (MAP) requests) and Rev. Proc. 2015-41 (advance pricing agreement (APA) requests and APA annual reports). The changes were released in a statement posted on the IRS webpage containing relief measures issued in response to the coronavirus (COVID-19) pandemic. Officials also provided responses from the Advance Pricing and Mutual Agreement program (APMA) to an increasing number of questions it has received about how the current economic environment is affecting its handling of pending APAs and executed APAs.

Tax enforcement trends





KPMG
TaxNewsFlash – Tax Dispute Resolution



U.S. Supreme Court grants certiorari in challenge to IRS notice and compliance with Administrative Procedure Act

May 4, 2020
The U.S. Supreme Court today agreed to review a Sixth Circuit decision concerning the reach of the Anti-Injunction Act (Code section 7421(a)) that provides “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person.”

Related content
All issue is whether federal courts have jurisdiction to entertain an action to enjoin enforcement of a notice issued by the IRS, prior to any action by the IRS to assess or collect any tax associated with a failure to comply with the notice, based upon the alleged failure of the IRS to comply with the Administrative Procedure Act (APA) in issuing the notice.
The case is: *CIC Services LLC v. IRS*, Docket no. 19-390 (cert. granted May 4, 2020).
KPMG's Week in Tax: 2 - 6 December 2019
Recent tax developments from Background

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Tax News Flash – Tax Dispute Resolution

U.S. Supreme Court to review challenge to IRS compliance with Administrative Procedure Act

KPMG LLP’s new [TaxNewsFlash-Tax Dispute Resolution](#) alert aggregates summaries of the latest tax dispute resolution news and developments being reported by KPMG firms from around the world.

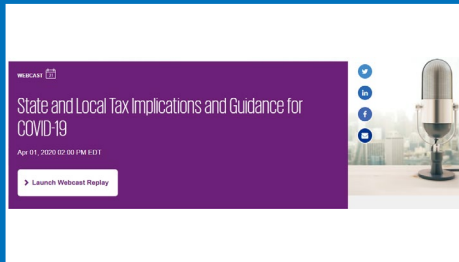
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The U.S. Supreme Court agreed to review a Sixth Circuit decision concerning the reach of the Anti-Injunction Act (Code section 7421(a)) that provides “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person.” At issue is whether federal courts have jurisdiction to entertain an action to enjoin enforcement of a notice issued by the IRS, before any action by the IRS to assess or collect any tax associated with a failure to comply with the notice, on the ground that the IRS failed to comply with the Administrative Procedure Act in issuing the notice.

Tax professionals believe that a taxpayer victory at the Supreme Court could have broad implications for the IRS and the way it issues guidance in the future. The case is *CIC Services LLC v. IRS*, Docket no. 19-390 (cert. granted May 4, 2020).

State and local tax





TWIST-Q

A quarterly roundup of This Week in State Tax which include a detailed checklist of state tax legislative updates.



State and Local Tax Extensions in response to COVID-19

Current as of May 27, 2020 5:00 pm eastern

[Webcast: State and local tax implications and guidance for COVID-19](#)

This April 1 KPMG TaxWatch webcast reviews how states are assisting those affected by COVID-19 by offering extensions of time to file and pay certain taxes and discusses other considerations, such as state conformity to federal tax relief provisions, nexus considerations in light of employees working from home, credits and incentives available, and the potential impact on audits and controversies.

[Watch replay](#)

[This Week in State Tax Quarterly](#)

TWIST-Q is a quarterly roundup of hot topics to provide readers with select state judicial, legislative and regulatory updates to state and local tax issues.

[State and local tax extensions in response to COVID-19](#)

This table provides in table format a summary of published guidance on extensions of time to file various state tax returns in light of the novel coronavirus COVID-19.

Global tax disputes





Webcast: Global disputes in COVID-19 era: Revenue authority reactions, guidance, and what to expect going forward

This 26 May 2020 webcast features senior officials from HM Revenue & Customs (HMRC), the Australian Tax Office (ATO), and the IRS discussing:

- How have revenue authorities sought to address the many issues confronting taxpayers in today's environment?
- How have revenue authorities' global collaboration efforts impacted their approach?
- What might a post-COVID-19 environment look like for revenue authorities and taxpayers as we return to tax audits, information gathering, and tax collection?
- Will the post-COVID-19 environment be more difficult for taxpayers to navigate as revenue authorities pick up their examination and collection efforts?
- How will the economic environment influence post-COVID-19 issues and disputes?

Advance Pricing Agreements and COVID-19

By Sean Foley and Mark Martin, Washington National Tax; Matthew Frank, François Vincent, Theresa Kolish, and Luca Bonardi, Economic Valuation Services

In this May 25 [article](#) in *Tax Notes Federal*, the authors explain how recent changes to the U.S. advance pricing agreement model confirm the potential to amend existing APAs and highlight the value of the APA process to address extraordinary economic disruption through tailored long-term solutions.

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COVID-19 and Transfer Pricing Policy: A Lookback Analysis of Routine Returns

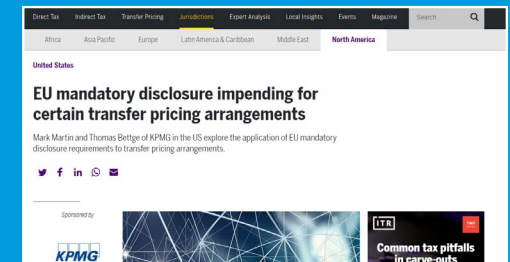
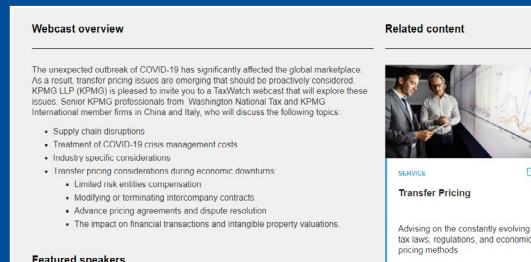
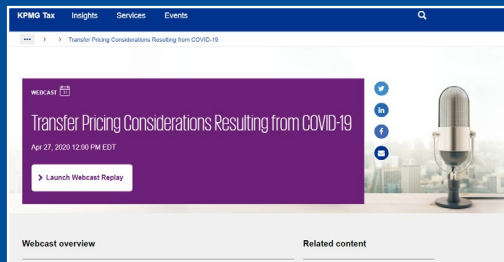
By Bob Clair, Brian Cody, Hilary Eisenberg, and Steve Galginaitis, Washington National Tax; and Gianni De Robertis, KPMG in Italy

International tax directors face the unenviable challenge of determining whether they should modify transfer pricing policies in the face of the economic downturn caused by the coronavirus (COVID-19) pandemic.

The business implications vary greatly by industry sector and geography. Moreover, while these tax directors need to make their decisions in real time, the profit margin data often used for setting or testing transfer prices is generally only available with a lag of five to six months for North American databases and up to 18 months for some foreign databases.

This [June 2020 report](#) focuses on a few of the various factors and approaches that tax directors might consider when determining if their current target profit margins are appropriate during the COVID-19 disruption and, if not, how they might adjust those target margins consistent with the arm's length standard.

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Webcasts: Transfer Pricing Considerations Resulting from COVID-19

The unexpected outbreak of COVID-19 has significantly affected the global marketplace. As a result, transfer pricing issues are emerging that should be proactively considered. Two TaxWatch webcasts explored these issues.

During the [April 27 webcast](#), senior KPMG professionals from Washington National Tax and KPMG International member firms in China and Italy, discuss:

- Supply chain disruptions
- Treatment of COVID-19 crisis management costs
- Industry specific considerations
- Transfer pricing considerations during economic downturns, including limited risk entities compensation, modifying or terminating intercompany contracts, advance pricing agreements and dispute resolution, and the impact on financial transactions and intangible property valuations.

In the [May 19 webcast](#), senior KPMG professionals from Washington National Tax and KPMG International member firms in Germany and Italy take a deeper dive into:

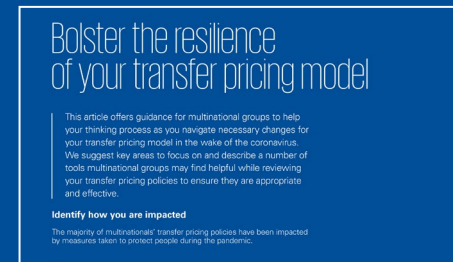
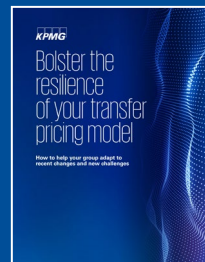
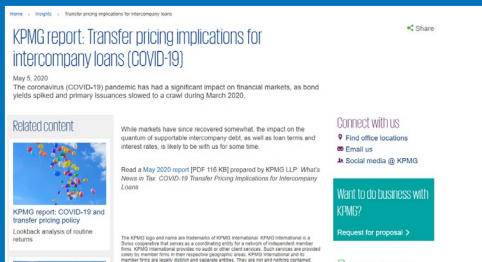
- The OECD's current transfer pricing workstreams and prospects for further guidance
- Emerging issues related to location/people disruptions
- Comparables selection and adjustments
- Restructuring and other expenses arising from business disruption.

EU mandatory disclosure impending for certain transfer pricing arrangements

By Mark Martin, Washington National Tax, and Thomas Bettge, Transfer Pricing Dispute Resolution Services

The EU's 2018 mandatory disclosure requirements for certain cross-border arrangements, commonly referred to as DAC6, along with country-by-country reporting requirements under Action 13 of the OECD's BEPS project, represent part of a growing trend toward tax transparency. An [article](#) in the April 2020 issue of *International Tax Review* explores the application of EU mandatory disclosure requirements to transfer pricing arrangements.

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Transfer pricing implications for intercompany loans (COVID-19)

By Vinay Kapoor and Yosef Lugashi, Economic and Valuation Services; Sherif Assef and Bob Clair, Washington National Tax

- The coronavirus (COVID-19) pandemic has had a significant impact on financial markets, as bond yields spiked and primary issuances slowed to a crawl during March 2020. While markets have recovered somewhat, the impact on the quantum of supportable intercompany debt, as well as loan terms and interest rates, is likely to be with us for some time. This [May 2020 KPMG report](#) concludes that care must be taken when implementing or modifying intercompany debt funding to ensure that the financing is respected as debt and the interest expense is deductible for tax purposes.

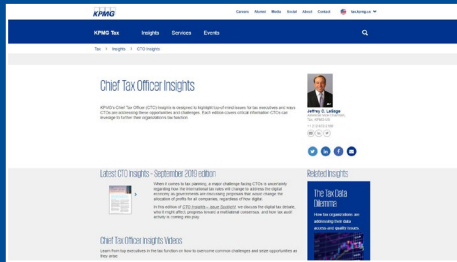
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Bolster the resilience of the transfer pricing model

There are certain key areas of focus and a number of possible helpful tools for multinational groups as they consider necessary changes for their transfer pricing model in the wake of the coronavirus (COVID-19) pandemic. A [May 2020 report](#) prepared by the KPMG member firm in Belgium reviews the action steps that multinational groups need to evaluate while reviewing their transfer pricing policies to ensure they are appropriate and effective.

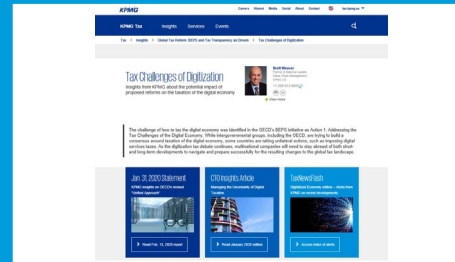
OECD and BEPS





BEPS Action 13: Latest country implementation update

Updated frequently, 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.

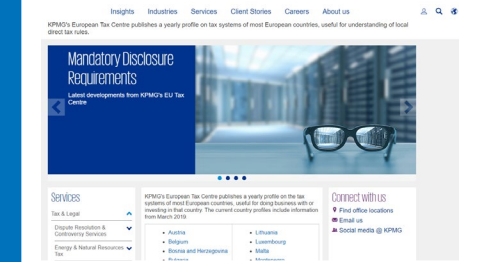


Tax challenges of digitization

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.

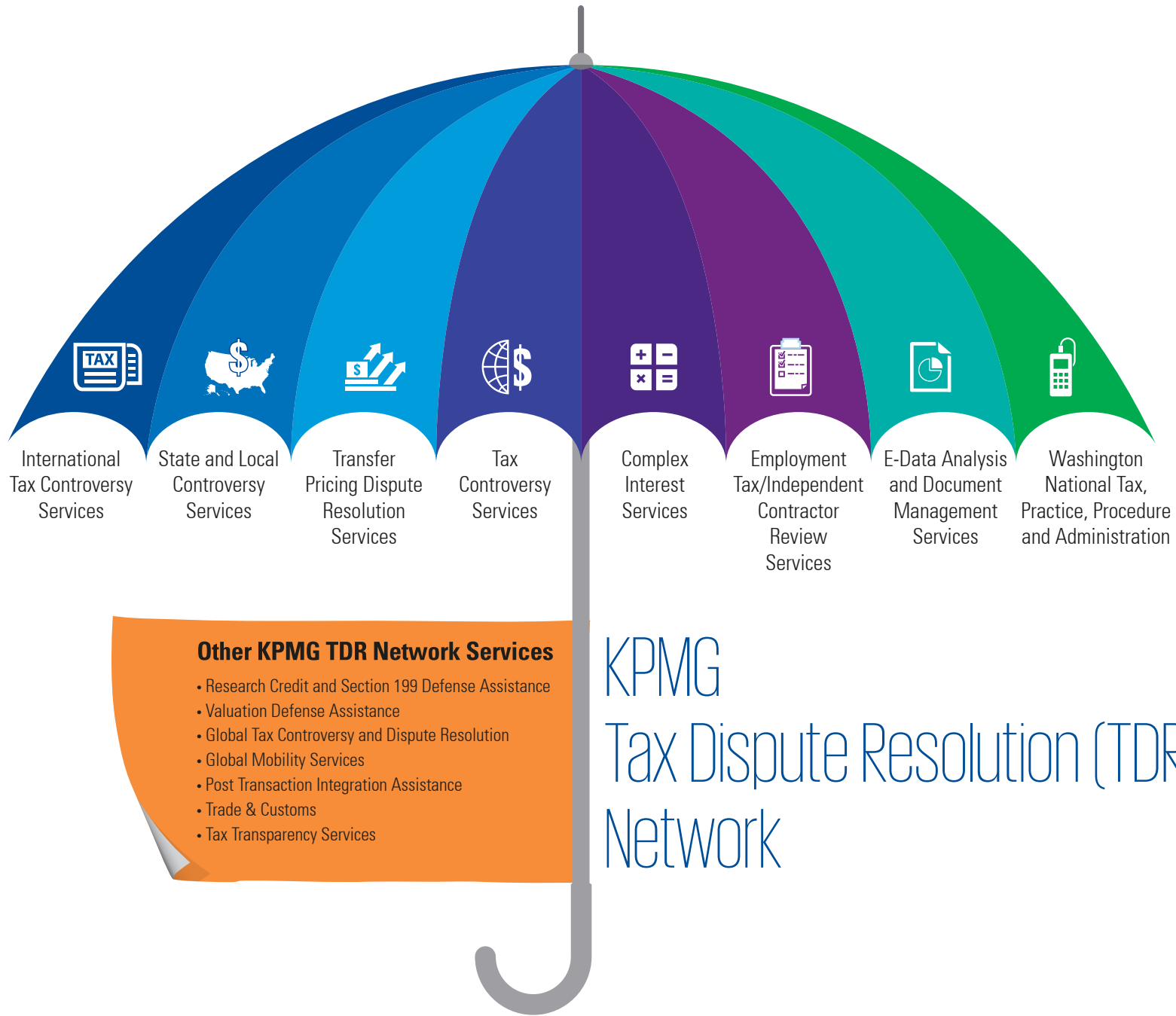
This [website](#) contains insights from KPMG about the potential impact of proposed reforms on the taxation of the digital economy.

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.



EU Country Profiles

KPMG's European Tax Centre publishes a yearly profile on tax systems of most European countries, useful for understanding of local direct tax rules.



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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's 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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