



Around the World with KPMG's Global Tax Dispute Resolution & Controversy Network

**New developments in Canada, the
United Kingdom and the United States**

Tuesday 14 March 2017, 12–1pm EST/4–5pm GMT



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Speakers

- Moderator: Sharon Katz-Pearlman, Global Head Tax Dispute Resolution & Controversy
- Paul Lynch, Partner, Tax National Leader, Tax Litigation & Dispute Resolution, KPMG in Canada
- Michael Dolan, Director, Washington National Tax, KPMG in the US
- Kevin Elliott, Director, Tax, KPMG in the UK

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Agenda

- Introduction
- New developments in Canada
- New developments in the United States
- New developments in the United Kingdom



New developments in Canada

Paul Lynch

Partner, Tax, National Leader, Tax Litigation & Dispute Resolution
KPMG in Canada

Current environment

- Canada Revenue Agency campaign “Cracking Down on International Tax Evasion and Avoidance” includes:
 - reviewing international electronic funds transfers > CAD\$10,000
 - collaborating and sharing information with international partners
 - identifying international non-compliance and abuses through exchange of information
 - the creation of an Offshore Compliance Advisory Committee
 - combatting avoidance by big multinational companies through actions set in the Base Erosion and Profit Shifting Action Plan
 - inviting the use of the Voluntary Disclosure Program
 - encouraging anonymous information on offshore tax avoidance via the Offshore Tax Informant Program.

Current process issues

- Large business risk assessment
- No collaborative compliance initiative
- Data analysis and business intelligence risk identification
- Information requests, including for uncertain tax position working papers
- Voluntary disclosure program
- “Audit agreements”
- Notice of objection process — timeframes and referrals back to audit function

Do not underestimate the importance of careful compliance and execution!

Current technical issues

- Non-resident withholding taxes (treaty-shopping, performing services in Canada)
- Statute-barred/limitation period issues (non-resident withholding taxes, transfer pricing penalties, errors in prior returns, current year “catch-up” adjustments)
- General anti-avoidance rule
- Anti-avoidance doctrines
- Interest deductibility
- Valuation matters
- Reorganizations
- Professional fees
- Penalties
- Intercorporate dividends
- Capital vs. income
- Indirect taxes — allocations and legal entity invoices

Global Tax Benchmarking Survey – Canada results

- Survey included a component on tax disputes
- Most interesting points pertaining to Canadian results vs Global results:
 - Canadian respondents indicated that managing tax disputes is more the responsibility of the Global Tax Manager than the Chief Financial Officer compared to Global respondents
 - Canadian respondents also indicated that they tended to manage tax disputes internally rather than outsource to external advisors. However, Canadian respondents were also more likely to reply that resources to manage tax disputes were inadequate as compared to Global respondents
 - Canadian respondents lagged somewhat behind Global respondents regarding the use of technology to manage disputes
 - Canadian respondents noted that new techniques of tax authorities to promote compliance and resolve disputes such as cooperative compliance significantly lagged the other Global respondents

Polling question 1

The Canada Revenue Agency has a campaign to Crack Down on International Tax Evasion and Avoidance.

- a) True
- b) False



New developments in the United States

Michael Dolan

Director, Washington National Tax
KPMG in the US

The US context facing large taxpayers

New administration — environment still uncertain

- Tax reform — substance and timing
- Further IRS budget reductions forecasted — will likely further impinge on IRS effectiveness and increase taxpayer frustrations

Cumulative budget reductions (2010–2015) drove change in resource deployment

- Each of the IRS operating divisions charged with identifying a future state
- Large Business and International (LB&I) is shifting its approach from a historical reliance on comprehensive examinations of selected large enterprises to a more issue-focused design
- In addition to more issue-focused audits the new approach to include other “treatments”
- Recent legislation also changes IRS approach to auditing large partnerships — result likely to be more aggressive audits of large partnerships

Campaigns – to address significant risk issues

New concept first introduced in late 2015

- Envisions centralized risk identification and case selection
- Campaigns will be designed to utilize a range of treatments
 - Published guidance
 - Soft letters/notices
 - New forms/instructions
 - Focused audits
- A revised organizational structure relies on meld of geographic and subject matter expertise

First 13 campaigns announced in February 2017

- Span a range of risk
- Project use of multiple treatments
- Many practical process and substantive questions remain

The 13 initial campaigns

- IRC 48C Energy Credits
- Offshore Voluntary Disclosure Declines/Withdrawals
- Domestic Production Activities Deduction — Video Distributors & TV Broadcasters
- Micro-Captive Insurance
- Related Party Transactions
- Deferred Variable Annuity Reserves & Life Insurance Reserves
- Basket Transactions
- Land Developers — Completed Contract Method
- TEFRA Linkage
- S-Corporation Losses Claimed in Excess of Basis
- Repatriation
- Form 1120-F Non-Filer
- Inbound Distributors

Promise vs. practice

- **New approach will pose technical and cultural challenges for the IRS**
- **Some version of a traditional large case program will continue to exist**
 - Future of the Compliance Assurance Process (collaborative audits) in question
- **Plan is for all audits to become more issue-focused**
 - Taxpayers not previously audited by the IRS are likely to be included in a campaign
 - Issue Practice Units and other forms of IRS guidance should introduce more transparency
 - Taxpayers are uncertain about: access to subject matter experts; potential for multiple campaigns; impact on traditional dispute resolution vehicles — other
- **IRS committed to series of webcasts designed to address taxpayer questions/comments**

Polling question 2

New IRS Campaigns will include:

- a) Issue Focused Audits
- b) Soft Notices
- c) Published Guidance
- d) All of the above



New developments in the United Kingdom

Kevin Elliott

Director, Tax
KPMG in the UK

The global tax disputes environment: UK context

More frequent contact/requests for information

More audit queries

More aggressiveness in raising assessments/penalties

Audits taking longer to conclude/difficulty in reaching settlement

Raising assessments/penalties

Information notices

- Formal request with relatively short deadlines for response
- Limited grounds for appeal
- Penalties for non-compliance

Assessments

- Discovery: An officer finds something new
- Normal 4 year limit, 6 years where failure to take reasonable care, 20 years for deliberate behavior
- Challenge by appeal

Penalties

- Mandatory review of behavior causing inaccuracies
- Careless: suspension where conditions can be met to prevent inaccuracies recurring
- Deliberate: no suspension & possibility of being named as a deliberate defaulter

Enquiries taking longer/settlement difficulties

HMRC structure and governance

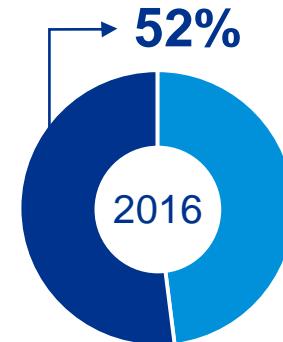
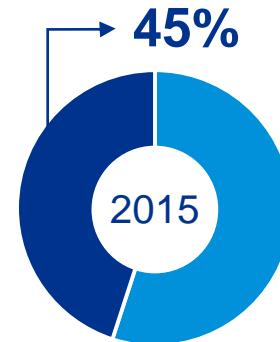
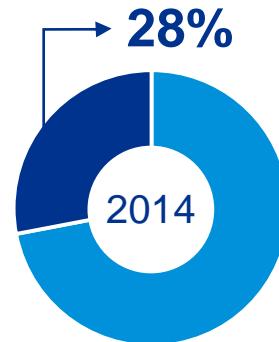
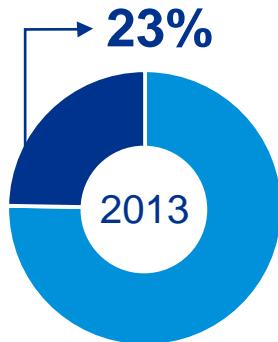
- Customer Compliance Group — concentration of all compliance activity
- Tax Disputes Governance — change in Tax Assurance Commissioner — consolidation of tax dispute resolution boards

Litigation & Settlement Strategy

- No package deals, no splitting the difference on 'all or nothing' issues
- Absence of Alternative Disputes Resolution in large and complex disputes
- HMRC litigation success in avoidance cases

Tax Assurance Commissioner's annual report

- Increasing rejection rate of taxpayer settlement proposals



UK disputes landscape – summary

Dispute prevention

- Careful execution of transactions
- Management of HMRC relationship

Dispute management

- Collaboration: joint ownership of the audit process
- Thorough presentation of positions

Dispute resolution

- Working to a litigation standard
- Navigation of HMRC procedures and governance

Polling question 3

Has the level of difficulty in reaching a negotiated settlement with HMRC in the last 3 years:

- a) Decreased
- b) Increased
- c) Remained the same



Q&A

Polling question 4

Would you like to be contacted by a representative from KPMG?

- a) Yes
- b) No

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