

THE SHAPE OF WATER

TAX DISPUTES IN THE AGE OF INTANGIBLE VALUE

New research from Baker McKenzie shows that the amount of tax under dispute is so large to wipe out more than half of profit growth in the Fortune 500. With disputes predicted to continue rising in the coming years, how can corporate taxpayers effectively manage the load?

Effective Dispute Resolution

Be prepared for a desire for information

Tax authorities have an increasingly demanding appetite for facts and documentary evidence. Time spent building a clear understanding of the facts and the availability of evidentiary support is often invaluable in putting the company on the front foot in later settlement negotiations. The powers of tax authorities to obtain information and documents vary from jurisdiction to jurisdiction and are often extensive. It is important in responding to any tax authority request for information to be clear on both the taxpayer's rights and obligations.

Cooperation and redlines

Reaching a negotiated settlement requires both parties to the negotiation to have trust in the other party. Creating an atmosphere of cooperation and transparency is often critical to building this trust. At the same time it is important to stand firm on the technical merits of the case and to be clear on your redlines, those points that will not be conceded for the purposes of reaching a negotiated outcome. Knowing your alternative routes to resolution, including the formal litigation process, and what would be involved in following through on a threat to litigate increases the strength of your bargaining position.

Global complexity and the importance of consistency

For cross-border matters involving international taxation, and in particular, transfer pricing, when agreeing a settlement in one jurisdiction consideration should be given to how that settlement might impact on the ability to reach settlements in other jurisdictions. Documenting differences in facts and any aspects of a settlement specific to a particular interpretation of the OECD guidance can be used in future audits to differentiate settlements reached in another jurisdiction. Equally, it is increasingly important to be alive to the increasing complex interaction of different tax and the volume of new international rules and regulations.

Negotiate or play to win

Tactics for reaching a negotiated settlement or litigating for a successful outcome tend to diverge. While it is possible to run these tactics in parallel it is of key importance to ensure that the impact of all decisions made in the negotiations on the litigation track are considered and vice versa. Know your appetite for litigation.

