The global tax disputes environment

Gain an in-depth look at the issues facing those who manage tax disputes and how they are responding

2019 Global Tax Disputes Benchmarking Survey

KPMG International

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This special report takes an in-depth look at the issues faced by those who manage their company's tax disputes, and the processes, practices and resources they have in place to meet these challenges. The Global Tax Disputes benchmarking report is part of KPMG International's broader tax benchmarking initiative. This research offers inside views of the structure, governance, priorities and performance measures of tax departments today and delivers insights on how leading tax departments expect to transform in the next 5 years.

For tax executives of international companies — including those charged with tax dispute management — benchmarking against comparable tax departments can be a powerful tool for reflecting on your organizational structures and competencies. It can also help leaders assess how the changes made today can help prepare organizations for the challenges and opportunities they are likely to face tomorrow.

The current survey tells us that companies are seeing a significant rise in tax audits and disputes, and all signs point toward even more intense tax authority activity in the future. The pace at which tax authorities have changed and intensified their approach — both unilaterally and cooperatively — has been surprising.

Tax executives clearly recognize the importance of tax dispute management to their business. Compared to the last time we conducted this survey in 2016, current results reveal more companies have adopted formal processes for tax disputes, and they're showing more appetite for investing in people, technology and centralized processes to help them manage tax disputes globally. However, the survey results also suggest that some companies may not be quick enough to invest in strengthening their dispute resolution functions at a pace needed to keep up with the tax authorities.

This report presents an overview of these and other key findings from this year's survey, together with insights from senior leaders of KPMG's Global Tax Dispute Resolution & Controversy Services network. We also present key takeaways for tax dispute management leaders to help them prepare for the challenging times ahead.

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About the survey

— KPMG International's Global Tax Benchmarking Survey 2019 charts the evolution of leading tax departments and identifies operational benchmarks for high-performing tax teams. This special report highlights the survey's findings about the people, processes and technology deployed by tax departments to manage their activities related to tax audits and disputes.

— The findings in this report are based on a survey of over 100 people in charge of the tax function and operations of companies in all major industries based in 17 countries worldwide.

— About half of respondent organizations are public companies. About 80 percent have up to 5 billion US dollars (USD) in annual revenue or turnover, and one-fifth have more than USD$5 billion in annual revenue or turnover. Over 30 percent of respondent organizations have more than 10,000 employees globally. Almost 60 percent have branches, subsidiaries or other permanent establishments in more than 10 countries.

Tax audits and disputes — the changing environment

Overall, KPMG International's global tax benchmarking research confirms that behavior is changing among tax authorities worldwide. Feedback suggests tax executives are finding today's tax administrations increasingly difficult to deal with.

Indeed, tax authority activity has been rising steadily in recent times, as financially strained governments press for higher revenue collection and media and public attitudes harden against perceived corporate tax avoidance.

Across the tax dispute continuum, 85 percent of the respondents are currently involved in tax audits or inspections. Over two-thirds are engaged in tax appeals, while a quarter face litigation. Under one in five are working through mutual agreement procedures for bilateral tax disputes.

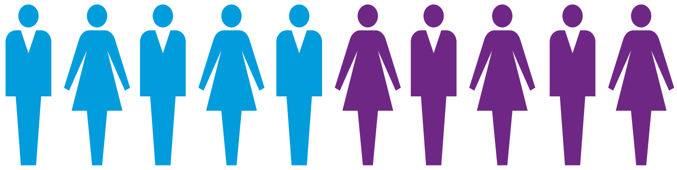
Indeed, audit activity has been rising across the board, from direct taxes and indirect taxes to employment and domestic compliance issues — and international tax in particular. Now that the Organisation for Economic Co-operation and Development's (OECD) proposals for curbing tax base erosion and profit shifting (BEPS) are complete, countries worldwide have been working to put them in place. From broader requirements for tax transparency through more stringent transfer pricing policies to greater scrutiny of business substance, the changing rules open the door to considerably more tax disputes — especially given differences in interpretations and timing as countries translate them into domestic laws.

Interactions with tax authorities

In this environment, it is not surprising that the survey respondents have noted rising tax audit scrutiny over the past 3 years. In particular, the respondents have observed increases in the following activities (in rank order):

1. more audit queries
2. more frequent requests for information
3. more extensive requests for information
4. more frequent contact.

Along with this added activity, 43 percent of the respondents observe that tax audits are taking longer to conclude.

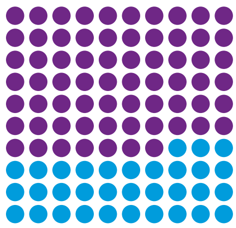


Almost half of the respondents say their disputes are getting harder to resolve.

45 percent say tax authorities are taking a harder line in negotiations.

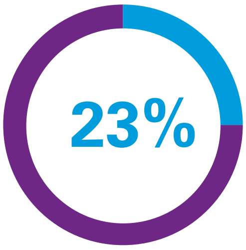
60 percent attribute the increase in disputes to tax authority aggressiveness and their reluctance to reach settlements.

60%



Over one-third of the respondents say the tax authorities they deal with have less appetite for settlement, resulting in more litigation the last 3 years.

Source: KPMG International 2019.



Almost **one-quarter** of the respondents noted an increase in the tax authorities' application of penalties globally.

Along with increased audit activity, nearly one-quarter of the respondents noted an increase in the tax authorities' application of penalties globally.

When audits result in disagreements between companies and tax auditors, nearly half of the respondents say the disputes are getting harder to resolve. About 60 percent attribute the increase to tax authority aggressiveness and their reluctance to reach settlements. Almost half say tax authorities are taking a harder line in negotiations, for example, by refusing to compromise in marginal cases and by expecting taxpayers to concede all disputed taxes.

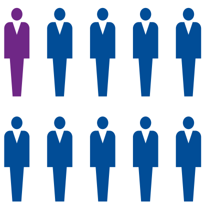
Further, over one-third of the respondents say the tax authorities they deal with have less appetite for settlement, resulting in more litigation in the last 3 years. Just under half of the respondents say the likelihood of litigation is about the same as the last 3 years.

While litigation used to be seen as something to be avoided, as tax authorities have become more aggressive and less willing to settle, litigation has come to be a viable component of many companies' strategies for dispute resolution.

The respondents say the most common new techniques that tax authorities have adopted for promoting compliance and resolving disputes in the past 3 years are (in rank order):

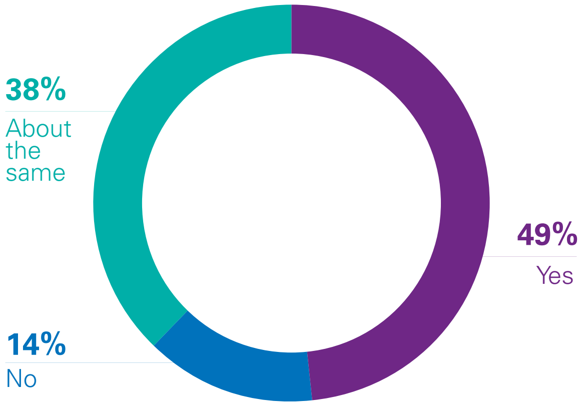
1. cooperative compliance and real-time working of issues
2. advance tax rulings
3. alternative dispute resolution or mediation.

However, results suggest that almost one in ten of the respondents have seen no attempt by tax administrations to bring new resolution techniques to bear.



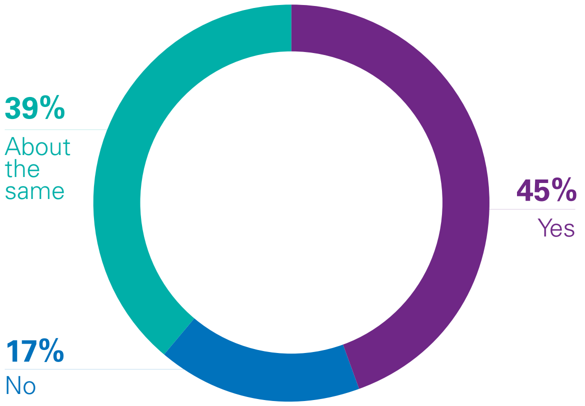
One in ten of respondents did not note any new techniques adopted by tax authorities to promote compliance and resolve disputes.

Is the level of difficulty in reaching resolution with the tax authorities you deal with increasing?



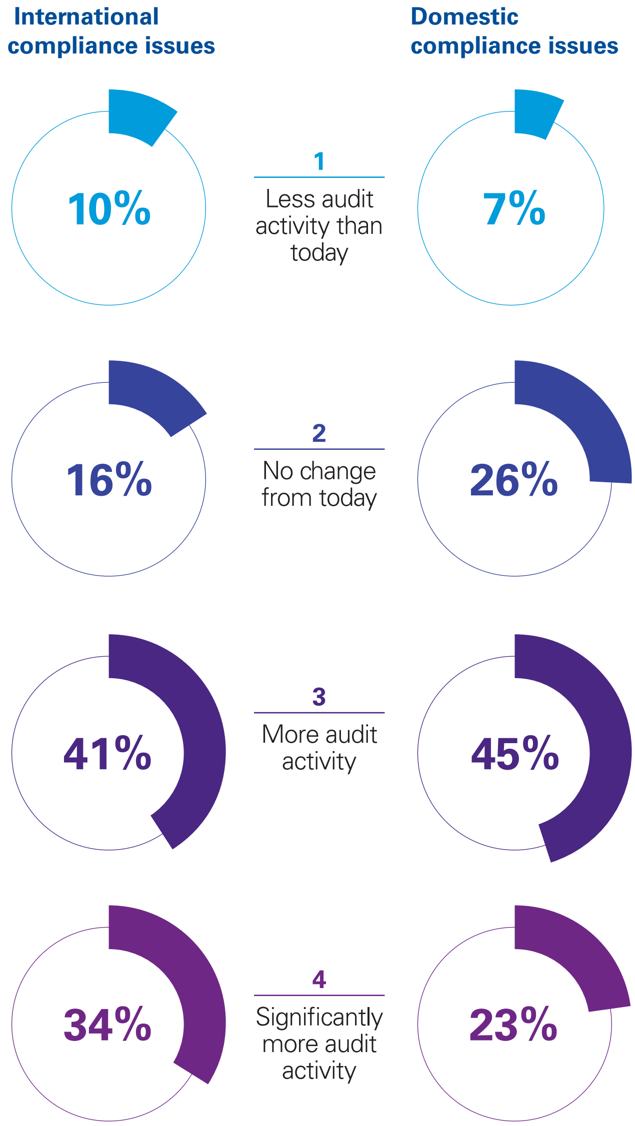
Note: Total might not add up to 100% due to rounding.
Source: KPMG International 2019.

In negotiations/settlement proceedings during the last 3 years, are tax authorities taking a harder line, e.g. not 'splitting the difference' in marginal cases or expecting taxpayers to concede substantially all of the tax in dispute?



Note: Total might not add up to 100% due to rounding
Source: KPMG International 2019.

On a scale of 1–4, in which areas do you see/anticipate the tax authorities you deal with undertaking more audit activity?



Note: Total might not add up to 100% due to rounding.
Source: KPMG International 2019.

Tax authorities' focus

When asked where tax authorities are sharpening their audit focus, international compliance issues (e.g. transfer pricing, diverted profits) topped the respondents' list, with three-quarters seeing an increase. As the international tax practices of some large corporations have come under fire, governments, the media and the public at large have become much more aware of the impact of BEPS on countries' tax revenues. Tax authorities, who have also been under pressure to increase tax revenues, have stepped up their scrutiny of international transactions as a result.

International tax issues are by no means the tax authorities' only focus. Over two-thirds of the respondents also report more audit activity related to direct taxes, indirect taxes and domestic compliance issues (e.g. income, expenses, reliefs).

Half of the respondents agree that tax authorities are getting better at assessing risk and allocating audit resources to issues that taxpayers and industries identified as high-risk. This statistic should come as no surprise to readers in countries like the UK and Australia, where risk assessment practices are well advanced. However, the result also shows that the use of risk assessment among other tax authorities is more widespread. As discussed later in this report, tax authorities are also investing heavily in technology to help them assess risk and develop audit priorities.

Collaboration and information sharing

The majority of the respondents say tax authorities are sharing more taxpayer information than they did 3 years ago, and levels of information sharing are set to intensify as tax authorities mine data gleaned from country-by-country tax reporting requirements, the Common Reporting Standard and automatic exchange of information.

Fewer respondents have noted other forms of increased collaboration among tax authorities, such as conducting joint audits or taking part in multilateral tax administrator groups.

Much of the current collaboration is not visible to taxpayers, so companies may not yet be aware of the extent to which it is occurring. The expansion and rising profile of groups like the OECD Forum on Tax Administration and the Joint International Taskforce on Shared Intelligence and Collaboration demonstrate that tax authorities are expanding their networks and working in concert more and more each year.

Tax dispute management take-aways:

Tax audits and disputes

— Aggressive tax authority activity has been steadily rising and is expected to intensify in coming years.

— Global tax department leaders say tax authorities are:

  — requesting more information from businesses

  — conducting more audits and taking longer to conclude them

  — increasingly reluctant to negotiate a settlement

  — moving more matters forward to litigation.

— All tax issues are coming under more audit scrutiny, with particular attention being paid to international tax issues.

— As tax authorities get better at risk assessment and share more information with other tax authorities, there is increased potential for more aggressive tax adjustments, with a commensurate increase in the potential for tax controversy.

Tax dispute management today

With tax audits getting more difficult and time-consuming and levels of tax disputes continuing to rise, are today's tax functions prepared to deal with the challenges ahead?

Many companies have room to improve their tax dispute function's organization and the attention they devote to tax dispute resolution. However, a minority of forward-thinking companies are working to make the investments in people, processes and technology they need to effectively manage their tax disputes on a global basis.

Reporting lines and day-to-day management

Our ongoing benchmarking survey research confirms the trend toward global tax departments centralizing management and resources to improve their efficiency and effectiveness and help them contribute more value. The same benefits can accrue to tax dispute management functions. Centralization can help ensure accountabilities are clear, the right mix of dedicated and shared resources are available, and processes and technologies are leveraged to improve consistency, quality and efficiency.

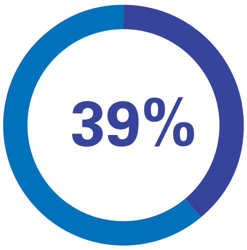
The past few years have seen this trend extend to tax dispute management. Currently, almost 40 percent of respondent companies have a specific group that handles tax audits and disputes exclusively, up from 20 percent in 2016. The majority of these companies have five or fewer members on their dispute management teams. However, 40 percent plan to expand these teams in the next few years. In two-thirds of companies without dedicated teams, disputes are handled by the tax department, while one in ten companies relies on multidisciplinary teams.

Forty-one percent of the respondents say that day-to-day management of tax disputes is the responsibility of a local tax manager (or equivalent) while 31 percent assign this role to a global tax manager (or equivalent). About one-third of the people responsible for tax dispute management report to global tax management while slightly less (28 percent) report to the finance function. Only one-quarter ultimately report to local or regional tax management.

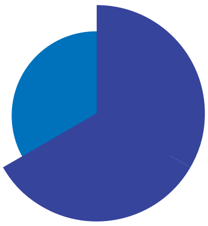
Compared to 2016, slightly more companies (13 percent) have appointed a global head of controversy or equivalent who is responsible for the day-to-day management of tax disputes. While these companies are still in the minority, the global head of controversy role delivers significant benefits by providing these executives with the power and mandate to clarify reporting lines, centralize tax dispute monitoring and controls, and provide strategic direction. The role is relatively new in most companies and, based on the current trend, we can expect more companies to appoint a global head of controversy in the future.

A global head of controversy can also have the profile to ensure senior management are kept well informed of the company's disputes and their reputational and financial implications. Forty-three percent of the respondents say that the people in charge of their company's tax dispute management have access to their organization's management, while just over one-third has access to both management and the audit committee.

Survey results

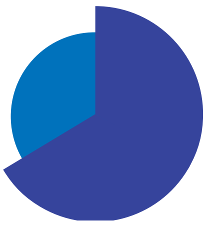


The number of respondent companies with a specific group that handles tax audits and disputes exclusively has doubled to 39 percent since 2016.



In **two-thirds** of companies without dedicated teams, disputes are handled by the tax department.

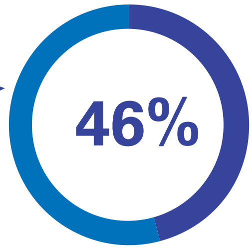
One in ten companies relies on multidisciplinary teams



Two-thirds of the respondents have established an internal process for managing all tax disputes, up from one-third in 2016.

80% of the respondents with established internal processes for handling tax disputes employ people with specific, relevant tax dispute management experience.

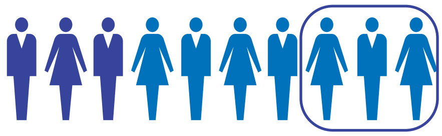
Just under half of companies have a process for escalating tax disputes that cannot be resolved at the lowest administrative level.



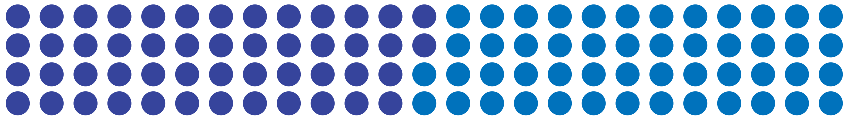
14 percent
have a global head of controversy or equivalent who is responsible for the day-to-day management of tax disputes.

Source: KPMG International 2019.

About **a third** of the people responsible for tax dispute management report to the global tax management...



...and **28 percent** report to the finance function



About **half** of respondent companies have a budget for managing tax disputes.

For **44 percent** of these respondents, the budget for managing tax disputes is more than **10 percent** of the tax function's budget overall.

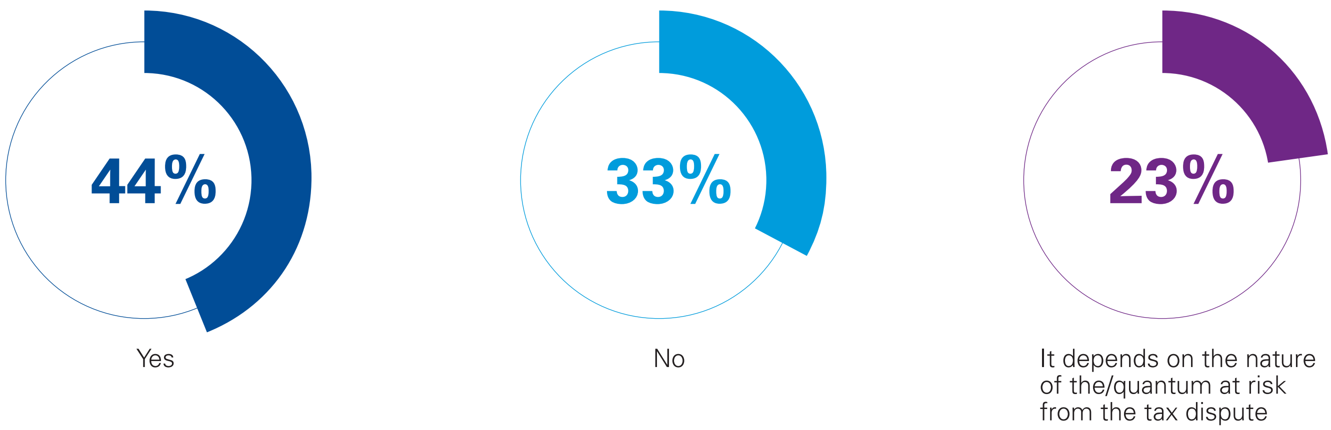
Source: KPMG International 2019.

Resources and processes for managing tax disputes

Half of respondent companies have a budget for managing tax disputes. For another quarter of the respondents, the budget coverage for particular disputes depends on the nature or quantum at risk. For 44 percent of these respondents, the budget for managing tax disputes is more than 10 percent of the tax function's budget overall. Three-quarters believe their current tax dispute management budget is adequate.

Established central processes, including processes for escalation, help companies identify issues and risk early, and achieve global consistency in how they manage disputes worldwide. A third of respondent organizations do not have in place such processes. The other respondents report having these processes, and for almost a quarter of them, the process depends on the dispute's nature or amount at risk. This helps ensure the process is reserved for only those disputes with relatively high reputational or financial risk.

Does your organization have an established internal process for managing tax disputes?



Source: KPMG International 2019.

It is encouraging to see that more respondents (44 percent) report having established an internal process for managing all disputes, compared to 2016 (just over a third).

Further, the portion of the respondents with established internal processes for handling tax disputes that employ people with specific, relevant tax dispute management experience (e.g. legal, previous dispute resolution experience) rose significantly (80 percent currently versus half in 2016).

Over half percent of all respondent companies have a process for escalating tax disputes that cannot be resolved at the lowest administrative level. These processes are important for bringing issues to the tax dispute management team's attention as early in the dispute resolution process as possible.

In 45 percent of these cases, the escalation process only applies to disputes of a certain nature or involving disputed taxes over a certain threshold, which is an advisable practice. Tax dispute management teams do not have the time or resources to involve themselves in every dispute. Establishing a materiality threshold (e.g. USD$20 million in disputed taxes) can focus scant dispute management resources on those cases with the most significant financial and reputational implications.

However, smaller cases still need to be monitored, since they can grow into larger disputes or add up to large amounts if the same relatively small issue is replicated across many jurisdictions. An analysis of smaller issues, such as US state income tax issues, can reveal cumulative savings opportunities and serve as a business case for adding more resources. As we will see in the next section, technology can help make sure tax dispute management teams are able to keep watch over all of the company's tax disputes.

Tax dispute management take-aways:

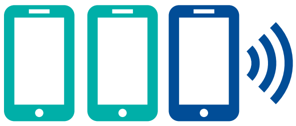
Tax departments today

- In light of swelling levels of tax disputes and the significant reputational and financial losses they can cause, some forward-thinking companies are investing in processes and resources to strengthen their tax dispute resolution functions. For example:
  - 40 percent of the respondents have a specific group that handles tax audits and disputes exclusively, twice as many as in 2016
  - two-thirds have an established internal process for managing and escalating tax disputes
  - about half have a budget dedicated to tax dispute management.
- A small but growing portion of the respondents have a global head of controversy or equivalent who is responsible for the day-to-day management of tax disputes and who can help the dispute team to clarify accountabilities, centralize tax dispute monitoring and controls, provide strategic direction, and communicate with the board and senior management. Centralizing company-wide responsibility for tax disputes under one leader may become a leading practice in the years to come.

Leveraging technology

As part of their increasingly sophisticated risk assessment and audit practices, tax authorities in many jurisdictions are employing data analytic tools to flag audit issues and risk-assess taxpayers, in part to make up for shrinking tax department budgets.

Over two-thirds of the respondents report more use of technology by the tax authorities they deal with. The majority are seeing more tax authority use of technology in audits of tax returns and transactions, while a third say technology is being used for assessing tax risk. Other areas where technology is being applied include customer service (reported by 21 percent) and analyzing country-by-country tax reports (17 percent).



Over two-thirds of the respondents report more use of technology by the tax authorities they deal with.

62% auditing tax returns and transactions

33% risk assessment

Similarly, technology can help resource-strapped teams ensure they are managing their company's disputes with efficiency and effectiveness, both centrally and locally:

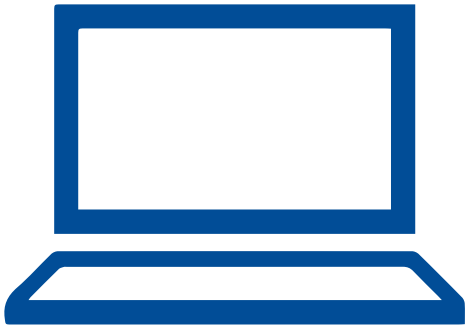
- Centrally, tax dispute management technology can help implement a governance framework for disputes by providing visibility and transparency into all ongoing disputes in each country you operate in.
- Locally, technology can offer an easy-to-use and effective means of providing information about in-country disputes, in a consistent and clear format.

Visibility is key to identifying issues early in the process and developing a litigation or controversy strategy. With a worldwide tax audit management system, dispute management teams can follow and compare cases and developments from country to country. Technology can also help to reveal systemic issues within the organization that are giving rise to disputes and ensure the lessons learned are shared across the global organization's transfer pricing and compliance teams.

Since 2016, there has been a big jump in the portion of the respondents who use technology to monitor the number and nature of their organization's tax disputes globally, rising from 30 percent in our previous survey to 68 percent currently. Excel spreadsheets are still the most commonly used technology for this task, while only a quarter of these respondents use a disputes-specific software platform. The low use of dispute management-specific technology could be due to the fact that, as noted earlier, most dispute teams are managed as part of the larger tax department and often lack budget for and control over investments in technology.

Tax dispute management technology can eliminate inefficient, ad hoc processes and give a quick, real-time picture of what's going on with the company's tax controversy matters globally. It is encouraging to see that about 46 percent of the respondents expect their use of technology for managing and monitoring tax disputes to change in the next 2 years, up slightly from 40 percent in 2016.

Over two-thirds of the respondents use technology to monitor the number and nature of their organization's tax disputes globally and only one-quarter of these respondents use a disputes-specific software platform.



46% expect their use of technology for managing and monitoring tax disputes to increase in the next 2 years.

Source: KPMG International 2019.

Tax dispute management take-aways:
leveraging technology

- Tax authorities in many jurisdictions are employing increasingly sophisticated data analytic tools to flag audit issues and risk-assess taxpayers.
- Technology can also help resource-strapped teams ensure they are managing their company's disputes with efficiency and effectiveness.
- A rising majority of the respondents use technology to monitor the number and nature of their organization's tax disputes globally, but only one-quarter of these respondents use a disputes-specific software platform.
- Encouragingly, about 44 percent expect their use of technology for managing and monitoring tax disputes to change in the next 2 years.

Tax dispute management of the future

Rising tax authority aggression. Increasing collaboration and sharing of information among tax authorities. More potential for tax disputes. Based on the current survey, many companies have scope to better protect their bottom lines and preserve value by investing in their tax dispute management functions. Across the survey responses, it is clear that a growing minority of forward-thinking companies are already at work developing robust tax risk management frameworks that are fit for the future.

Based on these results and the experiences of Global Tax Dispute Resolution & Controversy Services professionals of KPMG's global network of member firms, leading tax dispute management functions of tomorrow would have the following key hallmarks:

— **a global, senior executive head of tax controversy** with the power and mandate to clarify reporting lines, centralize tax dispute monitoring and controls, and provide strategic direction

— **dedicated budgets** that are sufficient to cover all of the company's dispute management needs and provide some control over how the funds are deployed and invested

— **dedicated, adequately staffed teams of professionals** with tax dispute management experience relevant to the company and its industry

— **centralized, internal processes** that ensure accountabilities are clear and promote consistency, quality and efficiency in tax dispute management activities, locally and globally

— **clear, company-wide tax dispute management guidelines** to help facilitate the hands-on work of managing tax cases and foster communication between business units and the tax dispute management team

— **an effective sourcing strategy** for the use of internal talent and third party advisers to ensure the right specialized skills and talent are on tap to manage tax disputes at the right time

— **escalation processes** for bringing issues to the tax dispute management team's attention as early in the dispute resolution process as possible

— **processes for communicating with company directors and senior executives** about the potential impact of tax disputes on their company's reputations, operations and bottom lines

— **a worldwide tax audit management software platform** that delivers a complete view of all current disputes, as well as potential disputes in the pipeline.

Contact us

For more information about how KPMG member firms can help your business manage and resolve tax disputes efficiently and effectively, please contact our Global Head of Dispute Resolution & Controversy Services below.

Sharon Katz-Pearlman
Head of Global Tax Dispute Resolution & Controversy
KPMG International
Partner, KPMG in the US
T: +1 212 8726084
E: skatzpearlman@kpmg.com

home.kpmg

home.kpmg/socialmedia

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