



WORLD **TAX**

# TAX CONTROVERSY LEADERS

THE COMPREHENSIVE GUIDE TO THE  
WORLD'S LEADING TAX CONTROVERSY ADVISERS

**TENTH EDITION**

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# Introduction

Welcome to the 10th edition of the *Tax Controversy Leaders* guide from **World Tax** – produced in association with the **International Tax Review**. This latest publication of the list of the world's leading tax controversy practitioners and remains the one of the most comprehensive individual rankings of dispute practitioners available, in both scope and scale. It covers an extensive range of jurisdictions, reaching out to thousands of individuals and identifying hundreds of leading practitioners – from rising stars just making a name for themselves to market leaders with decades of experience behind them

This year alone we reached out to more than 2,500 leading tax professionals from around the globe to gather their feedback about their markets and the individuals that stand out in them. The *Tax Controversy Leaders* guide now includes the names of almost 1,500 experts from jurisdictions in every corner of the world; more than ever before.

These individuals are nominated by their peers and recommended as trusted advisers. We ask professionals to name the people they would refer their clients to in the event of a conflict, or recommend as a local representative in another jurisdiction. They are also selected as those with the highest reputation among clients in the market, collected from feedback from subject matter experts. The resulting list is therefore a collection of tax controversy leaders recognised – by the leading names in their own and international markets – as those who perform strongest in their field. Market leaders chosen by market leaders.

As part of commitment to develop the guide, practitioners can provide online profiles if they are included in the ranking. This offers them a chance to showcase their work to clients, offer more information about their skills and experience and display feedback given to our research team by clients from a broad range of industries.

We hope to do more moving forward. Reach out to more practitioners, receive feedback from more clients and provide coverage of more leaders from every market. We would like to thank those who took the time to provide feedback to help us put this guide together this year and would encourage everyone to do so in the future to ensure we are providing the broadest, most accurate assessment of the leaders in tax controversy that we can.



Jonathan Moore,  
Editor,  
*World Tax* and *World TP*

# GLOBAL

## Interview



**James Fabijancic**  
Deloitte

### **What is the most significant development in your region/jurisdiction's tax practice in the past 12 months?**

There has been a strong and continuing trend towards the need for greater global management of disputes across jurisdictions and subject matters. Clients are beginning to centralize the conduct of multiple matters throughout the world, and in response Deloitte is pivoting towards greater levels of coordination, a need to create teams from multiple jurisdictions and work towards solutions that are acceptable across multiple tax authorities, as our clients look to protect their brand and reputation as highly respected and trustworthy global corporate citizens.

This is not an unexpected phenomenon given developments in recent years such as the move towards greater transparency, common reporting standards and approaches to disclosing tax positions, information sharing and joint audit activity across revenue authorities.

### **How do you anticipate that change impacting your work and the market moving forwards?**

As tax controversy professionals, our way of approaching problems has needed to lift upwards from the immediate issues and challenges to the broader objectives of our clients. This means a greater focus on understanding implications across different markets, dealing with experienced professionals in other markets and synthesizing content despite inherently competing positions.

What was previously a predominantly technical and administrative skillset is shifting towards more focus on project and stakeholder management and problem-solving abilities.

Work is becoming more variable and the role tax controversy professionals play is more likely to change across client

engagements. There seems to be a greater understanding by clients of the technical issues raised in each market, so that greater value is placed on strategy, ability to manage multiple authorities' challenges and structured planning for dealing with the dispute lifecycle.

**What impact do you see the COVID-19 pandemic having on your work directly and on the wider tax environment, in both the short and long term?**

COVID-19 has caused a slowdown of activity across various markets. Revenue authorities have played a crucial role in administering systems and relief packages in response to the impacts of the virus and this has deferred their focus on planned-out review programs. It is expected that this will mean a wave of activity as the world re-emerges from the current disrupted environment. Coupled with a need for each country's tax administrations to assess taxpayer performance during the impacted period, this will create high demand for tax controversy assistance.

**Given the likely long-term implications of COVID-19 on things like remote working and digital retail, how do you see tax technology developing to accommodate this new reality and where do you think the next area of focus might be?**

There is likely to be a heavy trend towards unified datasets being used by multiple professionals. Tax technology will need to develop quickly in order to be able to cope with multiple inputting users and ensuring the reliability of the data for multiple tax related uses

**What potential other legislative changes are on the horizon that you think will have a big impact on your region/jurisdiction?**

I expect that tax systems globally will need to pivot and adapt to the social and economic change caused by COVID-19. This will likely result in greater integrity measures, such as anti-avoidance regimes, to ensure tax systems are acting efficiently and the use of more principles-based legislative measures.

Further, there is likely to be a greater connection between tax legislative measures and foreign investment regimes as tax compliance and performance is given a more pronounced role as markets reestablish themselves.

**What are the potential outcomes that might occur if those changes are implemented?**

The industry will need to adapt through the delivery of a more proactive and multi-disciplinary approach to assisting clients. It will become imperative that tax controversy professionals work more closely with advisory professionals such that we will see greater crossover between the two sets of professionals. That is, advisory professionals becoming more alive to issues of potential complication and challenge in future, and tax controversy professionals more attuned to practical solutions and best practice steps to allow clients to proceed on transactions and business opportunities.

**Do you think that change will have a positive effect on both your practice and the wider regional/jurisdictional market?**

This should absolutely be the case. tax controversy professionals will be given the chance to experience new challenges across markets, work with a broader set of professionals and become involved much sooner in the business cycle.

This will lead to a more fulfilling career experience for tax controversy professionals and a more efficient approach to client problems, with a reduced chance of formal disputes.

**What legislative changes would you like to see be implemented that you think would have the most positive effect on your practice and the wider regional/jurisdictional market?**

It would be highly beneficial to see more standardisation of information requirements and tax evidentiary standards. This has taken place in an area such as transfer pricing, but could have greater application. This should also be coupled with greater “safe harbour” style measures to help keep on creating greater levels of materiality associated with revenue authority reviews, a concept common to the finance world but often overlooked in tax audits conducted many years after the underlying transactions and events.

**Do you think something like that is likely to be implemented in the near future?**

Unfortunately, not; this is a highly aspirational goal that is not easy in practice.

However, things will no doubt evolve as the competing tax systems become more aligned and greater reliance is placed on multilateral instruments and measures. It will be beneficial that decision makers and policy shapers have regard to not only the integrity components and abilities of these tools, but also the economic efficiency that can be added to the respective tax systems through simplification and standardisation and freeing up resources for economic growth and innovation.

**What have been the biggest developments in tax technology and where do you think the next area of focus might be?**

Tax technology has been very good at dealing with individual problems and using automation and data-analytics to simplify and make more efficient certain tasks. The tools have become very advanced and the increased familiarity using the same language and tools to address new problems assists in progressing onto increasingly more-complex applications.

The next area of focus will be on harnessing the power of data much more efficiently. By being able to draw on a unified set of reliable and quality data (one source of truth, for lack of better term), tax compliance and management will be revolutionised and more open to technology-based solutions, freeing up capacity, evolving roles and allowing tax professionals to be more involved at a strategic level within their organisations.

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# Vision 2020 – Tax Audits and Controversy in an Age of Conflicting Objectives

David Swenson, global tax controversy leader in the Washington DC office of PwC, discusses the global tax audit and controversy landscape in today's unprecedented environment and the complexities it raises for regimes and companies alike.



**David Swenson**  
PwC

Prior to the COVID-19 pandemic, multinational enterprises (MNEs) were facing the most challenging tax environment in history. It is now unquestionable that the magnitude of the pandemic will further heighten this challenging environment, resulting in a substantial increase in the number and size of tax audits, assessments and disputes with revenue authorities worldwide. Virtually no area of tax enforcement will be immune, including direct and indirect taxes, state aid disputes, and tariffs and trade matters. In this context, transfer pricing will remain an area of increased focus by tax administrations, particularly as a result of modifications made to operating models and intercompany pricing to increase cash flow in a turbulent environment where many MNEs are incurring significant losses around the world.

In the midst of the pandemic, the Organization for Economic Cooperation and Development (OECD), the European Commission and individual countries in the European region continue to propose new policies for taxing the digital economy, with the aim to better align taxable income with value creation. The OECD is pressured to find a solution in the near future, given that unilateral measures to tax the digital economy will increase the risk of double taxation and potential trade wars. MNEs are closely monitoring these developments and the promulgation of new international tax rules in the digital space in the United States and other countries, with an eye towards understanding how these potential new rules will impact business operations, including supply chain operations, in the current environment. The specter of double taxation looms over the increased uncertainty that has been created in the current environment.

Profit split approaches are being refined and relied upon more frequently. Defining 'value creation' to determine the

proper allocation of profits, however, can be subjective in nature. Moreover, it is difficult to reach consensus on a standardized approach, or even the common elements in a suggested methodology. Consequently, there are significant questions as to whether tax administrations are likely to accept allocations of profits based on methods with variable elements, thereby creating uncertainty and the risk of double taxation as an increase in audits unfolds in the coming years.

Taxpayers, tax professionals, and tax administrations are closely following a number of prominent cases in both national and international courts, given the impact that landmark decisions may have on future audits and the regulatory environment. Although litigation is generally an option of last resort, many stakeholders predict an increasing number of matters reaching the purview of judicial review with the use of expert testimony to help resolve often complex matters where significant tax revenue is at stake.

This dynamic environment places a premium on audit and dispute prevention techniques. MNEs need to develop coordinated approaches to audits and disputes around the globe, adopt preventive measures (such as pre-filing rulings and enhanced relationships with revenue authorities), and leverage both traditional and new alternative dispute resolution techniques to achieve the best possible outcomes.

### **The impact of COVID-19**

The COVID-19 pandemic has forced the world to break from the past and deal with a changed world. The entire globe has been impacted, with no government or taxpayer being completely immune from the economic chaos. In the wake of COVID-19, MNEs are experiencing economic *extremis* and disruption to supply chains and other aspects of business operations. The OECD Transfer Pricing Guidelines and local country transfer pricing regimes were not designed to address the financial impact of a global pandemic. The financial impact is even more significant for structures where local subsidiaries operate as limited risk entities earning a guaranteed return, but where overall system profit is reduced or eliminated. In such cases, the MNE will need to consider whether and how to support affiliated entities to maintain business continuity. In the short-to-medium term, liquidity and free cash flow are paramount for taxpayers that elect to delay payments (e.g. waiving royalties or reducing margins for limited risk entities), notwithstanding the overall functional and risk profile as evidenced in intercompany agreements. In the medium-to-longer term, MNEs may consolidate or rationalize to address changes to their markets or supply chains.

Past economic downturns (e.g. the Dot-Com recession and the 2008 Financial Crisis) did not reduce the IRS's or other taxing authorities' review of transfer pricing modifications, business restructurings, or loss transactions — even though substantive in nature and undertaken in the presence of economic duress. Indeed, following the 2008 Financial Crisis, taxing authorities raised — and vigorously pursued — debt-equity issues in the context of refinancings involving third-party banks. Therefore, it is reasonable to assume that the next round of audits by the taxing authorities will be robust when they commence examinations of COVID-19-impacted tax years. In this regard contemporaneous documentation will be critical. At a macro level, such documentation should demonstrate how COVID-19 changed the commercial landscape and disrupted supply chains throughout the world. At a specific company level, the documentation should further establish that losses or downward economic

adjustments were related to the extraordinary circumstances of the COVID-19 pandemic rather than the intercompany pricing.

Notably, the reality of unexpected losses has prompted questions to both local tax regulators and the OECD as to how MNEs should address transfer pricing policies in 2020 and the following years. More generally, in the US, the IRS published a Frequently Asked Questions (FAQ) guide on Transfer Pricing Documentation Best Practices, which clearly demonstrates that contemporaneous transfer pricing documentation is going to be extremely important to demonstrate the arm's-length nature of business results. Core themes of the FAQ guide included changing business circumstances in light of economic downturns and the requirement that transfer pricing documentation appropriately explain the associated impacts on profit realization. The OECD will be issuing transfer pricing specific COVID-19 guidance and has invited various stakeholders to submit information on issues to be addressed. Specific advice would help both taxpayers and tax administrations to mitigate the onset of COVID-19 related tax controversy.

In the interim, however, tax administrations in many countries may be less likely to pursue new audit activity and ongoing audits and litigation may be deferred or delayed, with priority focused on criminal activity and tax avoidance as a result of the crisis. Taxpayers with advance pricing agreements (APAs) may see critical assumptions violated due to economic conditions. Certain competent authorities have stated that they will assist taxpayers in addressing the impact of the crisis on both pending and existing APAs. In the US, for example, APMA is actively discussing various substantive and procedural issues with treaty partners, including the application of transfer pricing methods in periods of economic distress and the impact of current economic conditions on specific industries, types of taxpayers and different regions, among other factors.

MNEs will continue to grapple with economic conditions caused by COVID-19 for the foreseeable future, while at the same time, continue to monitor the progress of the OECD BEPS 2.0 project, which is top of mind for all interested parties.

### **BEPS 2.0 – the Digitalization Project**

Not surprisingly, governments have been immersed in addressing the economic chaos resulting from the pandemic, thereby creating a stumbling block to revamping the global tax system. The OECD, is however, increasingly pressured to deliver on its BEPS 2.0 (or the “digitalization”) project. The digitalization project refers to the OECD’s efforts to develop a multilateral set of rules related to the jurisdiction to tax and the allocation of profits in the digital world. Led by the Inclusive Framework, those jurisdictions involved in the project, a number of policy notes and reports have been issued over the last couple of years.

Most recently, the Inclusive Framework issued a package of documents that updated the work on tax challenges arising from the digitalization of the economy. Specifically, the Inclusive Framework settled on an initial approach based on two pillars. Pillar One proposed a three-part profit allocation mechanism that partially departs from the arm's length principle and, at the same time, creates a new taxing right that is not based on physical presence. Pillar Two features both an income inclusion rule (a minimum tax standard) and denial of deductions for base-eroding payments, as well as other supporting rules. For the first time, the Inclusive Framework supported the Pillar One “unified approach” as the basis for further

negotiations on revising taxing rights. It is worth highlighting that a key goal of Pillar One is to increase tax certainty through effective dispute prevention and resolution features. Subject to consensus, mandatory binding dispute resolution tools will also be developed.

The Inclusive Framework continues to double down on its ambitious timeline to achieve a consensus solution by the end of 2020. In the interim, the Inclusive Framework has continued to emphasize that if a comprehensive consensus-based solution is not reached within the agreed G20 timeframe, there is substantial risk that jurisdictions will increasingly adopt uncoordinated unilateral tax measures that are bound to increase the risk of double taxation. Achieving a consensus solution may become more problematic as countries will be keen to protect their own tax base as part of the efforts to rebuild from the economic deterioration caused by the COVID-19 pandemic. Moreover, government stimulus packages and other measures will need to be financed and governments will be incentivized to find additional sources of taxable revenue. The digital services economy is now under heightened scrutiny as a source of potential tax revenue, particularly focused on the major digital companies in the US. Governments will, therefore, be keen to attempt to tax digital companies in an effort to recover from the global recession. Accordingly, certain stakeholders are of the view that the digital tax project is now more relevant than ever.

One area of concern for many stakeholders is how to ensure the resolution of disputes between countries and companies with respect to how much tax is owed in a jurisdiction under the developing new rules. In this regard, the OECD publicly announced the development of a two-phased process that would use a two-panel approach. The first panel would make an initial determination and a second panel would make a decision that would be considered binding, if the first panel is unable to reach a resolution. That said, binding dispute resolution continues to be a difficult and politically contentious matter.

However, the road to a global agreement on changes to the international tax framework has become more uncertain following the US Treasury Department's decision to "pause" participation in certain OECD negotiations so that all stakeholders could focus on responding to economic issues resulting from the COVID-19 pandemic. The US Trade Representative (USTR) has also made it clear that countries should not pursue discriminatory unilateral actions while the Inclusive Framework agreement is pending negotiations, warning that the US will pursue sanctions against countries that move forward with such unilateral actions. In response to the USTR, various governments as well as the European Union have indicated an unwillingness to stop considering or implementing actions, despite retaliatory steps taken by the United States. To the extent that countries start enacting their own measures targeting digital activities, trade tensions will inevitably increase and may result in significant retaliatory tariffs.

### **Is a trade war on the horizon?**

Indeed, many stakeholders are predicting a trade war is on the horizon due to political unrest with respect to digital taxes (along with food, gas, and cars). In 2019, the US completed an investigation of France's digital tax under Section 301 of the 1974 Trade Act, concluding the tax constitutes discrimination against US technology companies, which nearly prompted a trade war between the two countries. In response to France's digital tax, the USTR had announced new tariffs on French wine and other French goods, but the two countries reached

a detente and France delayed the collection of levies. However, the USTR recently issued a notice of action in the Section 301 investigations and a retaliation schedule to begin in January 2021, which would place an additional 25% tariff on a range of products made in France.

The US has also announced investigations into unilateral measures in the UK, Italy, Brazil, and other countries, which may likely lead to new punitive tariffs and heightened trade tensions. The concern is that trading partners are adopting tax schemes designed to unfairly target US-based companies, and the USTR has indicated that the US will be prepared to take action to defend US businesses and employees against discrimination. Many stakeholders are concerned that the imposition of tariffs could further strain a global economy that is facing the worst downturn in more than a century.

Moreover, the OECD tax chief has commented that the progression and resolution of global talks on digital services taxes may depend on the outcome of the US elections in November 2020. In the interim, the OECD will present what has been termed “blueprints” by October 2020, which will provide the technical details of the unified approach for Pillar One and Two. That said, there is continued caution that reaching a consensus by year end may not be realistic given the number of issues that are pending, and a lack of consensus would prolong already delayed talks to secure a deal on taxing the digital economy. In the interim, a number of stakeholders predict a clear and significant risk of trade wars over the digital services tax.

### **Tax reform**

The international tax provisions in the US Tax Cuts and Jobs Act (TCJA) – coupled with an interconnected, complex and challenging global tax environment relating to BEPS 2.0 and the impact of COVID-19 pandemic on the global economy – will further complicate MNEs’ supply chains and other decisions on where to locate business functions, assets and risks.

In today’s distressed economic environment, MNE tax departments are being forced to re-prioritize their tax agendas. Pre-pandemic the focus was on tax reform and compliance, while the focus now (and in a post-pandemic era will be) on addressing liquidity needs, modifying transfer pricing arrangements to free up cash flow, restructuring operations and meeting compliance burdens. Nevertheless, tax reform implications need to be contemplated in parallel with modifications to transfer pricing arrangements and/or business restructurings that are implemented to mitigate the COVID-19 pandemic impact. MNEs will be particularly well-advised to consider transfer pricing risk with respect to the Base Erosion Anti-Abuse Tax (BEAT), the Global Intangible Low-Taxed Income (GILTI) tax, and the Foreign-Derived Intangible Income (FDII) deduction. The interactions between these three provisions must be closely evaluated because the tax consequences of one provision may significantly impact the tax consequences of another.

As MNEs consider different supply chain structures and locations within their global operations, they must also consider the risk of transfer pricing audits and examinations and develop and implement appropriate strategies and best practices.

### **Profit splits**

The use of profit split approaches has become increasingly common in the issuance of new guidelines and local legislation, as well as in audits and in applying alternative methodologies.

A core issue in numerous transfer pricing controversies surrounds the source of value creation and questions regarding where to attribute profit to value creation. These disputes tend to be complex, therefore audits and negotiated settlements are often contentious and protracted.

Action 10 of the OECD's BEPS Action Plan relates to the development of rules or measures that clarify the application of profit split approaches in the context of global value chains. In June of 2018, the OECD released its final report titled *Revised Guidance on the Application of the Transactional Profit Split Method*. This report provided that a profit split approach may be appropriate when the contributions of the parties cannot be reliably evaluated in isolation because the relevant business operations are highly integrated, or where the parties share the assumption of economically significant or closely related risks. Furthermore, the UN's Twentieth Session of the Committee of Experts on International Cooperation in Tax Matters revealed that the next version of the UN Practical Manual on Transfer Pricing for Developing Countries, which is due by 2021, will include additional updates on profit split methodologies. These actions demonstrate a trend toward the promulgation of guidance that embraces the use of profit split approaches.

In the context of alternative dispute resolution options, in March 2019 the US APMA program released a Functional Cost Diagnostic (FCD) Model – the FCD workbook is an Excel-based tool for collecting and analyzing taxpayer financial data in cases where APMA believes that two or more parties may be making significant value-added contributions to the relevant business operations, regardless of industry or whether the proposed covered transaction is inbound or outbound to the United States. In the latter part of 2019, the Director of the APMA program announced the impending release of an enhanced FCD workbook that will include new features, including a requirement that taxpayers identify and provide certain information with respect to entities and transactions within the related-party group and supply chain that may impact the profitability of US operations. Although certain taxpayers may be requested to complete an FCD Model in the process of filing an APA request, APMA stressed that this does not evidence APMA's conclusion regarding the selection of a best method in given cases. The FCD Model reflects APMA's view that a diagnostic evaluation of taxpayer data under a residual profit split method model may be appropriate in certain cases. Recently, APMA's Director publicly stated that the introduction of the FCD tool did not substantially impact the number of APA applications filed in 2019. In addition, we understand that APMA has recently honored the requests of taxpayers to submit APA applications without an accompanying FCD model in certain instances.

The new reality is that profit split approaches will continue to gain popularity from a local regulatory perspective as well as in transfer pricing disputes. MNEs will be encouraged to proactively consider whether tax authorities are inclined to apply a profit split to their particular intercompany arrangements, considering the functional profile of the relevant entities within the overall value chain.

### **International tax litigation and state aid**

There are noteworthy transfer pricing and related disputes taking place around the world where tax administrations are focused on a variety of issues. Many of these disputes have reached national and international courts, notwithstanding the OECD's BEPS efforts to

improve the international tax framework and develop effective and efficient dispute resolution options. Recently, there have been several landmark decisions that serve as guidance for taxpayers, tax advisers, and tax administrations. The core trends in these cases include, but are not limited to: the definition of intangibles assets, recharacterization of transactions, inclusion of stock option costs in cost sharing arrangements, attribution of profit to permanent establishments, use of adjustments to comparable uncontrolled prices, aggregation of transactions, etc.

In the US in particular, we witnessed notable decisions within recent months.

On June 22, 2020, the US Supreme Court refused to grant the writ of certiorari in the high-profile case *Altera Corp. v. Commissioner*. The *Altera* case involved the validity of a Treasury regulation (Treas. Reg. sec. 1.482-7A(d)(2)) that required stock-based compensation (SBC) to be included in the cost pools of intangible development costs (IDCs) associated with cost sharing arrangements (CSAs). Although the *Altera* saga has ended in the Ninth Circuit, the core issue regarding the validity of Treas. Reg. sec. 1.482-7A(d)(2) can be litigated in other circuits. The wake of *Altera* could potentially motivate the IRS to scrutinize stock-based compensation costs more proactively. Accordingly, taxpayers whose intercompany CSA agreements contain clauses referencing SBC and the validity of Treas. Reg. sec. 1.482-7A(d)(2) must assess the impact of the *Altera* litigation on their contractual and tax obligations.

In *Whirlpool v. Commissioner*, the Tax Court dealt with the question of whether income earned by a Luxembourg based Controlled Foreign Corporation (CFC) via the sale of appliances produced by a disregarded Mexican entity constituted foreign-based company sales income (FBCSI) under IRC section 954(d)(2) (the branch rule). The Tax Court held that the Luxembourg CFC was subject to the branch rule by passing title and selling inventory (via its participation in intercompany sales agreements and its recording of sales income), and that the sales income was FBCSI because Whirlpool's Mexican branch was treated as a subsidiary of the Luxembourg CFC. Thus, the sales income generated by the Luxembourg CFC constituted FBCSI. The *Whirlpool* case requires companies with maquiladora regimes to reassess their positions for purposes of financial accounting.

In the European Union (EU), the hallmark state aid controversy between the European Commission and Apple, Inc. over a \$14.9 billion tax bill was recently decided in favor of Apple by the EU General Court (EGC). The EGC ruling found that the European Commission failed to meet the requisite legal standard that Ireland's tax deal obstructed state-aid law by providing Apple an unfair advantage. Accordingly, although the case may be subject to appeal, it appears Apple will not be required to repay \$14.9 billion in state aid benefits the European Commission claimed it had received from Ireland. This case has been part of the EU Commission's five-year crusade to eliminate allegedly unfair tax deals that MNEs have received from EU governments. This decision will likely not hinder the EU's continued review of tax planning measures under state aid rules. The EGC decision will, however, set important precedent in tax law for a number of state aid disputes over Irish tax structures.

### **Audit readiness and dispute resolution options – global strategies**

Historically, taxpayers have handled transfer pricing audits on a case-by-case (or ad-hoc) basis, with the assistance of global and local country resources. The COVID-19 pandemic



and corresponding impact on the global economy will force taxpayers to revisit risk mitigation procedures and deploy global strategies to assess risk and develop a coordinated, centralized approach to transfer pricing arrangements, particularly when the prospect of disputes involving the 2020 year and subsequent years are subject to audit. These tax audits will take place many years after the close of the relevant taxable years – and this time gap allows memories to fade, employees with the institutional knowledge to leave, and supporting data and analyses to become lost. Recessionary times often enhance these challenges due to higher workloads and generally increased employee turnover.

To combat these challenges, MNEs are well advised to prepare a contemporaneous “audit-ready” defense file. Defense files can mean different things depending on the eye of the beholder (and, of course, depending on the MNEs needs). At a minimum, and using a transfer pricing issue as an example, the defense file should at least contain the relevant contemporaneous documentation requirements necessary to avoid an assertion of related penalties. The defense file, however, should contain a number of additional materials that, in the aggregate, will achieve at least two key objectives. The first objective is the need to develop and support the “theory of the case” (i.e. the factual underpinnings, business purpose and legal basis for the tax position). The second objective is the need to serve as a resource that thoroughly identifies applicable risks and exposures and appropriate responses. The global tax department will also need to have an understanding of the important nuances in audit processes on a country-by-country basis. In that connection, the dispute resolution process, including the right to administrative appeals, competent authority procedures, arbitration and litigation, varies across jurisdictions, requiring enhanced awareness of procedural options and requirements.

Assessing audit readiness is also prudent in the context of planning opportunities by addressing uncertainty upfront and developing a proactive approach to assess the risk of current and potential positions through the lens of the future tax landscape while considering proposed and finalized guidance and legislation. This has become increasingly important as a result of BEPS 2.0 and local tax reform initiatives to implement digital services taxes.

Effective dispute resolution capabilities have become more critical, with tax departments increasingly considering alternative dispute resolution options, including mutual agreement procedures (MAPs), as well as APAs and other pre-filing rulings. Such options, however, must be evaluated on an issue-by-issue and country-by-country basis to determine whether the dispute resolution option under consideration will be most effective and efficient under the circumstances of each case.

### Takeaways

The global tax community expects increased tax audits and disputes and heightened uncertainty and complexity in this new decade marked by unrepresented events and extremely difficult economic challenges. Without a doubt, MNE steps to preserve liquidity and free up cash flows as well as allocate losses, will be subject to close review by tax administrations throughout the world. Profit split approaches may be used more frequently in situations where a particular tax administration deems such an approach necessary to achieve its fair share of income and tax. Governments will now attempt to enhance revenue collections to help fund COVID-19 costs and restart economies. Until consensus is reached on the digital services



tax, individual countries are likely to continue to move forward with unilateral steps in taxing the digital economy. As a result, the risk of double taxation of MNEs may substantially increase and the threat of trade wars is on the horizon. In this unprecedented environment, MNEs will be forced to struggle with a new level of uncertainty and with tax models that present new challenges in multinational taxation. Accordingly, it is of paramount importance that MNEs develop strategies to prevent and manage audits on a local country and global scale.

*The author would like to acknowledge and thank Crystal Thorpe, PwC, Director – Global Structuring, and Ryan Trombley, PwC, Experienced Associate – Global Structuring, for their contributions to this article.*



# Americas



## Americas

The Deloitte network of member firms in the Americas leverages a combination of legal, business tax, and compliance knowledge to provide businesses with a cohesive perspective, enabling companies to make informed business decisions at any stage of the tax controversy cycle. In the Americas, Deloitte's Tax Controversy teams consist of numerous professionals in multiple locations across the network of member firms.

The Deloitte network has professional services teams across the globe to provide services locally, while coordinating engagements regionally or globally from a central location. We also draw on the capabilities and strengths of Deloitte's other businesses—Audit & Assurance, Consulting, and Risk & Financial Advisory—to provide broad-scale, tax-aligned business insights.

Our Tax Controversy professionals in the Americas provide assistance spanning the various stages of federal, state, and local examinations—from dispute mitigation/planning to issue resolution and post-exam improvements. Through decades of working with clients on a broad range of tax issues, Deloitte firms in the Americas have fine-tuned their technology, analytical procedures, and planning methodologies to offer a broad-based, scalable solution that can be tailored to the specific circumstances of each client and each tax controversy. Some of our cross-border Tax Controversy capabilities including the following services:

- Re-controversy audit readiness assessments including:
  - Risk assessments
  - Documentation readiness and retention preparation, and
  - Mock audits
- Examinations
- Litigation, appeals, and settlement
- Proactive resolution services
- Transfer pricing
- Tax controversy software tools and support

Innovation is a key component of Deloitte's Tax Controversy offerings across the Americas region. Deloitte's network of firms is investing heavily in tax technology and analytics capabilities and developing solutions to help clients mitigate the potential for, manage, and learn from the various types of tax disputes – which in turn, translates to value for our clients. Collaboration allows Deloitte firms to develop tax technology solutions that address specific and complex tax requirements in the Americas region. Deloitte firms in the Americas can provide innovative tax controversy software tools and support including:

- *Tax Controversy Manager*: Proprietary web-based tool for managing examination-related data and reporting.

- *Interest Analyzer*: Service to verify the accuracy of complex federal and state tax agency interest calculations.
- *Data Management*: Assistance with integrating systems to capture, retain, process, and analyze information, and respond quickly to high-volume information requests. Assistance with planning for tax data retention related to ERP systems implementation.

### **Awards:**

#### 2019 International Tax Review (ITR) Americas Tax:

- Regional Awards:
  - Americas Transfer Pricing Firm of the Year (third consecutive year)
  - Americas Tax Technology Firm of the Year (second consecutive year)
- National Transfer Pricing Firms of the Year: Deloitte Argentina, Deloitte Peru, Deloitte Mexico
- Other Transfer Pricing Firms of the Year: North America, Central America

#### 2020 ITR World Tax & World Transfer Pricing:

- World Tax: 9 jurisdictions ranked tier 1 (Argentina, Brazil, Canada, Colombia, United States) and 9 jurisdictions ranked tier 2 (Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Mexico, Uruguay, Venezuela) in various practice Tax practice areas.
- World Transfer Pricing: 9 jurisdictions ranked tier 1 (Argentina, Brazil, Canada, Chile, Colombia, Mexico, Peru, United States, Venezuela) or tier 2 (Uruguay)

### **Recognized Leaders:**

Euromoney and International Tax Review – Experts/Leaders guides: Following leaders across the region were recognized for their individual abilities, as well as for their in-depth capabilities, experience, and specialist knowledge:

- 52 leaders in Euromoney's 2020 Guide to the World's Leading Tax Advisers
- 46 leaders in ITR's 2020 Tax Controversy Leaders Guide
- 19 leaders in ITR's 2020 Indirect Tax Leaders Guide
- 80 leaders in ITR's 2020 Women in Tax Leaders Guide
- 50 leaders in Euromoney's 2018 Guide to the World's Leading Transfer Pricing Advisers
- Douglas Lopes, Deloitte Brazil was honored as Americas Indirect Tax Practice Leader of the Year in 2019 Americas Tax Awards.

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# AMERICAS

## Regional interview



**Rosemary Sereti**  
Deloitte US

### **What is the most significant development in your region/jurisdiction's tax practice in the past 12 months?**

The Americas continue to address a number of changes that will impact controversy. As a result of the COVID-19 pandemic, the United States recently enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020. This economic relief package included numerous tax provisions that increased the need for clients to work with their advisers in interpreting the new law and understanding the potential opportunities available to provide much needed liquidity.

### **How do you anticipate that change impacting your work and the market moving forwards?**

It is too early to assess the impact of the CARES Act on tax controversy. One of the more notable provisions modified the treatment of Net Operating Loss (NOL) carrybacks. For tax years beginning before 2021, taxpayers will be eligible to carry back NOLs to the prior five taxable years.

Due to increased legislation (i.e. CARES Act and TCJA) and modest budget increases in the US, tax administrations may continue to utilize centralized decision-making and the deployment of limited resources to allow for a more strategic approach. That said, it may take time for the tax authorities to see real change as many audit personnel continue to traditionally scope their examinations independently and may not adjust to the new approach immediately.

Deloitte's tax controversy professionals in the Americas take the premise seriously that financial statement certainty and issue resolution are key goals of chief financial officers and tax executives. Moreover, our controversy professionals appreciate that tax and reputational risks are concerns of tax-oriented corporate

## Interview

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executives. We continue to strive to provide clients with tax advice augmented by our insights into the merits of regional campaign processes and how the issues are developed in various countries.

### **What impact do you see the COVID-19 pandemic having on your work directly and on the wider tax environment, in both the short and long term?**

Given the health concerns that emanate from COVID-19, we expect tax administrations, taxpayers and their advisers to continue to work remotely when appropriate. This will in turn create the need to develop additional technological capabilities that will ensure there are effective and efficient ways in which to communicate, network and remain productive while working through the various tax controversy matters.

### **Given the likely long-term implications of COVID-19 on things like remote working and digital retail, how do you see tax technology developing to accommodate this new reality and where do you think the next area of focus might be?**

The next area of focus is digital. However, COVID-19 has accelerated the shift to digital and underlined the need and urgency to establish a virtual working environment.

With this shift, we expect a greater focus to be on the digital experience – leveraging technologies to work remotely while still being collaborative and effective.

Given budget cuts and recent talent impacts, automation will likely play a big role in helping taxpayers (and their regulators) accomplish more but with fewer resources. Automation goes beyond the basic, repetitive task. Machine learning and artificial intelligence enable new forms of ‘smart’ automation that may provide potential for automation of higher-order tasks that may yield new opportunities.

### **What potential other legislative changes are on the horizon that you think will have a big impact on your region/jurisdiction?**

It is too early to tell. Given the COVID-19 Pandemic and its impact on the US, there has been talk of additional relief for taxpayers. Such relief may come in the form of provisions that will have an impact on taxpayer’s filing and payment responsibilities. To that effect, there is a strong likelihood that any change will have a significant impact on our tax controversy practice.

### **What are the potential outcomes that might occur if those changes are implemented?**

Tax administrators will need to adjust their compliance plans to work through the various enforcement challenges created by the CARES Act. For many taxpayers, the recent change in law resulted in the need to amend tax filings. Dedicated professionals on both sides of tax administration will need to address the technical changes presented by the new tax law. Other enforcement priorities may slow down as amended return filings and other provisions take precedence.

## Interview

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### **What legislative changes would you like to see be implemented that you think would have the most positive effect on your practice and the wider regional/jurisdictional market?**

This is more administrative than legislative but still very important. In the US on July 1, 2019, the Taxpayer First Act (P.L. 116-25) was passed into law. This measure contains many significant and beneficial administrative and policy changes for taxpayers and practitioners pertaining to service and enforcement initiatives. As a result of COVID-19, limited resources and other time sensitive work required by the tax administration, a number of the provisions have yet to be implemented. As a result, there is still a tremendous amount of work that needs to be done before taxpayers and practitioners see the full scope of improvements to tax administration enacted in the Taxpayer First Act.

### **Do you think something like that is likely to be implemented in the near future?**

The Taxpayer First Act is mandated by law. The provisions within this law require implementation, and that will take some additional time before taxpayers and practitioners begin to see the full benefit of changes made by this legislation.

### **What have been the biggest developments in tax technology and where do you think the next area of focus might be?**

One of the biggest tax technology developments will be platform integration – the interconnectivity of multiple applications in a single platform. Given our focus on the digital experience, platform integration is key to providing a user with an effective, intuitive and seamless end-to-end experience.

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## Durval Portela

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Durval Portela is the managing partner of the tax and corporate consulting area of PwC Brazil. He has 30 years of experience in tax and corporate consulting services, focusing on the restructuring of local and international companies and on tax litigation at the administrative level.

### Practice areas

- Restructuring
- Transactions
- Corporate Taxes
- Litigation
- Tax Consulting

### Sector specialisations

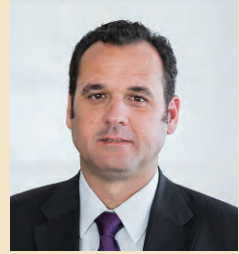
- Construction and Materials
- Consumer Goods and Services
- Industrials
- Oil and Gas
- Infrastructure

### Association memberships

- Center for Tax Studies of São Paulo (NUPET), the Brazilian Institute of Tax Law (IBDT), the Brazilian Financial Law Association (ABDF), and the International Fiscal Association (IFA)
- Board member of the Applied Tax Studies Group (GETAP), and leader of the Tax Efficiency Group of the American Chamber of Commerce for Brazil (AMCHAM)

### Academic qualifications

- Bachelor's degree in Law at the Universidade Federal da Bahia (UFBA) in 1990
- Bachelor's degree in Accounting Sciences at Universidade do Sul de Santa Catarina (UNISUL) in 2016
- Master's Degree in Economic Law at the Universidade Federal da Bahia (UFBA) in 1998
- Specialization in Tax Law from Pontifícia Universidade Católica de São Paulo (PUC-SP) in 2009



Managing partner of the tax and corporate consulting area

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## Brazil

# Marcos de Carvalho

**Languages:** Portuguese, English

**Bar admissions:** Brazillian Bar Association

### Biography

Marcos de Carvalho has extensive experience as a trusted advisor of local and international clients. His experience includes tax litigation and tax consulting (direct and indirect taxation), due diligence and legal advice rendered to departments of foreign trade and logistics. He joined the firm in March 1998 as a member of the tax practice. Marcos is ranked in Legal 500 and Chambers.

### Recent matter highlights

- Acted on behalf of a large multinational company on a tax assessment, seeking the collection of corporate income tax on omitted revenue on exports to other subsidiaries that acts as distribution hubs for the group on a global scale, as well as on import prices due to transfer pricing legislation.
- Acted on lawsuits against tax assessments, seeking the collection of taxes charged over payments abroad related to the acquisition of software and services. These cases involved disputes among federal, state and municipal tax authorities.
- Acted on behalf of a client against a tax assessment by federal tax authorities challenging the use of foreign losses to reduce profits of foreign subsidiaries subject to taxation in Brazil. The case involved a subject matter that is highly controversial in the administrative courts.

### Practice areas

Corporate taxes, tax consulting, tax controversy, VAT, customs

### Sector specialisations

Agriculture, automotive, consumer goods and services, industrials, tech and telecoms

### Association memberships

- Comitê tributário – Centro de Estudos das Sociedades de Advogados – CESA
- Instituto Brasileiro de Direito Tributário – IBDT

### Academic qualifications

- Law degree, Faculdades Metropolitanas Unidas (FMU), 1996
- LLM in Capital Markets, Instituto Brasileiro de Mercado de Capitais (IBMEC), 2005



Partner

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ADVOCADOS



## Brazil

# Gilberto de Castro Moreira Jr

### Biography

Gilberto de Castro Moreira Jr is a managing partner and the head of the tax department of LRI Advogados. He is based in São Paulo.

Gilberto has been practising law in São Paulo since 1990. Gilberto's practice is focused on tax law (litigation, advisory and planning).

### Recent matter highlights

- Nominated for the 5th, 6th and 7th editions of International Tax Review's Tax Controversy Leaders Guide (2015, 2016, 2017, 2018 and 2019)
- Nominated as the 2016 and 2018 Leading Tax Advisor of the Year, Brazil (Acquisition International Magazine); as the 2017 and 2018 Tax Planning
- Lawyer of the Year – Brazil (Finance Monthly Magazine); as the 2018 Tax Lawyer of the year – Brazil (International Advisory Experts)
- Tax Lawyer of the Year – Brazil (ACQ5 Global Awards); as the 2018 Tax Lawyer of the Year – Brazil (M&A Today Global Awards);
- The 2017 Tax Lawyer of the Year – Brazil (Global 100); as the 2018 Most Outstanding for Tax Advisory and Litigation – Brazil (Global Excellence Awards);

### Practice areas

Gilberto's practice is focused on tax law (litigation, advisory and planning)

### Association memberships

He is professor and former coordinator of the LLM in international taxation at the Brazilian Institute of Tax Law (IBDT), an arbitrator of the Association of European Chambers of Commerce and Industry's mediation and arbitration chamber (CAE), a member of tax litigation committee of the São Paulo Bar Association, of the Brazilian Institute of Tax Law (IBDT), of the scientific council of the Tax Law Association of São Paulo (APET), of the International Association of Tax Judges (IATJ) and a sitting member of the Lawyers' Institute of São Paulo (IASP). Former councillor of the 3rd Section of the Administrative Court of Tax Appeals (CARF), former tax law professor of the Mackenzie Presbyterian University and and former member of the Ethics Court and Tax Law Committee of São Paulo Bar Association.

### Academic qualifications

Gilberto holds a JD degree from the University of São Paulo (USP) and a PhD degree in economics and financial law from the University of São Paulo.



Managing partner and the head of the tax department

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## Brazil

# Gustavo Lian Haddad

**Languages:** Portuguese, English

**Bar admissions:** Brazilian Bar Association

### Biography

Gustavo Haddad has extensive experience as a trusted advisor of local and international clients on their investments in the Brazilian market. His experience includes tax consulting and tax litigation on high-profile cases. He is a professor at Insper, a former member of the administrative tax court (CARF) and one of the ten leading tax lawyers in Brazil according to the Legal 500 and Chambers.

### Recent matter highlights

- Representation of a large construction company in a tax assessment issued by the Brazilian federal tax authorities, aiming to charge unpaid differences for Corporate Income Taxes under the Brazilian Controlled Foreign Corporation Rules in connection with expenses incurred by some of its subsidiaries.
- Successful representation of an American financial services provider in the collection of PIS and COFINS based on a controversial understanding of the concept of “input” for service providers, specifically whether or not it comprises expenses with marketing and advertisement.
- Representation of a multinational brewing company in numerous cases involving the claim of tax credits related to company’s investments, which span across practically all countries in South, Central and North America in a very intricate corporate structure.

### Practice areas

Corporate taxes, tax consulting, tax controversy, international tax advisory, wealth planning

### Sector specialisations

Technology, financial services, agriculture, food and beverage, consumer goods and services

### Association memberships

- Instituto Brasileiro de Direito Tributário (IBDT)
- International Bar Association
- Comissão das Sociedades de Advogados – Ordem dos Advogados do Brasil

### Academic qualifications

- Bachelor’s degree in Law, USP – Universidade de São Paulo, 1995
- Post-graduated in Constitucional Law, Escola Superior de Direito Constitucional, 2007



Partner, head of tax

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## Brazil

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### Pedro Guilherme Accorsi Lunardelli

Advocacia Lunardelli

### Marcel Alcades Theodoro

Mattos Filho Veiga Filho Marrey Jr & Quiroga Advogados

### Marcos Joaquim Gonçalves Alves

MJ Alves & Burle Advogados & Consultores

### Antonio Amendola

Dias Carneiro Advogados

### Sergio André Rocha

Sergio André Rocha

### Marcelo Salles Annunziata

Demarest Advogados

### Carlos Henrique Tranjan Bechara

Pinheiro Neto Advogados

### Daniel Vitor Bellan

Lacaz Martins Pereira Neto Gurevich & Schoueri Advogados

### João Francisco Bianco

Mariz de Oliveira & Siqueira Campos Advogados

### Luiz Gustavo Bichara

Bichara Advogados

### José Luis Ribeiro Brazuna

Brazuna Ruschmann & Soriano Sociedade de Advogados

### Gustavo Brigagão

Brigagão Duque Estrada Advogados

### Isabel Bueno

Mattos Filho Veiga Filho Marrey Jr & Quiroga Advogados

### Fabio Pallaretti Calcini

Brasil Salomão and Matthes Advocacia

### Marcos de Carvalho

Lefosse Advogados

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### Vivian Casanova de Carvalho Eskenazi

Barbosa Müssnich Aragão

### Oscar Sant'Anna de Freitas e Castro

Daudt Castro & Gallotti Olinto Advogados

### Marcos André Vinhas Catão

Vinhas & Redenschi Advogados

### Guilherme Cezaroti

Campos Mello Advogados

## Brazil

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### Christiano Chagas Monteiro de Melo

Demarest Advogados

### Tércio Chiavassa

Pinheiro Neto Advogados

### Renata Correia Cubas

Mattos Filho Veiga Filho Marrey Jr & Quiroga Advogados

### Júlio de Oliveira

Machado Associados Advogados & Consultores

### Valter de Souza Lobato

Sacha Calmon Misabel Derzi Consultores & Advogados

### Hamilton Dias de Souza

Dias de Souza Advogados Associados

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Castro Barros Sobral Gomes Advogados

### Roberto Duque Estrada

Brigagão Duque Estrada Advogados

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### Mauricio Pereira Faro

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### Gilberto Fraga

Fraga Bekierman & Cristiano Advogados

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Martins Franco Teixeira

### Maucir Fregonesi Júnior

Siqueira Castro Advogados

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### Luis Augusto da Silva Gomes

Viseu Advogados

### André Gomes de Oliveira

Castro Barros Sobral Gomes Advogados

### Antonio Carlos Guimarães Gonçalves

Demarest Advogados

## Brazil

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### Celso Grisi

Tauil & Chequer Advogados

### Antonio Carlos Guidoni Filho

Vella Pugliese Buosi & Guidoni Advogados

### Gustavo Lian Haddad

Lefosse Advogados

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### Leonardo Krakowiak

Advocacia Krakowiak

### Ricardo Krakowiak

Advocacia Krakowiak

### Glauca Maria Lauletta Frascino

Mattos Filho Veiga Filho Marrey Jr & Quiroga Advogados

### Fernando Loeser

Loeser Blanchet & Hadad

### Ana Paula Schincariol Lui Barreto

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### Sandro Machado dos Reis

Bichara Advogados

### João Maia

Veirano Advogados

### Claudia Liguori Affonso Maluf

Demarest Advogados

### Gabriel Manica Mendes de Sena

Castro Barros Sobral Gomes Advogados

### João Marcos Colussi

Mattos Filho Veiga Filho Marrey Jr & Quiroga Advogados

### Ricardo Mariz de Oliveira

Mariz de Oliveira & Siqueira Campos Advogados

### Ana Luiza Martins

Tauil & Chequer Advogados

### Leonardo Martins

Machado Meyer Sendacz & Opice Advogados

### Marcos Matsunaga

Ferraz de Camargo & Matsunaga

### Daniel Lacasa Maya

Machado Associados Advogados & Consultores

### Enzo Megozzi

Abreu Goulart Santos Freitas & Megozzi

## Brazil

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### Marcos Minichillo de Araújo

Almeida & Associados

### Rogério Mollica

Cais Rangel Da Matta Fonseca & Mollica Advogados

### Oswaldo Leite de Moraes Filho

Demarest Advogados

### Gilberto de Castro Moreira Jr

Lautenschlager Romeiro & Iwamizu Advogados

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### Cláudio Moretti

Trench Rossi Watanabe

### Marcos Vinícius Neder de Lima

Trench Rossi Watanabe

### Raquel Novais

Machado Meyer Sendacz & Opice Advogados

### Carlos Eduardo Marino Orsolon

Demarest Advogados

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### Luiz Roberto Peroba Barbosa

Pinheiro Neto Advogados

### Durval Portela

PwC

See page 29

### Marcos Vinícius Passarelli Prado

Stocche Forbes Advogados

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Mattos Filho Veiga Filho Marrey Jr & Quiroga Advogados

### Lígia Regini da Silveira

Barbosa Müssnich Aragão

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Machado Associados Advogados & Consultores

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Rocca Stahl Zveibil & Marquesi Advogados

### Cristiano Frederico Ruschmann

Brazuna Ruschmann & Soriano Sociedade de Advogados

### Andrea da Rocha Salviatti

Mundie Advogados

### Luiza Sampaio de Lacerda

Barbosa Müssnich Aragão

## Brazil

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### Sidney Stahl

Rocca Stahl Zveibil & Marquesi Advogados

### Ivan Tauil

Tauil & Chequer Advogados

### Paulo Camargo Tedesco

Mattos Filho Veiga Filho Marrey Jr & Quiroga Advogados

### André Teixeira

Andre Teixeira & Associados

### Eduardo Maccari Telles

Tauil & Chequer Advogados

### Ernesto Johannes Trouw

Trouw & Fraga Advogados

### Mariana Neves de Vito

Trench Rossi Watanabe

### Daniella Zagari

Machado Meyer Sendacz & Opice Advogados

## Timothy Fitzsimmons

### Biography

Timothy is a partner in PwC Law's Toronto office. His practice focuses on tax dispute resolution and litigation. He also advises charities and not-for-profits on tax and compliance matters.

### Practice areas

- Corporate Taxes
- Audit Defence
- Audit Support
- Dispute Resolution

### Sector specialisations

- Construction and Materials
- Financial Services
- Mining
- Oil and Gas
- Real Estate

### Association memberships

- Canadian Tax Foundation
- Ontario Bar Association

### Academic qualifications

- LLB, Osgoode Hall Law School, 2005
- MA, New York University, 2001
- BA (Hons.), McGill University, 1999



Partner

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## Canada

# Shiraj Keshvani

### Biography

Shiraj is a Tax partner in PwC's transfer pricing practice. Having worked in both the public service and public practice, Shiraj has nearly 20 years of experience in transfer pricing. Since joining public practice, Shiraj has assisted multinationals and other clients in across a variety of industry sectors including Energy, Resources, TMT, Automotive, Services and Pharmaceutical to manage and resolve difficult and contentious tax controversy issues.

He has conducted a number of transfer pricing projects in a variety of industries involving audit defense, competent authority assistance, advance pricing arrangements (APAs) as well as planning and preparing documentation. These projects have addressed a wide range of transfer pricing issues including financing, business restructurings, pricing of intangible assets and tangible flows, the allocation of intra-group service charges, the treatment of technology and process solutions as well as location rents and saving. He has also assisted with due diligence in support of deals where he has been asked to help reconcile differing views.

Prior to joining public practice, Shiraj spent nearly 15 years with the Canada Revenue Agency (CRA). Prior to leaving the Public Service, Shiraj was the Chief Economist for CRA's Competent Authority Services Division and the national APA Coordinator. During this time, Shiraj was also a member of the Transfer Pricing Review Committee, which considers taxpayers' compliance with the Canadian legislation, was involved in developing Canada's position on international initiatives, was actively involved in negotiating the mode of application for the arbitration provisions under the 5th protocol to the Canada-US Treaty. He was also one of a few individuals working with the Advisory Panel on Canada's System of International Tax on specific transfer pricing and competent authority issues. Shiraj continues to remain active on the policy.

### Practice areas

Transfer pricing, dispute Resolution

### Sector specialisations

Automotive, energy, natural resources, oil and gas, pharma, tech and telecoms



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## Andrew McCrodan

**Languages:** English

### Biography

Andrew is a transfer pricing partner with PwC's Toronto office. He has been with the firm for over 30 years and has been a partner since 1997. He began his career in transfer pricing in PwC's New York office in 1994, assisting companies in complying with the first US contemporaneous documentation requirements and now specialises in transfer pricing controversy and dispute resolution.

His extensive cross-border experience includes prospective studies for planning purposes, income tax audit defence, contemporaneous documentation engagements, Competent Authority assistance, and Advance Pricing Agreements ("APAs"). He has helped clients in obtaining unilateral and bilateral APAs in a variety of industries, including mining, manufacturing, automotive, entertainment, retail, and software, in countries including the United States, United Kingdom, Germany, Australia, and most recently India.

Andrew is a CPA and a Chartered Business Valuator ("CBV"). As a CBV, Andrew brings a wealth of valuation experience to international restructuring, cost-sharing, and intellectual property migration assignments.

The *Euromoney Guide to the World's Leading Transfer Pricing Advisers* has featured Andrew since 2003, and in 2011 he was voted one of the "Best of the Best", a ranking of the top 5 advisers in Canada.

As a leader in the field, Andrew speaks regularly on transfer pricing and business valuation topics for a number of professional organisations. He has also written articles for *CA Magazine*, the Canadian Tax Foundation, the *Journal of Business Valuation*, and *Tax Planning International Review*. He has co-authored "The Dilemma of GlaxoSmithKline: Unreasonable in the Circumstances?" and "Transfer Pricing: A Critique of the CRA's Position on Range Issues", both published by the Canadian Tax Foundation.

### Practice areas

APAs, Dispute Resolution, Transfer Pricing

### Sector expertise

Automotive, Mining, Manufacturing, Entertainment, Retail and Software

### Academic Qualifications

CPA, CBV



Partner

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## Canada

## David Chodikoff

**Languages:** English

### Biography

David W. Chodikoff, Certified Specialist (Taxation), LSO, B.A. (Spec. Hons.), M.A., LL.B., specializes in civil and criminal tax litigation and is the national leader of the tax disputes resolution group at Miller Thomson LLP. David was a former counsel and a Crown Prosecutor at the Department of Justice. He has over 100 reported decisions. David has appeared in over 565 cases before the courts. David has been recognized by Canadian, American and European authorities as one of the leading tax controversy leaders in the world. He has edited and contributed to nine tax books. David is the recipient of numerous national and international awards.



Certified Specialist (Taxation),  
(L.S.O.), Partner, Leader, Tax  
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### Recent matter highlights

- *Canadian Legal Information Institute v. The Queen*, 2020 TCC56- 2020-07-17

### Practice areas

Dispute resolution, audit defence, audit support, MAPs/ADRs, controversy management, corporate taxes, international tax advisory, GST, cryptocurrency and customs.

### Sector specialisations

Tax litigation, taxation, financial services, accounting, real estate, tech and telecoms, pharma and life sciences, investment management and gaming.

### Association memberships

Advocate's Society, American Bar Association (Section of Taxation and Senior Lawyers Division), Association for Corporate Growth, Ontario Bar Association, Canadian Bar Association, Canadian Tax Foundation, International Bar Association, International Fiscal Association, The Law Society of Ontario, Toronto Lawyers Association

### Academic qualifications

Called to the Ontario Bar, LL.B., Dalhousie University, M.A., Dalhousie University, B.A. (Specialized Honours), York University

## Canada

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### François Barette

Fasken Martineau DuMoulin

### Neil Bass

Aird & Berlis

### Dominic Belley

Norton Rose Fulbright

### Jacques Bernier

Baker McKenzie

### Patrick Bilodeau

Deloitte

See page 23

### Monica Biringer

Osler Hoskin & Harcourt

### Nathan Boidman

Davies Ward Phillips & Vineberg

### Michel Bourque

KPMG

### Wendy Brousseau

McCarthy Tétrault

### Alexandra Brown

Blake Cassels & Graydon

### Michael Bussmann

Gowling WLG

### Maurice Chiasson QC

Stewart McKelvey

### David Chodikoff

Miller Thomson

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### Chia-yi Chua

McCarthy Tétrault

### Nicolas Cloutier

McCarthy Tétrault

### Louis-Frédéric Côté

Spiegel Sohmer

### Carrie D'Elia

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### Guy Du Pont

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### Kristen Duerhammer

KPMG

## Canada

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### Timothy Fitzsimmons

PwC

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### Olivier Fournier

Deloitte

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### Étienne Gadbois

Gadbois Commodity Tax Law

### Richard Garland

Deloitte

See page 23

### Cheryl Gibson QC

Dentons

### Laurie Goldbach

Borden Ladner Gervais

### Nathalie Goyette

Davies Ward Phillips &amp; Vineberg

### Gerald Grenon

Osler Hoskin &amp; Harcourt

### Geoff Hall

McCarthy Tétrault

### Jehad Haymour

Bennett Jones

### Amanda Heale

Osler Hoskin &amp; Harcourt

### David Kemp

Charles River Associates

### Shiraj Keshvani

PwC Canada

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### Andrew Kingissepp

Osler Hoskin &amp; Harcourt

### Norma Kraay

Deloitte

See page 23

### Edwin Kroft QC

Bennett Jones

### Justin Kutyan

KPMG

### Wilfrid Lefebvre

Norton Rose Fulbright

### Patrick Lindsay

PwC

## Canada

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**Paul Lynch**

KPMG

**Martha MacDonald**

Torys

**Peter Macdonald**

Osler Hoskin & Harcourt

**Bill MacLagan**

Blake Cassels & Graydon

**Jenny Mboutsiadis**

Fasken Martineau DuMoulin

**Janice McCart**

Blake Cassels & Graydon

**Andrew McCrodan**

PwC

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**Carman McNary QC**

Dentons

**Al Meghji**

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**Pooja Mihailovich**

Osler Hoskin & Harcourt

**Warren Mitchell QC**

Thorsteinssons

**David Muha**

Deloitte

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**Al-Nawaz Nanji**

Osler Hoskin & Harcourt

**Markus Navikenas**

Deloitte

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**Joel Nitikman**

Dentons

**Stevan Novoselac**

Gowling WLG

**Rob O'Connor**

Deloitte

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**Yves Ouellette**

Gowling WLG

**Jean-François Perreault**

Fasken Martineau DuMoulin

## Canada

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### Christine Ramsay

Deloitte

See page 23

### Sébastien Rheault

Barsalou Lawson Rheault

### David Robertson

EY

### Edward Rowe

Osler Hoskin & Harcourt

### Daniel Sandler

EY

### Alan Schwartz

Fasken Martineau DuMoulin

### Jeffrey Shafer

Blake Cassels & Graydon

### Nicolas Simard

Fasken Martineau DuMoulin

### Ken Skingle QC

Felesky Flynn

### Christopher Slade

Deloitte

See page 23

### John Sorensen

Gowling WLG

### Yves St Cyr

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### Joe Starnino

Starnino Mostovac

### Craig Sturrock

Thorsteinssons

### Paul Tamaki

Blake Cassels & Graydon

### Louis Tassé

EY

### Roger Taylor

EY

### Deborah Toaze

Bennett Jones

### Mark Tonkovich

Blake Cassels & Graydon

## Canada

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**Marc Vanasse**

PwC

**Joanne Vandale**

Osler Hoskin & Harcourt

**Scott Wilkie**

Blake Cassels & Graydon

**Matthew Williams**

Thorsteinssons

**John Yuan**

McCarthy Tétrault



## CHILE

## Gonzalo Schmidt Gabler

**Languages:** English and Spanish

### Biography

Gonzalo Schmidt is a Partner at PwC Chile, in the Santiago Tax & Legal Services practice, and he is the partner in charge of the Tax Controversy and Dispute Resolution Department. On July 2018 he was also appointed partner in charge of Marketing and Communications of the firm.

Gonzalo joined PwC Chile in January of 2007, advising national and multinational corporations in their defense in tax audits and tax claim processes. From August of 2010 to November of 2012, he worked in the Chilean Tax Administration (SII) at the Tax Litigation Department of the National Directorate, helping to implement and develop the fiscal defense in the new tax justice procedure in the whole country, whereby for the first time of the history of Chile, the tax courts are independent from the tax authorities.

Gonzalo has substantial experience in tax audits process, administrative appeals, tax claims, taxpayers rights violation procedures, real estate tax claims and transfer pricing tax claims before the Chilean Internal Revenue Service, Tax and Customs Courts and Chilean Courts of Law.

Gonzalo is Bachelor of Law from the Universidad de Los Andes, and also holds a Degree in Management and Tax Planning at the Pontificia Universidad Católica de Chile. He also has participated as lecturer at the specialization program “New Tax Justice”, and he has written and co-published several articles regarding tax matters (e.g. “The New Tax Justice in Chile”, “Discovery in Chile”, “Transfer pricing tax claims under Chile’s new tax justice law”, “Chile: New anti-avoidance rules: Substance over form?”, “The catalogue of avoidance”).

### Practice areas

Audit defence, audit support, dispute resolution, pre-litigation, MAPs/ADRs, litigation, controversy management, state aid, customs, APAs, and tax consulting.

### Sector specialisations

Banking, construction and materials, consumer goods and services, energy, financial services, fisheries and aquaculture, forestry, gaming, insurance, investment management, mining, pharma and life sciences, real estate, shipping, tech and telecoms.

### Academic qualifications

School of Law, J.D. (Bachelor in Juridical Sciences), Universidad de Los Andes, September 8 2005; Lawyer, Law degree granted by the Supreme Court of Justice, August 28 2006; Degree in Management and Tax Planning, Pontificia Universidad Católica de Chile, December 16 2008.



Partner

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## Chile

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### Christian Aste

Villarroel Lecaros Aste & Baraona

### Gabriel Bernal

PwC

### Jaime Carey

Carey

### Roberto Carlos Rivas

PwC

### Felipe Dominguez Celis

PwC

### Roberto Edwards

Edwards & Cía

### Oscar Ferrari García

Garrigues

### Pablo González Suau

Sapag & González Abogados

### Francisco Hurtado Sotomayor

Dentons

### David Lagos

Sole practitioner

### Francisco Lyon

KPMG

### Juan Pablo Orellana

Dentons

### Jessica Power

Carey

### Sergio Sapag

Sapag & González Abogados

### Gonzalo Schmidt Gabler

PwC

### Luis Seguel

KPMG

### Mario Silva Poblete

Philippi Prietocarrizosa Ferrero DU & Uría

### Francisco Valdivia Villagrán

Alcalde & Cía Abogados

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## COLOMBIA

## Javier Blel Bitar

**Languages:** Spanish, English and French

### Biography

Javier Blel is a Director in PwC's Tax controversy and dispute resolution Department. His practice focuses on the representation of Fortune 500 and other companies in connection with controversies relating to the national taxes, local taxes, international tax law, Community Law (CAN Decision 578), transfer pricing, customs, indirect taxation and foreign exchange controversies. He is a member of the Firm since 2017.

He is a professor in Tax Procedure, Contentious Administrative Proceedings and Tax Penalties Regime in the Tax Law programs at Universidad Externado de Colombia and Universidad Javeriana.

He has been recognized as a *"Highly Regarded"* lawyer and a tax controversy leader in Colombia by the International Tax Review (2018, 2019, 2020 and 2021).

### Recent matter highlights

In his professional experience, he has led and implemented successful litigation strategies for national and multinational companies.

### Practice areas

- Local Taxes
- International Tax Law
- Community Law
- Transfer Pricing
- Customs and Exchange Regime Dispute Resolution Before Tax Authorities and Jurisdiction

### Association memberships

Colombian Institute of Tax Law – ICDT

### Academic qualifications

Graduated as a lawyer, has postgraduate degrees in Taxation and International Taxation from Universidad Externado de Colombia.



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## Carlos Miguel Chaparro Plazas

**Languages:** Spanish and English

### Biography

A member of the Firm since 1995, Carlos is a tax partner based in Bogotá with extensive experience in corporate and individual tax. For several years he was a member of the International Assignment Solutions practice in Colombia, before transferring to New York where he joined the Latin American Tax Group in 2001 and 2002.

Upon his return to Colombia in 2002, Carlos has been at the front of the tax consulting practice, including international tax services. He is currently serving as the Energy Tax Leader for Latin America and the International Tax Services Lead partner in the region. Most recently, effective July 2020, Carlos has become the tax and legal practice lead partner for Colombia.

### Recent matter highlights

Carlos' experience includes intensive participation in M&A as well as tax structuring for inbound and outbound transactions. More recently, he has assisted several local MNC's with structuring, cash repatriation, complex transactions, and other.

### Practice areas

M&A, corporate taxes, tax consulting, transactions, international tax advisory

### Sector specialisations

Energy Tax Leader for Latin America, International Tax Services, Tax and legal practice

### Association memberships

Carlos served as President of the International Fiscal Association, Colombian Chapter in 2017 to 2018, where he currently serves as a member of the Executive Committee, as well as he is presently a member of the Academic Committee at the Colombian Tax Institute.

### Academic qualifications

Lawyer from the Universidad Sergio Arboleda, specialist in Tax Legislation from the Universidad del Rosario. He is also trained in International Business Law, US and Colombian Legal Systems arranged by the Universidad Javeriana and the Washington College of Law of American University. Carlos serves as a tax professor and instructor at a number of Universities in Colombia as well as he frequently speaks at local and international forums on taxation.



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## Colombia

### Carlos Mario Lafaurie Scorza

**Languages:** Spanish English

#### Biography

Carlos Mario began his professional career at the firm since 1989. Now, he is Country Senior Partner of PwC Colombia. Founder and Director of the Tax Law Specialization, in Pontificia Universidad Javeriana. Ex-president and an honorary member of the Colombian Institute of Tax Law. Co-author of the Estatuto Tributario PwC 2016 to 2020

#### Practice areas

- Transactions
- Litigation
- Transfer Pricing
- International Taxation

#### Association memberships

Ex-president and an honorary member of the Colombian Institute of Tax Law. He has been recognized in several international tax rankings, including: Chambers, International Tax Controversy, World Tax Guide Rankings, World Transfer Pricing and Latin Lawyer.

#### Academic qualifications

Graduated as a lawyer from Colegio Mayor de Nuestra Señora del Rosario (1986), specialized in Taxation from Universidad de Los Andes (1988), in Companies Law (1991), and in Commercial Law (1993) from Pontificia Universidad Javeriana. He took postgraduate courses in International Tax Law (2004), and in Constitutional Law (2009) at Universidad de Salamanca.



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## Nacira Lamprea Okamel

**Languages:** Spanish and English

### Biography

She has led the PwC Tax and Legal Services departments in the Barranquilla and Medellin offices. Leader of the Litigation and Tax Processes Team. Has advised various clients on Tax Compliance and Tax Managements issues. Has been a member of the firm since 1991.

### Recent matter highlights

She has led important projects on Tax Management and the outsourcing of companies' tax functions, in particular for companies in the pharmaceutical, aeronautical and retail sectors. Has advised many domestic and international companies on important matters related to Income, Sales, and Industry and Commerce Taxes as well as providing advice and assistance on tax withholding issues. Also advises on Tax Planning. Considerable experience in the development, management and leadership of Tax Litigation and Tax Processes at both Governmental and Jurisdictional levels.

### Practice areas

- Tax consulting
- International tax advisory

### Sector specialisations

- Pharmaceutical
- Retail and Commerce
- Health

### Association memberships

She has been recognized by the International Tax Review as one of the leaders in tax controversies in Colombia in the last 4 years. Also by the magazines Who is Who, and Women in Tax Leader.

### Academic qualifications

Graduate in Law from La Sabana University, Bogotá. Major in Tax Law from Los Andes University, Bogotá. Diploma in Corporate Law from del Rosario University, Bogotá. Diploma in Evidentiary Law from Pontificia Javeriana University, Bogotá. Specialisation in International Tax from the University of Santiago de Compostela, Spain.



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## Colombia

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### Mario Andrade-Perilla

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### David Bedoya Goyes

Bedoya Goyes Abogados

### Javier Blel Bitar

PwC

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### César Cermeño

DLA Piper Martínez Beltrán

### Camilo Cortés

Dentons Cardenas & Cardenas

### Lucy Cruz de Quiñones

Quiñones Cruz Abogados

### Catalina Hoyos Jiménez

Godoy & Hoyos Abogados

### Catalina Jaramillo Hernández

Brigard Urrutia

### Carlos Mario Lafaurie Scorza

PwC

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### Nacira Lamprea Okamel

PwC

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### Camilo Rodríguez

KPMG

### Margarita Salas

EY

### Vicente Javier Torres

KPMG

### Juan Carlos Vinasco

Baker McKenzie

## COSTA RICA

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### Rafael González Saborío

Grant Thornton

### Mario Hidalgo-Matlock

Grant Thornton

### Alan Saborio

Deloitte

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## CURAÇAO

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Xandra Kleine-van Dijk

Tax-Insight

## DOMINICAN REPUBLIC

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David Infante

Deloitte

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## ECUADOR

## Pablo Aguirre

**Languages:** Spanish and English

### Biography

Joined PwC Ecuador in 1987 as trainee of the consulting practice and one year later he moved to Tax where he developed his career in Tax and Legal.

### Recent matter highlights

- Managed complex local and cross border operations with major players in the oil and mining industry industries operating in Ecuador.
- Based on his Tax, Business, Financial & Accounting background, he has worked in the Transaction Services Group (TS), advising financial and corporate clients in their tax, labor and corporate due diligences

### Practice areas

Tax modelling, APAs, tax audit defence, dispute resolution, international tax advisory on corporate taxes.

### Sector specialisations

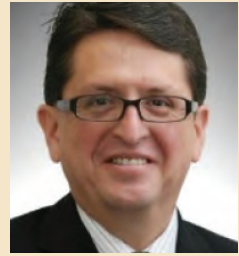
Construction and materials, consumer goods and services, energy, natural resources, , tech and telecoms.

### Association memberships

International Fiscal Association, Quito Chamber of Commerce, Ecuadorian-American Chamber of Commerce (AMCHAM).

### Academic qualifications

Economist of the Pontificia Universidad Católica de Quito and has an MBA from the University of Montreal of Canada (UQAM) and Business Law studies in the Universidad San Francisco de Quito. He has also participated in many courses/training sessions in specialized tax matters as well as business skills and have wrote some notes on tax matters in several instances including contributions as PwC Partner to the World Bank in the Paying Taxes worldwide publication.



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## Ecuador

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**Rita María Silva**

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**Mauricio Ambrosi Herrera**

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**Alejandro Barrera Fernandez**

Basham Ringe & Correa

**Mario Barrera Vázquez**

Thompson & Knight

**Jorge Alberto Cabello Alcérreca**

Cancino Ayuso Abogados

**Adolfo Calatayud**

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**Alejandro Calderón Aguilera**

Calderón González & Carvajal

**Luis Carbajo-Martinez**

Baker McKenzie

**César Gerardo Castañeda Guerrero**

Kroy Abogados

**Ulises Castilla Flores**

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**Pablo Fernández de Cevallos y Torres**

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**Martha Dorantes**

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**Angel Escalante**

Nader Hayaux & Goebel

**Jaime Espinosa de los Monteros**

Hogan Lovells

**Roxana Gómez-Orta**

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## Mexico

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### Manuel González López

Mancera - EY

### Jorge Jimenez

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### Edgar Klee

Haynes and Boone

### Carl Edward Koller Lucio

Turanzas Bravo & Ambrosi

### Jorge Libreros

Mancera - EY

### Miguel Ángel Llaca García

LB & Cía

### Manuel Llaca Razo

Garrigues

### Fernando Lorenzo Salazar

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### Carlos Martínez Betanzos

Creel García-Cuellar Aiza & Enriquez

### Mauricio Martinez-D'Meza

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### Nora Morales

Mijares Angoitia Cortés & Fuentes

### Jorge Narváez-Hasfura

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### Ricardo González Orta

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### Karina Perez Delgadillo

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KPMG Cárdenas Dosal

### Enrique Ramírez

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## Mexico

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**Carlos Alberto Ramírez Larsen**

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**Eduardo Revilla**

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**Hugo Romero**

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**Ricardo Santoyo**

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**Manuel Solano**

Mancera - EY

**Christian Solís Martínez**

SMPS Legal

**Simon Somohano**

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**Arturo Tiburcio**

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**Juan Carlos Valles Zavala**

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**Luis Vázquez**

Creel García-Cuellar Aiza & Enriquez

**Hernaldo Vega**

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## NICARAGUA

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**Juan Carlos Cortez Espinoza**

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## PERU

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**Yanira Armas Regal**

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**María Eugenia Caller Ferreyros**

EY

**César Castro**

CMS Grau

**Lourdes Chau**

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**César Talledo Mazú**

Estudio Talledo

**Fernando Zuzunaga**

Zuzunaga Assereto & Zegarra Abogados

## PUERTO RICO

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**Rolando Lopez**

KPMG

## Kenneth Clark

Kenneth has led Fenwick's award-winning tax controversy practice since its formation, working on high-profile tax controversy matters in the United States and internationally. As a partner and the chair of its tax controversy practice, Kenneth's team has handled more than 75 federal tax litigations. Several of these matters resulted in important reported decisions; and Fenwick has received numerous accolades for its tax controversy practice, including recognition by *International Tax Review* as the top controversy practice in North America and as the U.S. tax litigation firm of the year in a number of different years.

The principal focus of Kenneth's practice is complex federal tax litigation and tax controversy work, particularly involving international matters. He counsels clients on federal tax audits, appeals, transfer pricing, and APA matters. He practices in the U.S. Tax Court and has published numerous articles relating to tax controversies. Kenneth's practice includes clients such as Xilinx, The Limited, L Brands, Textron, Chrysler AG, G.M. Trading, Dover Corporation, Adaptec, Analog Devices, Sanofi SA, Cameco, CBS and VF Corporation. Kenneth is included in *International Tax Review's* World's Controversy Leaders and *Euromoney's* World's Leading Transfer Pricing Advisors.

In addition to his more than four decades of tax focus, Kenneth's other career-long interests include providing strategic and legal advice to startup businesses. He has extensively worked on mediations and other forms of alternative dispute resolution, helping resolve business and legal problems around the globe. He has worked on client matters in numerous countries, spanning Europe, Asia, Australia and North America, as well as managing disputes in over twenty states in the U.S. He also has a notable background in teaching speaking techniques based on his competitive debating experience.



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## United States

### Anthony Curtis

**Languages:** English

#### Biography

A principal since 2000, Tony is a senior economist, transfer pricing specialist and U.S. Consumer Markets Transfer Pricing (TP) Sector Leader for PwC. He is part of PwC's tax controversy practice, integrating tax controversy resolution and prevention specialists from federal and international tax, transfer pricing, state & local tax with former government and other specialists. Tony has 30 years of experience conducting economic analysis for PwC. For 28 years, he has specialized primarily in the economics of inter-company pricing, including planning studies to help taxpayers determine appropriate transfer prices for future transactions, economic studies for use in the defense of transfer prices under examination, and economic analyses for APA and competent authority negotiations with the IRS and foreign tax authorities.

He is negotiating APAs, assisting with transfer pricing audits, and managing competent authority cases. His experience includes bilateral and multilateral cases involving Canada, China, Germany, Italy, Japan, Spain, Switzerland, the U.K. and many more.

Tony has considerable experience working with PwC's largest consumer products, retail and luxury goods clients. As the TP Consumer Markets Sector Leader, he brings clients needed industry expertise as he connects them with best practices and personnel of the PwC Global Network.

Over his career, Tony has served as the NYC Tax Controversy Practice Leader, the TP leader for PwC's NY metro transfer pricing region, has led the practice's Globally Coordinated Documentation service offering, as well as editor for PwC's transfer pricing news articles. He is also a frequent author and presenter. Tony is also passionate about PwC's people and enjoys recruiting, teaching and working on PwC's diversity and inclusion initiatives.

Tony previously taught graduate courses in Business Economics and Money and Banking at Johns Hopkins University. He has a MBA with a concentration in marketing and a BBA with a concentration in Business Economics and Public Policy from The George Washington University and has completed several graduate classes in taxation at Fordham University.



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## United States

### David Forst

David Forst is a partner in Fenwick's tax group and focuses on international corporate taxation. David is included in *Euromoney's* Tax Advisors Expert Guides (World's Leading Tax Advisors and World's Leading Transfer Pricing Advisors), and he was named one of the Top 30 U.S. Tax Advisors. He is also in *The Legal 500 Hall of Fame* and is regularly recognized in *Law Business Research's* International Who's Who of Corporate and Tax Lawyers. David is listed in *Chambers USA* and *Chambers Global* as one of America's Leading Lawyers for Tax and Business. He has also been named a Northern California Super Lawyer in Tax by *San Francisco Magazine*.

David is a lecturer at Stanford Law School and UC Berkeley Law School, where he focuses on international taxation. He is an editor of and regular contributor to the *Journal of Taxation*, where his publications have included articles on international joint ventures, international tax aspects of mergers and acquisitions, the dual consolidated loss regulations, and foreign currency issues. He is a regular contributor to the *Journal of Passthrough Entities*, where he writes a column on international issues. David is a frequent chair and speaker at tax conferences, including the NYU Tax Institute, the Tax Executives Institute, and the International Fiscal Association.

David graduated with an A.B., *cum laude* and Phi Beta Kappa, from Princeton University's Woodrow Wilson School of Public and International Affairs, and received his J.D., with distinction, from Stanford Law School.

David is admitted to practice in California.



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## United States

### James Fuller

Jim Fuller is a partner in Fenwick's tax group. *Euromoney* named Jim eight times as one of the world's top 25 tax advisers, most recently in 2019.

He is the only U.S. tax adviser to receive a Star Performer rating (higher than first tier) in *Chambers USA* (2020), and *Chambers Global* ranks him tier one in corporate and international tax (2020). He also is one of the three "most highly regarded" U.S. tax practitioners according to *Who's Who Legal* (Law & Business Research Ltd). *Legal 500* has included Jim in its "Halls of Fame" for both Corporate Tax and International Tax. Jim also is one the U.S.'s top 30 transfer-pricing advisers, according to *Euromoney* (2019).

Fenwick is first tier in *International Tax Review's* World Tax 2020 in Corporate Tax, Tax Controversy and International Tax, the only firm in California to be named first tier in all three categories, and one of only three firms in the US to be so named. *International Tax Review* named Fenwick & West "Tax Firm of the Year for the San Francisco Area" 10 times and "U.S. (or Americas) Tax Litigation Firm of the Year" five times. Fenwick also has received a Transfer Pricing Firm of the Year award, been named "Americas M&A Tax Firm of the Year" and received a number of *ITR's* M&A and JV Tax Deal of the Year awards.



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## United States

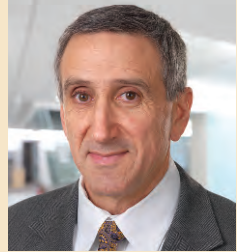
### Adam Halpern

Adam is a partner and the chair of Fenwick's tax group, with 20 years of experience practicing U.S. international tax law at Fenwick.

Recognized as a leading tax practitioner, Adam focuses on the U.S. federal income taxation of international transactions. In recent years, Adam's practice has focused significantly on the 2017 TCJA, including FDII, GILTI, BEAT, and the new foreign credit system. Adam also handles traditional international tax issues such as transfer pricing, cross-border M&A, international restructurings, Subpart F, source of income and expense allocations.

Over 20 years at Fenwick, Adam has developed a reputation for delivering practical, targeted advice on complex tax matters. He has successfully defended U.S. and non-U.S. multinationals in federal tax controversies at all levels. He is a frequent speaker at TEI and PLI, and a Lecturer in Law at Stanford Law School. He has been named a leading tax lawyer by *Chambers*, *International Tax Review*, and *The Legal 500*.

As chair of Fenwick's tax group, Adam leads a team of lawyers recognized across the United States and internationally. The group has represented more than 100 Fortune 500 companies on tax matters, and has served as counsel in innumerable IRS Appeals proceedings and federal court tax cases.



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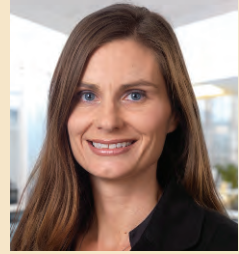
### Larissa Neumann

Larissa Neumann is a partner in Fenwick's tax group and focuses her practice on U.S. tax planning and tax controversy with an emphasis on international transactions. She has broad experience advising clients on mergers and acquisitions and restructurings, and she has extensive transfer pricing experience. Larissa has a reputation as a leading tax advisor due to her keen analytical skills coupled with a focus on providing clients practical solutions to complex tax issues.

*Chambers and Partners* recognized Larissa for the second consecutive year for her "wide-ranging practice," with clients noting that she has "strong international tax expertise" and "a lot of insight, and is thorough, responsive and careful." *Euromoney's* Women in Business Law has named Larissa America's Best Transfer Pricing Lawyer, and she is consistently named as one of the World's Leading Transfer Pricing Advisors. *Law360* honored Larissa as among the most influential women in tax law. In addition, *The Legal 500* has recognized Larissa several times, most recently as a Next Generation Lawyer for both her tax dispute and international tax work. She was also named to the *Daily Journal's* list of Top Women Lawyers in California and honored with the Women of Influence award by the *Silicon Valley Business Journal*.

Larissa teaches international tax at the University of California, Berkeley, School of Law. She frequently speaks at conferences for professional tax groups, including TEI, IFA, Pacific Rim Tax Institute and the ABA. Larissa also coauthors a monthly column on all recent developments in U.S. international tax for *Tax Notes International*. She is also on the executive committee of the International Fiscal Association (IFA) and serves as the President of Women in IFA (WIN).

Larissa received her J.D. from the University of California, Berkeley, School of Law. She received her M.A. in public health from Yale University. She received her B.S. in molecular cell biology from the University of California, Berkeley. Larissa is a member of the State Bar of California and Pennsylvania and the ABA Section of Taxation. She is also admitted to practice in the U.S. Tax Court, the Federal Court of Claims, and the U.S. Court of Appeals for the Ninth Circuit.



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## Danielle Smith

### Biography

Ms. Smith leads the PwC Tax Risk Management, Controversy Solutions & Litigation Support team. Ms. Smith is an attorney and has been practicing tax controversy and litigation for over 20 years. Her practice focuses on partnering with corporate and business tax planning and operations teams throughout the entire life cycle of tax matters. Ms. Smith advises large corporate taxpayers on innovative, proactive, strategic approaches to controversy matters, starting with a deep understanding of business platforms, continuing with involvement in the planning of transactions and significant matters, and concluding with defense of positions on audit, appeals and support of litigation. Ms. Smith's work provides an integrated approach to legal and efficient tax planning without undue reputational risk and by leveraging experience and technology.

Prior to joining PwC, Ms. Smith was senior tax counsel in the Tax Examinations, Appeals & Litigation group at General Electric Company for almost a decade. Before GE, she practiced tax controversy and litigation at White & Case LLP in New York City, representing major investment banks, corporations, accounting firms, law firms and individuals in federal and state litigation and tax audits. While in private practice, she managed high-profile summons enforcement actions and tax shelter audits, defended discovery requests by the IRS and U.S. Congress, litigated privilege claims, and negotiated settlements with the IRS, the Department of Justice, and state revenue authorities. Ms. Smith clerked for the Honorable L. Paige Marvel at the United States Tax Court in Washington, DC. She received a J.D. from the University at Buffalo Law School, with a concentration in finance transactions and tax, and a LL.M. in Taxation, with distinction, from Georgetown University Law Center.



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### Practice areas

- Corporate taxes
- Dispute resolution
- Pre-litigation
- Controversy management
- Tax consulting

### Sector specialisations

- Accounting
- Banking
- Financial services
- Industrials
- Insurance

## United States

### David Swenson

David Swenson is the global leader of PwC's tax controversy and dispute resolution (TCDR) network and is resident in the Washington, DC office. The TCDR global network includes more than 1000 tax controversy professionals, located in upwards of 80 countries across the globe, who assist multinational enterprises to prevent, manage, and resolve tax audits and disputes worldwide.

Following a prominent legal career spanning 25 years, David has substantial experience in advising multinational enterprises (MNEs) on international tax matters, and assisting companies in their efforts to pursue a variety of measures aimed at proactively preventing, efficiently managing, and favourably resolving tax audits and disputes worldwide. Over the years, David has participated in more than 250 tax controversies involving audits and disputes between MNEs and the Internal Revenue Service (IRS), as well as dozens of other revenue authorities around the world.

Many of these tax disputes were resolved at the audit level or through the proactive use of administrative appeals, mediation, arbitration, APAs, or the Competent Authority/MAP process. Other controversies were docketed in a US court of law, proceeded to trial, and resulted in important decisions for MNEs, including cases involving transfer pricing (Bausch & Lomb I), the foreign tax credit (Ampex), Competent Authority matters (Yamaha), the definition of 'manufacturing' for Subpart F purposes (Bausch & Lomb II), foreign currency (Carborundum), and intellectual property rights (Exide/Exxon). David also participated in several landmark tax cases before the US Supreme Court, including the Barclays Bank, Boeing, and Goodyear cases. David has been described as "one of the top five tax controversy experts in the US", and he received recognition as a "leading attorney" in US tax litigation by Chambers US, and as one of the world's top 25 transfer pricing specialists.

In addition, David received a Meritorious Service Certificate from the Treasury Department and IRS, and has been an adjunct professor at Georgetown University Law Center, where he continuously taught courses for 25 years relating to international corporate income taxation. David received his MLT from Georgetown University Law School, and his JD, with honours, and BA, with distinction, from the University of Mississippi. David also has been admitted to practice before the US Tax Court, the US Court of Federal Claims, numerous US Federal Courts of Appeal, and the US Supreme Court.



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Mayer Brown

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Baker McKenzie

### Michael Alter

Fried Frank Harris Shriver & Jacobson

### Jenny Austin

Morgan Lewis & Bockius

### Summer Austin

Baker McKenzie

### Howard Berman

Deloitte

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### David Blair

Crowell & Moring

### William Bonano

Pillsbury Winthrop Shaw Pittman

### Kim Marie Boylan

White & Case

### Kevin Brown

PwC

### Steven Brown

Clark Hill

### Michael Bryan

Deloitte

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### Thomas Callahan

Thompson Hine

### Christopher Campbell

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### Nathaniel Carden

Skadden Arps Slate Meagher & Flom

### Cabell Chinnis

Mayer Brown

### Kerwin Chung

Deloitte

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### Kenneth Clark

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### George Clarke

Baker McKenzie

## United States

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**Jerold Cohen**

Eversheds Sutherland

**Erin Collins**

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**Jon Contreras**

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**Daniel Cook**

Deloitte

**Matthew Cooper**

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**Anthony Curtis**

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**Valerie Dickerson**

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**Paul DiSangro**

Mayer Brown

**Steven Dixon**

Miller & Chevalier

**Mike Dolan**

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**Rod Donnelly**

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**Thomas Driscoll**

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**Jeffrey Erney**

Dentons

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**Miriam Fisher**

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## United States

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### José Valecillos

D'Empaire Reyna Abogados



# Asia-Pacific

# Deloitte.

## APAC

The COVID-19 pandemic has inflicted pains on many fronts and surely repainted the tax environment around the globe. As authorities tilt their focus onto introducing financial incentives to support the recovery of economy, companies channeled their efforts into combating the crisis by leveraging such incentive packages while seeking opportunities to substantiate their tax positions in 2020 and beyond.

Deloitte's tax controversy teams in Asia Pacific include former tax authority officials, alternative dispute resolution specialists, and in many countries, tax litigation specialists who can assist multinational businesses at all phases of the tax controversy cycle.

Dedicated tax controversy professionals within the Deloitte network provide coverage across Asia Pacific with presence in all key markets across the region.

Deloitte operates a global tax controversy group with leaders assigned across a number of countries. The leaders within the Asia Pacific region are able to draw upon the connections within this community from all parts of the world, to deliver cross-border based solutions in a coordinated and aligned manner.

This approach in dealing with the tax controversy related problems of clients provides common methodologies and development of technology-based tools used collaboratively across jurisdictions to enhance success for clients.

Deloitte in Asia Pacific includes offices in more than 120 cities in over 20 countries, with over 600 partners and 9,000 client service professionals, and forms part of one of the world's largest professional services firms capable of drawing on the firm's multidisciplinary skills to deliver cross-border solutions to clients in local markets.

Deloitte in Asia Pacific is innovative because it has developed a coordinated network of professionals sharing insight and approaches, designed in response to trends being observed over the course of the past five years.

The delivery of services and solutions within this network entails approaching problems in an innovative fashion by embedding technology-based solutions. This is done by using data analytics and forensic tools to assist in large-scale reviews and audits in conjunction with the skill and decision-making of highly experienced professionals.

### **Our key service offerings include:**

Consulting services to help clients manage, understand and resolve complex disputes with revenue taxing authorities, including pre-audit procedures or dispute prevention, tax audits or assessments, and dispute resolution or settlement; audit readiness assessments (income, estate, gift, inheritance tax etc.) and support for clients undergoing tax authority reviews and audits.



## Awards

International Tax Review Awards in the last three years:

### 2019 – 10 awards

- Tax Firm of the Year: Indonesia, Malaysia, Singapore
- Transfer Pricing Firm of the Year: India, Indonesia, Thailand
- Tax Disputes & Litigation Firm of the Year: Taiwan, Thailand
- Regional Impact Cases of the Year: Landmark application of product sharing contract transfer tax on cross border M&A transactions in the oil & gas industry: Deloitte Indonesia
- Tax policy development for Labuan International Insurance Association Malaysia: Deloitte Malaysia

### 2018 – 14 awards

- Asia Transfer Pricing Firm of the Year
- Asia Indirect Tax Firm of the Year
- Asia Tax Technology Firm of the Year
- Tax Firm of the Year: China, Japan, Indonesia, New Zealand, and Taiwan
- Transfer Pricing Firm of the Year India, Indonesia, New Zealand, Philippines, Taiwan, and Thailand
- Tax Disputes & Litigation Firm of the Year: Taiwan and Vietnam

### 2020 World Tax & Transfer Pricing by ITR

- 14 jurisdictions (Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, South Korea, Taiwan, Thailand, Vietnam) were ranked tier 1 by World Tax
- 13 jurisdictions (Australia, China, Hong Kong, India, Japan, Malaysia, New Zealand, Philippines, Singapore, Taiwan, Thailand, Vietnam) were ranked tier 1 by World TP

### Leader/Expert Guides:

- Euromoney's 2020 Guide to the World's Leading Tax Advisers – 45 leaders from the APAC region were recognized
- Euromoney's 2019 Guide to the World's Leading TP Advisers – 40 leaders from the region were recognized
- ITR's 2020 Indirect Tax Leaders Guide – 39 leaders from the region were recognized
- ITR's 2020 Tax Controversy Leaders Guide – 67 leaders from the region were recognized
- ITR's 2020 Women in Tax Leaders Guide – 54 leaders from the region were recognized

Deloitte in Asia Pacific region includes approximately 120 plus offices, 600 partners and 9000 plus service professionals

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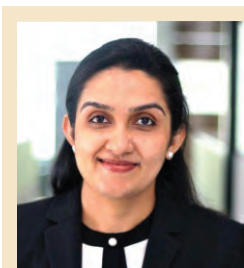
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# ASIA-PACIFIC

## Regional interview



**Karishma Phatarpekar**  
Deloitte India

### **What is the most significant development in your region/jurisdiction's tax practice in the past 12 months?**

Across the APAC region, one of the most significant developments in tax practice in the past 12 months has been the use of technology, be it advising MNCs to deal with the taxation aspects of their digital footprints in market jurisdictions, reimagining tax in the connected and data-driven age, automation/analysis of complex data used for tax compliances, the launching of smart tools for managing operations/compliance, etc. In our transformation strategy, technology has been an integral component, which has not only helped us in strategic planning, but also in mindset change and development of capabilities, and overall led to a benefit in terms of time and cost savings with higher efficiency.

In short, technology has helped us to move the tax function up the value chain within the organisation.

### **How do you anticipate that change impacting your work and the market moving forwards?**

The approach of the revenue to go digital has not only helped to have paperless offices, but also helped to correlate digital information across various revenue departments. The most notable effect can be seen in the APAC region's investment in the digitization of tax technology solutions for various tax aspects such as transfer pricing, tax controversy, GST and tax issues in new digital business models. Such an increased focus has changed the outlook of all the stakeholders, namely taxpayers, tax consultants and revenue authorities.

Today, employees in the APAC region are working with smart tools to harness data, automate execution of rote tasks, comply in real time and free themselves up to add greater value to the organization.

## Interview

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Further, the increased participation of the APAC region can even be seen at various forums such as OECD/UN/G20 meetings. With digital information, developing countries have turned aggressive in their bid to guard, as well as extend, their tax base and get a fair share of taxes. Increased participation in the OECD/UN/G20 would help them have their say at a global level, not only in terms of a right to tax, but also to gather information for MNCs spread across the world.

Every function in an organization is under perpetual pressure to cut costs, improve efficiency, and enhance overall organizational agility. While there are still certain tax activities that are comparatively manual intensive, relative to other functions, many aspects having already conducted a digital transformation. Gone are the days when a particular complex tax requirement was soaking up significant resources. Now, the organizations are constantly looking for ways to reduce manual activities and shift resources to more value-added services. This increased use of technology has completely changed our approach towards client needs, and now it has become more of a necessity.

On the tax controversy front as well, the COVID impact has invented virtual courts in countries who were dependent on physical hearings. This has proved to be again a very effective way of disposing of disputes by concerned parties using technology effectively to argue and defend their matters. The Indian government has already started faceless assessments in limited cases. The scope may be expanded in future to widen the base. It is also expected to have virtual hearings/faceless hearings for appeals at the first appellate authority.

### **What impact do you see the COVID-19 pandemic having on your work directly and on the wider tax environment, in both the short and long term?**

COVID-19 has forced business houses to cut down costs and they would prefer to maintain a level which is sustainable in the future. Though recovery will eventually start, it will be slow initially and will only improve over a period of time.

The impact will vary differently based on the nature of work. For example, in M&A the current situation will put a break on certain activities. However, there will be a growth in the business later, as there is a lot of debt restructuring and other merger activities, wherein investors will be looking to take advantage of low valuations, etc. Clients who undertake changes in their supply chain due to the disruptions caused will also need expert opinion on the tax and legal implications of the steps they intend to undertake.

Similarly, audit/court work/bilateral negotiations, which had come to a halt, have resumed via virtual hearings, and down the lane though the physical format may resume. Virtual courts and meetings may be the new normal to achieve the expeditious closure of cases.

### **Given the likely long-term implications of COVID-19 on things like remote working and digital retail, how do you see tax technology developing to accommodate this new reality and where do you think the next area of focus might be?**

If there is one thing that has helped us survive during this pandemic, it is technology. In fact, not only during this pandemic, but even otherwise, technology has long become an intimate part of our routines and has also influenced all aspects of our business activities, including business models.

## Interview

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The market is now seeing technology deliver exponential growth in speed and performance, enabled by capable systems and tools that are available on demand, even during pandemic times. Such a transformation has enhanced MNCs' visibility into their data/supply chain/operations at a much more granular level, and business leaders now make data-driven and quick decisions. This has really allowed businesses to reach into new markets without requiring massive investment.

There has been lot of debate on ways to tax transactions on digital retail. Debate between the taxpayer and tax collector continues, and with rapid changes in technology tax laws need to be dynamic to foresee such changes and tax effectively without hampering business. The next area of focus should be to develop effective mechanisms to tax this new style of doing business.

Further, given the rate at which business is digitally transforming, I think the next area of focus will be robotics. Standard industrial robots will be replaced by advance autonomous robots, replacing not only routine tasks but also tasks requiring higher skills. This space of 'humans vs robots' is something to really watch out for in the future.

### **What potential other legislative changes are on the horizon that you think will have a big impact on your region/jurisdiction?**

Governments all over APAC and the world are seeking ways to tax digital companies, be it introducing a Digital Service Tax (DST), by expanding the scope of existing indirect tax or by any other means. Even multilateral groups, including the OECD, the European Commission and IMF, are exploring different taxation models for the future.

As this debate continues about the best approach, we can anticipate significant legislative changes in next 12-24 months, either through unilateral measures or through a global consensus reached through the OECD process. In fact, India has recently expanded its scope of equalization levy to tax the digital transaction of ecommerce companies.

As per recent reports on tax controversy management, the Indian government is also mulling a mediation mechanism to resolve tax disputes. Further, in the current situation the priority of the government is to augment its revenue, which can be deployed for public expenditure/relief packages, etc. This may lead to a situation wherein the tax base is enhanced to generate that extra revenue.

So, there are significant legislative changes expected in the future, specifically pertaining to the taxation of digital transactions and also augmenting tax collections. Adjustments in tax and transfer pricing policies due to the COVID impact is another significant area that may result in controversy.

### **What are the potential outcomes that might occur if those changes are implemented?**

The digital economy has been growing at a staggering pace. With working from home becoming the new normal, customers prefer ordering online thereby increasing the customer base of ecommerce companies. Further, online streaming has grown many times over. The implementation of the equalization levy, which is a unilateral levy applied by India, will create a lot of controversies and may also lead to double taxation.

The litigation battle in India is a long-drawn process. Dispute resolution settlement schemes may be the new way of closing out overdue disputes and bilateral advance pricing

## Interview

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agreements (APAs) and mutual agreement procedures (MAPs) may be alternate dispute resolution mechanisms to achieve certainty and avoid the impact of double taxation. Mediation has been adopted as a method to resolve tax controversy in many countries. This would help in the speedier resolving of disputes and could also boost investor sentiment, if introduced in the right form and also implemented in the right spirit. Further online hearings/virtual courts may also be a new normal, leading to faster and more efficient dispute resolution.

### **Do you think that change will have a positive effect on both your practice and the wider regional/jurisdictional market?**

It is not a debate anymore that taxation rules were developed to cater to traditional ways of doing business and are not able to cope with current digital businesses structures. Thus, the introduction of digital taxation would definitely have a positive impact, especially on consumer heavy or market-focused jurisdictions like India, China, Brazil, etc. It will undeniably increase significant untapped tax opportunities for organisations.

However, a consensus-based solution would be the ideal solution to this global problem, and any unilateral/isolated measures by countries will lead to unintended double taxation, having undesirable results like an increase in the administrative and compliance burden, as well as an increase in tax disputes (e.g. claiming tax credit in other countries, adopting a dispute resolution mechanism, etc.).

### **What legislative changes would you like to see be implemented that you think would have the most positive effect on your practice and the wider regional/jurisdictional market?**

I am waiting for a consensus-based multilateral solution to address the tax challenges brought about by the digitalization of the economy. In various G20/OECD meetings they have endorsed the unified approach as the basis for further negotiations and the basic idea of it is to re-allocate some profits and corresponding taxing rights to countries and jurisdictions where MNEs have their markets. This will really be a booster for the Indian economy in particular, as India has a huge consumer/market base. In fact, India has been at the forefront of leading policy initiatives for changes in the international tax system and was among the first to implement an equalization levy of 6% in 2016 on online advertisements. Further, the Finance Act, 2018 introduced the concept of the significant economic presence of a non-resident in India. Also, the recent Finance Act, 2020 has expanded the scope of the equalization levy to bring into its scope ecommerce transactions other than online advertisements, on which there is a levy of 2%.

On the tax controversy front, bilateral safe harbors, multilateral APAs, joint audits and non-binding arbitration could be modern alternate dispute resolution mechanisms to adopt.

The above-mentioned legislative changes will definitely create the need for a lot of tax advice and I think is likely to have a positive impact on the economy of developing countries. It may also help address perceptions and concerns about a fair share of tax being paid across the world.

### **Do you think something like that is likely to be implemented in the near future?**

While the OECD is still trying to reach consensus on digital taxation and is sticking to its committed deadline of end of the year, it is to be seen if the COVID-19 situation derails the

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final outcome. Also, the US has expressed concerns over digital taxation and has suggested a pause in the OECD talks.

We are hopeful that the talks will resume later this year and all members of the Inclusive Framework will remain engaged in the negotiation towards the goal of reaching a global solution by year-end, or at least by mid-2021.

### **What have been the biggest developments in tax technology and where do you think the next area of focus might be?**

As an organisation, we are at a turning point in tax. I feel the biggest development in tax technology has been developing and implementing a customised tax technology strategy for clients, working on tax data management and analytics to assist in the decision-making process and using technology to collaborate, automate and monitor tax processes/compliances.

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## AUSTRALIA

## Paul McCartin

**Biography**

Paul is one of Australia's leading tax controversy and dispute resolution advisors. He has over 20 years tax experience and spent over half his career as a senior ATO executive, including Assistant Commissioner and ATO JITSIC delegate, focused on multinational audits conducted by various revenue authorities while based in Washington DC. Paul brings an unparalleled understanding of the ATO and its approach to audits. He uses this knowledge to resolve tax disputes on the best possible terms for his clients.

**Recent matter highlights**

Paul was the lead advisor to a global energy company involved in a cross border financing dispute. He led the collation of evidence, appeared at the GAAR Panel and led the negotiations. The potential adjustment was \$1.5b and 50% penalties. Paul achieved negotiated settlement and no penalties were imposed. Paul played a lead role in audit defence and settlement negotiations for an ASX listed company. The potential adjustment was \$500m and was later resolved on favourable terms with no penalties.

**Practice areas**

- Audit Defence
- Dispute Resolution
- Pre-litigation
- MAPs
- Controversy Management

**Association memberships**

- The Tax Institute (Australia)
- Chartered Accountants (Australia & New Zealand)

**Academic qualifications**

- Masters of Taxation Law



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## Australia

### Eddy Moussa

#### Biography

Eddy is a Tax Lawyer and Partner in the Tax Controversy Practice in Australia. He leads major complex audit defence for multinational and large private businesses. Areas of focus include anti avoidance, transfer pricing, WHT, financing and IP cases.

#### Recent matter highlights

- Eddy has assisted clients under audit in a variety of industry sectors including financial services, infrastructure, FMCG, technology and real estate.
- He has also successfully resolved debt pricing, anti avoidance, transfer pricing cases involving material amounts of tax and penalties at stake.
- Eddy has also published papers on evidence in tax disputes, anti avoidance, and taxation of intellectual property matters.

#### Practice areas

- Audit defence
- Dispute resolution
- Pre-litigation
- MAPs/ADRs
- Controversy management

#### Association memberships

- Member of the Law Society of NSW
- Member of the State Council of the NSW Tax Institute of Australia
- Board Member of the National Council of the Tax Institute of Australia

#### Academic qualifications

- Bachelor of Business, Bachelor of Law – University of Technology Sydney
- Masters of Taxation – University of Sydney



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## Australia

### Simon Rooke

**Languages:** English

**Bar admissions:** Supreme Court of Victoria, High Court of Australia

#### Biography

Simon is a legal partner in PwC's tax controversy practice. He specialises in working with clients to resolve complex disputes with the Australian Tax Office (ATO) and state revenue authorities. Simon has over 25 years' experience, including 12 years in international tax and M&A and over 15 years in dispute resolution and litigation.

#### Recent matter highlights

Simon has extensive experience in assisting clients manage revenue disputes, including streamlined and tax assurance reviews, audits, settlement negotiation, ADR and litigation. Simon's approach is to resolve disputes as early as possible, while rigorously protecting a client's rights at law and under administrative practice and policy. This includes navigating the increasingly aggressive information gathering approach of revenue authorities, to seeking binding rulings where available, to litigation if other resolution is not possible. Simon also assists clients with transactions, preparing for revenue authority review and counter-party due diligence.

#### Practice areas

Transactions, audit defence, dispute resolution, litigation, international tax advisory

#### Sector specialisations

Automotive, banking, consumer goods and services, gaming, pharma and life sciences

#### Association memberships

Law Council of Australia, Chartered Accountants Australia and New Zealand

#### Academic qualifications

Bachelor of Commerce, Bachelor of Laws, University of Tasmania, 1994

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## CHINA

## Yimin Kou

**Languages:** English, Mandarin

**Bar admissions:** PRC bar

### Biography

Yimin Kou is a Partner at Rui Bai Law Firm, which is an independent law firm and a member of the PwC global network of firms. She graduated from the Law School of Peking University (JM) and obtained her master's degree from the International Tax Centre of Leiden University (Master in International Tax Law). Prior to joining Rui Bai, Yimin had worked in a Big Four firm, the Beijing representative office of an Italian law firm, and a domestic law firm. Yimin is a PRC qualified lawyer.

### Recent matter highlights

- In 2015 and 2018, Yimin acted as the lead counsel against the Chinese State Taxation Administration in two tax administrative reconsideration cases (transfer pricing) which separately were the very first and second case of such kind in China.
- A tax administrative litigation case in which Yimin acted for a Chinese SOE was selected as first of the Top 10 Most Influential Judicial Precedents in Taxation of 2018 with top clicks among tax litigation cases till now.
- Yimin also helped to draft the NPC suggestions, the suggestion regarding refund of over-paid VAT in 2019 has been accepted by the draft Chinese VAT Law.

### Practice areas

Dispute resolution, pre-litigation, MAPs/ADRs, litigation

### Sector specialisations

Automotive, construction and materials, energy, financial services, real estate

### Academic qualifications

- JM, Law School of Peking University (2007)
- LL.M, International Tax Centre of Leiden University (2008)



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## Pratik Jain

**Languages:** English

### Biography

Pratik Jain is a Partner and the National Leader for Indirect Tax in PwC India's Tax and Regulatory Services and leads the firm's GST practice. Before joining PwC, he had a 10-year tenure with KPMG and an earlier stint of 6 years with EY/Arthur Andersen. He has significant experience in the consumer market, retail and services segments, and supported by his large team of widely experienced professionals across India.

Over the years, Pratik has been working closely with several Indian and multinational corporations, and advises them on tax planning, management, dispute resolution and policy-related issues. He actively supports clients in putting in place effective strategies and is consulted by industry and industry associations. He is also engaged in tax advocacy and frequently interacts with Tax Regulators in India.



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Tax advisory, tax consulting and indirect tax (GST, customs, supply chains)

### Sector specialisations

Consumer goods and services, government and public policy, real estate.

### Association memberships

Chairman, National Council on Indirect Taxes, The Associated Chambers of Commerce and Industry of India (ASSOCHAM)

### Academic qualifications

Chartered Accountants – The Institute of Chartered Accounts of India, 1998; Law Graduate – Chaudhary Charan Singh University, India, 2015.

## Rohan Shah

Mr. Shah was admitted to practice on 7th November 1987. Mr. Shah has been practicing as an independent Counsel in the Hon'ble Supreme Court, various High Courts (Mumbai, Delhi, Chennai, Rajasthan, Punjab & Haryana), Tribunals (ITAT, CESTAT, NCLT, Central Sales Tax Appellate Tribunal and, the PMLA/FEMA Tribunal) and, other judicial forums.

Mr. Shah represents cases before different forums in relation to GST, Customs Duties, Service Tax, VAT, Income Tax and Transfer Pricing, Issues under DTAAs, Exim Policy Issues, TRADE Remedial issues under WTO, FEMA issues, Corporate Law issues and Constitutional Law issues. Mr. Shah has also appeared in various Bilateral Investment Treaty Arbitrations.

Mr. Shah has represented in significant litigations for clients from various Industries – the Oil and Gas Industry, the Pharmaceutical Industry, the Gem and Jewellery Industry, the Real Estate Industry, the Retail Industry, the Ecommerce Industry, the Automotive Industry, the Alcohol & Beverage Industry, the Insurance Industry, the Banking Industry and the Projects & Infrastructure Industry.

Mr. Shah has successfully represented Clients in over 350 reported cases before various judicial forums.

Mr. Shah has been repeatedly recognized as one of Asia's and India's leading Tax Controversy Lawyers in Chambers and partners in Asia Pacific. International Tax review, World Tax, Benchmark Litigation Asia Pacific and various other publications.

Mr. Shah has been awarded as the Indian "Tax Lawyer of the year " at the Legal Era Awards 2020.

Mr. Shah has been appointed by the Ministry of Commerce and Industry in India as India's Representative and Governor on the board of Economic Research Institute for ASEAN and East Asia ("ERIA"). The appointment is for a period of three years.



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Economic Laws Practice

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Chambers of Rohan Shah

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### Gopalakrishnan Shivadass

Lakshmikumaran & Sridharan

### Hasnain Shroff

BSR & Co

### Hardev Singh

PwC

### Himanshu Sinha

Trilegal

### Rajesh Srinivasan

Deloitte Haskins & Sells

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### Krishnamani Subramanian

Deloitte Haskins & Sells

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### Naresh Thacker

Economic Laws Practice

### Sanjay Tolia

PwC

### Kunj Vaidya

PwC

### S Vasudevan

Lakshmikumaran & Sridharan

### Ajay Vohra

Vaish Associates Advocates

### Rajan Vora

EY

### Alok Yadav

Sole practitioner

## Ahdianto

**Languages:** Bahasa Indonesian, English

### Biography

Ahdianto is a tax partner with more than 21 years' experience in tax, customs and business consulting. He is a licensed tax court attorney, a licensed customs court attorney and holds Indonesian Customs Expert Certification and Indonesian Tax Brevet Certification (Level C- the highest level). In the past, he was indirect taxes head with Deloitte Indonesia.

He is known in the market for his litigation expertise in the Tax Court. Ahdianto named as Indirect Tax Leader and Tax Controversy Leader by International Tax Review (ITR) World Tax in 2020. He is also a 2017 and 2018 Asia Tax Disputes & Litigation Practice Leader Finalist by ITR Asia Tax Awards. He led the tax disputes and litigation team of GNV Consulting to win the award as the ITR 2018 Indonesia Tax Disputes & Litigation Firm of the Year

Ahdianto also has extensive knowledge and experience in Indonesian tax and customs. He has engaged in several tax projects such as performing tax diagnostic review, tax disputes settlement, corporate tax restructuring, obtaining tax and customs facilities, tax and customs refunds, bonded zone facility audit and customs review. He has a broad experience in strategic planning and representation in the Indonesian Tax Court for multinational companies including manufacturing, mining companies, financing services, trading services and constructions services.

### Sector specialisations

- Mining
- Telecommunications
- Transportation & Logistics
- Plantation
- Manufacturing
- Trading

### Academic qualifications

- Master of Management majoring in Finance, Gadjah Mada University, Yogyakarta, Indonesia
- Chemical Engineering, Gadjah Mada University, Yogyakarta, Indonesia



Tax partner

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**GNVConsulting**

## Indonesia

## Ratna Febrina

**Languages:** English

### Biography

Ratna Febrina is a Tax Partner of SF Consulting (Member Firm of Crowe). She is a Certified Tax Attorney, Tax Consultant and obtained a Brevet C – the highest working license qualification. Ratna has over 25 years of experience as a tax consultant including 10 years with Arthur Andersen and Ernst and Young Indonesia. Prior to joining Arthur Andersen as a tax consultant, she was an external auditor in Deloitte.

Throughout her tax consultancy career, Ratna has served major multinational and large national companies in various industries. With this experience, she has grown accustomed to dealing with different types of clients and providing effective, practical solutions. Her speciality is in matters regarding dispute resolutions such as tax audit, objection, appeal to Tax Court and reconsideration request to Supreme Court



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### Practice areas

Restructuring, M&A, Corporate Taxes, Dispute Resolution, Pre-litigation, Litigation, Tax Consulting, International Tax Advisory, VAT, Customs, Transfer Pricing

### Sector specializations

Banking, consumer goods and services, energy, financial services, food and beverage, government and public policy, healthcare, industrials, insurance, investment management, media, mining, natural resources, oil and gas, pharma and life sciences, real estate, tech and telecoms, transport, utilities

### Association memberships

Indonesian Tax Consultant Association  
Indonesia Chartered Accountant Association

### Certifications

Tax Consultant License (Brevet C)  
Tax Attorney  
Customs and Excise Attorney  
Advocates (PERADI – Indonesian Advocates Association)

## David Hamzah Damian

**Languages:** Indonesia, English

**Bar admissions:** Indonesia Tax Court

### Biography

David is the Partner of Tax Compliance & Litigation Services at DDTC. He is an experienced practitioner in transfer pricing, customs, and all aspects of Indonesian taxation with more than 18 years of experience. He holds tax consultant license to practice before the Indonesian tax authority and tax attorney license to practice at the tax court. He is well known for his advocacy skills both during dispute resolution process with the Indonesian tax authority and at the tax court. In 2019, all the cases that he handled during tax audit process with the Indonesian tax authority are closed or settled.

David have been with DDTC for over 10 years. He currently leads the tax compliance and litigation services of DDTC which consists of more than 30 persons. With full support from DDTC, David has attended various seminars and conferences from reputable universities and international organizations.

David is an expert contributor of DDTC News (Indonesia leading tax news portal), co-author of two chapters in “*Transfer Pricing: Idea, Strategy, and Practical Guidance in International Tax Perspective*” (in Bahasa Indonesia) published by DDTC and co-author of the Indonesian chapter in the 8th edition book entitled “*The Tax Disputes and Litigation Review*”, published by Law Business Research. As a leader in the field of tax dispute and litigation, David speaks regularly on tax disputes and tax litigation topics in various seminars.

### Practice areas

Restructuring, audit defense, litigation, tax consulting, international tax advisory

### Sector specialisations

Agriculture, automotive, consumer goods and services, energy, pharma and life sciences

### Association memberships

- Member of Indonesian Tax Consultant Association

### Academic qualifications

- Bachelor's degree in Fiscal (Tax) Administration, University of Indonesia
- Advance Diploma in International Taxation, the Chartered Institute of Taxation, United Kingdom



Tax Compliance and Litigation  
Services Partner

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## Indonesia

### Sri Wahyuni Sujono

**Languages:** English

#### Biography

Sri has had over thirty years of experience of tax consulting/lawyer with Arthur Andersen, Ernst and Young Indonesia and SF Consulting. As the coordinator of the Financial Services group in Arthur Andersen, Sri has been involved in the restructuring and mergers/acquisitions of major banks and companies where she dealt almost exclusively with MNCs.

Her experience has lead to her expertise in areas such as Tax Litigations, Transfer Pricing, Tax Planning and Tax Restructuring.

Sri is experienced in serving a large variety of clients, both national and multinational. Thus, she is aware that each client has different needs and is able to adapt her services to best suit the client.



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#### Practice areas

Restructuring, M&A, corporate taxes, dispute resolution, pre-litigation, litigation, tax consulting, international tax advisory, VAT, customs, transfer pricing

#### Sector specializations

Banking, consumer goods and services, energy, financial services, food and beverage, government and public policy, healthcare, industrials, insurance, investment management, media, mining, natural resources, oil and gas, pharma and life sciences, real estate, tech and telecoms, transport, utilities

#### Association memberships

Chairman of the Taxation Committee –Indonesian Chamber of Commerce (KADIN)  
Supervisory Board of Indonesian Tax Consultant Association (IKPI)  
Audit Committee of PT Alam Sutra Tbk  
Board of Jakarta Menteng Rotary Club Indonesia  
Board Member of Entrepreneur Organization (EO) Indonesia

#### Academic qualifications

Bachelor of Law, University of UNTAG (2007); Brevet C, Registered Tax Consultant (1997); Bachelor Business Administration University of Wisconsin – Madison, USA (1987); Chartered Financial Consultant (ChFC) – Singapore College Of Insurance (2003)

#### Certifications

Tax Consultant License (Brevet C); Tax Attorney; PERADI (Indonesian Advocates Association)

## Wawan Setiyo Hartono

**Languages:** Indonesian, English

### Biography

Wawan assumed his duties as Vice Managing Partner on 2017. Prior, he was an officer in the Indonesian Directorate General of Taxes (DGT) with the last post in the Large Taxpayers Office Two (LTO 2) for nearly eight years and assigned to the transfer pricing taskforce of LTO 2 and Large Taxpayers Regional Office with the main tasks to assist the resolving transfer pricing cases during tax audits and objections.

Wawan was successfully advising multinational and local companies in structuring cross-border and domestic transactions, managing tax and customs risks, and selecting the most feasible tax and customs facilities. Most of the clients' matters were arranged in the defensible structure avoiding disputes during examinations with cooperative negotiation with DGT and Customs Authority. In litigation, he successfully defended various types of controversies through nearly 200 hearings.



Vice Managing Partner

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PASSION FOR EXCELLENCE

### Recent matter highlights

- Decided, advised, and implemented strategies to resolve the continuous and significant tax adjustments, whether to capitalize or to expense the significant amount of costs incurred by the leading mining company in Indonesia with a cooperative negotiation with DGT.
- Selected, implemented, and evaluated the most appropriate facilities (tax and/or customs) for the leading copper smelter and refinery company in Indonesia, in which in-depth knowledge of the company's business was great importance.
- Decided and implemented the successful resolution strategies to revoke tax audit adjustments in the objection stage concerning the complex financial transaction, i.e. hedge transactions concluded by the leading copper smelter and refinery company in Indonesia.
- Decided and executed the successful strategies to prevent disputes concerning the most significant issue incurred by the second biggest mining contractor in Indonesia whereas most competitors already suffered from such issues during tax audits.

### Practice areas

Dispute Resolution and litigation, Dispute prevention, MAPs/APAs, Customs, Transfer Pricing and International Tax

### Sector specializations

Commodities, Mining, Manufacturing and trading (consumer goods, automotive, etc.), Financial services, Technology and Telecommunication

## Indonesia

# Muhamad Fajar Putranto

**Languages:** Indonesian, English

### Biography

Fajar, TaxPrime founder and Managing Partner has more than 24 years of experience advising and representing multinational and local corporations in tax audits, objections, and tax appeals, assisting them in structuring transfer pricing (TP), international, and domestic tax policies. He has a wide professional expertise in planning and executing the most appropriate fiscal facilities and customs policies, preventing and resolving the disputes related to the matters thereof. Prior, Fajar worked with Indonesia Directorate General of Taxes (DGT) for 16 years, last posted in Foreign Investment Tax Office Four and was a member of Transfer Pricing task-force team at Large Taxpayers Regional Office.

Fajar has been successfully representing clients in the litigation of some of the largest and most complex cases. His unique strategies are also proven to be effective in preventing the disputes arising from the greatest potential tax assessments involving a wide variety of domestic and international tax issues including TP, particularly related to cross-border sales of commodities, license of intangibles, intra-group service, business restructuring, corporate and individual tax management. He successfully resolved the vast majority of the matters at the stages before the litigation to the tax court through discussion and presentation of the case to tax auditors and objection examiners.



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PASSION FOR EXCELLENCE

### Recent matter highlights

- Planned, advised and implemented the most appropriate tax facilities for the leading copper smelter and refinery companies in Indonesia.
- Planned, advised, and executed the strategies to resolve the continuous and significant disputes experienced by the mining company with the world largest gold deposit.
- Successfully challenged and resolved tax audit assessments in the objection stage, that the leading copper smelter and refinery company in Indonesia dealt with.

### Practice areas

Dispute Resolution and Controversy; Pre-Litigation; MAPs/ADRs; Customs; Transfer Pricing and International Tax Advisory

### Sector specialisations

Commodities; Industrials; Banking and financial services; Technology and Telecommunication; Government and Public Policy

### Association memberships

International Fiscal Association

## Indonesia

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### Ahdianto

GNV Consulting Services

### Ratna Febrina

SF Consulting

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### David Hamzah Damian

DDTC

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### Yan Hardyana

Deloitte

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### Wawan Setiyo Hartono

TaxPrime

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### Ponti Partogi

Hadiputranto Hadinoto & Partners

### Ay Tjhing Phan

PwC

### Abraham Pierre

KPMG

### Eko Prajanto

KPMG

### Muhamad Fajar Putranto

TaxPrime

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### Sri Wahyuni Sujono

SF Consulting

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### Cindy Sukiman

Deloitte

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### Otto Sumaryoto

PwC

### Bambang Suprijanto

EY

### Heru Supriyanto

Deloitte

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### Dodi Suryadarma

EY

### Turino Suyatman

PwC

### Turmanto Turmanto

Deloitte

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### Ali Widodo

PwC

### Wimbanu Widyatmoko

Hadiputranto Hadinoto & Partners

## JAPAN

# Michito Kitamura

**Languages:** Japanese, English

## Biography

Michito Kitamura is a partner of PwC Legal Japan. He joined PwC in 2016. Before that, he started his career as a CPA at Arthur Andersen and then he was working for the largest law firm in Japan for 15 years. He graduated from International Tax Program of New York University.



Partner

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## Recent matter highlights

- Michito Kitamura has successfully defended his clients in the tax audits (e.g. defended M&A tax matters with potential huge impact for a famous Japanese pharmaceutical company in 2018).
- He represented tax disputes and litigations including the case regarding entity classification of foreign entities, tax treatment of debt-equity-swap, deferral treatment on hedge transaction and application of CFC (anti-tax haven) rule.

## Practice areas

Audit Defence, Dispute Resolution, Litigation, Controversy Management, Tax Consulting

## Sector specialisations

Investment Management, Pharma and Life Sciences, Tech and Telecoms

## Association memberships

- Tokyo Bar Association
- Member of JICPA

## Academic qualifications

- LL.M. in International Taxation, New York University School of Law, 2007
- LL.M. with Distinction and Dean's List, Georgetown University Law Center, 2006
- B.C., Keio University, 1994

## Japan

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### Brajeshwar Banerjee

KPMG Japan

### Atsushi Fujieda

Nagashima Ohno & Tsunematsu

### Yushi Hegawa

Nagashima Ohno & Tsunematsu

### Akihiro Hironaka

Nishimura & Asahi

### Michito Kitamura

PwC Japan Group

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### Yutaka Kitamura

Deloitte Tohmatsu Tax Co

### Yuichi Komakine

KPMG Japan

### Takayuki Kozu

KPMG Japan

### Shigeki Minami

Nagashima Ohno & Tsunematsu

### Daisuke Miyajima

PwC Japan Group

### Toshio Miyatake

Adachi Henderson Miyatake & Fujita

### Hisashi Miyatsuka

Atsumi & Sakai

### Eiichiro Nakatani

Anderson Mori & Tomotsune

### Kuniaki Nomura

Nomura & Partners

### Yo Ota

Nishimura & Asahi

### Takashi Saida

Nagashima Ohno & Tsunematsu

### Jun Sawada

Deloitte Tohmatsu Tax Co

### Koichi Sekiya

Ernst & Young Tax Co

### Kazuhiro Takei

Nishimura & Asahi

## Japan

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**Ryann Thomas**

PwC Japan Group

**Shigekazu Torikai**

Torikai Law Office

**Edwin Whatley**

Baker McKenzie

**Hiroki Yamakawa**

Deloitte Tohmatsu Tax Co

**Hideyuki Yamamoto**

Baker McKenzie

**Yang Ho Kim**

Deloitte Tohmatsu Tax Co

## Weng Hoe Tai

**Languages:** English, Malay, Mandarin, Cantonese

### Biography

Tai has close to 20 years of experience in tax and accounting practice. He specialises in assisting local and multinational companies in tax and revenue advisory, corporate tax planning, transfer pricing, tax audits, tax investigations, tax appeals and alternative dispute resolution.

### Recent matter highlights

- Tai has extensive experience dealing with the Inland Revenue Board of Malaysia (IRBM) on tax audits and tax investigations and has assisted high-profile clients in achieving favourable and confidential settlements of tax disputes.
- He also advises clients on tax audit risk assessments and reviews, tax refunds as well as provides assistance with applications for tax incentives. He provides a depth of knowledge and experience aimed at delivering holistic and comprehensive services to his clients.



Director

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### Practice areas

Corporate taxes, audit defense, dispute resolution, pre-litigation, controversy management, tax audit and investigations support, tax audit risk assessment and reviews, tax consulting

### Sector specialisations

Automotive, aviation, construction and materials, consumer goods and services, energy, food and beverage, government and public policy, healthcare, industrials, media, oil and gas, pharma and life sciences, real estate, tech and telecoms, utilities

### Association memberships

- Fellow member of the Association of Chartered Certified Accountants (FCCA)
- Member of the Malaysian Institute of Accountants (MIA)
- Member of the Chartered Tax Institute of Malaysia (CTIM)

### Academic qualifications

- Honours in Management (Accounting), University of Technology Malaysia, 2001
- Approved Tax Agent licensed by the IRBM



## Malaysia

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**Chow Kuo Seng**

Deloitte

**Nicholas Crist**

KPMG

**William Stanley Walker Davidson**

Azman Davidson & Co

**Senthuran Elalingam**

Deloitte

See page 89

**Theresa Goh**

Deloitte

See page 89

**Goh Ka Im**

Shearn Delamore & Co

**Vijey Krishnan**

Raja Darryl & Loh

**Azhar Lee**

Platinum Tax Consultants

**Lim Kah Fan**

EY

**Ng Sue Lynn**

KPMG

**Anand Raj**

Shearn Delamore & Co

**Chandran Ramasamy**

Deloitte

See page 89

**Jagdev Singh**

PwC

**Soh Lian Seng**

KPMG

**Datuk Francis Tan**

Azman Davidson & Co

**Tan Eng Yew**

Deloitte

See page 89

**Weng Hoe Tai**

PwC

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**Adeline Wong**

Wong & Partners

**Simon Yeoh**

EY

**Irene Yong**

Shearn Delamore & Co

## NEW ZEALAND

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### Brendan Brown

Russell McVeagh

### Geoffrey Clews

Sole practitioner

### Geoff Harley

Harleys Chambers

### Kirsty Keating

EY

### Mike Lennard

Stout Street Chambers

### Patrick McCalman

Deloitte

See page 89

### David McLay

Sole practitioner

### Aaron Quintal

EY

### Campbell Rose

Deloitte

See page 89

### Fred Ward

Russell McVeagh

## PHILIPPINES

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### Walter Abela Jr

Deloitte

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### Carlos Baniqued

Baniqued Layug & Bello

### Terence Conrad Bello

Baniqued Layug & Bello

### Mario Rosario Bernardo

Salvador Llanillo & Bernardo

### Ronald Bernas

Quisumbing Torres

### Dennis Dimagiba

Quisumbing Torres

### Benedicta Du-Baladad

Du-Baladad & Associates

### Mark Gorriceta

Gorriceta Africa Cauton & Saavedra

## Philippines

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### Fidela Isip-Reyes

SyCip Gorres Velayo & Co - EY

### Fredieric Landicho

Deloitte

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### Richard Lapres

Deloitte

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### Herminigildo Murakami

KPMG

### Carlo Navarro

Deloitte

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### Cirilo Noel

SyCip Gorres Velayo & Co - EY

### Mary Karen Quizon-Sakkam

KPMG

### Vincent Paul Saavedra

Gorriceta Africa Cauton & Saavedra

### Wilfredo Villanueva

SyCip Gorres Velayo & Co - EY

## SINGAPORE

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### Sunit Chhabra

Allen & Gledhill

### Nicole Fung

PwC

### Daniel Ho

Deloitte

See page 90

### Peter Le Huray

PwC

### Lee Tiong Heng

Deloitte

See page 90

### Leung Yew Kwong

KPMG

### Eugene Lim

Taxise Asia

### Low Hwee Chua

Deloitte

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### Mak Oi Leng

KPMG

## Singapore

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### Ong Ken Loon

Drew & Napier

### Dawn Quek

Baker McKenzie Wong & Leow

### Vikna Rajah

Rajah & Tann

### Shantini Ramachandra

Deloitte

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### See Jee Chang

Deloitte

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### Sim Siew Moon

EY

### Geoffrey Soh

KPMG

### Allen Tan

Baker McKenzie Wong & Leow

### Peter Tan

Rajah & Tann

### Tan Kay Kheng

WongPartnership

### Michael Velten

Deloitte

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## SOUTH KOREA

## Henry An

**Languages:** English/Korean

### Biography

Henry An is a Senior Partner at Samil PricewaterhouseCoopers (“Samil PwC”), the Korean member firm of PricewaterhouseCoopers, and currently serves as Strategy Leader and Inbound Leader. Henry has over 25 years of experience in the U.S. and Korea and specializes in providing advice on complex business and tax issues.

### Recent matter highlights

- Selected for inclusion in Legal Media Group’s Guide to the World’s Leading Tax Advisers and Guide to the World’s Leading Transfer Pricing Advisers every year since 2004.
- Selected for inclusion in the Legal Media Group’s Best of the Best in the area of transfer pricing (in 2011, 2013, 2014, 2016, 2018 and 2020).
- Served as an external adviser to Korea’s National Tax Service, Korea Customs Service, Ministry of Strategy and Finance, Office of the Prime Minister and President’s Transition Committee.



Partner

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### Practice areas

Restructuring, APAs, Audit Defence, Dispute Resolution, MAPs/ADRs

### Sector specialisations

Consumer Goods and Services, Financial Services, Food and Beverage, Pharma and Life Sciences

### Association memberships

Chief Compliance Officer and Co-Chair of the Taxation Committee of the American Chamber of Commerce in Korea.

### Academic qualifications

- Received a Bachelor of Economics degree from the Wharton School of Business at the University of Pennsylvania.
- MBA from the Kellogg School of Management at Northwestern University

South Korea

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Henry An

Samil PwC

See page 123

Kyu-Bum Cho

Deloitte Anjin

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Jeong Wook Choi

Samjong KPMG

Sunyoung Kim

Deloitte Anjin

Min Yong Kwon

EY

Kwon Jee Won

Deloitte Anjin

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Nam Hyuk Park

Deloitte Anjin

Michael Quigley

Kim & Chang

Seong Kwon Song

Deloitte Anjin

See page 90

SRI LANKA

---

Suresh Perera

KPMG

## TAIWAN

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**Robert Chen**

Deloitte

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**Thomas Chen**

Deloitte

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**Sophie Chou**

EY

**Albert Gau**

KPMG

**Kevin Lai**

Deloitte

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**Dennis Lee**

Baker McKenzie

**Susan Lee**

Deloitte

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**Robin Lin**

Deloitte

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**Ye-Hsin Lin**

Deloitte

See page 91

**Josephine Peng**

Lee & Li

**Michael Wong**

Baker McKenzie

**Glendy Yuan**

Deloitte

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## THAILAND

---

### Chinawat Assavapokee

Kudun & Partners

### Ruth Chaowanagawi

EY

### Korneeka Koonachoak

Deloitte

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### Wynn Pakdeejit

Baker McKenzie

### Panya Sittisakonsin

Baker McKenzie

### Wanna Suteerapornchai

Deloitte

See page 91

### Aek Tantisattamo

Baker McKenzie

### Kitipong Urapeepatanapong

Baker McKenzie

### Suvarn Valaisathien

Dr Suvarn Law Offices

### Suksawat Watewai

Baker McKenzie



## VIETNAM

## Huong Vu

Huong Vu is a Partner in Tax & Advisory Services, overseeing Japanese business services and Korean business services. She is also the General Director of EY Consulting Vietnam Joint Stock Company (EY Consulting VN).

With over 25 years of experience in tax and regulatory consulting and as the current leader of Tax group of Vietnam Business Forum (VBF), Huong has particularly deep understanding of the Vietnamese legal system governing tax and investment and uses this knowledge in different working groups to offer insights to regulators and policymakers, comment on taxation regulations, and promote transparency in the Vietnamese tax system and financial environment.

She has extensive experience assisting clients in tax controversy and tax litigation support. Her specific areas of specialisation also include assisting clients in Tax due diligences and international tax structuring advices for cross border transactions in areas such as tax effective acquisition, transfer pricing planning, reorganizations, M&A, etc.

Huong leads a team of experienced and multi-disciplinary professionals in servicing clients, focusing on foreign invested companies. She is engaged in inbound investment including market entry, exit, business expansion, tax incentives negotiation with the government to achieve favorable outcomes for clients; supporting clients with Tax compliance and advisory on corporate income tax, VAT, foreign contractor tax, import – export taxes; and advising Human capital services, especially expatriate tax services for Vietnam encompassing global mobility compliance, tax planning and cross border advisory for a broad base of foreign companies doing business in Vietnam.

Huong is a member of Certified Practising Accountant (CPA) Australia, a member of Standing Committee of Vietnam Tax Consultants' Association (VTCA) and Deputy Director of Vietnam CFO Club. She is also a lecturer in the Association of Chartered Certified Accountants (ACCA) Tax courses, a frequent keynote speaker on Tax issues at Vietnam Business Forum and various seminars as well as a valued author of several influential publications of the prestigious media organizations in Vietnam.



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**Vietnam**

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See page 91

**Tuan Bui**

Deloitte

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**Frederick Burke**

Baker McKenzie

**Richard Irwin**

PwC

**Tram Le Bao**

PwC

**Christopher Marjoram**

PwC

**Thanh Vinh Nguyen**

Baker McKenzie

**Nguyen Huong Giang**

PwC

**Nguyen Huu Phuoc**

Phuoc & Associates

**Phan Vũ Hoàng**

Deloitte

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**Jack Sheehan**

DFDL

**Huong Vu**

EY

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# Europe, Middle East & Africa



## EMEA

Tax authorities continue to innovate, not only opening more enquiries, but also exploring new types of data-led tax audits. As such, multinational organizations continue to spend more time and resources managing tax controversies in both their local and foreign jurisdictions, with a view to both the financial and reputational aspects of a tax dispute.

Tax authorities are sharing information about companies and focusing increasingly not just on the technical merit of a tax position but also on implementation. Research suggests that the average length of a tax audit has risen in recent years. As a result of these trends, organizations and tax authorities are increasingly taking disputes to court and the past 12 months have seen a number of significant judgements across the region.

Deloitte's tax controversy teams include former tax authority officials, tax specialists, alternative dispute resolution specialists, and in many countries, tax litigation specialists who can assist multinational businesses at all phases of the tax controversy cycle.

In the EMEA region, a strong network has been created that is ready to assist multinational enterprises navigate the various procedures and provide strategic guidance in addition to detailed legal analysis. Deloitte controversy specialists assist clients proactively across pre-dispute, dispute and litigation matters.

### Our key service offerings include:

- Pre-controversy audit readiness and data examination
- Voluntary disclosures
- Negotiated settlements
- Litigation, appeals, and settlement
- Transfer pricing
- Tax controversy software tools and support
- Corporate defense

### Recent wins:

- Corporate defense for a large multinational in the consumer sector against alleged failure to comply with supervisory duties regarding its tax function. The underlying allegations evolved during tax field audits. The defense required combined tax and legal expertise and resulted in settlements in favor of the taxpayers.
- Represented a major media company in a VAT hearing on the VAT rating for electronic newspapers. The win for the taxpayer could have far-reaching effects on the VAT treatment of a range of digital newspapers and other digital publications, benefiting publishers of all sizes.

- Successfully represented a corporate group in litigation that was heard at all levels of the UK tax courts and was referred to the CJEU, on the fiscal neutrality between virtual and physical slot machines.
- Case in the German Federation Fiscal Court and CJEU involving the interaction of German real estate transfer tax law and European State Aid law.
- Case referred to the CJEU regarding German dividend withholding tax and violation of EU fundamental freedoms.
- A landmark win in the Dutch courts that reintroduced the rights of Dutch taxpayers to appeal against any decision relating to the actual or envisaged exchange of information by the Dutch tax authorities.
- Assisting an industry leading Multinational company manage a Transfer Pricing Revenue Audit including the preparation for the Tax Appeal Commission by virtue of the raising of amended assessments by the Irish Tax authorities.
- Assisting a client in the aircraft leasing industry defend its VAT recoverability position arising from the supply of loans in a case that will have widespread significance for the industry.
- Acted for a number of large corporates in the UK's High Risk Corporate Programme.

### **Awards and recognition:**

#### **2020 ITR European Tax Awards:**

Deloitte in EMEA won 21 awards, including regional awards: Tax Firm of the Year and Compliance & Reporting Firm of the Year for the fourth consecutive year and Tax Innovator Firm of the Year.

National Tax Firms of the Year: Austria, Central and Eastern Europe, Cyprus, Luxembourg, Malta, Norway, Russia, Switzerland and Ukraine

National Transfer Pricing Firms of the Year: Austria, Baltics, Belgium, Denmark, Portugal, Spain and Switzerland

**2020 Euromoney World Tax Guide:** Deloitte's Tax practices in the region were ranked tier 1 in 27 jurisdictions and tier 2 in 15 jurisdictions.

**2020 ITR World Transfer Pricing Guide:** Deloitte's Transfer Pricing practices in EMEA were ranked tier 1 in 28 jurisdictions.

**2020 ITR Leader Guides:** A total of 270 leaders from Deloitte were listed in the Indirect Tax, Tax Controversy and Women in Tax Leaders guides, respectively.

**2020 Euromoney Tax Advisers Guide:** 84 Tax practitioners from different countries in the region were recognized by the Tax Experts Guide.

**2019 Euromoney Transfer Pricing Advisers Guide:** 58 Transfer Pricing specialists from different countries in the region were recognized by the Transfer Pricing Experts Guide.

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## INTERVIEW

## EMEA

## Regional interview



**Matt Batham**  
Deloitte UK

**What is the most significant development in your region/jurisdiction's tax practice in the past 12 months?**

In Deloitte UK we have always had a tax-led controversy practice, but we've more recently started building a substantial legal practice that strengthens our already-broad tax controversy offering. This mirrors the existing capabilities in other member firms in the EMEA region. The past 12 months have seen a number of landmark cases, both in the UK and across the EMEA region, proving that clients increasingly need advisers who can provide an end-to-end service across the lifecycle of a dispute.

In the market, we've seen tax authorities continue to debate information sharing and anti-arbitrage measures, including DAC6, and consult on proposals to increase their data base further, e.g. the UK government consultation that will require large corporates to self-declare uncertain tax positions adopted in their accounts.

**How do you anticipate that change impacting your work and the market moving forwards?**

The complexity involved in handling disputes and reaching a successful conclusion has underlined the need for specialist support. The market is looking for support from experienced professionals who can add value to an organization's in-house teams. We've pulled together Deloitte Tax Controversy as an integrated, end-to-end offering that provides a full controversy service to our personal and business clients in everything from voluntary disclosures and pre-dispute negotiations to resolving complex disputes up-to-and-including litigation.

We are leading more and more with technology. Given our broader business outside of tax we have great capabilities to assist with data retrieval and analysis. This is something that we

## Interview

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are doing more and more for our clients, which feeds into the end-to-end service and enables us to help our clients respond to some of the mammoth information requests which they receive.

### **What impact do you see the COVID-19 pandemic having on your work directly and on the wider tax environment, in both the short and long term?**

That's a big question. There are a number of areas where we could see updates, including the multilateral instrument, diverted profits and digital profits taxes, DAC6 and government responses to tax collection in a post-COVID economy. The most predictable trend is the continued move of tax authorities taking a more comprehensively aggressive approach.

### **Given the likely long-term implications of COVID-19 on things like remote working and digital retail, how do you see tax technology developing to accommodate this new reality and where do you think the next area of focus might be?**

Tax technology is already an item on most revenue authorities' radars, whether it is the e-audits that the Irish Revenue are already running, the introduction of pre-populated returns in Spain or the move towards Making Tax Digital in the UK. It will be interesting to see whether COVID-19 encourages governments to accelerate these programmes, or whether budget cuts delay the introduction of further tax technology.

### **What are the potential outcomes that might occur if those changes are implemented?**

The global reaction to the previous financial crisis of 2008 – 2010, which included a heightened media debate around responsible taxation and the transparency agenda, suggests that we could be in for significant change in the years to come.

The industry will need to adapt through the delivery of a more proactive and multi-disciplinary approach to assisting clients. It will become imperative that tax controversy professionals work more closely with advisory professionals such that we will see greater crossover between the two sets of professionals. That is, advisory professionals becoming more alive to issues of potential complication and challenge in future, and tax controversy professionals more attuned to practical solutions and best-practice steps to allow clients to proceed on transactions and business opportunities.

### **Do you think that change will have a positive effect on both your practice and the wider regional/jurisdictional market?**

A renewed debate around tax transparency is likely to lead to a higher level of tax audits and a greater need for specialist support in order to navigate the new expectations governing those audits. To that extent, it could be said that this is positive news for a tax controversy business, but of course our goal is that clients receive only the appropriate levels of enquiries and so I have mixed feelings about this likely trend.



## Interview

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### **What have been the biggest developments in tax technology and where do you think the next area of focus might be?**

As discussed above, this is already a key area of focus for tax authorities and for tax professionals such as us, that already use edata review services. The next big change would be from tax authorities using technology to analyse data to technology “using” the data, e.g. predict tax yields, select enquiries more efficiently or even pre-populate returns.

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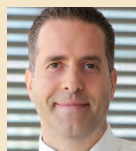
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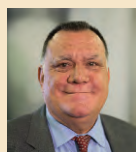
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## Gerald Schachner

**Languages:** German, English

### Biography

Gerald is head of the bpv Huegel's tax practice group. His practice focuses on domestic and international corporate tax law, tax planning, structuring of (cross border) reorganisations and M&A transactions, tax audits as well as tax litigations including fiscal criminal proceedings and obtaining of rulings. He is dual-qualified as lawyer and tax advisor.

Gerald studied at the Karl-Franzens-University Graz and ESADE Barcelona. After working for Arthur Andersen and Deloitte, he passed the tax advisor examination. He has been with bpv Huegel since 2010. Prior to that, he worked for several years for renowned austrian law firms and in the London office of a major international law firm.



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### Selected representations

Gerald Schachner advises domestic corporations and multinationals, banks, private equity-funds on transactions, tax structuring including obtaining of advance rulings as well as high net-worth individuals and trusts. A special focus is on internal investigations, voluntary self-disclosures and the representation in tax audits as well as tax litigations.

### Recent matter highlights

- Representation of several groups of companies in tax litigations (including fiscal criminal law) relating to debt push down structures, goodwill deprecation within tax groups, abuse of civil law, offshore payments, IP transfer and royalty payments and reorganisations.
- Information service provider (private equity group) on an internal investigation in tax law and financial criminal law matters
- International logistic group on a multiple (cross-border) reorganisation including the obtaining of advance rulings and implementation under company law
- Group of investors resident in different EC member states and third countries on the implementation of a double-HoldCo-structure and tax neutral transfer of shares
- Tax-neutral separation of a family-owned group of companies

### Practice areas

Transactions, M&A, corporate taxes, audit defence, audit support, dispute resolution, litigation, tax consulting, international tax advisory

### Association memberships

Tax & Legal Excellence – Head of Lounge Vienna; IFA; IBA; Austrian Bar Association; Chamber of Public Accountants and Tax Advisors.

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## BELGIUM

# A few noteworthy takeaways from the Belgian direct tax controversy environment

PwC Legal senior counsel Véronique De Brabanter and PwC transfer pricing tax director Bram Markey remark on some of the latest developments in Belgian tax audits and case law.



**Véronique De Brabanter,**  
PwC Legal and **Bram Markey,**  
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A number of recent developments in the international tax world are clearly finding their way into the Belgian tax investigation practice. We have observed a significant increase in domestic and multilateral tax audits, including field inspectors increasingly having recourse to means of international exchange of information and anti-abuse legislation to build their claims. On top of the annual wave of transfer pricing investigations, Belgian tax audits focus more and more on passive income flows (dividend, interest and royalty), beneficial ownership issues and alleged tax abuse through the involvement of intermediary entities. Entities that have significant carry-forward tax losses or high debt leverage are also facing a lot of scrutiny in Belgium.

In this article, we will go into some of these developments observed by us as part of tax audits and case law.

## Application of anti-abuse rules in Belgian tax audits

A number of anti-avoidance provisions have been introduced over the last years, such as the anti-abuse rules of the EU Parent-Subsidiary Directive 2003/49/EU and the EU Anti-Tax Avoidance Directive 2016/1164/EU (ATAD). Those anti-abuse rules have been implemented into Belgian domestic provisions related to the dividends-received deduction (also referred to as participation exemption), withholding tax exemptions, interest deductions, etc.

The general anti-tax avoidance provision of the ATAD (ATAD GAAR) has not been implemented in Belgium since, according to the Belgian Minister of Finance, the existing domestic general anti-abuse rule (domestic GAAR) is sufficient to guarantee the result envisaged by the ATAD. Legal scholars have nevertheless pointed to the more limited scope of the domestic GAAR versus the ATAD GAAR.

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The application of the domestic GAAR by the Belgian tax authorities is gaining in frequency, even though it has yielded only limited success in Belgian case law so far. Certain Belgian Courts defend a very strict interpretation of the domestic GAAR, requiring the tax authorities to demonstrate that the taxpayer's legal acts have frustrated the objectives of a tax provision, taking into account the legislator's intention upon such provision's entry into force. It is therefore important to monitor how the ATAD GAAR and the case law of the Court of Justice of the European Union (ECJ) in this respect will influence the debate on a national level going forward.

With respect to the application of a specific anti-abuse rule regarding the Belgian notional interest deduction (NID) regime, a milestone case was recently decided in favour of the taxpayer. The Belgian tax authorities challenged the NID applied by a Belgian company on the basis of specific anti-abuse rules (SAAR), disallowing a set-off of income derived from "abnormal or gratuitous advantages" received from a group company against specific tax attributes, among which was the NID. The tax authorities argued that the company was artificially interposed with the sole purpose to benefit from the NID tax regime. Using a factual analysis of the transactions conducted by the company, the Court of Appeal of Antwerp concluded that there was no sufficient proof of tax abuse and that the conditions to apply the NID were fulfilled. The appeal of the tax authorities was granted by the Belgian Supreme Court that ruled principally that any interpretation of the SAAR should consider the broader economic context. In a judgment of June 16, 2020, the Court of Ghent (when re-examining the case) ruled in favour of the taxpayer, considering there was no abuse due to the presence of other (economic/business) drivers warranting the interposition of the company. The argument of the tax authorities (among other things) that the company managed only one loan and immediately transferred the income were set aside as the intervention in the financing of the acquisition could be substantiated on the basis of economic objectives and the interest was not received in abnormal circumstances (as the group was already present in Belgium with financing activities and had the necessary knowhow and personnel; the interest payment and other conditions were at arm's length; etc.). On the other hand, the transactions in this case law date from 2012, so it will be interesting to see how similar structures would hold up in courts in light of the updated OECD transfer pricing guidelines, the viral spread of newer anti-abuse rules, interest limitation rules, etc.

### Beneficial ownership challenges

The ECJ issued important judgments in the so-called "Danish cases" on February 26, 2019 relating to (among other things) questions whether non-residents deriving dividend and interest income originating from profits of Danish companies through EU intermediate companies are entitled to the withholding tax exemptions provided for in the EU Parent Subsidiary Directive 2003/49/EU (cases C-115/16, C-118/16, C-119/16 and C-229/16) on the one hand, and in the EU Interest Royalty Directive 2011/96 (cases C-116/16 and C-117/16) on the other. In these cases, the ECJ took a broad approach to the beneficial ownership concept and mentioned lack of beneficial ownership as an indicator of tax abuse.

Whereas in a Belgian withholding tax context, a strictly legal approach to the concept of 'beneficiary' has traditionally been adopted, even by the Minister of Finance and the tax

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authorities, recent comments made in legal doctrine by certain officials of the Belgian tax authorities on the Danish cases and our practical experience leave no doubt that a shift towards an economic approach is to be expected.

The judgments rendered by the ECJ are being fiercely criticised in doctrine and give rise to divergent opinions regarding their scope and interpretation, leading to remaining legal uncertainty for taxpayers. Ultimately, further clarification by the ECJ will be required.

The Belgian tax authorities are clearly inspired by these developments as we have seen a recent increase in tax audits focusing on passive income streams, with the Belgian tax authorities trying to deny withholding tax benefits claimed by taxpayers. Also, other cross-border topics such as anti-hybrid and CFC rules and the arm's length nature of transactions come up in these audits. The Belgian tax authorities are building up expertise in these areas with specialised and dedicated inspection teams focusing on these topics. The amounts at stake are often very material. Multinational groups should be prepared to defend the compliance of their tax positions even where it concerns structures that are non-abusive in nature and which are commonly applied.

### Exchange of information

As part of the tax audits, mechanisms for international exchange of information between tax authorities are used to obtain data on foreign enterprises of multinational groups to support the claims. Administrative cooperation between Belgian and foreign authorities is increasingly happening nowadays, particularly where it concerns transfer pricing or international tax disputes.

Within a European context, the Directive on Administrative Cooperation (Directive 2011/16/EU) (so-called "DAC") has been amended six times since its adoption on February 15, 2011, with a view to enhancing tax transparency. DAC6 introduced mandatory reporting requirements in the EU for intermediaries involved in aggressive cross-border tax planning arrangements. On July 15, 2020, a (seventh) amendment was proposed (DAC7) by the EU Commission, extending the tax transparency rules to digital platforms. The proposal also contains certain provisions on exchange of information and strengthens the legal framework for multilateral audits. If adopted, the new amendment should be transposed into the domestic legislation of the Member States by December 31, 2021 and apply as from January 1, 2022.

DAC7 will be another catalyst in international cooperation, relieving Belgian tax authorities of a considerable amount of red tape in requesting information from other EU countries. Under the proposal, the requesting authorities are for example no longer required to motivate the foreseeable relevance of the requested information, if this request is sent as a follow-up to an automatically exchanged cross-border ruling or advance pricing agreement.

### Statute of limitations in direct tax

As it is the case in many other jurisdictions, exchange of information has an impact on the statute of limitations applicable under the Belgian domestic legislation for conducting investigations and for assessing additional taxes. This needs to be monitored very carefully by taxpayers as it is often overlooked. If a foreign tax authority requests information from the Belgian tax authorities and the latter have to exercise their investigation powers in order to

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obtain the requested information, an investigation period of seven years applies, even if the standard investigation and assessment period is three years.

When receiving such information, whether it is exchanged automatically or spontaneously or at request, the Belgian tax authorities are entitled to investigate and assess taxes during a period of 24 months as from the receipt of this information. This investigation or assessment can relate to a period of five assessment years (seven assessment years in the case of fraud) preceding the year in which the authorities received the information. This exceptional investigation and assessment period also applies, notwithstanding the standard three-year investigation and assessment period.

If the case relates to withholding taxes, yet another exceptional provision regarding the statute of limitations applies. In this respect the date when the tax authorities establish an infringement of the Income Tax Code determines the start of a 12-month investigation period. This investigation can cover a period of five years preceding the year in which the infringement was established.

Finally, where the use of carry-forward tax losses is involved, both the Supreme Court and the Constitutional Court confirmed that the Belgian tax authorities can investigate the origin and the amount of carry-forward tax losses during the assessment years in which these losses are set off against taxable income (even if the audit period for the year in which the losses arose already expired).

Taking into account the above, a taxpayer can find themselves in a very complex situation when facing audits combining several exceptional statute of limitations provisions. This requires careful consideration, including mapping and managing information flows, since the Belgian tax authorities do have a tendency to request more information than allowed in view of the statute of limitations.

### **OECD transfer pricing guidelines for financial transactions**

The recent introduction of OECD transfer pricing guidelines for financial transactions significantly ups the threshold for substance and control over risk for both borrowing and lending entities engaging in financial transactions. These principles are embedded in the new transfer pricing circular letter (administrative guidelines) published on February 25, 2020 by the Belgian tax authorities. In audits, we have seen a high focus on the transfer pricing treatment of financial transactions for a number of years already. This is expected to increase even further with the new guidance, particularly given the introduction of new and rather complex interest limitation rules.

Even though Belgian tax authorities loyally adhere to the principles of the OECD transfer pricing guidelines, it is to be seen how these guidelines will be enforced where a dispute would be brought before a national Court. Belgian courts do not always recognise the legally binding value of the OECD transfer pricing guidelines. The Court of Appeal of Antwerp stated this as part of a judgment of March 5, 2019. In that case, the court furthermore ruled that the tax authorities did not meet their burden of proof when adjusting the taxpayer's transfer pricing method. We expect a lot more cases to be challenged in court on grounds of an insufficiently met burden of proof on the part of the tax authorities. The fact that tax authorities are increasingly trying to reverse the burden of proof or having recourse to GAAR and SAAR in Belgian tax investigations will be a trigger for court proceedings.

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### Multilateral audits

Experience has taught us that the Belgian tax authorities are also increasingly initiating multilateral tax audits themselves, in order to cooperate with foreign tax authorities on transfer pricing and other international tax matters. Exchange of information often entails an extension of traditional investigation and assessment periods, as mentioned above. In practice, managing international exchange of information and enquiries from multiple tax authorities at the same time is very complex and time-consuming for taxpayers.

Stimulated by the EU Fiscalis programme, and by the OECD's Forum on Tax Administrations platform, coordinated audits between tax authorities of two or more countries have significantly increased. When asked, Belgium is typically participating in a multilateral audit. This cooperation in practice mostly takes the form of the presence of officials during an investigation on another territory or simultaneous controls. Such simultaneous controls (i.e. when two or more tax authorities agree to conduct simultaneous and independent, each on their own territory, audits of the tax situation of taxpayers in which they have a common or related interest) can be very burdensome for taxpayers in terms of administrative follow-up and resources. Very often, such controls lead to double or multiple taxation, as the tax authorities participating in such simultaneous controls are not obliged to reach a joint conclusion. Taxpayers often need to resort to Mutual Agreement Procedures (MAP) under multiple double tax treaties to resolve double taxation arising from multilateral audits.

Under Belgian domestic legislation, it is not currently possible for foreign tax officials who are present during investigations performed on Belgian territory to actively participate. It is even explicitly prohibited for foreign officials to interview people and to examine documents while on Belgian territory. However, in a limited number of cases, the Belgian tax authorities participated in joint audits and requested the upfront agreement of the taxpayer to allow a more-or-less active presence of foreign officials during investigations. This lacks legal certainty for the taxpayer, as well as for the participating authorities, but can be beneficial in terms of managing information and communication with multiple tax authorities.

The new EU DAC7 proposal provides for a stricter legal framework for joint audits. Joint audits are defined as administrative inquiries conducted jointly by the authorities of two or more EU Member States who proceed in a pre-agreed and coordinated manner, acting as one audit team. If adopted, not only can the authority of an EU Member State can request to conduct a joint audit, but also the taxpayer themselves can request the authorities to carry out a joint audit. Seeking to reduce the administrative burden and to mitigate the risk of double or multiple taxation, the taxpayer can indeed have an interest to ask for a joint audit. In this respect, the DAC7 proposal contains an obligation for the participating authorities to agree on the facts and circumstances of the case, and to lay down their conclusion of the joint in a final report.

Moreover, the new DAC7 proposal urges all Member States to provide for a legal framework that allows them to perform corresponding adjustments. As such, cross-border cooperation between tax authorities is expected to continue to surge and will become part of the new normal with regard to Belgian tax audits.

### Conclusion

Multinational groups should be prepared to defend the compliance of their tax positions, even where it concerns structures that are non-abusive in nature and that are commonly

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applied. There is a notable surge of Belgian tax audits focusing on anti-tax abuse rules, transfer pricing, beneficial ownership and other international tax matters. Due to recent developments in terms of transparency and administrative cooperation, taxpayers will need to deal more frequently with multilateral tax audits and exchange of information, as this is becoming the new normal as part of Belgian tax audits on international tax and transfer pricing matters.

In order to get upfront certainty and help prevent disputes, taxpayers can consider applying for advance tax rulings on these topics with the Belgian Rulings Office. Where it concerns transfer pricing, they can also consider bilateral or multilateral advance pricing agreements.

The timing of these Belgian tax audits is challenging, as many companies are in the middle of recovery (both financially and structurally) from the COVID-19 pandemic and are bracing themselves for difficult economic conditions. Intensive tax audits may result in a need to reshuffle already scarce resources. Taxpayers need to be vigilant in light of these developments.

Reviewing the compliance and sustainability of the tax and legal models upfront and carefully considering future transactions may help taxpayers avoid additional unpleasant cash surprises following any audits.



## BELGIUM

## Véronique De Brabanter

**Languages:** Dutch, French, English

**Bar admissions:** Member of the Brussels Bar

### Biography

Véronique's practice focuses on dispute resolution and litigation related to all types of taxes. With more than 24 years' experience as a lawyer at the Brussels bar, Véronique advises both Belgian and international clients on procedural matters and in handling both administrative and Court proceedings (such as complex transfer pricing disputes cases). She is a guest lecturer at Ghent University.



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### Recent matter highlights

- Assisted clients in the context of domestic as well as multilateral tax audits
- Provided assistance in aggressive tax audits (dawn raids where tax authorities proceed to data dumps and use forensic tools) and negotiated settlements with the tax authorities
- Handled administrative disputes (domestic procedures as well as MAP's) and litigation cases (in local Courts as well as Constitutional Court and Supreme Court) related to all kinds of tax matters (direct taxes, indirect taxes, local taxes, ...)
- Carried out risk analyses and helped clients with voluntary disclosures

### Practice areas

Audit defence, controversy management, dispute resolution, pre-litigation, litigation

### Sector specialisations

Automotive, consumer goods and services, food and beverage, gaming, media, pharma and life sciences

### Association memberships

Member of IFA and Belgian Association of Tax Lawyers

### Academic qualifications

Master Degree in Accounting and Taxes, Vlerick Management School (Ghent), 1992-1993  
Law degree, University of Leuven, 1987-1992

## Belgium

### Bram Markey

**Languages:** Dutch, English, French

#### Biography

Bram Markey is a Tax Director and leads PwC's Tax Controversy Management practice in Belgium.

He advises Belgian and foreign headquartered groups on transfer pricing and international tax matters in an increasingly sensitive, transparent and complex tax environment. Bram looks at the sustainability of tax strategies given the viral spread of anti-tax avoidance rules, BEPS measures and proliferation of unilateral legislation.

Bram has solid credentials in finding solutions for tax controversy issues at all stages of the dispute lifecycle. He has developed significant expertise and insights on how to deal with multilateral tax audits and international exchange of information in practice. He successfully completed several milestone multilateral tax audit cases in Belgium and other EU countries.

Bram has captive working relationships with all bodies of the tax administration (field inspectors, central services, APA commissioners, competent authorities, etc) in view of efficient dispute prevention and resolution. This includes negotiating unilateral and bilateral APAs, tax audit settlements, administrative appeals as well as assistance with mutual agreement procedures and procedures under the EU Arbitration Convention. His mindset is always to find solutions in your interest as early as possible whilst at the same time safeguarding fundamental taxpayer (defense) rights.

Bram co-authored various articles and publications and is a guest lecturer at the Fiscale Hogeschool in Brussels and the University of Ghent.

PwC's dedicated Tax Controversy Management practice is a multidisciplinary team that investigates transactions and potential issues in a holistic way. The team applies technology-enabled risk screenings and data analytics to prevent or help resolve tax controversies. There are experts that assist with the development and implementation of tax control frameworks. The cooperation with the tax litigation team at PwC Legal ensures that your rights are respected and that court proceedings can be pursued when needed.

#### Practice areas

APAs, audit defence, MAPs/ADRs, controversy management, transfer pricing.

#### Sector specialisations

consumer goods, food and beverage, industrials, pharma and life sciences.

#### Association memberships

Member of the International Fiscal Association (IFA)



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## Antoine Glaize

**Languages:** French, English

**Bar admissions:** France

### Biography

Antoine has extensive experience of 20-plus years on all issues pertaining to transfer pricing:

Management of an array of projects including transfer pricing strategy design and structuring, general documentation, effective tax rate management, strategic management of intangibles; Corporation reorganisation, structuring.

### Practice areas

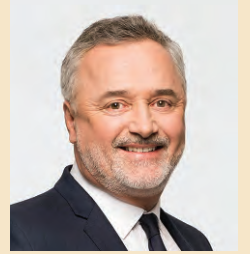
IP management, technology services, corporate taxes, litigation, tax consulting, international tax advisory, transfer pricing

### Sector specialisations

Accounting, agriculture, automotive, aviation, banking, construction and materials, consumer goods and services, energy, financial services, food and beverage, government and public policy, healthcare, industrials, insurance, investment management, media, mining, natural resources, oil and gas, pharma and life sciences, real estate, social infrastructure, tech and telecoms, tourism, transport, utilities

### Academic qualifications

- Engineer in “economy, engineering and urban management”
- National School of Administration (ENA, 1991)



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## GERMANY

## Yves Hervé

**Languages:** German, French, English

### Biography

Dr. Yves Hervé is a Managing Director in NERA's Global Transfer Pricing Practice and is operating in NERA's Frankfurt office. Dr. Hervé has been a fully dedicated TP professional since 1999. Prior to joining NERA, he was a Transfer Pricing Partner at KPMG and the German Tax Leader of the global Value Chain & Digital Transformation practise at PwC.



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### Recent matter highlights

- Transfer pricing analysis in German tax litigation case in the tobacco industry
- IP valuation and damage claim computation in commercial litigation case in the pharmaceutical company
- TP advisor of global aviation manufacturer on the development of their future digital business models
- Lead TP advisor for a leading US Digital Tech Company for their BEPS related European TP restructuring
- Lead TP advisor for the Specialty Chemicals Division of a German DAX 30 Company, conduct of a global TP restructuring, related TP documentation and Dispute Resolution strategy

### Practice areas

Business model optimization, cost-sharing arrangements, dispute resolution, EU state aid, transfer pricing

### Sector expertise

Automotive, consumer goods and services, healthcare, industrials, tech and telecoms

### Association memberships

- IFA

### Academic qualifications

- M.Sc. in Economics from the University of Bonn, Germany, 1993
- M.A. in European Studies, College of Europe in Bruges, Belgium
- PhD in Economics from the University of Saarbrücken, Germany

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# The mainly substantive nature of tax litigation according to Greek law of administrative court procedure



**Georgios I. Katrinakis**  
PwC Greece

In the Greek legal order tax litigation is a subcategory of the so-called ‘administrative litigation’. This is because one of the litigant parties is an administrative (tax) authority that serves the public interest and exercises sovereign powers in connection with the application and enforcement of tax legislation – such as the conduct of tax audits, the assessment of taxes, the imposition of administrative sanctions and the collection of public revenues through the issuance of administrative acts that directly affect the legal and financial situation of the taxpayers concerned. The administrative acts issued by the tax authorities are presumed valid and are, by default, wholly or partially enforceable on taxpayers unless they get annulled or suspended either by a competent administrative authority or by the competent independent administrative courts.

Tax disputes are traditionally considered substantive in nature. Substance means different things in different contexts. In the realm of the Greek law of administrative court procedure, which is relevant to tax disputes, substance relates to the scope of judicial review of the acts issued by the tax authorities. A substantive tax dispute is a dispute that, due to its nature (i.e. directly affecting a specified taxpayer by assessing a specified amount of taxable base or tax liability, or imposing a sanction for breach of tax laws, or rejecting a tax refund application, or imposing an obligation to file tax returns for a specified taxable base), triggers a full-scope judicial review of both points of law and matters of fact (with the exception of a potential final-instance cassation recourse to the Greek Supreme Administrative Court, which triggers a limited judicial review of points of law only). In the context of a substantive tax dispute the court is empowered and obliged to examine all points of law and all matters fact raised

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by the litigant parties, and to make its own ultimate determination of both the law and the legally relevant facts of the case at hand.

In the context of substantive tax disputes the court may not annul a disputed administrative act merely because it is based on an inadequate or legally flawed reasoning (other than the lack of any essential elements, which according to the law constitute the minimum formal content of a valid tax assessment act or of the accompanying tax audit report). The court is required to carry out its own examination and to formulate an independent, reasoned and firm conclusion as to whether the legally significant facts exist or not in the specific case, in the light of all formally admissible pieces of evidence submitted to it by the litigant parties and of such additional evidence as the court may request to be submitted to it by virtue of a relevant preliminary judgement. The court is obliged to also conjunctively evaluate all available pieces of evidence, instead of evaluating each piece of evidence separately and independently from the other pieces of evidence, especially in cases of tax fraud and serious bookkeeping infractions where a global assessment of various circumstances is required. The court may rely on common experience in order to draw a conclusion about the existence or not of a specific circumstance based on evidence proving the existence of another circumstance. Finally, the court may allocate the burden of proof among the litigant parties, in which case the litigant party bearing the burden of proof will assume the risk of the court's doubt. Whilst procedurally each litigant party bears the burden of proving the factual arguments it raises, the wording and purpose of the provisions of the tax law, which are applicable in each particular case, play an important role in determining who (the tax authority, the taxpayer or both) will bear the burden of proof, and to what extent.

In exercising its full-scope jurisdiction, the court is empowered to directly and ultimately determine and formulate the substantive content of the tax assessment, and of the taxpayer's right, obligation or situation arising therefrom, and for this purpose it may not only annul, wholly or partially, but also modify the disputed tax assessment act. There are, though, certain limits in the power of the court to determine the applicable laws and to verify facts, which are set by the legal/factual base of the disputed tax assessment act and by the relevant requests and arguments (both legal and factual) raised by the taxpayer in a formally admissible manner before the court. In addition, the factual arguments raised by the taxpayer, in the context of a mandatory pre-court administrative re-examination procedure before a special dispute resolution unit of the tax administration, circumscribe in principle the scope of the judicial review in the case the dispute is subsequently brought to the court.

Tax disputes concerning the formal-registration status of a taxpayer (e.g. tax residence status of an individual) without involving a specified amount of taxable base, tax liability or tax receivable, or the obligation to file tax returns in connection with a specified taxable base, are not considered substantive. In these disputes, an administrative act may be annulled, wholly or partially, by the court on specified grounds, among which are the illegal/inadequate reasoning of the disputed act or the tax authority's mistaken perception about the existence or non-existence of the facts on which the disputed act was based. The elaboration of the aforementioned grounds for annulment heavily relies on facts and evidence. Following the annulment of an administrative act on either of these grounds the file is returned by the court to the tax authority so that the latter re-examines the case and arrives at a new lawfully/adequately



reasoned and well-informed decision, in conformity with the criteria or instructions contained in the court's judgement.

In view of the above, the availability of suitable and formally admissible (i.e. compliant with the Greek rules of procedure) evidence is as important as legal argumentation in determining the outcome of tax litigation, in the context of the mainstream domestic administrative court procedure.

## Greece

### Georgios I Katrinakis

Georgios Katrinakis is a barrister at the Athens Bar Association and he joined PwC Greece in 2014 to lead its tax litigation practice and as a Partner of the PwC network member law firm “M. Psylla – V. Vizas – G. Katrinakis”.

Georgios has more than 20 years of experience in handling complex litigation and ADR in virtually all areas of taxation, including corporate taxation, PE and TP disputes, indirect taxes (VAT, stamp duties, customs and excise duties), individual and wealth taxation, either defending clients against tax and penalty assessments after the conduct of audits or reclaiming the refund of taxes unduly paid. Georgios also assists criminal defense lawyers in cases of alleged criminal tax evasion.

During the first 4 years of his career he has conducted commercial litigation at an Athens-based law firm, specializing in banking and financial law. Subsequently he has served as one of the leading tax litigators in a major Greek law firm for 11 years before joining PwC Greece. Georgios has represented over the years a multitude of multinational and Greek companies, as well as individual taxpayers before all Greek court instances (including the Greek Supreme Administrative Court) and before the Court of Justice of the European Union.

Georgios is a graduate of the Law School of the Athens National and Kapodistrian University and holds an LL.M. in European & International Law (University of Durham, UK) and PG Certificates in Tax Law and Accounting (Athens University of Economics & Business). He has been a regular author of technical articles on substantive tax and tax / court procedure issues, which have been published with some of the most reputable tax and business law reviews in Greece. He speaks Greek (native), English and French.



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## Greece

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### Effie Adamidou

KPMG

### Tassos Anastassiadis

Platis - Anastassiadis & Associates Law Partnership

### Georgios Katrinakis

PwC

See page 168

### Spyros Maratos

Zepos & Yannopoulos

### Spyros Oikonomidis

Oikonomidis - Kontos Law Firm

### Eftichia Piligou

Deloitte

See page 138

### Andreas Tsourouflis

Tsourouflis & Associates

## HUNGARY

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### Ákos Becher

DLA Piper Posztl Nemescsói Györfi Tóth & Partners Law Firm

### Balázs Békés

BékésPartners

### Michael Glover

Taxually

### Mihály Harcos

Deloitte

See page 138

### Zsuzsanna Huszl

Deloitte

See page 138

### Pál Jalsovszky

Jalsovszky Law Firm

### Barbara Koncz

PwC

### Tamás Lőcsei

PwC

### Kovács Orsolya

Nagy & Trócsányi

### Botond Rencz

EY

### Gergely Riszter

Hegymegi-Barakonyi és Társa Ügyvédi Iroda

## Hungary

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### Levente Torma

DLA Piper Posztl Nemescsói Györfi Tóth & Partners Law Firm

### Zoltán Varszegi

Réti Várszegi & Partners Law Firm

## IRELAND

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### Brian Duffy

William Fry

### Joe Duffy

Matheson

### Michael Farrell

KPMG

### Greg Lockhart

Matheson

### Martin Phelan

William Fry

### Gavan Ryle

PwC

### David Smyth

EY

## Ofer Granot

**Languages:** Hebrew, English

**Bar admissions:** Israel (2005)

### Biography

Ofer Granot specialises in tax disputes and tax litigation, in domestic and multijurisdictional matters. Ofer represents clients in tax audits and administrative tax proceedings before the ITA, in tax appeals before Israeli courts and in Mutual Agreement Procedures (Competent Authority). In recent years, Ofer has led complicated Israeli and cross-border tax audits and tax litigations, including of large multinationals, in cases involving, for example, business restructurings, transfer pricing, taxation of digital economy, management and control, and tax treaty matters.

In addition, Ofer has extensive experience in advising on innovation incentives, in particular in the context of the Israeli Innovation Authority (the IIA). Ofer helps large multinationals with establishing and expanding their operations in Israel, and he plays a central role in international M&A, investment, restructuring and joint venture transactions due to the tax and business implications of Israeli incentives laws.



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### Practice areas

Dispute resolution, pre-litigation, MAPs/ADRs, litigation, controversy management

### Association memberships

Member of the Israeli Bar Association, 2005

### Academic qualifications

LL.M., Harvard Law School (LL.M.), 2011

Fulbright Scholarship of the U.S. government, 2011

LL.B. (magna cum laude) and a BA in Economics (magna cum laude), Tel Aviv University, 2004.

## Israel

### Meir Linzen

**Languages:** Hebrew, English

**Bar admissions:** Israel Bar Association, 1982

#### Biography

Meir Linzen is a managing partner and the head of the tax department at HFN. He has more than 40 years of experience in international tax and advising private clients, and is regarded as one of Israel's leading tax experts. Meir specialises in advising high net worth individuals in their domestic and international tax and estate matters. He serves as chairman of the Tax Committee and International Law Committee of the Israeli Bar Association, is a member of STEP (the Society of Trusts and Estates Practitioners), and is former chairman of the Trusts Committee of the Israeli Bar Association.



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#### Recent matter highlights

- Within the framework of the World Bank, the International Monetary Fund, and the Norwegian Government, composed the model for cooperation between Israel and the Palestinian Authority Under the auspices of the Dutch Government and in conjunction with Palestinian, Jordanian, and Israeli colleagues
- Designed the model for a Triangular Tax Treaty
- Represented the Israel Bar Association in reform legislation concerning mergers and spin-offs and in discussions with the Income Tax Authority, and contributed significantly to the process of this reform legislation in the Knesset

#### Practice areas

Personal Tax, Private Clients, Trusts and Estates, International Tax Planning, Corporate Tax

#### Sector specializations

Internet & E-commerce-Gaming, Defence, Aerospace and Homeland Security, Public International Law

#### Association memberships

Chairman the Tax Committee of the Israeli Bar; Chairman of STEP (Society of Trusts and Estates Practitioners) Israel; Chairman of the Scientific Committee of the Israeli branch of International Fiscal Association; President of the International Association of Jewish Lawyers and Jurists; Part of the Executive Council of Tel Aviv University

#### Academic qualifications

LL.B., honours (Tel Aviv University, 1980); PhD honoris causa (Tel Aviv University, 2017)

## Israel

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### Ofer Granot

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### Eran Lempert

Yigal Arnon & Co

### Ofir Levy

Yigal Arnon & Co

### Meir Linzen

Herzog Fox & Neeman

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### Leor Nouman

S Horowitz & Co

### Daniel Paserman

Gornitzky & Co

### Pinhas Rubin

Gornitzky & Co

### Ziv Sharon

Ziv Sharon & Co

### Yaacov Sharvit

Herzog Fox & Neeman

## Vittorio Giordano

During his 16-year career Vittorio Giordano has gained a significant amount of experience in trials before the Italian Supreme Court, the Italian Constitutional Court, the Court of Justice of the European Union and the European Court of Human Rights, where he represented taxpayers in highly complex tax and state aid issues.

Indeed, he is one of the few Italian lawyers admitted to appear before the supreme courts when he was just 35 years old, after having passed the relevant exam with full marks. As an integral part of his practice, Vittorio also provides assistance in the context of tax audits, settlements procedures and administrative rulings, acts as expert in criminal tax cases and regularly advises clients on income taxes, indirect taxes, property taxes, excise duties and tax avoidance, aiming at mitigating the risk of tax disputes arising on their transactions.

Vittorio was born in 1978 and began his career in 2002 with Professor Franco Gallo, former president of the Italian Constitutional Court, and became partner of the homonymous law firm in 2013. After taking part in the opening of the Ludovici Piccone & Partners' Rome office in 2015, Vittorio established his own practice in 2017 together with his long-time colleague Andrea Merolle.

Giordano-Merolle – Studio Legale Tributario is a boutique law firm of 11 professionals deeply specialised in taxation, with offices in Rome and Milan, which provides assistance mainly to banks, insurance companies, MNE and HNWI.

The firm recently advised and represented, inter alia, an Italian Bank for tax topics related to a EUR 4.4 billion securitisation of receivables, a real estate company in a EUR 100 million deemed tax-avoidance trial before the Italian Supreme Court and several e-cigarettes companies in trials before lower tax courts concerning the application of excise duties on consumption and its compatibility with the EU harmonised legislation.



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GIORDANO | MEROLLE  
STUDIO LEGALE TRIBUTARIO



## Italy

## Valentino Guarini

**Languages:** Italian, English

### Biography

Valentino Guarini is Partner at PwC's Tax Controversy & Dispute Resolution Network. He is based in Milan office (Italy).

Valentino has achieved 26 years of experience inside the PwC network dealing with tax controversies. He developed his experience also through a wider range of activities: M&A, Corporate restructurings, Domestic and International tax advising.

Valentino and his team specialized in tax controversy and dispute resolution, handling assistance in the course of tax audits as well as pre-litigation phases (settlements and rulings) and litigations before the Tax Courts.

He's attorney-at-law before Tax Courts and serves a wide range of clients (MNGs) in dealing with tax controversies as well as providing tax advice on both domestic and international tax matters. He serves and advises clients in a variety of sectors with particular focus on consumer and industrial & manufacturing, fashion & luxury and pharmaceutical sectors.

Valentino is member of the International Taxation Commission of the Chartered Tax Consultants Council of Milan. He graduated in Economic and in Law.



Partner

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**PwC TLS**  
Avvocati e Commercialisti

## Italy

### Carlo Romano

**Languages:** Italian – English – Dutch

**Bar admissions:** Rome

#### Biography

Partner of PwC TLS – tax controversy and dispute resolution leader in Italy. He is a tax lawyer with 24 years of experience qualified to argue Supreme Court cases and has a doctorate in International and Comparative Tax Law (PhD cum laude, University of Groningen, Netherlands)

#### Recent matter highlights

- Leading partner for some of the most significant permanent establishments and transfer pricing cases for several multinationals in Italy
- Mutual Agreement Procedures and International Arbitration cases
- Advance Pricing Agreements
- Court's success stories before the Italian Supreme Court and the European Court of Justice



Partner

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#### Practice areas

Policy design, audit defence, audit support, pre-litigation, litigation, transfer pricing.

#### Sector specialisations

Aviation, banking, consumer goods and services, financial services, food and beverage, government and public policy, healthcare, industrials, insurance, oil and gas, and transport.

#### Association memberships

- International Fiscal Association – Board member
- International Bar Association
- IBFD Alumni
- Italian Tax Lawyers' Association – Board member
- Italian Tax Consultants' Association

#### Academic qualifications

- PhD cum laude University of Groningen
- NYU researcher
- LUISS LLM in Tax
- Law Degree at University of Naples

## Italy

# Giuseppe Zizzo

**Languages:** Italian, English

**Bar admissions:** Italian Bar Association (1990), admitted to defend cases before the Court of Cassation (2003)

### Biography

Full professor of tax law at the Università Carlo Cattaneo – LIUC, Professor Giuseppe Zizzo has been registered with the Milan Bar Association since 1990, and on the Special Register of Court of Cassation lawyers since 2003. After many years working with the one of the leading Italian Tax Law Firms, he founded Studio Zizzo e Associati in 2007.

His main focus is providing assistance during tax audits and tax assessment procedures, as well as representing taxpayers in tax controversies before the Tax Courts and the Court of Cassation in a wide range of areas relating to international and domestic tax law.

In 2018 he won the Court of Cassation Barrister of the Year Award at the Top Legal Awards.

He is a member of the editorial board of *Rassegna Tributaria* and of the scientific committee of *Corriere Tributario*.

Since 1986 he has published two books, numerous articles in professional journals and sector magazines, essays in collective works, encyclopaedic entries and case notes mainly on issues dealing with international and domestic corporate tax, company reorganisations and tax avoidance.

### Practice areas

Corporate taxes, Audit defense, Pre-litigation, Dispute resolution, Litigation

### Sector specializations

Banking, Energy, Industrials, Shipping, Transport

### Association memberships

- European Association of Tax Law Professors
- Associazione Nazionale Tributaristi Italiani (member CFE)

### Academic qualifications

- Full Professor of Tax Law, Università Carlo Cattaneo – LIUC, since 2005
- Associate Professor of Tax Law, Università Carlo Cattaneo – LIUC, from 1999 to 2005
- Law Degree (cum laude), University of Palermo



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## Italy

## Marco Cerrato

**Languages:** Italian, English

### Biography

Marco Cerrato has considerable experience in domestic, European and international tax controversies and in tax disputes resolutions through settlements, arbitration and mutual assistance procedures.

With respect to the consultancy practice, his areas of expertise cover the assistance in potential tax controversies and tax penalties, as well as the taxation of trusts, estate tax planning and regularisation procedures.

In 2015 and 2016 he has been a member of the Committee of Experts on Tax and Economic Policy of the Presidency of the Italian Council of Ministries.

He is an author of many publications on tax matters and is a frequent speaker at congresses. Since 2002 he is a lecturer of tax law at the Law faculty of the University Carlo Cattaneo of Castellanza.



Partner

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MAISTO E ASSOCIATI

### Recent matter highlights

- Represented the fashion house Valentino in a tax litigation that was recently concluded at the Supreme court level regarding the value attributed to the trademark in the context of an alleged abusive transaction.
- Represented various major Swiss banks with the Italian Revenue Agency in connection to tax investigations on their alleged Italian source and undeclared income.

### Practice areas

Dispute Resolution, Pre-litigation, MAPs/ADRs, Litigation, Controversy Management

### Association memberships

Admitted to the Bar in 1995 and admitted to the Supreme Court in 2008

### Academic qualifications

LL.M. in Tax at the London School of Economics (1997), PhD in Tax at the University of Pavia (2000)

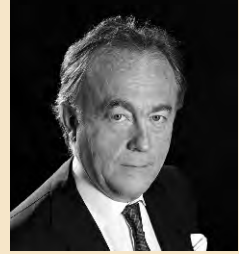
## Italy

# Guglielmo Maisto

**Languages:** Italian, English

## Biography

Guglielmo Maisto founded Maisto e Associati in 1991. He is a Professor of international and comparative tax law at the Università Cattolica di Piacenza. He is Chair of the European Region and Italian Branch of the International Fiscal Association (IFA), member of the Board of Trustees of the International Bureau of Fiscal Documentation (IBFD), member of the Advisory Board of the Master of Advanced Studies in International Taxation of the Lausanne University, member of the Practice Council of New York University (NYU) Law's International Tax Program and member of the Board of the American Chamber of Commerce in Italy. He represents the Italian Association of Industries (Confindustria) at the OECD Business Industry Advisory Committee in Paris. He acted as a consultant to the Ministry for European Community Affairs and was a member of the EU Joint Transfer Pricing Forum. He is a member of several law societies and of the editorial board of various Italian and foreign tax legal journals. He usually participates as a speaker to several annual tax conferences.



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MAISTO E ASSOCIATI

## Recent matter highlights

Prof. Maisto represented a leading company operating in the spirit sector in a successful litigation before the Supreme Court concerning the right of the Dutch holding of the Group to receive the reimbursement of the withholding tax on Italian dividends. He represented a leading bank in a complex litigation related to the attribution of income to its permanent establishment in Italy.

## Practice areas

Dispute Resolution, pre-litigation, litigation, controversy management

## Association memberships

Italian Bar Association (1980), Italian Certified Public Auditors Association (1995), International Fiscal Association, The Law Society, American Bar Association, International Bar Association, Instituto de Fiscalidad Internacional, Union Internationale des Avocats

## Academic qualifications

He graduated in Law (cum laude) at the University of Genoa and trained at the EC Commission, Directorate General IV. He received a Masters from the University of Amsterdam.

## Italy

## Pietro Piccone Ferrarotti

**Languages:** Italian, English

### Biography

Pietro is a partner at the Italian tax law firm L&P – Ludovici Piccone & Partners. He has more than 20 years of experience in the areas of tax controversy and litigation services. He gained significant experience in advising domestic and foreign clients in complex tax audits, pre-litigation and judicial settlements, and defence before tax courts and the Court of Cassation.

### Recent matter highlights

He provided assistance to Värde Partners on tax matters related to the €600 million sale of a portfolio of eight luxury hotels in Europe operating under The Dedica Anthology brand to Covivio

### Practice areas

- M&A
- Dispute Resolution
- Pre-litigation
- Litigation
- International Tax Advisory
- VAT
- Registration Tax and Other Indirect Taxes as Well as Excise Duties and Consumption Taxes

### Sector specialisations

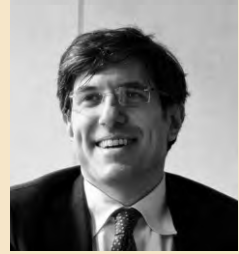
- Automotive
- Food and Beverage
- Industrials
- Oil and Gas
- Real Estate

### Association memberships

- IBA

### Academic qualifications

- Degree in Law, LUISS – Guido Carli University, Rome, 1995
- Full-time specialization program in Tax Law and Tax Accounting, Management School
- LUISS – Guido Carli University, Rome, 1996



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**L&P**

## Italy

### Piergiorgio Valente

**Languages:** English, French and Italian

**Bar admissions:** Italy

#### Biography

Piergiorgio covers key roles at the national, international and supranational level, as President of CFE Tax Advisers Europe, as chairman of the Technical Committee of the International Association of Financial Executives Institutes (IAFEI), as Member of the Business at OECD (BIAC) Committee on Taxation and Fiscal Policy, as chairman of the Global Tax Advisers Platform, and as Member of BUSINESSEUROPE's Tax Policy Working Group, among others.

Founding and Managing Partner of Valente Associati GEB Partners and of Crowe Valente – both Firms are Members of Crowe Global International network.

He has acquired extensive and specialized experience (almost 30 years) within the various areas of international tax, tax litigation, tax strategy and tax control.

Professor of EU Tax Law as well as Tax and Financial Planning at the Link Campus University in Rome and Adjunct Professor of Taxation of Multinational Enterprises at the Faculty of Political Studies and for the Superior European and Mediterranean Education “Jean Monnet” of the University “Luigi Vanvitelli” in Naples. He also advises Governments on national and international tax issues.

He is the author of 14 Manuals, co-author of 30 Volumes. Over 500 Articles published in Italy and abroad.

#### Recent matter highlights

During the year Piergiorgio negotiated several bilateral APAs for leading multinational groups and concluded few MAP, with one being particularly relevant due to the figures involved and due to the fact that it was an investment Ruling. Continued providing advice to Governments. Frequently advises on complex international tax re-organizations. Litigation rate success: 96%)

#### Practice areas

Business model optimisation, APAs, MAPs/ADRs, litigation, international tax advisory

#### Sector specialisations

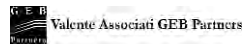
Oil and gas, industrials, automotive, tech and telecoms, food and beverage



Managing Partner – International  
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### Gianluca Boccalatte

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### Cristiano Caumont Caimi

Tremonti Romagnoli Piccardi & Associati

### Cristina Caraccioli

Valente Associati GEB Partners / Crowe Valente

### Aurelia Daniela Casali

DLA Piper

### Marco Cerrato

Maisto e Associati

See page 178

### Paolo Comuzzi

Quorum

### Roberto Cordeiro Guerra

Cordeiro Guerra & Associati

### Matteo Costigliolo

Studio Tributario e Societario - Deloitte STP (STS Deloitte)

See page 138

### Eugenio della Valle

Studio Tributario e Societario - Deloitte STP (STS Deloitte)

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### Marco Di Siena

Chiomenti

### Gabriele Escalar

Escalar & Associati

### Barbara Faini

Baker McKenzie

### Augusto Fantozzi

Fantozzi & Associati Studio Legale Tributario

### Stefano Fedele

Studio Tributario e Societario - Deloitte STP (STS Deloitte)

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### Carlo Galli

Clifford Chance

### Bruno Gangemi

Macchi di Cellere Gangemi

### Vittorio Giordano

Giordano-Merolle - Studio Legale Tributario

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### Valentino Guarini

PwC TLS Avvocati & Commercialisti

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## Italy

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### Marco Lio

PwC TLS Avvocati & Commercialisti

### Guglielmo Maisto

Maisto e Associati

### Alessandro Martinelli

DLA Piper

### Salvatore Mattia

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### Christian Montinari

DLA Piper

### Renato Paternolli

Freshfields Bruckhaus Deringer

### Lorenzo Piccardi

Tremonti Romagnoli Piccardi & Associati

### Pietro Piccone Ferrarotti

Ludovici Piccone & Partners

### Giuliana Polacco

Bird & Bird

### Carlo Polito

LED Taxand

### Carlo Romano

PwC TLS Avvocati & Commercialisti

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### Andrea Silvestri

Bonelli Erede Pappalardo Studio Legale

### Alessandro Tardiola

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### Antonio Tomassini

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### Piergiorgio Valente

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### Giuseppe Zizzo

Zizzo e Associati

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### Giancarlo Zoppini

Tremonti Romagnoli Piccardi & Associati

## KUWAIT

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**Rasheed Al-Qenae**

KPMG

**Zubair Patel**

KPMG

## LUXEMBOURG

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**Eric Fort**

Arendt & Medernach

**John Hames**

EY

**Fabienne Moquet**

PwC

**Philippe Neefs**

KPMG

**Jean Schaffner**

Allen & Overy

**Alain Steichen**

Bonn Steichen & Partners

## NETHERLANDS

## Stef van Weeghel

Prof. Dr. Stef van Weeghel is Global Tax Policy leader at PwC. He is also professor of international tax law at the University of Amsterdam and chair of the Board of Trustees at the International Bureau for Fiscal Documentation (IBFD).

Stef's primary focus is on tax policy, strategic tax advice and tax controversy. His experience covers cross-border transactions, structuring and tax controversy/litigation. He advises and renders second opinions to clients and their advisers on corporate income tax and tax treaty matters, is consulted by the Dutch government on a regular basis and participates in the work of the OECD. He acts as counsel and as expert witness on tax treaty interpretation (for taxpayers and for governments) before Dutch and foreign courts and in arbitration pursuant to bilateral investment treaties and in commercial arbitration.

Stef graduated from the University of Leiden in business law (1983) and tax law (1987) and obtained an LLM in Taxation from New York University (1990). In 1997, he received a doctorate in law from the University of Amsterdam (PhD thesis: Improper Use of Tax Treaties); in 2000 he was appointed a tenured professor of international tax law at that same university. He has authored and co-authored several books and many articles on Dutch and international taxation. He has lectured extensively in the Netherlands and internationally.

Before joining PwC, Stef was a partner at Linklaters and at Stibbe where his roles included membership of the executive committee, head of tax and resident partner in the New York office. He has acted as secretary and chair of the Dutch branch of the International Fiscal Association (IFA) and is immediate past chair of IFA's Permanent Scientific Committee. In 2010 he was the general reporter for Subject 1 (Tax treaties and tax avoidance: application of anti-avoidance provisions) at the IFA Congress in Rome.

In 2009/2010 Stef chaired the Study Group Tax System, a committee that advised the Dutch government on comprehensive tax reform. In 2000 he was a member of the Van Rooy-Committee that advised the Dutch government on corporate income tax reform. Prior thereto he was member of a working group at the Dutch Ministry of Finance that worked on revision of the Dutch ruling practice. He also worked on the review of administrative practices in taxation commissioned by the European Commission. On various occasions he appeared as expert before the Finance Committees of the Second and First Chamber of the Dutch Parliament and he also appeared before the TAXE-Committee and the PANA-Committee of the European Parliament.



Global Tax Policy Leader

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## Netherlands

### Eric Vroemen

**Languages:** Dutch (native), English (professional), German and French (passive)

#### Biography

Eric (1962) is a Partner in the PwC Transfer Pricing practice in Rotterdam with over 30 years of relevant experience. Since 1999, Eric has focused on Transfer Pricing and business model optimisation and was involved in planning and controversy management for a large number of well-known and complex multinationals. As such, Eric has obtained an in-depth understanding of business operations in a wide variety of industries such as agriculture, automotive, food and beverage, industrial products, consumer products, media and publishing, oil and gas, steel, pharma and life sciences, transport, etc.

He is leading the Dutch transfer pricing controversy and dispute resolution practice and as such involved in audit defence, audit support, dispute resolution, pre-litigation, MAPs/APAs, arbitration, controversy management, state aid, joint- and domestic audits, etc.

From 1989 until 1996, prior to joining PwC, Eric worked with the Dutch Tax Authorities as a State Auditor. After that he worked with Deloitte in the Netherlands. In 2001, Eric was seconded to New York, and from 2003 until 2006 he was located in Chicago as the managing partner of the Dutch Desk.

He is a lecturer in Transfer Pricing at the University of Amsterdam and frequent speaker for the IBFD, the Dutch Order of Tax Advisers and other institutions. He has published a number of articles sharing his experience and expressing his view on transfer pricing. Eric studied fiscal economics at the Erasmus University Rotterdam.



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### Guido de Bont

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### Johan Hollebeek

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Osborne Clarke

### Arjo van Eijsden

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### Stef van Weeghel

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## Netherlands

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**Roelof Vos**

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**Eric Vroemen**

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**Svein Gunnar Andresen**

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**Einar Bakko**

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**Morten Beck**

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**Joachim Bjerke**

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**Finn Eide**

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**Anders Liland**

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**Daniel Løken Høgtun**

Selmer

**Arild Vestengen**

EY

## OMAN

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**Ashok Hariharan**

KPMG

## Mariusz Marecki

**Languages:** Polish, English

### Biography

Mariusz Marecki is a licensed tax advisor and Vice-Director in the Tax Controversy and Dispute Resolution Department in PwC Poland, with over 25 years' experience in tax and fiscal law.

Mariusz specializes in assisting PwC clients in high profile and complex litigations involving multinational organizations. Within his practice, he has been representing clients in course of numerous tax and administrative court proceedings, including the proceedings before Supreme Administrative Court in tax cases.

He is also an author of numerous tax publications.

### Practice areas

- Tax Audit Defence
- Tax Audit Support
- Dispute Resolution
- Pre-litigation
- Litigation
- Fiscal Liability

### Sector specialisations

- Energy
- Financial Services
- Food and Beverage
- Pharma and Life Sciences
- Tech and Telecoms

### Association memberships

- National Chamber of Tax Advisers

### Academic qualifications

- Law, Warsaw University, 1991



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## Poland

### Jan Tokarski

**Languages:** Polish, English

#### Biography

Jan Tokarski is a licensed tax adviser and a Partner leading Tax Controversy and Dispute Resolution Department for PwC Poland.

Jan Tokarski specializes in various aspects of tax-related litigations against Polish tax, customs and enforcement authorities, including tax audits, fiscal and tax assessment proceedings. He also assists clients in course of administrative court proceedings, including proceedings before the Supreme Administrative Court in tax cases.

Within his practice he participated in numerous projects related to VAT issues, specializing in VAT evasion disputes, forensic projects, white-collar crime, combating and prevention of tax crimes and mitigation of personal fiscal penal liability.

He is also an author of numerous tax publications.

#### Practice areas

- Audit Defense
- Dispute Resolution
- Pre-litigation
- Litigation
- Controversy Management
- Forensic Support
- White-collar Crime
- Fiscal Criminal Defense

#### Sector specialisations

- Agriculture
- Automotive
- Consumer Goods and Services
- Food and Beverage
- Industrials

#### Academic qualifications

- Master of Laws, University of Warsaw, 2004

#### Association memberships

- National Chamber of Tax Advisers



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## Poland

# Andrzej Zubik

**Languages:** Polish, English

### Biography

Andrzej Zubik is a Director in the Tax Controversy and Dispute Resolution Department in PwC Poland. Andrzej has over 15-years' experience in all types of tax, social security and other public levies disputes. He is specialised in advising and representing multinational corporations and Polish entrepreneurs before and during audits, proceedings, litigations and is focused on finding and implementing efficient dispute resolution mechanisms.

He is also an author of numerous tax publications.

### Recent matter highlights

- Leading advisor in 10+ finished and pending tax audits with values exceeding PLN 100M each.
- Successfully represented the pension fund in the course of the leading Supreme Administrative Court case concerning the refund of interest resulting from the infringement of EU law by Polish legislator.
- Leading advisor in two pending Constitutional Tribunal cases.

### Practice areas

Audit Defence, Dispute Resolution, Pre-litigation, Litigation, Controversy Management

### Sector specialisations

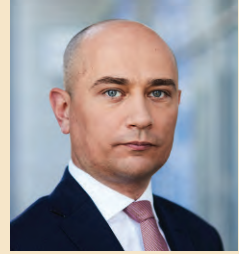
- Automotive
- Consumer Goods and Services
- Financial Services
- Real Estate
- Tech and Telecoms

### Association memberships

- National Chamber of Tax Advisers
- Warsaw Chamber of Legal Advisers

### Academic qualifications

- Master of Laws, University of Warsaw, 2004
- Diploma in English and European Law – University of Cambridge (in cooperation with University of Warsaw), 2004



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**Mariusz Każuch**

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**Dariusz Malinowski**

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**Mariusz Marecki**

PwC

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**Jerzy Martini**

Martini & Co

**Wojciech Pietrasiewicz**

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**Dorota Szubielska**

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**Agnieszka Tałasiewicz**

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## Poland

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[Piotr Wysocki](#)

Baker McKenzie

[Andrzej Zubik](#)

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# DAC-6: From Brussels, with love



**Jaime Carvalho Esteves**  
JCE

Imagine that you are travelling around Europe again. No masks. No COVID. Sound good? Now imagine that during such trip you are obliged to report any actions with possible unlawful intention as one of its main purposes. And if you fail, you are fined. Because during such trip you are not only a citizen, you are also a police officer and it was not your choice.

Feel uncomfortable? Welcome to the reality! It is actually happening today, in the European Union. Any actions perceived to have as one of their main purposes the reduction or postponement of taxes due by the tax payer or another entity, in the present or in the future, in the country or abroad, are to be reported. Full stop.

And more: the report will cover any steps taken in 2018. In some countries, even professionals with a legal privilege (like lawyers) must report such potentially unlawful actions. And it is understood that due to the difficulties and subjectivity of the actual application of the novel regime, intermediaries are encouraged to overreport. Does it look like Checkpoint Charlie seen from East Berlin? For me it does.

Some EU countries enacted laws and guidelines with some anticipation (like the Netherlands). Others shifted the duty (to self-incriminate) to taxpayers, in case lawyers are not required to disclose (like Germany) and, considering the traumas of COVID, others postponed the first disclosure dates (but not the events subject to disclosure – those starting on or after June 25, 2018).

Sadly, in Portugal like in Poland, lawmakers went beyond the EU requirements (Council Directive (EU) 2018/822, of 25 May 2018) and decided the following:

- i) domestic transactions (on top of cross-border operations) must be reported (what was already required by the now-

revoked Law 29/2008 of 25 February 2008, the framework for the so-called mandatory disclosure of abusive tax planning schemes to Portuguese Tax Authorities);

ii) taxes not covered by the Directive, such as VAT, are also to be reported.

Because of his (understandable) doubts, the President of the Portuguese Republic took some time to approve the new law. In fact, it was due to be published by the end of 2019, but the Law was only approved by the Parliament on May 28, 2020 and was only published almost two months later (on the 21 July), thus after the date it was supposed to enter into force (1 July). Furthermore, no one knows yet if the reporting deadlines will be extended by six months (such as in the Netherlands or the UK) or not (like in Germany or Finland). And all this despite the fact the disclosure forms (maybe to be named Catch-22) are not yet available.

Thus, DAC-6 is in force in Portugal since July 22, 2020. It was supposed to establish two different reporting periods, which was already complex enough, namely, because the Constitutional Court will be asked, at least, to decide:

- i) whether the initial one-off report has an illegal retroactive effect or not;
- ii) whether the duty imposed on lawyers is a breach of the guarantees provided to citizens;
- iii) whether the self-reporting is a violation of the fundamental right to not to self-incriminate; and,
- iv) whether EU Law can overrule national constitutions or not (do you remember the recent German ruling on ECB?).

But in real life, things tend to be even more complex, especially if a six-month delay (up to the beginning of 2021) will be implemented.

In such case there will be four different reporting periods:

- i) for cross-border arrangements with a first step implemented between 25 June 2018 and 30 June 2020 (thus with a retroactive effect);
- ii) for cross-border arrangements implemented between July 1 and July 21 2020 (also with the same retroactive effect because the new law was not yet enacted at that time);
- iii) due to the extension (in some, but not in all, EU Countries) new cross-border and domestic arrangements implemented between July 22 2020 and December 31 2020 will also be subject to a one off report in 2021; and,
- iv) cross-border and domestic arrangements implemented on or after January 1 2021 and thus subject to periodic reporting duties from 2021 onwards.

Since penalties are very significant with respect to each potentially reportable arrangement (requiring a subjective judgement), the consequences for taxpayers can be enormous as well as indemnities to be requested to over reporting intermediaries. The breach to the fundamental freedoms is also evident. Thus, strong civil, tax, administrative and criminal litigation will arise, causing serious challenges to tax payers, lawyers, notaries, consultants, accountants, advisers, financial institutions, family and trust offices, just to name a few.

Finally, if we add to this nightmare scene the new trend to consider any potential breach of a tax law (including ancillary duties) or any tax planning exercise as a tax fraud (with connected money laundering), then we shall conclude behind any reasonable doubt: the tax ocean has never been so dangerous to navigate.

## Portugal

### Rosa Areias

**Languages:** Portuguese, English, French, Spanish

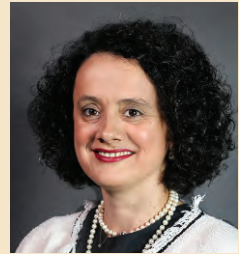
#### Biography

Rosa leads the tax practice of PwC Angola, Cabo Verde and Portugal and is a Member of the Territory Leadership Team. Rosa became a PwC Partner in 2010.

With over 21 years' experience, Rosa has focused in tax management and international projects with national and multinational groups. Rosa has an extensive know-how in corporate reorganizations, mergers and acquisitions and family businesses.

Rosa is an Arbitrator at the Portuguese Court of Tax (CAAD).

Rosa often participates as an invited speaker at events concerning taxation, also collaborating with the press on this topic. She is an invited lecturer at Portuguese universities, teaching tax matters.



Tax Lead Partner

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#### Recent matter highlights

Rosa regularly assists clients with tax litigation in audits undertaken by the tax authorities. As regards the services at the disposal of PwC Portugal clients, it is worth noting that they can be assisted locally or in the investments abroad by CCR Legal, an independent Portuguese law firm and a member of the group of legal services practices of PwC member firms that provide legal services.

#### Practice areas

International tax advisory, restructuring, tax consulting, dispute resolution, arbitration.

#### Sector specialisations

Consumer goods and services, industrials, energy, tourism, tech and telecoms.

#### Association memberships

Rosa is a member of the Professional Body for Economists (Ordem dos Economistas) and also a member of the Portuguese Chartered Accountants Association (OCC).

#### Academic qualifications

Bachelor's degree in Accounting and Administration (Instituto Superior de Contabilidade e Administração do Porto, 1994); Degree in Economics (Faculdade de Economia da Universidade do Porto, 1998); Post-graduation in Management and Taxation (IESF, 2000); MBA in Finance (Faculdade de Economia da Universidade do Porto, 2003); Degree in Law (Universidade Lusófona, 2004); Advanced Management Programme (in a partnership between Católica Lisbon School of Business and Economics and the Kellogg School of Management of the Northwestern University, 2013); Post-graduation in Business Intelligence and Analytics by Porto Business School (2019).

## Portugal

### Jaime Carvalho Esteves

**Languages:** Portuguese, English, French, Spanish

**Bar admissions:** Admitted in 1988

#### Biography

Jaime started in April 2020 his own tax boutique law firm in Lisbon, to serve individuals, national corporations and international investors in tax related matters (local, inbound or out-bound) as well as with their tax controversies including with the collar crime.

From a strategic point of view the new tax practice offers clients a “will stand by you” approach, increasingly relevant as technical know-how, interpersonal skills and personal trust and availability are of increased essence, while tax authorities increase their aggressivity and Portugal opts for an over implementation of DAC 6.

The new boutique tax law firm specialized in tax strategies for corporations, entrepreneurs and families and also on tax controversy. The practice also offers tax transactional M&A services, transfer pricing and tax compliance services, covering all Portuguese territory, being Lisbon, Porto, Algarve and Funchal key focus areas.

Industry wise the new practice offers a broad range of specialism notably industrial and consumer products, retail, hospitality and leisure, real estate and venture capital. During recent years Jaime was also very active in the O&G and Mining sectors as well as with tax public policy related matters.

As always Jaime is very active with the media, universities and public policies’ think tanks.

Jaime started his tax career at PwC (then C&L) back on 1988 and led the Porto practice to a leading role. He was requested in 2009 to lead the Portuguese practice (including Cabo Verde) to boost its prominence and then was requested to do the same with the Angolan tax practice in 2014.

#### Recent matter highlights

- Tax litigation concerning CFC rules – litigator – €11 million;
- Anti-avoidance related tax dispute – litigator – €5 million;
- Restructuring of a national group of companies – tax advisor – transaction value of €100 million;
- Restructuring of an international group of companies – tax advisor – transaction value of €350 million;
- Inbound agro-industry – corporate design, tax advisor and negotiation of tax incentives – transaction value of €90 million.

#### Practice areas

Tax consulting, international tax advisory and corporate taxes; restructuring and APAs; transactions and M&A; litigation; policy design.



Founder

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## Portugal

# Francisco Castro Guedes

**Languages:** Portuguese, English and Spanish

### Biography

Francisco operates in the tax controversy and dispute resolution law practice. He has dedicated his entire career to the tax law and tax controversy and dispute resolution practice, focusing his practice on business taxation, especially in tax litigation, providing regular legal advice to domestic and international clients, in respect of all taxes of national law as well as in matters related to social security contributions.

His experience also includes legal advice in tax criminal law. Recently, the International Tax Review recognised him as a Tax Controversy Leader. Francisco is also recognised and mentioned, since 2017, by the international magazine Best Lawyers.



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**CCR Legal**  
**Sociedade de Advogados**  
An independent law firm member  
of PwC's legal practices

### Recent matter highlights

- Francisco has been representing several taxpayers in tax litigation matters, regarding CIT, VAT, transfer pricing and customs duties
- Recently, Francisco represented a taxpayer in an administrative tax claim sustaining the deductibility, for corporate income tax purposes, of the bank levy paid in 2015. Even though the current tax law expressly excludes the deduction of such a cost and there is a total absence of any case law on the matter, the Portuguese Tax Authorities accepted the deductibility of €1.8 million accounted as bank levy costs
- Francisco was a speaker in Tax Seminars, organised by PwC Portugal and the Professional Body for Economists, and in several seminars regarding the State Budget 2020

### Practice areas

Dispute Resolution, Pre-litigation, Litigation and Arbitration

### Sector specialisations

- Automotive
- Banking
- Energy
- Food and Beverage
- Industrials

### Academic qualifications

- Law Degree, Law Faculty of Catholic University of Oporto (2006)
- Post-graduate degree in tax planning and tax controversy, Oporto Business School (2011)

## Portugal

### Catarina Gonçalves

**Languages:** Portuguese, English, Spanish, French

**Bar admissions:** Portuguese Law Bar Association

#### Biography

With more than 15 years of experience in Tax Advisory services, Catarina is a Partner at PwC Lisbon and also an Arbitrator at the Tax Arbitration Court.

#### Recent matter highlights

- Challenge flat rate taxation on business related vehicles – Ongoing
- Recovery of tax audit fees in special payment on account reimbursement procedures – Ongoing
- Requalification of income from capital gains into dividends upon a deferred payment sale – Won

#### Practice areas

Restructuring, corporate taxes, pre-litigation, tax consulting, international tax advisory.

#### Sector specialisations

Consumer goods and services, energy, industrials, tourism, transport.

#### Academic qualifications

- LLM, International Business Law, Católica Global School of Law, 2015
- Law, Universidade Católica Portuguesa, 2001



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## Portugal

### Leendert Verschoor

**Languages:** Dutch, English and Portuguese

#### Biography

Leendert Verschoor is a tax and transfer pricing partner who leads the PwC transfer pricing services group in Portugal, Angola and Cabo Verde. He started his professional activity as a tax consultant in The Netherlands. In 1999, he joined PwC in Portugal and became partner in 2008.

He specialises in areas related to international taxation of multinational companies, with more than 25 years of experience in these matters.

Leendert lectures at the post-academic tax education at the Faculty of Law of the Catholic University in Lisbon on transfer pricing matters.

#### Recent matter highlights

- Assistance to a Spanish/Portuguese Group on a bilateral APA between the two countries
- Assistance with tax litigation in several transfer pricing audits conducted by the Portuguese tax authorities
- Article in magazine of Portuguese Centre of Tax Arbitration (CAAD) on tax arbitration in Cabo Verde

#### Practice areas

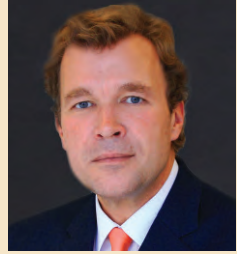
APAs, dispute resolution, arbitration, tax consulting, international tax advisory.

#### Sector specialisations

Automotive, energy, oil and gas, pharma and life sciences, real estate.

#### Academic qualifications

- Degree in Tax Law, Law Faculty of University of Leiden, The Netherlands (1993)
- Degree in Business Economics, Economy Faculty of Erasmus University Rotterdam (1993)



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**Frederico Antas**

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**Rosa Areias**

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**Catarina Belim**

Belim Legal Services

**Bruno Botelho Antunes**

BARV Sociedade de Advogados

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CCSL Advogados

**Rui Camacho Palma**

Linklaters

**Jaime Carvalho Esteves**

JCE

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**Diogo Tavares Castro**

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**Francisco Castro Guedes**

CCR Legal

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**Fernando Castro Silva**

Garrigues

**Susana Claro**

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### Patrick Dewerbe

CMS Rui Pena & Arnaut

### Clara Madalena Dithmer

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### Filipa Simoes Figueiredo

Garrigues

### Jorge Figueiredo

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### João Taborda da Gama

Gama Glória

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### André Gonçalves

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### Catarina Gonçalves

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### Joaquim Pedro Lampreia

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### Gonçalo Leite de Campos

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### Antonio Lobo Xavier

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### Marta Machado de Almeida

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## Portugal

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**Leendert Verschoor**

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## ROMANIA

## Dan Dascălu

**Biography**

Dan Dascălu heads the litigation team of D&B David și Baias, having particular expertise in tax, administrative and labour law, and being constantly acknowledged in various sections of international profile publications. Dan is also CEE Leader of the PwC Tax Controversy and Dispute Resolution Network. His litigation practice includes assistance before administrative authorities and representation in courts and arbitral tribunals in areas such as tax law, competition law, civil law, labour law.

Dan has also assisted clients during infringement proceedings before the European Commission and in five preliminary ruling proceedings before the Court of Justice of the European Union, namely the Rafinăria Steaua Română Case (C-424/2012), the BCR Leasing Case (C-438/12), the Lukoil Case (C-68/2018), the GSP Case (C-291/2018) and the Orange Case (C-61/19).

Dan is also the coordinator of the Tax Procedure Task Force of the main business organisations (AMCHAM, CDR etc.) involved in the discussions with the Romanian Government in the enactment of the Tax Procedure Code and in all substantial subsequent legal changes since 2003.

Dan Dascălu taught “*Tax procedure and tax disputes*” within the Postgraduate tax courses of the Law School, Bucharest University, and of the Faculty of Finance, Insurance, Banking and Stock Exchange, Bucharest University of Economic Studies.

Dan has also published several books as author (“Tax disputes treaty” and “Extraterritorial recovery of tax receivables”) or co-author (“Theoretical and practical explanations of the Tax Procedure Code”), and several articles in various law journals.

Dan is recognized as a band 1 lawyer in Tax in the Chambers and Partners 2020 Edition as well as a Leading Individual in Tax in the Legal 500, 2020 Edition.



Partner

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**Recent matter highlights**

Romanian Subsidiary of a German retailer – Dan successfully assisted the company in a dispute involving an assessment of additional building taxes and ancillary liabilities in the amount of EUR 8 million with the risk of this practice being spread around to other local municipalities. The additional tax liabilities were imposed given that the local authorities refused to acknowledge the evaluation of the Company’s buildings and thus, calculated the building taxes at an increased rate. The Supreme Court of justice granted the Company’s claim and annulled the entire assessment performed by the tax authority.

Romania

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Dan Badin

Deloitte

See page 139

Emanuel Bancila

EY

Vlad-Constantin Boeriu

Deloitte

See page 139

Dan Dascălu

PwC

See page 207

Niculae Done

KPMG

Ciprian Gavriliu

Deloitte

See page 139

Cezar Gusu

Glodeanu & Partners

George Soare

Glodeanu & Partners

## RUSSIA

## Stanislav Denisenko

**Languages:** Russian, English

### Biography

Stanislav has about 30 years of practical experience in the legal sphere. He has been working with KPMG for 23 years. Before joining KPMG, he worked as the Head of the Legal Department at a Russian bank.

Stanislav has significant multidisciplinary experience in advising on various areas of law including tax and customs, currency, civil and labor law. A great number of projects was implemented under his supervision, including legal, currency, civil and customs risks' assessment in business, structuring of sustainable business models, business risk mitigation procedures, business restructuring, comprehensive transaction support, successful litigation support, etc. Stanislav has an impressive extensive experience in representing interests of KPMG clients in a wide range of tax disputes at pre-litigation and litigation stages, including in supreme courts.

His clients include major foreign and Russian companies engaged in various sectors, including transport and logistics, construction and real estate, manufacturing and trade, oil and gas, pulp and paper, pharmaceutical industry, mass media, telecommunications and entertainment, financial sector, infrastructure, etc.



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### Recent matter highlights

- Success in the Supreme arbitration court on behalf of one of the leading developers on the commercial real estate market. Supported by the KPMG team headed by Stanislav, the client successfully appealed against additional tax charges of approximately RUB500 mln. Notably, the client engaged KPMG after the court of first instance and the court of appeal had denied the claims twice.
- A tax dispute won for a major pharmaceutical company at all three court instances. The tax authorities had challenged the deductibility of costs of lectures delivered to medical workers, and the amount in question exceeded RUB100 mln.
- A case won at all three court instances. It concerned the deductibility of management fees for the services rendered by the group service center for tax purposes in Russia. Despite the negative practice and low chances of winning, Stanislav managed to build up sustainable arguments, collect supporting documentation, and develop a strategy of presenting evidence to the court, which enabled the company to challenge tax charges totaling approximately RUB150 mln and also escape the same tax claims in the course of further tax audits.

### Practice areas

Dispute resolution, pre-litigation, litigation, arbitration, tax consulting

## Russia

# Andrey Ermolaev

**Languages:** Russian, English

### Biography

Andrey has extensive experience providing a wide range of tax dispute resolution services, as well as tax and legal consulting. His main work has been with major Russian and international companies in the real estate and construction, retail and manufacturing, oil & gas and finance sectors.

Andrey has more than 15 years of experience. Over this period he has successfully helped many clients by, amongst other things, supporting them during field and desk tax audits and challenging additional charges and claims made by the tax authorities, both at pre-trial and trial stages.

As a specialist interest, Andrey enjoys projects seeking to increase tax efficiency, including by providing services to identify tax provisions, overpayments and tax benefits.

In addition, Andrey has significant experience rendering services to contest cadastral values: during his work, Andrey managed to successfully contest cadastral values for major clients such as Hines International, Immofinanz, Bank Otkritie Financial Corporation, etc.



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### Recent matter highlights

His projects representing client interests in litigation include:

- LLC JC RUSVIETPETRO (case No. A05P-417/2019) – confirming the legitimacy of a property tax benefit in respect to energy-efficient equipment
- LLC Volkswagen Group Rus (case No. A41-64958/2019) – confirming the client's entitlement to a regional investment tax benefit
- LLC Iveco Russia (cases Nos. A41-13101/19 and A41-3245/19) – confirming the right to not pay the recycling tax in respect to motor vehicles (chassis) imported into Russia for the purpose of subsequent sale in the Republic of Belarus
- LLC Novostroy (case No. A27-13534/2016), LLC KIT Ekaterinburg (case No. A60-7484/2017) – confirming the client's entitlement to a property tax benefit in respect to facilities classed as highly energy efficient

### Practice areas

Dispute resolution, pre-litigation, litigation, arbitration, tax consulting.

### Sector specialisations

Automotive, energy, natural resources, oil and gas, real estate

## Russia

### Mikhail Orlov

**Languages:** Russian, English

#### Biography

Mikhail has over 25 years of legal experience. His key areas of expertise include advising major companies across energy, automotive, logistics and retail sectors on tax matters, as well as supporting clients in tax related disputes.

Mikhail joined KPMG in 2010. Prior to that, he acted as Head of the Taxation Policy Department with the Russian Ministry of Economic Development and Trade, Deputy Director at the Foundation of International Institute for Development of Legal Economy, was a Partner at a well-known law firm.

Mikhail is one of the originators of Russian tax legislation: in 1998, he was part of a legal team working out the RF Tax Code. His legislative background is highly demanded as well. He extensively interacts with the Ministry of Finance of the Russian Federation and the Federal Tax Service, is a Chairman of the Tax and Customs Law Expert Council of the Russian State Duma.

Mikhail's direct involvement and efforts led to the introduction of the horizontal monitoring concept to the RF Tax Code, improvement of transfer pricing principles for intra-group transactions, and implementation of the beneficial owner disclosure rules. He takes part, as an expert, in the development and analysis of amendments to the RF Tax Code, including those related to oil and gas matters (tax incentives and benefits for Arctic projects, VAT, etc.).

His work and contribution were recognized by letters of appreciation from the President of the Russian Federation, Russian ministries, and other national governmental agencies and departments. Mikhail regularly ranks among the top Russian tax lawyers according to ITR World Tax, Best Lawyers, ITR World Tax and Legal500.



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#### Recent matter highlights

Mikhail is a Head of Tax and Legal Department in KPMG in Russia & CIS and involved in all key projects for Russian and international projects in main industries.

#### Practice areas

Restructuring, M&A, financial services, corporate taxes, dispute resolution, tax consulting

#### Sector specialisations

Accounting, agriculture, automotive, aviation, banking, construction and materials, consumer goods and services, energy, financial services, food and beverage, government and public policy, media, mining, natural resources, oil and gas, real estate

## Russia

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**Rustem Ahmetshin**

Pepeliaev Group

**Galina Akchurina**

FBK Legal

**Valentina Akimova**

Pepeliaev Group

**Raisa Alexakhina**

PwC

**Alexey Artyukh**

Taxology

**Dmitri Babiner**

EY

**Kristina Baleva**

Dentons

**Boris Bruk**

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**Alexander Bychkov**

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**Alexander Chmelev**

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**Stanislav Denisenko**

KPMG

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**Irina Dmitrieva**

White & Case

**Dzhangar Dzhachinov**

Dentons

**Alexander Erasov**

Bryan Cave Leighton Paisner

**Andrey Ermolaev**

KPMG

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**Andrey Grachev**

Eversheds Sutherland

**Alexander Grigoriev**

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**Tatiana Grigorieva**

FBK Legal

**Marina Ivlieva**

Pepeliaev Group

## Russia

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**Ivan Khamenushko**

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## Russia

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### Kirill Petrov

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### Sergei Zhestkov

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### Anna Zvereva

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### Anton Zykov

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## SAUDI ARABIA

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### Nasser Al Sagga

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### Ebrahim Baeshen

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## SLOVAK REPUBLIC

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**Jan Skorka**

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## SOUTH AFRICA

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Sole practitioner

**Johan van der Walt**

FTI Consulting

**Louise Vosloo**

Deloitte

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## SPAIN

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**Pedro Aguarón**

Baker McKenzie

**Felipe Alonso Fernández**

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**Miró Ayats**

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**María Antonia Azpeitia**

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**Álvaro de la Cueva González-Cotera**

Garrigues

**Abelardo Delgado Pacheco**

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**Jose Diaz-Faes**

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**Santiago Díez**

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Uría Menéndez

**Javier García Pita**

Linklaters

**Angel Garcia Ruiz**

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**Jose Maria García-Valdecasas Alloza**

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**José Ignacio Guerra Garcia**

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**Alberto Heras**

Ramón & Cajal Abogados

**Juan Manuel Herrero de Egaña**

Deloitte Legal

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**Maximino Linares**

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**Ramon Lopez de Haro**

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**Jesús López Tello**

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**Miguel Lorán**

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### Raúl Salas Lúcia

Roca Junyent

### Manuel Santa María Fernández

Garrigues

### Enrique Seoane Smith

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### Montserrat Trapé

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### José Vicente Iglesias Gómez

Garrigues

### Esther Zamarriego Santiago

Garrigues

### Adolfo Zunzunegui

Allen & Overy

## Fredrik Berndt

**Languages:** Swedish, English

**Bar admissions:** Previous member of Swedish Bar

### Biography

Fredrik Berndt heads Svalner's tax litigation practice. He is frequently retained as counsel in the most significant cases before the Swedish tax courts. He represents clients before the European Court of Justice. He also has experience from civil courts and international arbitration. He was previously a member of the Swedish Bar.

### Recent matter highlights

Fredrik has acted as counsel in several high-profile cases the last decade. In 2020 Fredrik has successfully represented clients before the Supreme Administrative Court twice. Recent significant cases include EQT portfolio company IP-Only, Nasdaq Stockholm large cap corporation Sagax and Norwegian construction company Veidekke.

### Practice areas

- Tax Litigation
- Transactions
- Restructurings
- Incentive programmes
- International Tax Advisory

### Sector specialisations

- Financial Services
- Industrials
- Investment Management
- Real Estate
- Tech and Telecoms

### Academic qualifications

Master of Laws, Lund University 2007



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**SVALNER**

## Sweden

### Hans Eklund

#### Biography

Hans has over 30 years' experience as a legal adviser in corporate taxation with a special focus on tax disputes and resolution. Hans has a background as a judge and has been active in the Administrative Court and the Court of Appeal.

#### Practice areas

- Corporate Tax
- Tax Disputes and Resolution
- EU Law

#### Association memberships

- FAR

#### Academic qualifications

- LL.M., Lund University

#### Accreditation

- Authorized tax adviser



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## Sweden

### Magnus Larsén

Magnus Larsén is a corporate tax partner at Skeppsbron Skatt. He is a lawyer and has 20 years of experience working in the field of Swedish and international taxation.

Magnus brings long experience in corporate and international tax advisory, with deep expertise in international structured financial transactions and mergers and acquisitions (M&A).

He deals with companies in most sectors, specializing particularly in the banking, large corporate and private equity industries.

Magnus has, over the years, been appointed to lead complex major disputes for large companies.

Before joining Skeppsbron Skatt, Magnus headed part of Morgan Stanley's tax structured finance business.

Magnus is also engaged as a speaker and panel member at tax seminars and conferences, besides being a member of Taxand's steering group for global M&A.



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## Sweden

# Lennart Staberg

**Languages:** Swedish, English

### Biography

Lennart Staberg, who has a Master of Laws (LLM) degree from the University of Uppsala, joined PricewaterhouseCoopers in 1994. Before joining the firm, he was assistant judge of the Administrative Court of Appeal in Gothenburg and also deputy director with the National Council for Advance Tax Rulings. He has well over 20 years of experience from tax-related work.

Lennart, who is a tax partner, specialises in providing tax consultancy services to the financial sector in Sweden and abroad. He also has extensive experience of tax litigation and services in relation to the structuring of private equity funds.

Lennart's principal clients are major Swedish companies and foreign companies with business activities in Sweden.



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## Sweden

# Pär Magnus Wiséen

### Biography

Pär Magnus heads the transfer pricing team of PwC in Sweden. With a background in corporate finance and tax law, he supports Swedish and international clients with their international tax strategies and assists with various dispute work (tax audits, MAPs, APA and court litigations) in the field of transfer pricing.

### Practice areas

- IP Management
- Restructuring
- Audit Defence
- Litigation
- Transfer Pricing

### Sector specialisations

- Banking
- Consumer Goods and Services
- Financial Services
- Industrials
- Investment Management

### Association memberships

- FAR
- IFA

### Academic qualifications

- Master of Laws, Uppsala University, 1994-2000
- Master of Business Administration and Economic, Uppsala University, 1996-2000
- Studies in Finance, University of Miami, 1997-1998



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## Sweden

### Joakim Wittkull

Joakim Wittkull is a partner at Skeppsbron Skatt and the leader of the tax controversy team of Skeppsbron Skatt. He is a lawyer and has more than 25 years of experience working in the field of Swedish and international taxation.

Joakim has a wide experience advising clients across a broad range of sectors. As a professional tax advisor, he assists clients in tax disputes and tax audits. He is often engaged in complex major disputes and has represented clients successfully in some of the most important tax cases in Sweden.

For eight consecutive years, Joakim has been recognized by International Tax Review as a tax controversy leader.

Joakim has worked as an associate judge in Swedish tax courts. He has a master's degree in law from the University of Stockholm. He is often engaged as a speaker and panel member at tax seminars and conferences.



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**SKEPPSBRON  
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❖ TAXAND

## Sweden

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**Ulrika Bengtsson**

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**Fredrik Berndt**

Svalner

**Hans Eklund**

KPMG

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**Lars Franck**

Deloitte

See page 141

**Ulrika Grefberg**

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**Erik Hultman**

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**Magnus Johnsson**

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**Magnus Larsén**

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**Lennart Larsson**

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**Fredrik Sandefeldt**

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**Lennart Staberg**

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**Pär Magnus Wiséen**

PwC

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**Joakim Wittkull**

Skeppsbron Skatt

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## SWITZERLAND

# Strengthening legal certainty and transparency in the mutual agreement procedure in Switzerland



**René Matteotti and  
Monika Bieri**  
Tax Partner

## Introduction

As an important group location for multinational companies Switzerland has many years of in-depth experience with mutual agreement procedures (MAPs). An analysis of all MAPs concluded by the end of 2017 shows that of the approximately Fr17 billion in adjustments originally claimed by foreign tax authorities, around a quarter (i.e. more than Fr4 billion) were effectively adjusted within the framework of a MAP. These figures clearly demonstrate that MAPs are a crucial and efficient dispute resolution instrument for Switzerland as a business location.

Given this starting point, it is surprising that important domestic procedural issues such as the rights and obligations of the taxpayer, time limits and the implementation of a mutual agreement are still not legally standardised in Switzerland. A considerable number of MAPs have significant financial implications for the Federation, the cantons and the municipalities. This aside, there are relevant differences of opinion on certain procedural law matters between the competent authority responsible for the MAP, namely the State Secretariat for International Financial Matters (SIF), and the cantonal tax authorities responsible for implementing the MAP. Therefore, it is highly welcomed that the Federal Council is now attempting to regulate the domestic procedural issues in the Federal Act on the Implementation of International Tax Agreements (ITAIA). The draft law, which is currently in consultation, distinguishes between the request, the conduct and the implementation of the MAP. The new provisions are scheduled to enter into force in the latter half of 2021.

## Switzerland

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### Request for the MAP

This stage of the procedure verifies that the conditions for conducting a MAP are met. The taxpayer affected by taxation contrary to the Double Taxation Agreement (DTA) is a party to this procedure. He or she may lodge an appeal with the Federal Administrative Court within 30 days if the SIF rejects the MAP request.

Throughout the entire procedure, the taxpayer must provide all pertinent facts that may be relevant to the MAP and supply information and necessary documents, otherwise the MAP request may be denied.

BEPS Action 14 Minimum Standard requires that the threshold for requesting a MAP be set as low as possible. Admission to the MAP must be granted by the competent authority if in either of the Contracting States there is, or it is reasonable to believe that there will be, taxation not in accordance with the DTA. According to BEPS Action 14 Minimum Standard, this applies even if there is disagreement between the taxpayer and the tax authorities about the application of treaty or domestic law anti-abuse provisions. Similarly, an audit settlement reached by the taxpayer and the assessing tax authority in the course of a tax audit, may not lead to the exclusion of a MAP.

In Switzerland, nonetheless, various cantonal tax authorities are of the opinion that a taxpayer should be excluded from utilising a MAP if a possible international double taxation, already in the assessment procedure, is recognisable to the taxpayer with all due diligence. The authorities argue that a general provision should be included in the ITAIA under which a MAP request can be refused in the event of a breach of the principle of good faith. However, such a provision would violate the BEPS Action 14 Minimum Standard and create new legal uncertainties. If a state claims more tax base as a result of treaty abuse or domestic law anti-abuse provisions there is no reason, from a tax-systemic perspective, why a resulting double taxation should not be eliminated under a MAP. It is not the task of treaty law but that of domestic criminal tax law to penalise abusive arrangements. On the basis of these considerations it is correct that the current draft consultation does not exclude a MAP request if a tax authority invokes the application of an anti-abuse provision. Admittedly, a generous approval of a MAP does not alter the fact that, even under the Minimum Standard in force, there is no obligation to reach an agreement and that a competent authority can refuse to eliminate double taxation resulting from the application of treaty abuse or domestic law anti-abuse provisions. The only remedy would then be arbitration proceedings – if the DTA contains an arbitration clause – or possibly a domestic appeal procedure.

### Conduct of the MAP

Once the request procedure has been completed and the MAP has been entered into, the MAP will be conducted unless the double taxation can be eliminated by a unilateral measure taken by the Swiss tax authorities. During the conduct of the MAP the taxpayer is not a party thereto and may neither inspect the files of, nor participate in, the procedure. Nevertheless, unlike in many other countries, MAP applicants can obtain information on the status of the proceedings from the SIF. Furthermore, and on their own initiative, applicants have the option of sending further comments and documents to the competent authority.

Another special feature of the Swiss procedure is that the Federal and cantonal tax authorities are involved in the procedure, whereby the SIF informs the responsible Swiss tax

## Switzerland

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authorities about all cases of mutual agreement that affect them. If a case concerns taxation in Switzerland, the responsible tax authorities are given the opportunity to comment.

Additionally, the SIF may involve an authority of a State which is not a party to the applicable DTA in a MAP, or delegate the conduct of negotiations to that authority. This for instance, allows Switzerland, as the State of residence of the head office, to delegate the conduct of negotiations to the State of the permanent establishment. However, the potential to delegate does not alter the fact that in such cases the agreement must ultimately be concluded by the SIF. In turn, the SIF can engage in negotiations to safeguard the tax interests of Switzerland, even if only the permanent establishment is located in Switzerland. Needless to say, delegations of this nature are only possible if all participating states agree or respectively, offer their hand in support.

In clear-cut cases, the SIF can agree with the affected federal or cantonal tax authority to make a domestic – and therefore unilateral – adjustment, without conducting a MAP and involving the other state. In this respect it should be noted that, according to current practice, the competent cantonal tax authority in various cantons already make corresponding adjustments on their own authority and without involving the SIF, provided that the foreign primary adjustment is justified. In our opinion, this efficient practice can and should continue, even after the inception of the ITAIA.

### Implementation of the MAP

Following notification from the SIF, the mutual agreement solution must be implemented *ex officio* by the competent tax authority. If the tax year has already been finally assessed, the assessing tax authority issues an implementation order. This instrument is new. Up to now, a mutual agreement solution has been implemented by way of a revision of the original final assessment. An implementation order represents a simplification, compared to the previous revision solution. However, this approach meets with resistance, particularly from the cantonal tax authorities.

It is controversial whether a mutual agreement can be implemented even if it contradicts a (supreme) court ruling. Due to the principle of separation of powers, various cantonal tax authorities have taken the position that a mutual agreement that contradicts a decision of the highest court should not be implemented. In this respect, however, it should be noted that domestic tax collection procedures and the MAP are two distinct procedures, with different requirements and rules. Thereby, the MAP aims to avoid taxation contrary to the DTA and, in particular, double taxation for the person(s) concerned. In order to achieve this the competent authority may also include equity considerations in individual cases, which a domestic court may not consider in double taxation conflicts, due to the strict principle of legality. A mutual agreement solution should therefore also be implemented if it contradicts a decision of the highest court. It would be welcomed if a corresponding provision were to be included in the ITAIA in this regard.

BEPS Action 14 Minimum Standard requires that MAPs be implemented independent of domestic time limits. However, states may make a reservation in this respect, which Switzerland has done. Accordingly, very few Swiss DTAs provide for an obligation to implement MAPs regardless of the time limits under domestic law. According to the new BEPS Action 14 Minimum Standard, Switzerland may only maintain its previous DTA practice if it

## Switzerland

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is prepared to accept provisions within the framework of DTA negotiations, which restrict the time limit for profit adjustments of affiliated enterprises or permanent establishments. In view of this context, the current draft ITAIA provides that the assessing tax authority does not have to implement the mutual agreement if the MAP request is submitted more than 10 years after the final assessment was issued. Whilst business associations would like to dispense with a time limit altogether, the cantonal tax authorities advocate a tightening up of the proposed regulation. It is likely that the current proposal will be accepted by parliament as a compromise solution.

### Assessment

The proposed ITAIA represents an important step towards increasing legal certainty and transparency in the MAPs. However, we believe there are various gaps in the proposal, which require resolution as follows:

- APAs, which are likely to become even more important for multinational companies in the future, are excluded from the present draft devoid of convincing rationale.
- The ITAIA should explicitly state that a MAP request will suspend any domestic appeal proceedings.
- The existing practice for international profit adjustments is that secondary adjustments are not considered as deemed dividend distributions subject to withholding tax, and will only be regarded as such if the SIF recognises them within the framework of a MAP. Such a limitation of this correct practice is no longer appropriate and cannot be justified from a tax-systematic perspective. Primary and secondary adjustments should always be possible without withholding tax consequences if they comply with the arm's length principle, irrespective of whether a mutual agreement exists.

If these issues are resolved in the ongoing legislative process, and deterioration to the detriment of taxpayers is prevented, Switzerland will have robust internal regulations for international dispute resolution and dispute prevention, which will further strengthen its position as a business location.

## Switzerland

### Sarah Dahinden

Sarah Dahinden is a senior manager at PwC in Switzerland's tax services practice. As a lawyer, she regularly and successfully assists clients in tax litigation cases and exchange of information procedures.

After passing the law and the attorney-at-law degree, Sarah wrote her thesis in international tax law, concerning tax sheltering of foreign companies. Subsequently, she passed the exam for certified tax experts.

Before joining PwC in 2007, Sarah had worked at a district court, at the University of Zurich (dealing with tax law), at two of the bigger law firms in Zurich and in the legal department of the tax authority of the Canton of Zurich.

Sarah renders services in different tax fields, usually with a clear focus on legal procedures and tax litigation in the corporate tax field as well as on administrative assistance matters. Sarah is a member of the International Fiscal Association (IFA). She is fluent in English.



Senior manager, tax services practice

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## Switzerland

### Jean-Blaise Eckert

**Languages:** English, French, German

#### Biography

Jean-Blaise Eckert is considered as a leading lawyer in tax and private client matters in Switzerland. He is the co-head of the tax group of Lenz & Staehelin. He advises a number of multinational groups of companies as well as HNWIs. Jean-Blaise Eckert is a frequent speaker at professional conferences on tax matters. He is Secretary General of the International Fiscal Association (IFA). Jean-Blaise Eckert studied law at the University of Neuchâtel and was admitted to the Bar of Neuchâtel in 1989 and to the Bar of Geneva in 1991. He studied business administration in the US (Berkeley, Haas Business School) where he acquired an MBA in 1991. He acquired a diploma as a Certified Tax Expert in 1994. Since 2016, he is a Certified Specialist SBA in Inheritance Law.

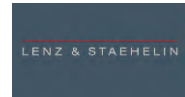
#### Practice Areas

- Tax
- Private Clients
- Succession Law
- Commercial and Contracts
- Investigations



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## Switzerland

### René Matteotti

**Languages:** German, English

#### Biography

René Matteotti is a tax attorney and Professor of Law specialising in Swiss, European and international tax law at the University of Zurich. His areas of expertise also include transfer pricing and governmental advisory work. He represents clients before tax authorities and the courts, primarily supporting multinationals with dispute resolution arising from tax audits, tax ruling requests and mutual agreement procedures. René also routinely provides legal opinions to government agencies and business associations on complex tax law issues, such as the Swiss-US Exchange of Information Agreement in relation to the landmark case of United States of America v UBS AG (2009), the Federal Act on Alcohol Tax (2013), the Automatic Exchange of Financial Information Act (2016) and The Federal Act on Tax Reform and Pension Fund Financing (2020). René has been appointed by the Federal Government to the VAT Advisory Committee and as an expert to the working group of the Federal Government on the implementation of the OECD-2-Pillar project into the domestic tax law. René is widely published, has authored books and numerous academic articles in the field of tax law and regularly lectures at conferences in Switzerland and abroad.



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#### Practice areas

VAT, M&A, Corporate taxes, Audit Defence, Tax Controversy and Dispute Resolution

#### Sector specialisations

Consumer goods and services, financial services, government and public policy, insurance, mining, tech and telecoms

#### Association memberships

Swiss Bar Association, EXPERTsuisse – Tax Chapter, International Fiscal Association, Swiss-American Chamber of Commerce, Tax Chapter, Swiss Association of Tax Law Professor, European Association of Tax Law Professors, Joint Committee of the German, Austrian and Swiss Tax Expert Associations

#### Academic qualifications

- MLaw, University of Bern, Switzerland, 1997
- PhD, University of Bern, Switzerland, 2003
- LLM Tax, Northwestern University, USA, 2004

## Switzerland

---

### Denis Berdoz

Baker McKenzie

### Peter Brülisauer

MME Legal | Tax | Compliance

### Harun Can

SwissVAT

### Sarah Dahinden

PwC

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### Marcus Desax

Walder Wyss

### Jean-Blaise Eckert

Lenz & Staehelin

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### Pierre Gillioz

Gillioz Dorsaz & Associés

### Pierre-Marie Glauser

Oberson Abels

### Marco Greter

Altorfer Duss & Beilstein

### Andreas Helbing

Altorfer Duss & Beilstein

### Jackie Hess

Deloitte

### Niklaus Honauer

PwC

### Benjamin Koch

PwC

### Hans Koch

Baker McKenzie

### Ferdinando Mercuri

Deloitte

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### Xavier Oberson

Oberson Abels

### Per Prod'hom

Python

### Britta Rehfish

Altorfer Duss & Beilstein

### Raoul Stocker

Bär & Karrer

### Markus Wyss

KPMG

## TURKEY

## Zeki Gündüz

**Languages:** English

**Bar admissions:** Istanbul Bar Association

### Biography

Zeki Gündüz is a partner at PwC Turkey and he leads the country's tax practice, he also leads the PwC Turkey Tax Controversy and Dispute Resolution team. With his extensive experience, Zeki is considered as one of the foremost experts in the field of tax and customs litigation.

### Recent matter highlights

Before joining to PwC, Zeki worked for Ministry of Finance as auditor for eight years; he performed numerous tax audits of private companies and state institutions.

Zeki has led PwC Turkey's pharmaceutical industry and the transfer pricing, client training and tax/customs disputes business units of PwC Turkey. He has represented a broad range of corporate clients on various tax and customs related dispute resolution projects for about 28 years.

He is concentrated on the big global firms, which are providing digital services such as social and professional networking, social media and e-commerce companies. He has also been one of the leading names to be consulted regarding the newly introduced digital services taxation in Turkey.

### Practice areas

Corporate taxes, technology, dispute resolution, litigation, controversy management, tax consulting

### Sector specialisations

Accounting, government and public policy, healthcare, media, pharma and life sciences, tech and telecoms

### Association memberships

Zeki, a sworn financial adviser (YMM) and lawyer, is also an educator and is a regular speaker at tax forums and seminars organised by PwC, the Istanbul Chamber of Sworn Financial Advisors (İYMMO), the Istanbul Chamber of Certified Public Accountants (İSMMMÖ), publication houses, professional associations and other institutions. Zeki is admitted to Istanbul Bar Association.

Alongside his professional interests, Zeki is a member of the Turkish Industrialists and Businessmen's Association (TÜSİAD) Tax Commission and the board of Transparency International and IFA in Turkey; he is personally invited to Tax Council Turkey. Zeki is the author of various articles and supplements in periodicals as well as PwC publications.



Partner, Leader of Country Tax Practice and Tax Controversy and Dispute Resolution

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## Turkey

### Ersin Nazali

**Languages:** English

**Bar admissions:** İstanbul Bar Association

#### Biography

Ersin Nazali, who worked as tax inspector for nine years under the Revenue Administration, is an expert and has considerable knowledge in several tax and corporate law areas, especially tax-customs disputes, customs litigation, transfer pricing, tax inspections and tax-free re-structuring of companies. As of August 2012, Ersin works as a tax consultant and attorney in the private sector. Ersin has also published more than 100 articles in several tax journals and 5 books (Taxation of Merger-Acquisition and Spinoff, International Taxation, Permanent Establishment, Transfer Pricing, Tax-Civil- Criminal Liabilities of Company Directors) on the tax law.



Managing Partner

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#### Recent matter highlights

The main difference of NAZALI is that we provide regular legal services and services in the fields of tax law, social security and customs through its partners and employees experienced in both public and private sectors. In this respect, our firm offers tax, social security and labor law, customs and foreign trade, general legal services, accounting, fraud risk management and internal systems services to the clients.

#### Practice areas

Competition Law, Business Model Optimization, Restructuring, Corporate Taxes, Litigation, Tax Consulting, Corporate and Commercial Law, IP, M&A, Social Security, Capital Markets and Financial Law, Criminal Law, Personal data Protection Law, Dispute Resolution, Customs

#### Sector specialisations

Construction and Materials, Industrials, Investment Management, Shipping, Tech and Telecoms

#### Association memberships

American Chamber of Commerce (AMCHAM), International Association of Restructuring, AIJA – International Association of Young Lawyers, Swedish Chamber of Commerce, International Fiscal Association, International VAT Association, International Bureau of Fiscal Documentation (IBFD), International Tax Review, British Chamber of Commerce in Turkey, The Blockchain Turkey Platform (BCTR)

#### Academic qualifications

Ankara University, Political Science, 2001; Dicle University, Faculty of Law, LLB, 2012; İstanbul University, MSc, Financial Law, 2018; King's College London, School of Law, LLC, 2012

## Turkey

### Ezgi Turkmen

**Bar admissions:** Istanbul Bar Association

#### Biography

Ezgi Turkmen is the leader of the team that provides dispute resolution consultancy on corporate and indirect tax issues; she is specialised in tax law and she is providing consultancy in settling the tax or customs disputes of companies from various sectors both by administrative or judicial ways.

#### Recent matter highlights

Ezgi is very experienced in disputes about the taxation of digital economy, and highly complex transfer pricing disputes in various sectors. She has focused on big global digital economy companies and multinational clients. These clients are operating in various sectors including retail, media, social media, social networking, microblogging, professional networking industries. Her experiences in tax disputes also includes indirect tax disputes and the tax amnesty processes in Turkey.



Partner, Tax & Customs Dispute Resolution

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#### Practice areas

APAs, corporate taxes, technology, dispute resolution, litigation, controversy management, tax consulting

#### Sector specialisations

Construction and materials, consumer goods and services, energy, media, tech and telecoms, utilities

#### Association memberships

Ezgi has participated in many seminars and training programmes as a lecturer and trainer along with organising seminars and in-house client training. She is also a founding member of IFA Turkey and admitted to Istanbul Bar Association. Together with being a lawyer, she is a certified public accountant (SMMM).

#### Academic qualifications

Ankara University, Faculty of Law

## Turkey

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**Ahmet Cangöz**

Deloitte

**Niyazi Çömez**

Deloitte

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**Refik Yaşar Durusoy**

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**Erdal Ekinci**

Esin Attorney Partnership

**Duygu Gültekin**

Esin Attorney Partnership

**Zeki Gündüz**

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**Abdulkadir Kahraman**

EY

**Ersin Nazalı**

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**Yuksel Toparlak**

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**Ezgi Turkmen**

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Cragus Group

**Mark Stevens**

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Joseph Hage Aaronson

**Kate Alexander**

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Skadden Arps Slate Meagher & Flom

**Michael Anderson**

Joseph Hage Aaronson

**Shaun Austin**

Deloitte

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**Rupert Baldry QC**

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Freshfields Bruckhaus Deringer

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Pinsent Masons

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Joseph Hage Aaronson

### Mark Whitehouse

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### Simon Wilks

PwC

### James Wilson

EY

### Zizhen Yang

Pump Court Tax Chambers

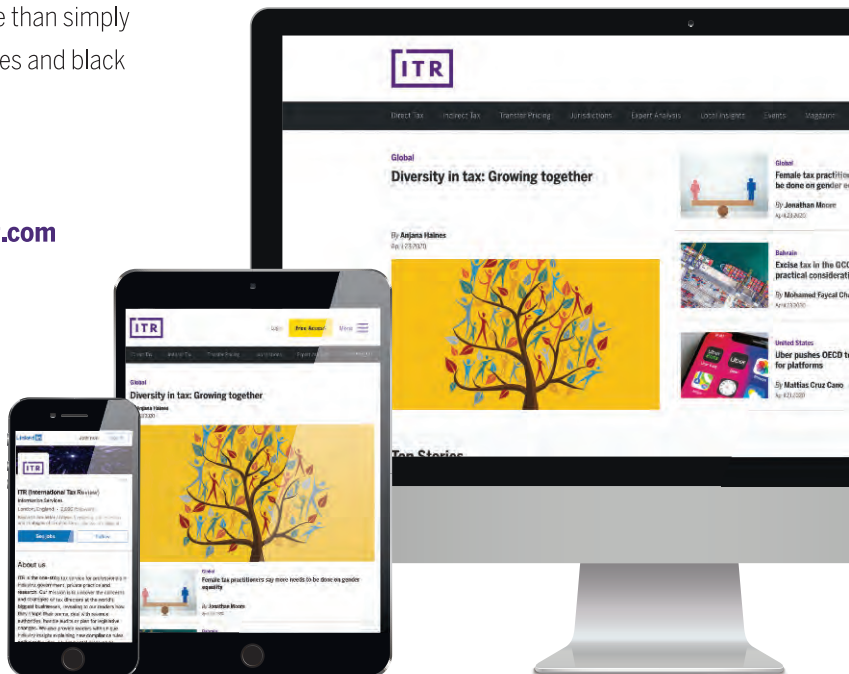


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