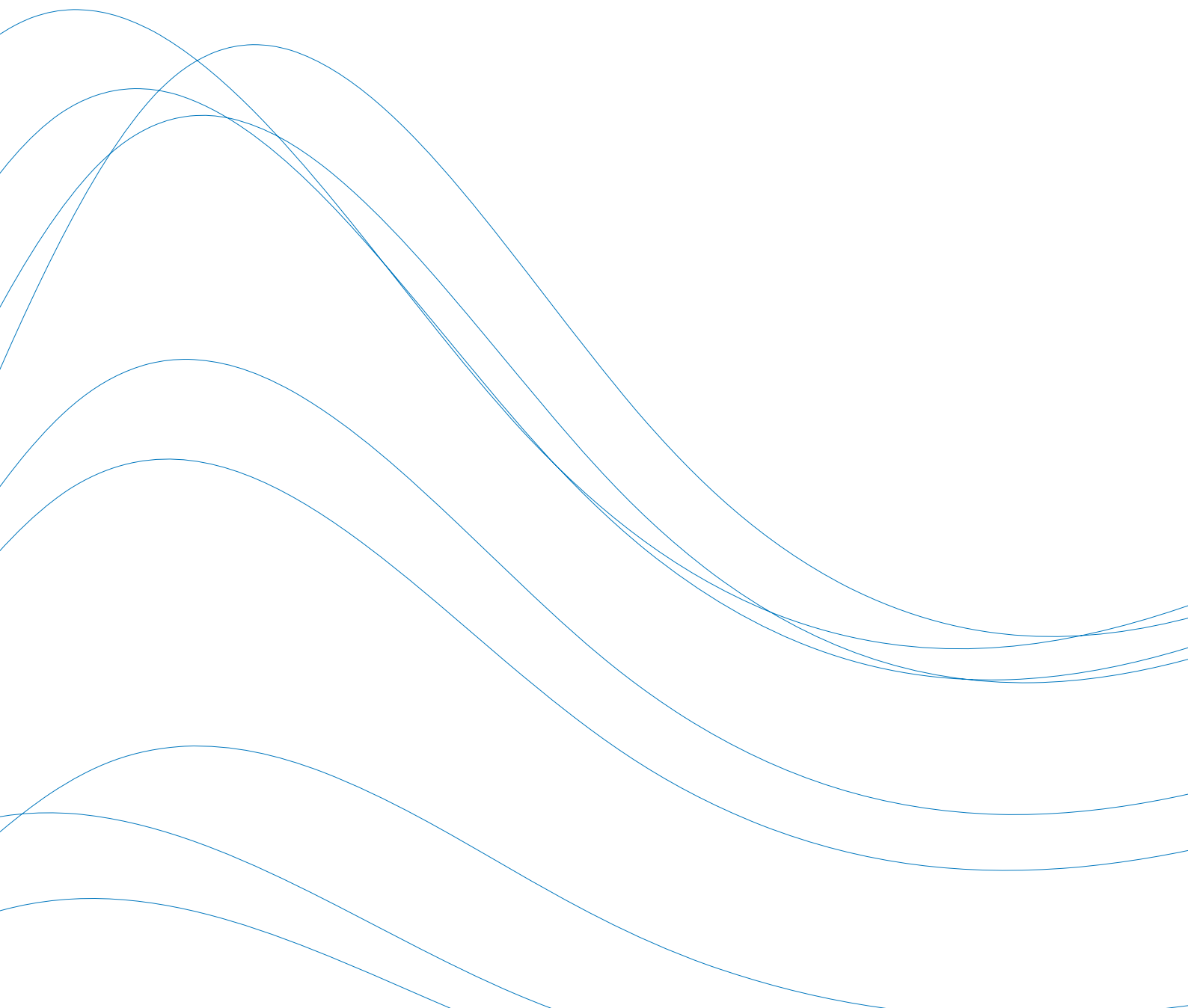




Tax Controversy and Disputes Survey 2022

Contents

Time for a more strategic approach	3
Organizations lack specialist resource	5
Preparation is everything	7
The value of an external perspective	8
Get ready now.....	12



Time for a more strategic approach

Tax controversy and disputes are on the rise.

Challenges from tax authorities are increasing in number, as governments look to shore up revenues after investing huge amounts in pandemic support programs.

Meanwhile, authorities around the world are collaborating and coordinating to closely scrutinize the tax positions of multinational enterprises. The result is greater harmonization and information-sharing, multilateral agreements and joint audits, and initiatives like the OECD's International Compliance Assurance Program.

In this context, queries from tax authorities are becoming business as usual. Our survey of tax leaders found three quarters of them are currently under audit – many in several jurisdictions at once. Four fifths expect more disputes to arise.

The three main targets of disputes are transfer pricing (cited by 80% of survey respondents); indirect taxes such as VAT (51%); and permanent establishment/residence issues (47%). This is in line with what we'd expect. These three areas represent what we might call the “soft underbelly” of the global tax system, where the complexity of the system, the potential for subjectivity and the large sums at stake make interventions by the tax authorities very worthwhile to undertake.



Jason Collins

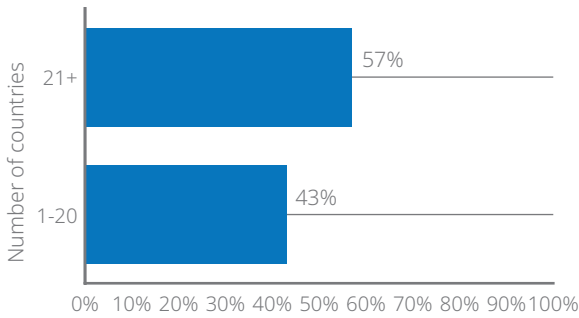
Partner

Head, International Tax Controversy

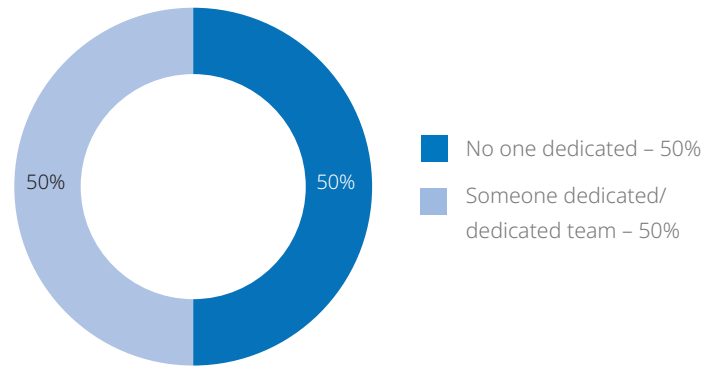
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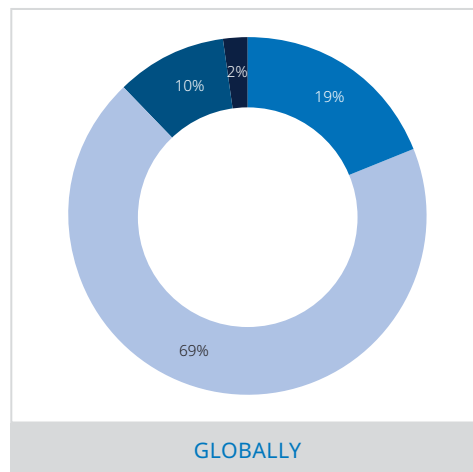
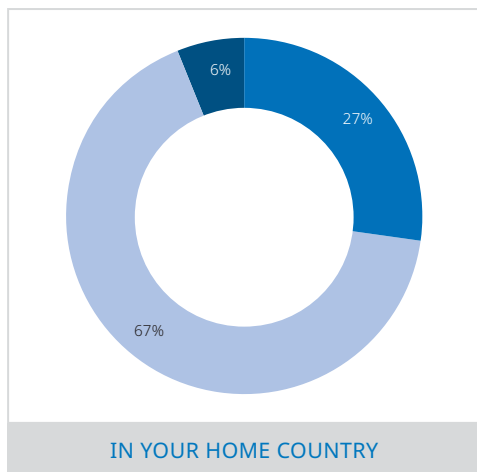
Q1. How many countries does your organization pay tax in?



Q2. Do you have anyone dedicated to working on tax controversy and disputes?

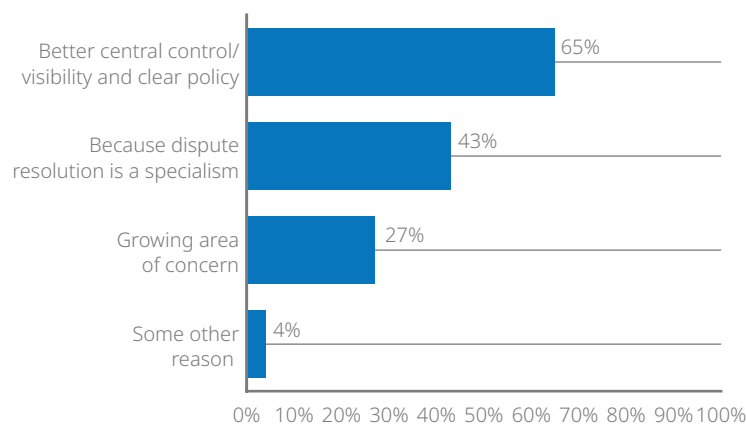


Q3. Do you have a dedicated head of tax audits and/or controversy/disputes?



■ Yes – 27%
 ■ Not yet but it is being discussed – 6%
 ■ Yes – 19%
 ■ Not yet but it is being discussed – 10%
■ No – 67%
 ■ No – 69%
 ■ Not sure – 2%

Q4. What do you see as the advantages of having a dedicated head of tax audits and/or controversy/disputes?



“I believe there are advantages and disadvantages. The advantage of having a head of tax audits is freeing of resources and in-house specialist; the disadvantage is that we want the head of tax to have the controversy reflexes, maybe this makes the head of tax less accountable.”

— SURVEY RESPONDENT

Organizations lack specialist resource

We wanted to know how global organizations are tackling the rising volume of disputes, and importantly, whether they're taking a strategic approach.

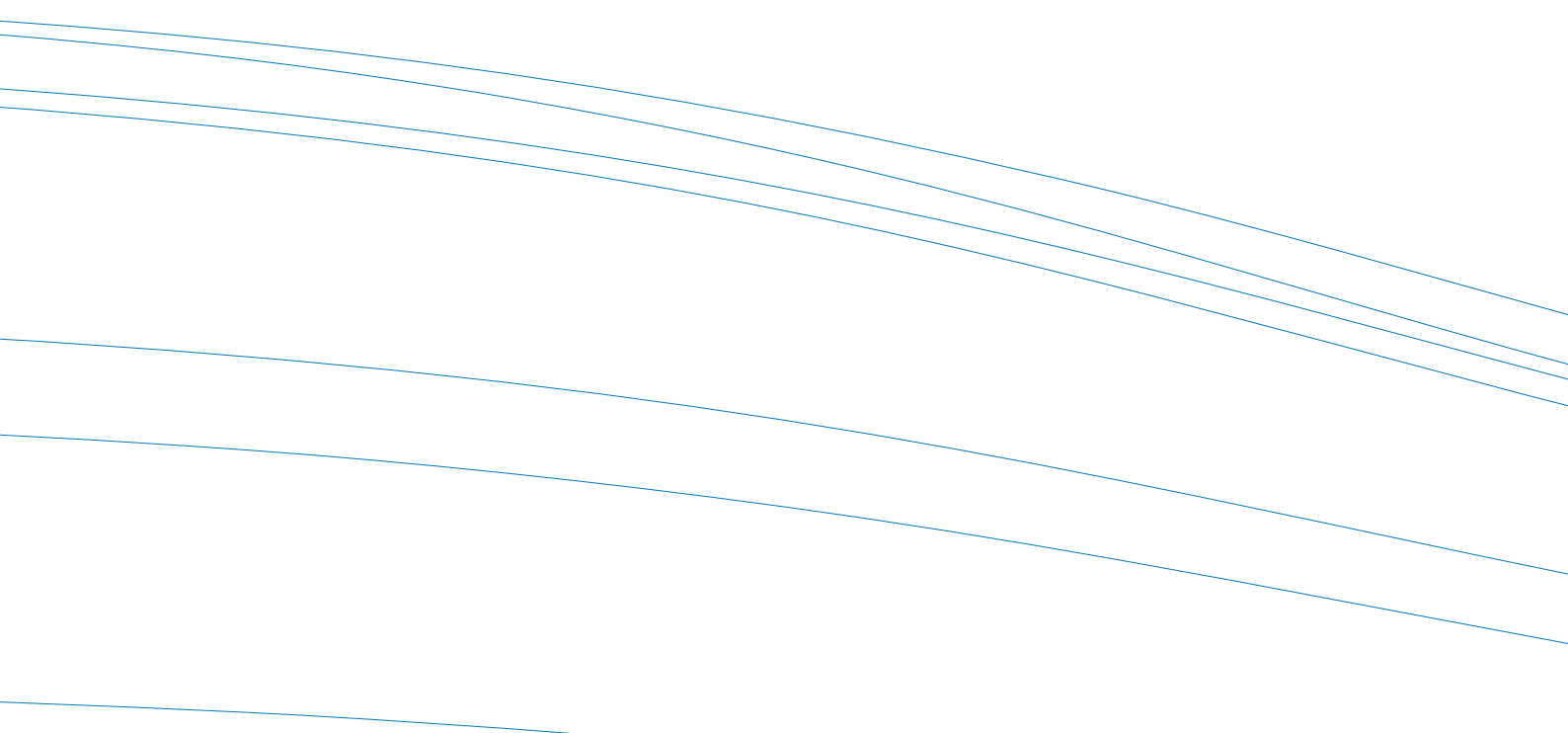
The results of our survey suggest they're not.

Seven in ten businesses lack effective policies for responding to interventions from tax authorities. More still lack any sort of proactive approach. Only half have made use of alternative resolution mechanisms.

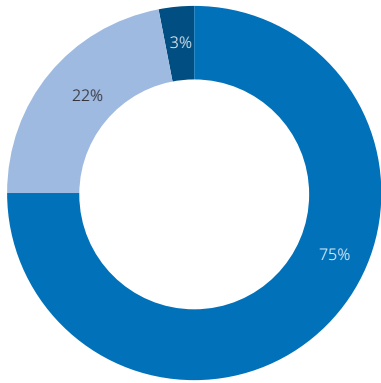
Tax controversy and disputes is a specialist discipline, which requires technical expertise. Yet just a fifth of the companies we spoke to have a global head of tax controversy.

Instead, disputes are typically handled by the general tax team, alongside everything from statutory reporting to restructuring and transactions. The assumption is that the people who know the firm's tax positions are ideally placed to answer authorities' queries on them.

The reality is infinitely more challenging. Responding to authorities' queries is not a tick-box exercise. There's no formal procedure to follow – particularly in the more complex, high-value and evidence-heavy cases.



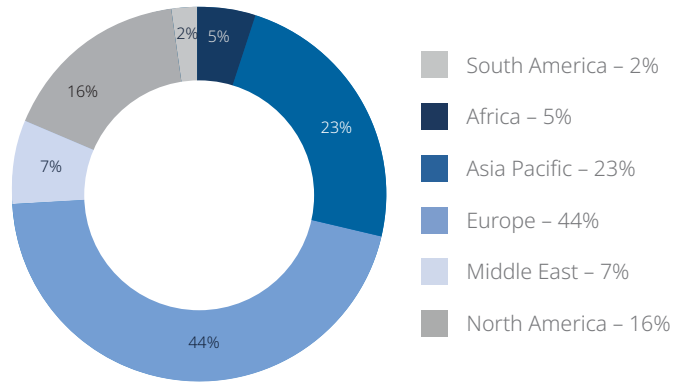
Q5. Do you have any audits at the moment?



■ Yes – 75% ■ No – 22% ■ Don't know – 3%

Q6. If yes to Question 5, please confirm in which geographical area(s)?

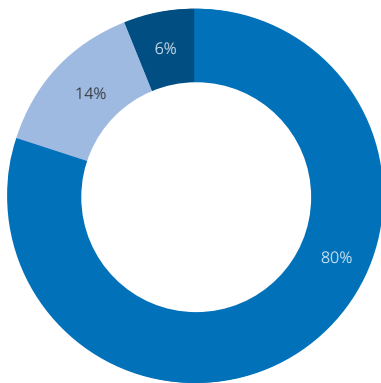
RESPONSES BY GEOGRAPHICAL AREA



“At any given time I have approximately 800 active tax audits with the IRS, states, local jurisdictions and over 50 countries outside the US.”

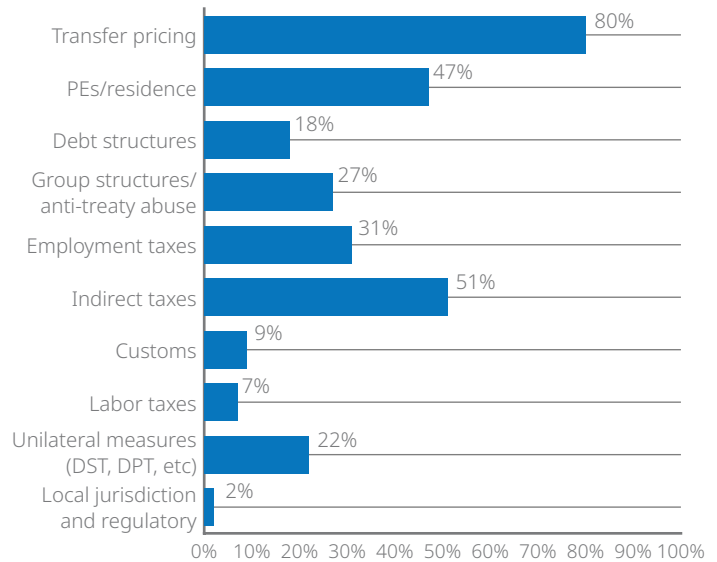
— SURVEY RESPONDENT

Q7. Do you foresee disputes arising more in your business?



■ Yes – 80% ■ No – 14% ■ Not sure – 6%

Q8. If yes, in which areas?



Preparation is everything

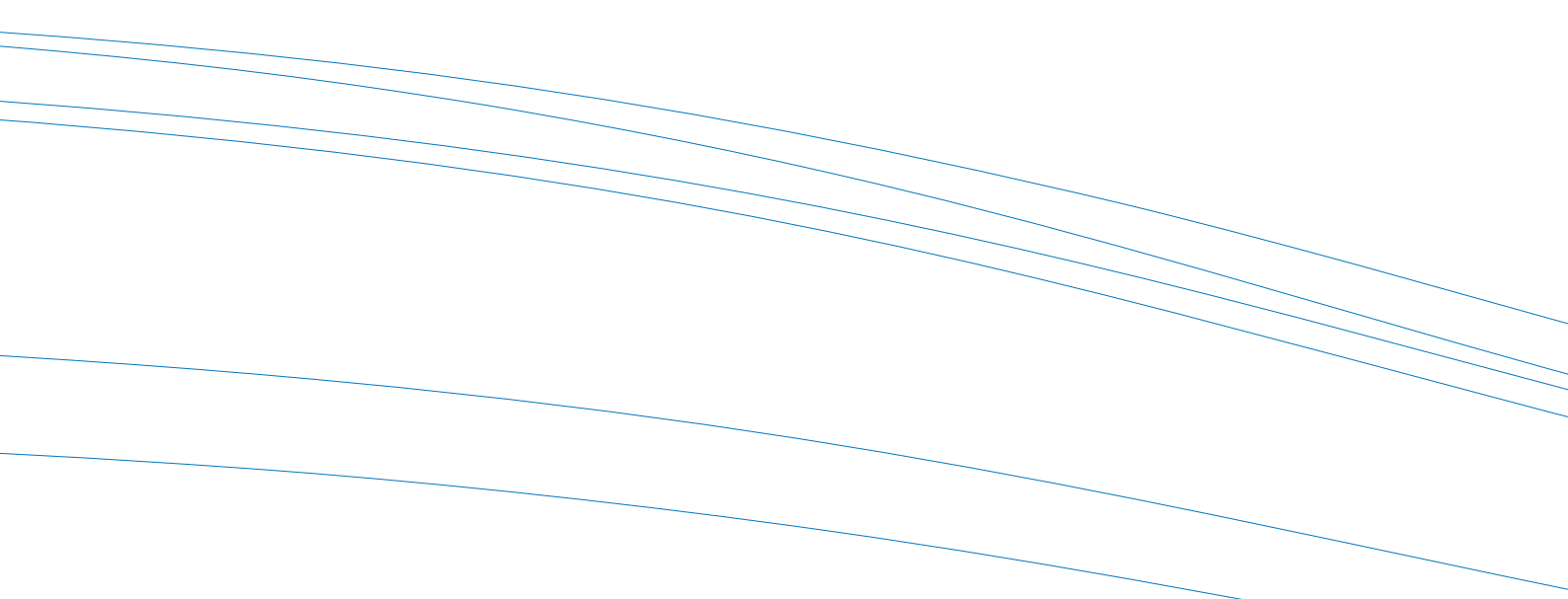
The best way forward will depend on the cause of the challenge, and the nature of the authority's questions. But it's critical that you stay in control of proceedings as they unfold – which means being prepared for queries before they come in. Failing to anticipate the direction of a line of enquiry can have serious consequences – a seemingly innocuous query at the outset can cause problems further down the line, while the impact of answers to the same question which might arise in other jurisdictions also needs to be considered.

Being prepared means having a defined dispute resolution strategy, robust policies and procedures, and clear data structuring, so historical evidence is quick and easy to find.

Having that infrastructure in place will enable you to control the flow of information during an examination, rather than constantly being in 'reactive' mode. And it will streamline the process of responding to queries, and help ensure that thought has been given ahead of time to strengths and weaknesses – and ensuring consistency of answers where an issue might be multijurisdictional.

In addition, it can shorten the duration of the intervention, enhance your chances of a positive outcome, and even head off a dispute in the first place.

It will also allow you to capture learnings from each challenge you handle, and identify how to be better prepared for the next one.



The value of an external perspective

If a dispute were to emerge over a commercial contract, in a mature legal market you'd hire a specialist litigation lawyer to manage and resolve it, not the lawyer who helped you draft and negotiate it with the other party in the first place. The skills needed for concluding deals are not the same as those for resolving disputes, even if the subject matter is the same. The same logic should apply to tax.

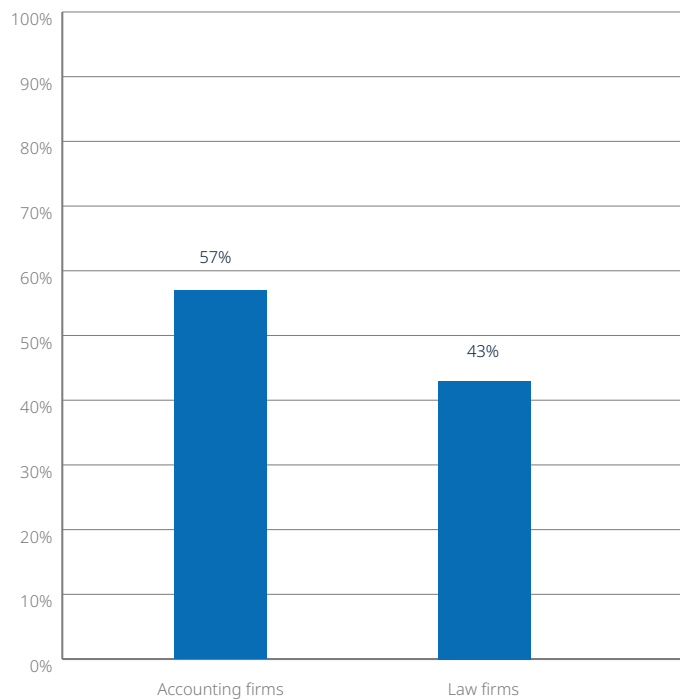
Tax controversy and disputes practitioners will understand the legislation in the jurisdictions where queries are raised. And they'll be familiar with the tax authority's powers and the limits on them. At some point, you're likely to find yourself facing several disputes at once, all in different countries. An intervention in Cambodia, say, will demand a very different response from one in the US.

But tax controversy and disputes specialists provide much more than technical knowledge. It's their job to think strategically about a challenge. They'll know when an initial query becomes an actual dispute in the eyes of the authority. And they'll advise you on whether to defend your position, step back, or seek alternative remedies.

They'll also work with you to formulate a tax controversy and disputes strategy. And they'll help you implement rigorous policies and processes, to simplify the task of gathering and submitting information to satisfy the authority.

What's more, they will bring a neutral perspective – something you can't get from the people involved in structuring your tax arrangements. They can look objectively at the positions being challenged by tax authorities, and impartially assess their strengths and weaknesses. And they will often see vulnerabilities that neither your tax team, nor your original tax advisors, have spotted.

Q9. Do you prefer working with dispute teams within global accounting firms or global law firms?



Tax is an area where accounting, economics and law intersect. While accounting firms can boast scale and some deep specialisms, law firms are seen as the professionals to turn to when interventions become bogged down or hard-edged.

The results of the survey actually show that often a multi-track or “second chair” approach can often yield the best results. As the accounting firms shift their businesses to focus on big data and technology outsourcing projects, and find ever increasing audit restrictions in place, law firms which have invested in services not traditionally seen in the legal sector – such as transfer pricing, tax structuring and tax controversy and disputes – will increasingly come to the fore.

Law firm or accounting firm? Some observations....

"In most countries an accounting firm is also our main tax advisor, and thus we use them, but for higher stake/more complex disputes we also, in co-operation with an accounting firm, use a local law firm/specialist."

"In practice it varies according to jurisdiction – accounting firm in anglophone countries; law firms elsewhere."

"Both accounting and law firms have a role to play, and in some countries we prefer one over the other. We don't use exclusively law firms or accounting firms for controversy."

"Actually depending on the type and stage of tax dispute, we may be using both at the same time."

"It is less about law firm vs accounting firm and more about finding the right controversy advisor who can be knit into day to day advisory, so that when an audit or dispute comes we are prepared."

In favor of a law firm:

"Expertise and better able to write a persuasive document."

"Better skill sets for dispute resolution."

"More strategic in approach, fewer administrative issues."

"A traditional law firm is preferred in further litigation steps because of their specific experience in that area."

"Let the lawyers do what they specialise in, disputes, law. Accounting firms are better at the tax computations and tax advice."

"The law firms are better advocates for tax controversy."

In favor of an accounting firm:

"With the accounting firms we seem to get better expert advice based on the particular situation. Usually they have other clients who have gone through or are in the process of going through the same type of examination."

"For tax compliance the distribution tax reviews are suited to the resources of an accounting firm."

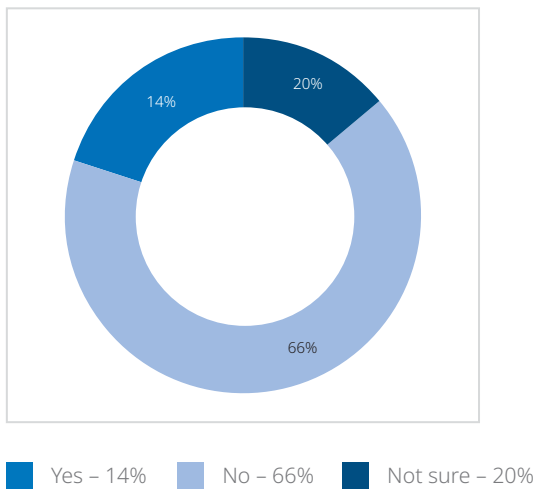
"Global coverage; linked to tax compliance support already provided."

"Usually an accounting firm will have been involved in the issue being discussed so will have first hand knowledge."

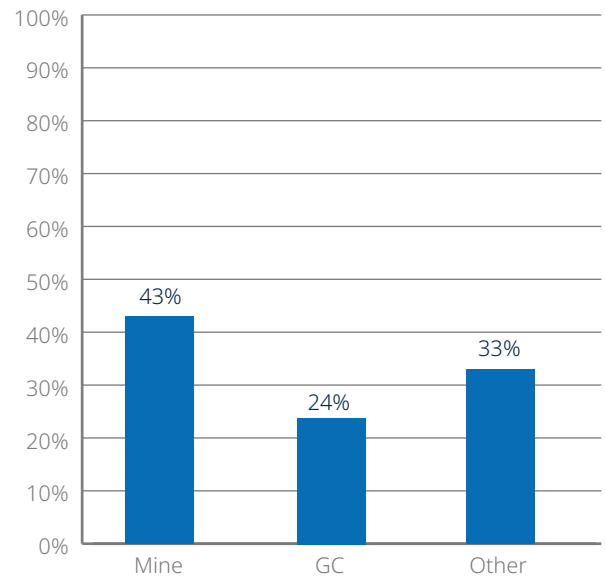
"Usually because we hired [the accounting firm] to help with the tax position. We may use a law firm if the audit gets dicey."

"Global mandate as accounting firms have visibility on our transactions with law firm work being more specific transaction/project related."

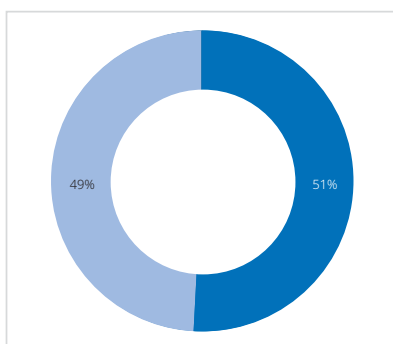
Q10. Are you looking for a single firm which can handle all your disputes, globally?



Q11. Is the decision yours alone or in consultation with your GC when appointing a controversy/disputes provider?

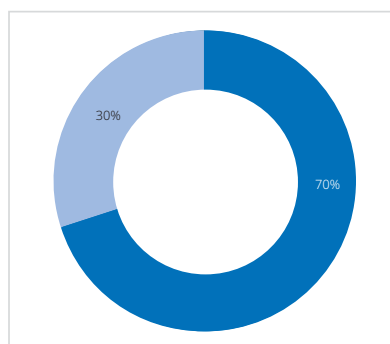


Q12. Have you ever handled a tax dispute via alternative resolution mechanisms, such as mutual agreement procedures or mediation services?



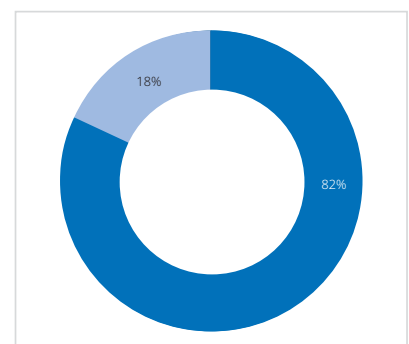
Yes – 51% No – 49%

Q13. Would an internal policy about how to conduct a tax audit or tax controversy process be helpful to your organization?



Yes – 70% No – 30%

Q14. Are you interested in proactive solutions to either mitigate or manage international tax and transfer pricing controversy more effectively when they occur?



Yes – 82% No – 18%

“Other” options for appointing a controversy/disputes provider included consultation with:

The wider tax team

The COO

The wider business

The local business and the global tax team

Get ready now

Tax functions should work on the basis that it's not whether disputes arise, it's when. And how many.

You know that challenges are coming your way. And you may well know which of your tax positions are most likely to provoke a query. So put the preparation in place before they arrive.

Formalize your approach to tax controversy and disputes as part of your tax strategy. Make sure your tax team's capabilities include tax controversy and disputes – and seek external support where it can add value.

A strategic approach, based on dedicated expertise and best practice, will put you in the best shape possible to manage disputes. And it will help you get the right results.

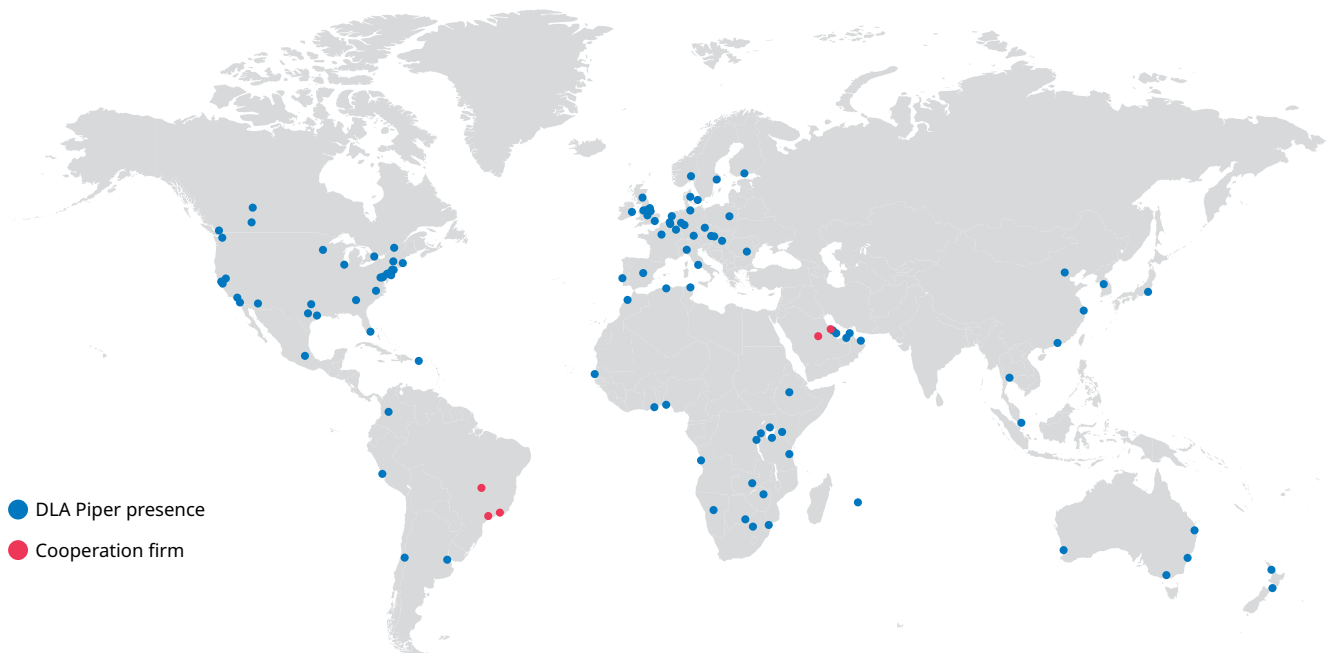
The best managed tax functions of the future will be those that put controversy management at the heart of their operations – ready for the challenges they face ahead.

If you would like to discuss any aspect of this survey, please contact one of the authors of this summary or your principal Tax contact at DLA Piper.



Our global tax coverage

DLA Piper is a global law firm with lawyers throughout the Americas, Europe, the Middle East, Africa and Asia Pacific. With tax presence in 45+ countries, and as global leaders in tax controversy and disputes, transfer pricing and VAT and indirect tax, we are uniquely positioned to partner with our clients to deliver opportunities and address the challenges they may face across the countries in which they operate.



- DLA Piper presence
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