KPMG Meijburg & Co
Tax & Legal

Global tax disputes: how to keep control of your own situation

The report 'Navigating the global tax disputes landscape' looks at tax authorities worldwide. How do taxpayers navigate their way in a world where disputes are becoming increasingly intense? Aldo Mariani, partner at KPMG Meijburg & Co and Head of Global Tax Dispute Resolution & Controversy Services, explains the trends and developments taking place in the area of tax disputes and how clients can better equip themselves to deal with them.

One of the most important trends Aldo Mariani sees developing is that more tax audits are taking place. "Clients are increasingly confronted with tax audits carried out by different central authorities. And there is more frequent use of information that central authorities have collected from clients or from other sources. More and more information is now available to tax authorities to help them determine what is going on at the international level at a client. A third element is that the international system of legal protection does not always align with practice, which often makes it difficult to resolve these disputes."

Tax under the spotlight

The shift in the attitude of tax authorities is something that has developed over the last decade. Aldo Mariani: "You had the OECD/G20's BEPS initiative, which sought to ensure that multinationals, in particular, pay more tax, while also looking at closing loopholes. Loopholes are legal ways to avoid paying tax, which in the past allowed for all manner of structures to be used for tax planning purposes. The change in attitude of the authorities saw these structures coming under the spotlight and people began to question whether what was happening was right and should action be taken to combat those structures. In many countries, this is now happening more frequently than in the past."

This can also be attributed to the fact that central authorities are better informed about these structures. As Aldo Mariani explains: "More reporting obligations have been introduced, such as Country-by-Country reporting, which requires large enterprises to report how many people they employ and how much profit they make in all the countries where they operate. In addition to this, transfer pricing documentation is now mandatory in most countries. These are all minor elements of a wider trend that is seeing far more attention being paid to internationally operating companies and their tax bills."

Grey area

Aldo Mariani notes that countries are communicating more frequently with one another. "You're now seeing that many countries are taking the initiative to perform audits at the same time. For example, the Netherlands, Germany and France will agree that all three of them will audit the same company, each from their own perspective. The information is then exchanged in real time. That can be quite complicated for the taxpayer, because you're having to deal with different authorities with different legal systems and to do so all at the same time. It's also difficult to control which information you provide to whom and how the rights of taxpayers can be safeguarded in such situations. The clear rules on legal protection found in national situations are still mostly a patchwork in the international situation, resulting in gaps and ambiguities. That makes it more difficult for taxpayers to manage any disputes."

No watertight system

Technology makes it easier to gather much more information. But that also means that clients have a greater responsibility to ensure that everything is set up properly. Aldo Mariani: "There are many aspects to an audit, whereby, for example, the tax authorities gain access to a client's IT systems in order to run certain checks. They will look at certain transactions, mainly checking for VAT and whether those transactions have all been properly reported. In other words: that the correct VAT was charged. What if errors are detected? Then the final adjustment is calculated on the percentage of errors on the total transactions checked. You're therefore facing an extrapolation of sorts at that point."

Also, more and more countries are working with digital invoices. Aldo Mariani: "Invoices sent by the taxpayer thus also directly land up at the tax authorities. You don't see that happening in the Netherlands as yet, but it is becoming increasingly common in other countries. This therefore gives the tax authorities information about remittances and deductions that are claimed, and then it's a simple matter of comparing them in an IT system. That was not possible in the past, when you have to wade through files to check if everything was correct." If it appears that errors have been made, supplementary tax assessments, with penalties and interest, will be imposed on the client. As Aldo Mariani points out: "These aren't watertight systems; it's not simply a case of one click on the button and you can see exactly what's gone wrong. But they are tools to detect errors faster and to determine how many errors have been made."

Retaining control

The best way that clients can equip themselves against such situations is to ensure their internal risk management is sound. For example, they need to know when the company does something, but the inhouse tax department must also be aware of what's happening and what the tax implications are. Aldo Mariani: "We can help the client to perform checks of their own systems so that errors can be detected and repaired. To not do anything is a very dangerous and risky strategy. I sometimes come across clients who say: 'I don't have any problems, because supplementary tax assessments have never been imposed on me.' But if you dig a bit deeper, you discover that they haven't been audited for years."

Aldo Mariani has noticed that clients are paying more attention to this and also asking how they can better manage disputes with the tax authorities. "You need to look closely at how you are going to oversee such an audit and who within the company should be involved. That's something that's not always organized properly in practice. For example, a tax department that was unaware that an audit was being performed in a particular country, because they hadn't been informed of this on time. It's important that those types of internal procedures are in place. Another factor that's important for clients is for them to ask themselves how they should deal with transfer pricing. For example, are the effects of this adjustment felt in more than one country? You need to know what dispute resolution options are available to you. After all, it's not inconceivable that the tax authorities may be in the wrong." Aldo Mariani's advice: "Ensure you have a long-term strategy and try to mitigate risks as much as possible. That's generally better than adopting a wait-and-see approach and then having to defend yourself in a dispute. Ensure you have procedures and contingency plans in place. What does that entail? How can you quickly retrieve the right information? By doing this you can retain control of your situation. If you nevertheless land up in an international tax dispute, then engage a party in that country who knows how the regulations work and how the interests of the taxpayers can best be served."

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Feel free to contact Aldo Mariani if you'd like more information about how Meijburg can help your company to deal with and resolve tax disputes efficiently and effectively.

Aldo Mariani
Partner Meijburg & Co
mariani.aldo@kpmg.com