



Around the world with KPMG's Global Tax Dispute Resolution and Controversy network

New developments in Argentina, Brazil and Mexico

Tuesday 13 April 12–1pm EDT / 1pm ART / 1pm BRT / 11am CDT



Notice

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates.

Agenda and speakers

1	2	3	4
Moderator	Argentina	Brazil	Mexico
			
Sharon Katz-Pearlman	Valeria Cardinale	Marcos Matsunaga	Manuel Llaca
Head of Global Tax Dispute Resolution & Controversy Services KPMG International	Director, Tax & Legal KPMG in Argentina	Latin America Leader, Tax Dispute Resolution and Controversy KPMG in Brazil	Partner in Charge, Legal Practice, Dispute Resolution & Tax Litigation KPMG in Mexico

Notes on CPE and polling questions

Continuing Professional Education (CPE) Credits

North America

- We require that participants are registered, logged in and take part in at least 4 of the 5 polling questions and participate in at least 50 of the 60 minutes to qualify for CPE credits for today's webcast.

Outside North America

- We encourage you to participate in the questions, as you may be eligible for continuing education credits in your local jurisdiction.

Polling Questions

- The first polling question will appear on your screen after this introduction, and the remaining questions will appear as we proceed through the presentation.
- As mentioned, in order to receive the CPE credit, we require that those participants take part in at least 4 of the 5 polling questions and participate in at least 50 of the 60 minutes to qualify for CPE credits for today's webcast.

Questions

- You may submit questions in the 'Ask a question' button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question, someone from KPMG may reply via phone or email.
- For technical issues, please use the Question Mark button in the upper-right hand corner of the media player.

Your feedback

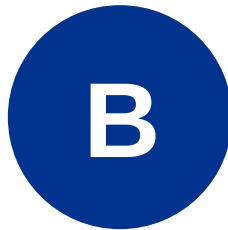
- When the webcast is over, the webcast player will automatically refresh to display an exit survey. Feel free to complete the survey, as your comments are very valuable to us.

Polling question

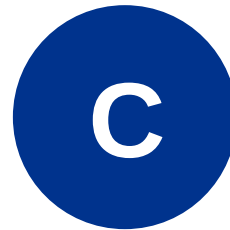
In how many jurisdictions are you currently under examination or otherwise engaging with the revenue authority?



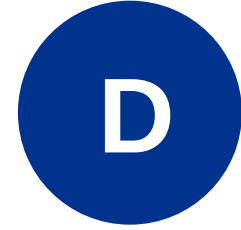
1-10



11-25



26-50



Over 50



New developments in Argentina

Valeria Cardinale
Director, Tax & Legal
KPMG in Argentina

New Government – winds of change

- ▶ In the last 10 years, Argentina's tax law has shown a marked tendency towards punishing transactions related to international business.
- ▶ This trend became more pronounced in the last few years in which the Tax Authority was used as a tool to intervene in the private economy (e.g. refusal to grant import and export permits)
- ▶ Since December 2015, the Tax Authority has taken a more technical approach, tax disputes from now on are expected to be concerned with technical aspects.

General considerations about tax procedure

-  In Argentina there is no mediation procedure with the Tax Authority at the administrative level.
-  After a tax audit, the administrative procedure is initiated, unless the taxpayer accepts the proposed adjustment.
-  Tax Courts cannot overrule a law nor an executive decree.
-  The Administrative Tax Court and Judicial Courts are bound by the National Supreme Court's decisions.

Recent tax developments

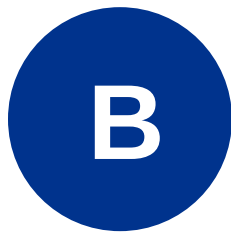
- ▶ Increasing local tax audits and adjustments – provincial states are being more active in collecting taxes and including more taxpayers under their jurisdictions.
- ▶ These days, a higher burden of administrative tasks related to different regimes of tax collections on behalf of local tax authorities is an issue that has caused concern for taxpayers.
- ▶ At the national level, it is said that a new amnesty regime may be established.
- ▶ As a result of different Court rulings, and due to the economic crisis, many companies have decided to take active legal actions to save tax.

Polling question

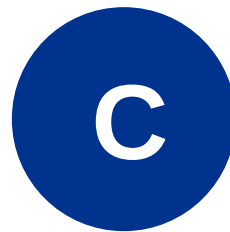
Do you find the Argentinian tax enforcement landscape to be:



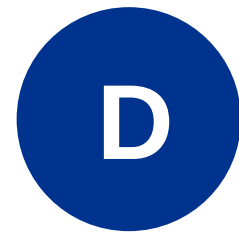
More difficult to
navigate than
last year



Easier to
navigate than
last year



No different
than last year



No experience
with the
Argentinian tax
authority



New developments in Brazil

Marcos H. M. Matsunaga

Latin America Leader, Tax Dispute Resolution and Controversy

KPMG in Brazil

Brazil – New developments

- ▶ Administrative Tax Appeals Council (CARF) new developments
- ▶ Recent decisions from CARF on important tax issues
- ▶ 2016 Tax Audits Annual plan issued by the Brazilian Internal Revenue Service (RFB)
- ▶ Recent decisions from Federal Supreme Court

Brazil – New developments

CARF



Corruption scandal – Operação Zelotes:

- Trials were suspended in March, 2015



New internal regulations:

- Reduction of trial panels, increase of judges per panel – 6 to 8
- Strict deadlines for judges
- Possibility of grouping similar cases at the same trial session



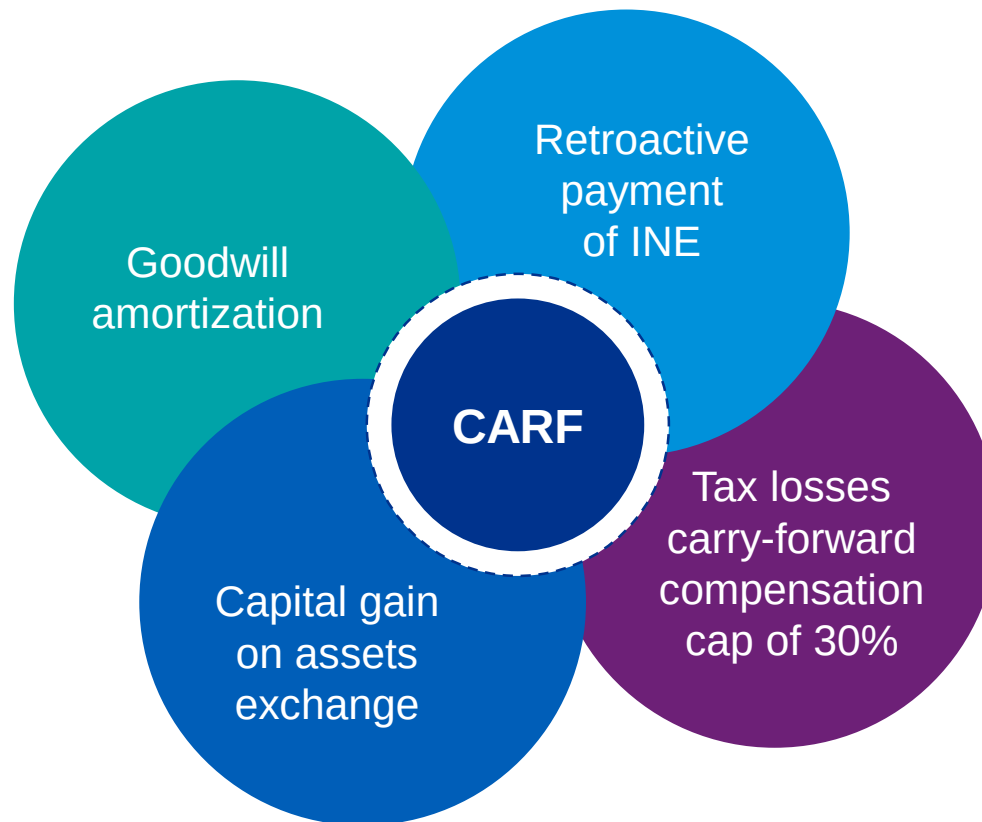
80 percent to 90 percent of taxpayers' representatives judges have changed:

- Impacts on new cases

Brazil – New developments

CARF

Majority of CARF rulings have been unfavorable for taxpayers



Brazil – New developments

RFB Tax Audits Annual Plan

- ▶ Tax planning focusing on the creation of amortizable assets
- ▶ Tax planning involving private equity funds
- ▶ Taxation of profits generated abroad
- ▶ Cigarettes, beverages and fuel sectors
- ▶ Social Contribution on Payroll – individual companies “Pejotização”
- ▶ Omission of income based on electronic invoice (NF-e)
- ▶ Omission of income based on suspicious inconsistent financial flow
- ▶ Social security offset informed in GFIP (social contribution declaration form)

Brazil – New developments

Supreme Court



Complementary Law n. 105/2001 (*establishes that Tax Authorities can have access to taxpayers banking data without judicial authorization*)



STF judges understood that Complementary Law n. 105/2001 is constitutional (ADIs 2859, 2390, 2386, 2397 and RE 601314)



Consequences of this decision to tax audits

Brazil – New developments

Supreme Court



Federal Supreme Court, on the judgment of **Habeas Corpus n. 126.292**, ruled that a decision issued by the second level Court in a judicial procedure allows to initiate with the provisory execution of the criminal sentence



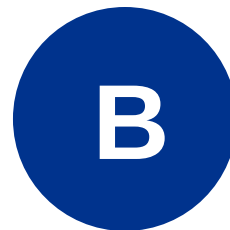
A question relies on the possibility of this ruling being applied or not applied to tax disputes procedures, considering the existing disposal of the new Code of Civil Procedure

Polling question

Many jurisdictions have programs in place to allow for a more collaborative interaction between the taxpayer and the revenue authority. Have you seen any indication that the Brazilian tax authorities are interested in developing a collaborative relationship with the taxpayer?



Yes. I see a positive shift in the way the Brazilian revenue interacts with taxpayers.



No. I do not see any shift towards a more collaborative approach to working with the taxpayer.



New developments in Mexico

Manuel Llaca

Partner in Charge, Legal Practice, Dispute Resolution & Tax Litigation

KPMG in Mexico

Tax Dispute Resolution & Controversy - Developments in Mexico

Background



Tax controversy issues in Mexico / Audit programs:

- The rejection of deductions regarding payments made abroad on a pro-rata basis
- **The rejection of deductions regarding marketing and advertising expenses**
- Back-to-back loans
- Royalty payments to foreign residents with regards to intangibles generated in Mexico
- VAT refunds
- Aggressive tax planning in relation to the BEPS initiative

The rejection of deductions regarding marketing and advertising expenses

Legal grounds of the Mexican Tax Authorities (MTA)



This audit program is currently in progress and is a major issue in Mexico



These types of expenses do not meet the required standard because:

- I. They are duplicative (local payments and payments made abroad to related parties)
- II. Lack of evidence (e.g. documentation) in order to prove the existence of deliverables in connection to payments made abroad to related parties and how they contribute to generate income in Mexico
- III. Lack of evidence to demonstrate the existence of an economic benefit that justifies these expenses
- IV. The amounts paid abroad are not consistent with the arm's length principle

The rejection of deductions regarding marketing and advertising expenses

Dispute resolution techniques

-  **Burden of proof** – A dispute resolution technique used to solve this case
 - Preventative perspective
 - Reactive perspective
 - Audit defense / Tax Ombudsman / Administrative appeal / Litigation
-  **Defense file (preventive perspective)** — multidisciplinary team is needed: Dispute resolution, transfer pricing and tax members to make a complete analysis and to document the case
 - A proactive method to anticipate disputes before the authorities are involved
-  **Audit defense (reactive perspective)** — to try to provide all the documentation with legal deadlines / open a communication channel, including round table meetings with the MTA.
 - Must strategically manage with experts from the beginning of a dispute

The rejection of deductions regarding marketing and advertising expenses

Dispute resolution techniques

-  As a part of the audit defense, it is necessary to submit a **conclusive agreement in PRODECON** (Tax Ombudsman as a mediator), before the tax assessment is issued by the MTA
-  **Administrative Appeal**, is advisable in the case that the MTA issues a tax assessment. There is no obligation to offer a warranty of the tax liability and communication with the MTA could still be opened
-  Leveraging these dispute resolution techniques can help avoid a litigation process
-  There is a tendency to reach a settlement and to avoid litigation.

The rejection of deductions regarding marketing and advertising expenses

Dispute resolution techniques



Litigation, if necessary, before the Tax Court, Court of Appeal or Supreme Court of Justice

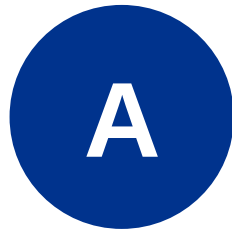


Precedent of the Tax Court

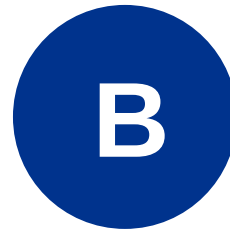
- **Corporate tax** – A strictly indispensable expenditure incurred by taxpayers when advertising for business development, with the purpose of reporting earnings.

Polling question

The rejection of deductions of payments made abroad on a pro-rata basis and the rejection of deductions regarding marketing and advertising expenses are both examples of current audit programs focused on by the Mexican Tax Authorities (MTA):



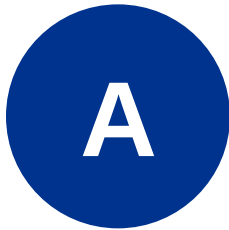
True



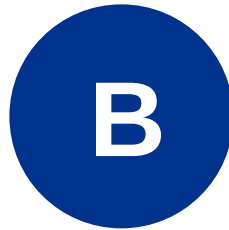
False

Polling question

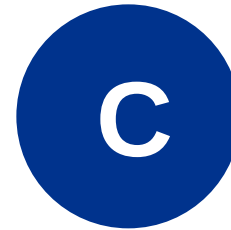
On balance, do you think that the overall enforcement trend amongst the revenue authorities around the world in the last five years is:



More
aggressive



Less
aggressive



No change
noted



Q&A

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2 June 2016, 9 am EST / 11pm AEST / 9pm CST / 9pm MYT

New developments in Nigeria, South Africa and Turkey

19 July 2016, 12-1pm EDT / 5pm WAT (Nigeria) / 6pm SAST (South Africa) / EEST (Turkey),

New developments in Ireland, Luxembourg and Switzerland

October 2016, date and time to be confirmed

You can also view the slides and playbacks of our recent webcasts:

New developments in Canada, the UK and the US

Thank you! Please contact us with any questions.

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