



# Tax Controversy and Dispute Resolution Quarterly

## Spring 2023 Issue

- IRS current and future state
- Crypto crackdown on digital assets
- Administrative guidance on GloBE rules
- Pillar One's Amount B
- EV charging raises state tax issues

Spring 2023

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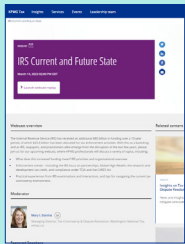
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# IRS practice and procedure



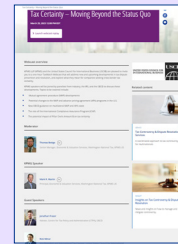
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## Webcast: IRS Current and Future State

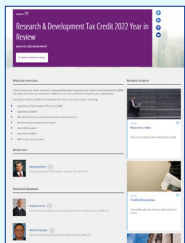
The IRS has received an additional \$80 billion in funding over a 10-year period, of which \$45.6 billion has been allocated for tax enforcement activities. With this as a backdrop and as IRS, taxpayers, and practitioners alike emerge from the disruption of the last few years, a March 14 **webcast** addresses:

- What this increased funding might mean – IRS priorities and organizational overview
- Enforcement trends – including the IRS focus on partnerships, global high wealth, the research and development tax credit, and compliance under TCJA and the CARES Act
- Practical experiences from IRS examinations and interactions, and tips for navigating the current tax controversy environment.



## Webcast: Tax Certainty—Moving Beyond the Status Quo

Professionals from industry (regulatory and litigation counsel from Google and international tax counsel of the U.S. Council for International Business), the IRS (acting director of treaty and transfer pricing operations), and the OECD (adviser to the Centre for Tax Policy and Administration, OECD) joined KPMG professionals to explore what tax dispute prevention and resolution developments mean for companies seeking cross-border tax certainty. Topics in this March 29 **webcast** include mutual agreement procedure (MAP) developments, potential changes to MAP and advance pricing agreement (APA) programs in the US, new OECD guidance on multilateral MAP and APA cases, the role of the International Compliance Assurance Program (ICAP), and the potential impact of Pillar One's Amount B on tax certainty.



## Webcast: Research & Development Tax Credit 2022 Year in Review

There have been many developments regarding the R&D tax credit and other tax treatment of R&D. On a March 7 **webcast**, KPMG professionals provide legislative and litigation updates, IRS refund Chief Counsel Memorandum and procedures, IRS examinations/appeals hot topics, and state and international R&D updates.

Also see KPMG reports:

- New section 174 mandatory capitalization regime, issues for engineering and construction industry
- Analysis and observations on Rev. Procs. 2023-8 and 2023-11, guidance for accounting method changes under section 174 (January 1)



## More IRS news in *TaxNewsFlash*

- IRS practice units: Changes in accounting methods
- IRS extends due date for QI withholding agreement to 1 May 2023
- Form 1099-K delayed reporting thresholds
- Final regulations: Special enforcement matters, centralized partnership audit regime
- Temporary relief for foreign financial institutions required to report U.S. TINs
- Year-in-review list of U.S. federal tax developments for 2022
- Final regulations on exception for U.S. real property interests held by foreign pension funds – Initial impressions and observations
- Service industry tip compliance agreement program
- IRS announces changes to bridge phase of Compliance Assurance Process (CAP) program
- Interim guidance regarding certain insurance related issues under corporate alternative minimum tax (CAMT)

## Superfund Excise Taxes

- Third Reinstated “Superfund” Tax Adds Complexity
- The Reinstated Superfund Excise Taxes
- Observations from Notice 2023-18 (guidance on qualifying advanced energy project credit under section 48C)





# Tax enforcement trends



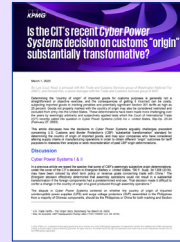
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- | 2023 Chief Tax Officer Outlook
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## Crypto Crackdown: Information Reporting in a Digital Asset World

By Martin L. Mueller, Jr. and Lani L. Chou  
Business Tax Services, Denver  
Financial Services Information Reporting, New York

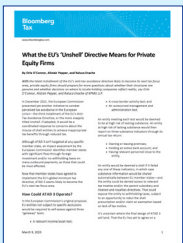
The interplay of increased IRS enforcement capabilities with respect to crypto assets, a delayed effective date for new broker reporting rules, and new proposed regulations on the horizon has left many taxpayers feeling thankful for the reprieve, yet apprehensive of what lies ahead. A March 2023 KPMG **report** looks at the question of when and what form the crackdown on crypto reporting will take.



## Is the CIT's recent *Cyber Power Systems* decision on customs "origin" substantially transformative?

By Luis (Lou) Abad and Donald Hok  
Washington National Tax

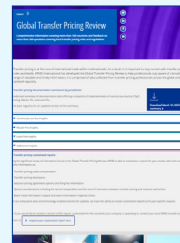
Read a **March 2023 KPMG report** that discusses how the decision in *Cyber Power Systems* arguably challenges precedent concerning U.S. Customs and Border Protection's (CBP) "substantial transformation" standard for determining the country of origin of imported goods and may spur companies who have considered altering supply chains or manufacturing operations in order to obtain different "origin" outcomes for tariff purposes to reassess their analysis or seek reconsideration of past CBP origin determinations.



## What the EU's 'Unshell' Directive Means for Private Equity Firms

Orla O'Connor, Alistair Pepper, and Raluca Enache  
M&A Tax, London  
Washington National Tax  
KPMG EU Tax Centre

A March 9 **article** in *Bloomberg Tax* suggests that with the latest installment of the EU's anti-tax avoidance directive likely to become its next tax focus area, private equity firms should prepare for more questions about whether their structures are genuine and whether decisions on where to locate holding companies reflect reality.



## Global Transfer Pricing Review, Adjustments Penalties

Easily access transfer pricing documentation summaries by jurisdiction in the *Global Transfer Pricing Review*. It comprises data collected from transfer pricing professionals across the globe and updated regularly, including a condensed summary of documentation data offering a snapshot of implementation of country-by-country (CbyC) reporting, Master file, and Local file.





### Chief Tax Officer Outlook

The fourth annual CTO survey examines how top tax executives at companies with \$2 billion or more in annual revenue are navigating political and economic unrest, supply chain and operational issues, regulatory change, and more.

### More tax enforcement news

- OECD: Manual on handling of mutual agreement procedures (MAPs) and advance pricing arrangements (APAs)
- U.S. Supreme Court: Penalty for FBAR violation applies on per-report, not per-account basis
- Video – *Mobility Matters Express*: Supreme Court to review application of non-willful FBAR penalty
- Ninth Circuit: Tax return not considered filed when sent in response to IRS inquiry; Tax Court affirmed
- Eleventh Circuit: Permanent injunction against “tax mandate” in American Rescue Plan Act upheld
- Seventh Circuit: Research tax credit disallowed, Tax Court affirmed
- U.S. Tax Court: Gain recognized on sale of partnership interest attributable to inventory may be U.S.-source income (February 7)
- U.S. Tax Court: Regulation under section 482 relating to consideration of foreign legal restrictions upheld





# OECD and BEPS

- | Pillar One: Administrative guidance on the GloBE rules
- | Focus on country-by-country reporting (CbC) data with Pillar Two minimum tax and public CbC reporting
- | Pillar Two implementation package
- | Where next for Amount B?
- | More OECD/BEPS news in *TaxNewsFlash*





## Pillar One: Administrative guidance on the GloBE rules

By Kevin Brogan, Seth Green, Danielle Rolfes, Marcus Heyland, Alistair Pepper, and Daren Gottlieb

Washington National Tax

On February 2, 2023, the OECD/G20 Inclusive Framework on BEPS released administrative guidance related to the Pillar Two global anti-base erosion (GloBE) rules, which provide a coordinated system to ensure that multinational enterprises (MNEs) with revenue above €750 million pay an effective tax rate of at least 15% on their adjusted financial statement income arising in each of the jurisdictions in which they operate. A **February 2023 KPMG report** provides general observations on the guidance, followed by detailed descriptions of the issues of particular importance to U.S.-parented MNEs and other groups with significant U.S. operations.

## Webcast: New Pillar Two Guidance, New Considerations for U.S. Multinationals

During this February 24 **webcast**, KPMG professionals summarize the areas of the guidance that may affect U.S. multinational groups, including treatment of GILTI, Subpart F, overall domestic losses, and tax credits arising from equity investments as well as exploring clarifications to the transition rules.

## Webcast: Pillar Two Advances: Implications for U.S. Multinational Group

This January 2023 webcast provides an update on the status of OECD/G20 Inclusive Framework's implementation of the Pillar Two GloBE rules and how U.S. multinational companies are preparing to comply, with specific focus on data and technology challenges.



## Focus on country-by-country reporting (CbC) data with Pillar Two minimum tax and public CbC reporting

Jessie Coleman, John DerOhanesian, and Alistair Pepper

Washington National Tax

The EU reached agreement on its Pillar Two minimum tax directive and the OECD has dropped its transitional Pillar Two CbC reporting safe harbor. As MNEs are reviewing this safe harbor, many are determining whether they are comfortable relying on CbC reporting data for more than a tax risk assessment. As MNEs are being required to slice and dice country data for the upcoming minimum tax compliance, a January 23 KPMG **report** suggests that MNEs may want to take a holistic view of what is needed on a by-country basis.



## Webcast: **A Brave New World for Country-by-Country Reporting: Pillar Two and Public Disclosures**

In a March 9 **webcast**, KPMG professionals discuss how companies are rethinking their country-by-country data in light of international tax reform developments and the increased emphasis that many companies are placing on environmental, social, and governance (ESG) issues.

### **Comments on public consultation documents on implementation under Pillar Two**

In response to the OECD request for comments, KPMG LLP submitted these two comment letters in February 2023:

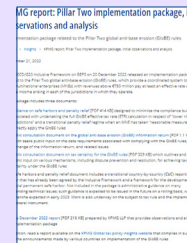
- Pillar Two – GloBE Information Return
- Pillar Two – Tax Certainty for the GloBE Rules

### Videos: **Pillar Two Implementation**

- **Part 1: U.S. Multinationals Impacts and Considerations**  
Watch a December 2022 video on the Pillar Two implementation issues that may affect cash taxes and effective tax rate and add compliance and administrative requirements for U.S. groups.
- **Part 2: Progress Around the World**  
Watch a February 2023 video that provides an overview of the impact of the OECD's Pillar Two initiative in key jurisdictions around the world, including more detailed discussion of developments in the European Union and the United Kingdom and on the related technical work at the OECD.

### Podcasts:

- **Doubling Down on CbCR: The EU and Pillar Two** (February 2023) – Destination Country X
- **What to Expect when You're Expecting Pillar Two** (February 2023) – Inside International Tax



## **Pillar Two implementation package**

- 👤 Marcus Heyland, Kevin Brogan, Seth Green, Quyen Huynh, Danielle Rolfes, and Alistair Pepper
- 📍 Washington National Tax

A December 2022 KPMG **report** provides initial observations and analysis on the December 20 implementation package related to the Pillar Two GloBE rules, which provide a coordinated system to ensure that MNEs with revenues above €750 million pay at least an effective rate of 15% on the income arising in each of the jurisdictions in which they operate.





## Webcast: **Update on Pillar 1 and Pillar 2**

This January 2023 KPMG global events webcast explains recent OECD releases on Pillar 2 (including safe harbors, penalties, certainty, and GloBE information return) and Amount B of Pillar 1 (standardized tax treatment of marketing and distribution rights).

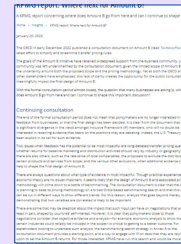
## KPMG comment letters on Pillar One consultation documents

These January 2023 KPMG comment letters respond to the OECD's December 20, 2022 consultation document on digital services taxes—part of its ongoing work to implement a two-pillar solution and address tax challenges arising from the digitalization of the economy.

- Amount B under Pillar One
- Withdrawal of DSTs under Pillar One

## Webcast: **Pillar One: Where Next?**

2023 is the year of implementation for the OECD's Pillar Two global minimum tax rules. But agreement has yet to be reached on Pillar One—the other half of the OECD's BEPS 2.0 package. Within the world of Pillar One, the future for Amount A (the proposed reallocation of taxing rights over a small set of large, highly profitable companies) and Amount B (a transfer pricing simplification project that would apply to small and large businesses alike) is much less certain. A February 2023 **webcast** looks at where Pillar One may go next, focusing on the status of Amount A, Amount B, and the removal of digital services taxes; and implications for the future of the international tax system and how countries apply transfer pricing rules.



## Where next for Amount B?

- Jessie Coleman, Alistair Pepper and Thomas Bettge
- Washington National Tax

The OECD in early December 2022 published a consultation document on Amount B—its latest effort to simplify and streamline transfer pricing rules. With the formal consultation period almost closed, the question that many businesses are asking is, where does Amount B go from here and can they continue to shape this important discussion? Read this January 2023 KPMG **report**.

Listen to *Exploring Transfer Pricing* podcast — Amount B under Pillar One – Simplification for Baseline Marketing and Distribution Activities

## More OECD/BEPS news in *TaxNewsFlash*

- OECD: Further progress on harmful tax practices (January 6)
- OECD: Manual on handling of mutual agreement procedures (MAPs) and advance pricing arrangements (APAs) (February 1)
- OECD: Comments on public consultation document on Amount B under Pillar One (January 30)
- OECD: Comments on public consultation document on withdrawal of DSTs under Pillar One (January 24)
- OECD: Report to G20 Finance Ministers and Central Bank Governors, updates on developments in international tax reforms (February 24)
- OECD: Comments on public consultation documents on implementation under Pillar Two (February 16)

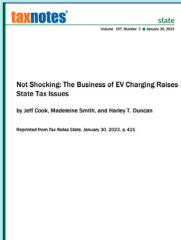




# State and local tax

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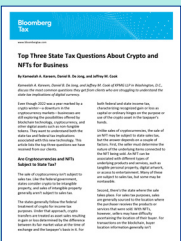


## Not Shocking: The Business of EV Charging Raises State Tax Issues

👤 Jeff Cook, Madeleine Smith, and Harley T. Duncan

📍 Washington National Tax

An **article** in the January 30 edition of Tax Notes State discusses the potential sales and excise tax implications of electric vehicle charging stations, including the two areas in which tax issues are likely to arise: the build-out or installation of those stations and electricity sales through them.



## Top Three State Tax Questions About Crypto and NFTs for Business

👤 By Kameelah A. Kareem, Daniel B. De Jong, and Jeffrey M. Cook

📍 State and Local Tax, Los Angeles  
Washington National Tax

The downturn of cryptocurrency markets notwithstanding, businesses are still exploring the possibilities offered by blockchain technology, cryptocurrency, and other digital assets such as nonfungible tokens (NFTs). An **article** in the February 3, 2023 edition of Bloomberg Tax discusses the most common client questions from those who are struggling to understand the state tax implications of digital currency.

### Webcast: **SALT and PTET considerations**

This February 23 webcast addresses state and local tax (SALT) issues that entities investing in real estate are facing as deadlines for elective pass-through entity taxes (PTETs) approach. Various rule changes will impact state liabilities over the coming year, and economic considerations are shaping the choices for investments in real estate and how states are taxing it.

### State and local tax changes affecting entities in asset management industry in 2022

Changes to state and local laws, as well as court decisions and state administrative actions, can have a significant effect on an entity's filing and payment obligations, including companies engaged in the asset management industry. A **February 2023 KPMG report** summarizes significant state and local tax developments that may affect return and/or payment obligations of companies engaged in the asset management industry for tax years beginning in 2022, and includes a table listing states that have enacted a passthrough entity tax as a workaround for the federal SALT cap on taxes that may be deducted as an itemized deduction.

### State and local tax, technology-related developments (fourth quarter 2022)

A January 2023 **KPMG report** of U.S. state and local tax developments concerning technology-related tax issues, for the fourth quarter of 2022, provides updates in table format and covers topics such as the taxability of software, guidance on digital equivalents, and other items.

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**KPMG LLP Tax Controversy & Dispute Resolution Services**

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