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Methodology

Welcome to the 2021 edition of the Guide to the World's Leading Transfer Pricing Advisers, the international legal market's leading guide to the top legal practitioners advising on transfer pricing law.

When first published in 1994, the Expert Guides were the first-ever guides dedicated to leading individuals in the legal industry. Since then we have continued to focus on individuals considered by clients and peers to be the best in their field.

Our research process involves sending over 4,000 questionnaires to senior practitioners or inhouse counsel involved in each practice area in over 60 jurisdictions, asking them to nominate leading practitioners based on their work and reputation. The results are analysed and screened for firm, network and alliance bias. The list of experts is then discussed and refined with advisers in legal centres worldwide.

Our researchers have compiled a list of specialists in 56 jurisdictions for this guide. These specialists have been independently offered the opportunity to enhance their listing with a professional biography. The biographies give readers valuable, detailed information regarding each lawyer's practice and, if appropriate, their work and clients.

We owe the success of this guide to all the in-house counsel and firms that completed questionnaires and met our researchers. Thank you. We hope you find the guide to be a useful tool. All information was believed to be correct at the time of going to press.

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ASIA PACIFIC

Features for: Australia, by Janelle Sadri and Paul Riley of Deloitte Australia 4 India, by Anis Chakravarty of Deloitte India and John Wells of Deloitte Tax LLP (US) 10 India, by Maulik Doshi of Nexdigm (SKP) 14 Indonesia, by Yusuf Wangko Ngantung of DDTC 20 Singapore, by Luis Coronado of EY 26

Navigating the TP lifecycle in COVID-19 times

Janelle Sadri and Paul Riley of Deloitte Australia provide a practical insight for multinational enterprises managing the impact of COVID-19 on the transfer pricing lifecycle.

COVID-19 has forced many multinational enterprises (MNEs) to change the way business is conducted, due to significant disruption and change. Some industries have enjoyed a boom since early 2020, with a sudden influx of revenue and an increased workforce. Others have had to re-engineer service offerings and workplace environments, against the backdrop of weakening consumer demand and confidence, global supply chain disruptions, and a compromised workforce.

The long-term impact of COVID-19 on the global economy is unlikely to be known for some time, however real gross domestic product (GDP) in the OECD area showed an unprecedented fall of 4.9% for 2020, the largest fall ever recorded in over 50 years.

In a transfer pricing (TP) context, this has meant that some MNEs are experiencing losses across the value chain. Several new and unanticipated risks have also materialised in an unforeseeable and unprecedented way. However, for those sectors experiencing unprecedented growth and increased revenue, there are now additional profits in the chain that need to be properly allocated.

COVID-19 provides an opportunity for MNEs to revisit international related party dealings (including contracts and TP models between related parties), just as independent companies are doing, to help their businesses survive the pandemic and its aftermath.

As governments come under increased and sustained fiscal pressure, tax administrations are also likely to expand TP reviews and audit activity. MNEs will need to present clear evidence of the impact of COVID-19 on business and TP positions.

This article considers the impact of COVID-19 across the various stages of the TP lifecycle and provides practical guidance on steps MNEs can take to help ensure that TP policies and filing positions remain defensible in the light of commercial changes necessitated by COVID-19.

OECD guidance and revenue authority responses

In December 2020, the OECD released guidance which clarifies and illustrates the practical application of the arm's-length principle to some of the unique fact patterns and specific challenges associated with the COVID-19 pandemic. The guidance was developed and approved by the 137 members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework).

Four priority issues were identified and are covered in the OECD guidance:

Comparability analysis

The guidance emphasises the importance of a comparability analysis which specifically delineates the related party transaction, including its





actual economic circumstances. It also recognises that the reliability of historical data used in comparability analyses may be reduced, and that if the arm's-length price of a controlled transaction is determined annually, a comparability analysis will be required for the 2020 financial year.

Losses and the allocation of COVID-19 specific costs

In relation to losses, Chapter I of the OECD TP Guidelines is particularly relevant. It is noted that exceptional, non-recurring operating costs should be allocated based on an assessment of how independent parties operate. Further, the commercial rationale for any change in the risks assumed before and after the outbreak of COVID-19, must be considered.

Government assistance programmes

The OECD view is that government assistance may mitigate the quantifiable negative impact of a risk. It should therefore be taken into account when reviewing potential comparables (given that it may be relevant to how the parties establish commercial or financial relations, and how transactions are priced).

Advance pricing agreements

For MNEs with unilateral, bilateral or multilateral advance pricing agreements (APAs) in place, certain critical assumptions may have been breached depending on the impact of COVID-19. For non-material breaches, the business and tax authority may agree to keep the APA on foot. For material breaches, the APA may be revised, cancelled or revoked.

The OECD encourages businesses and tax authorities to adopt a flexible and collaborative approach to minimise delays in concluding APAs under negotiation.

Though tax authorities are cognisant of the impact COVID-19 is having on MNEs globally, challenges will inevitably arise for those multinational groups financially impacted, whether positively or negatively

The Australian Taxation Office (ATO) released guidance on:

 How taxpayers should account for COVID-19 economic impacts on TP arrangements; and

Concerns the ATO have with taxpayers changing related party agreements in the COVID-19 environment.

It is clear from the guidance issued that the impact of COVID-19 on TP positions is likely to be a key area of focus for the ATO (and other tax authorities globally) for the foreseeable future.

What should MNEs be considering in light of COVID-19?

Against this backdrop, now is the time for MNEs to consider the following (non-exhaustively) in relation to 2020 and beyond:

- Whether triggering of force majeure clauses, or revisions to key terms and conditions, in existing inter-company agreements is necessary;
- Whether penalty or termination clauses should be invoked;
- Whether covenant holidays or payment deferrals could be negotiated, or credit terms restructured;
- Whether parental guarantees are required in order to secure third party funding in the current economic circumstances;
- The impact of strengthened or weakening consumer demand and confidence on revenue and in turn, profitability forecasts;
- The materialisation of unexpected risks and the impact on functional, asset and risk profiles;
- Whether any of the above changes warrant a change in the TP method(s) applied or policies, or profit level indicators used;
- Whether new related party agreements are required depending on any changes in counterparties across the global value chain;
- Global supply chain interruptions including changes to the location and scale of key activities;
- How to reflect COVID-19 in benchmarking studies and economic analysis;
- · The justification for (potential) profitability decreases or losses; and
- The allocation of additional profits that may have accrued to the MNE if in an industry or sector that has in fact been buoyed by COVID-19.

Impact of COVID-19 across the TP lifecycle: A holistic approach

There are four main stages to the TP lifecycle – plan, implement, manage and resolve. Together these steps help MNEs to proactively manage their day-to-day operational TP and documentation processes, prevent and resolve disputes.

Plan: Revisit pricing policies and anticipated results instead of waiting for year-end surprises

As mentioned above, COVID-19 has impacted the level of profits across the supply chain for many MNEs, thereby distorting the allocations of profits and losses between group companies.

Businesses are encouraged to proactively review and, where necessary, adjust TP policies and inter-company agreements, just as they would renegotiate third party contracts. It is critical to consider consistency, long-term relevance and flexibility; the commercial justification for any changes; and how independent companies and industry peers are reacting to COVID-19.

MNEs are strongly encouraged to develop a strategy based on anticipated results instead of waiting for year-end surprises. During this stage of the TP lifecycle, some of the practical and more granular considerations for MNEs may include:

- Which entities have historically been bearing the key risks in respect of inter-company transactions? Have these entities maintained this risk profile throughout COVID-19?
- Have new key risks materialised as a result of COVID-19 and who is responsible for managing these new risks?
- Are entities which have been previously characterised as limited risk

distributors, breaking even, in fact incurring losses, in 2020 or are they insulated?

- Who is truly responsible for the development, enhancement, maintenance, protection and exploitation (DEMPE) of existing or new IP?
- Is there a need for additional funding to support cash flows during the period given reduced revenue (noting the credit rating may be impaired)?
- Alternatively, how can any excess cash be best used to reduce debt, invest in new businesses or product offerings?
- Where should additional profits sit, commensurate with the functional, asset and risk profiles of the entities in the value chain?

As part of the planning phase, it may become evident that the MNE's operating model and global tax structure needs to be better aligned and integrated. Hence this planning phase is critical, bearing in mind the short-term impact felt by COVID-19, and the likely continued impact of the pandemic.

Implement: Build robust mechanisms to collate operational and financial data

This phase of the TP lifecycle involves implementing the right systems, for example building mechanisms to collect and collate relevant operational and financial data.

The current global environment is forcing many tax teams to do more with less, with a focus on preserving cash, reducing costs and providing increased value in a difficult business environment. Other tax teams are grappling with the effects of a sharp and sudden increase in demand, revenue and profits across the value chain. Ensuring that efficient and appropriate operational TP processes are in place, is critical.

MNEs should consider:

- Are the right systems in place to set prices as well as test outcomes?
- Can TP policies be effectively and efficiently tested, and how regularly?
- Are there specific shareholder, chargeable, or other types of costs which need to be identified and isolated/tracked?
- Is it a challenge to collect the relevant data for reporting deadlines/filings?
- Is there a more effective way of keeping track of new costs or expenses, or new transactions?
- Could the process for true-up adjustments be streamlined?
- Are local results consistent with new group policies (if any)?
- Can profit and loss segmentation, transaction data capture, etc. be automated?
- Is valuable data being appropriately leveraged and used effectively?
 These short-term responses and more longer-term changes can help mitigate the potential financial and operational impacts of COVID-19.

Manage: Revisit inter-company agreements vis-à-vis actual conduct and prepare contemporaneous documentation to prevent disputes Preparing contemporaneous documentation and audit defense files is the best way to successfully navigate any inquiries. Businesses are under increasing pressure to find efficient ways of managing TP documentation. The OECD recommendations are being expanded with additional local requirements, and tax authorities expect significant levels of detail and exactness from MNEs in their documentation.

Businesses must therefore analyse, document and keep evidence of business changes and the impacts of COVID-19 and address it explicitly and in detail in the TP documentation. MNEs, whether negatively or positively financially impacted by COVID-19, should

gather comprehensive evidence to help explain and defend the TP position in the event of a tax authority review. Such evidence may include:

- From a benchmarking perspective, how have third party comparable companies fared during COVID-19? What year(s) will benchmarking studies cover? Is a special factor analysis required? Can loss-making comparables be included or a lower point in the range selected?
- For MNEs operating in an industry that has fared well (e.g. online retail, workplace solutions, cleaning products and supermarkets), how have competitors fared during COVID-19 (as the tax authorities would do the comparison)?
- Can 'but for COVID-19' results be prepared/provided to help illustrate how TP and financial outcomes were impacted by COVID-19?
- The justification for (potential) reductions in revenues, profitability decreases or losses, including any significantly impacted profit and loss items.
- Conversely, the rationale for increased revenue, additional profits and an explanation of how these have been allocated across the group.
- Commentary on how the taxpayer is controlling the impact of COVID-19 on performance and who within the MNE is controlling the major risks faced by the business.
- Board minutes, emails, presentations, TP documentation, news reports, competitor results or industry-specific information highlighting the impact of COVID-19 on financial results to support TP positions taken in 2020 with granular detail in case of tax authority enquiries.

The focus of this stage of the lifecycle is on contemporaneous TP documentation that tells a well-developed and coherent 'story' and demonstrates alignment between substance and form.

MNEs are also encouraged to monitor whether local tax authorities have issued temporary concessions or guidelines to support businesses in applying alternative TP methodologies during the pandemic. For certainty, MNEs may wish to proactively engage with revenue authorities in relation to any APAs in place for which critical assumptions and conditions are at risk of being breached as a result of the impact of COVID-19.

Resolve: Settle disputes with real-time evidence of the impact of COVID-19 and commercial drivers for change

In this last stage of the TP lifecycle, MNEs must consider past and future interactions with tax authorities and develop a resilient controversy strategy. To defend the existence/pricing of particular transactions, particularly if faced with delineation or reconstruction challenges, MNEs should play devil's advocate and prepare for inevitable queries from the tax authorities.

APAs may help achieve certainty in this uncertain environment. The mutual agreement procedure (MAP) process may also be beneficial in resolving disputes. Looking at tax audits through a pre-, during, and post-COVID lens including any historic tax/TP audits and reviews, will help MNEs' audit-readiness. This may involve defending profitability or results in the context of wider group margins; reviewing the appropriateness of critical assumptions in existing APAs given the pandemic was not foreseeable; or exploring new APAs where restructuring has occurred.

Looking forward

COVID-19 has undoubtedly led to unchartered waters for MNEs in managing complex supply chain, workforce and other key operational elements. Despite the well-documented predicament of certain industries, other sectors have better weathered the storm, with some even experiencing a surge in growth and profits.

Tax authorities are likely to be more investigative in this COVID-19 context, whether MNEs have been positively or negatively financially impacted. It is therefore imperative that MNEs collect and present the right quantitative and qualitative evidence to be able to demonstrate to tax authorities, down the track, the real impact of COVID-19 on business.

Across all stages of the TP lifecycle, MNEs must have a forward looking, comprehensive strategy for tackling the impact of COVID-19. Real-time evidence of the impact of COVID-19 and commercial drivers for change, robust documentation of the factual position and economic analysis to support arm's-length outcomes, and bridging the gap between the tax authority's understanding of the facts and reality, are more important now than ever to best prepare for inevitable inquiries.



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Based in Melbourne, Helen also served on PwC Australia's Executive Board as Managing Partner, People, Partnership & Culture from 2012 through 2020. In this role, Helen was responsible for driving cultural change within the firm with a particular focus on embedding a values based culture, diversity and inclusion, alignment of performance metrics and values, partner development, wellbeing and employee relations. This translates to a real focus on ensuring technical excellence, outstanding client delivery together with an outstanding experience in how work is done with and for clients founded on shared values and objectives.

Practice areas

Business model optimization and value chain analysis, IP ownership and management models, APAs, Dispute Resolution, TP documentation and policies.

Sector specialisations

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Association memberships

Fellow of the Institute of Chartered Accountants in Australia, and the Taxation Institute of Australia.

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Nick has also participated in consultations with the Australian Taxation Office, the Inspector General of Taxation and Australian Treasury in relation to a variety of matters related to transfer pricing law and practice over a number of years. Nick is currently on the Advisory Panel of the Board of Taxation.

Practice areas

Business model optimisation, policy design, IP management, technology services, restructuring, cost-sharing arrangements, APAs, transactions, financial services, corporate taxes, technology, value chains, audit defence, audit support, dispute resolution, pre-litigation, MAPs/ADRs, litigation, controversy management, international tax advisory, supply chains

Sector specialisations

Banking, construction and materials, consumer goods and services, financial services, food and beverage, forestry, healthcare, industrials, insurance, investment management, mining, natural resources, pharma and life sciences, real estate, tech and telecoms, utilities

Association memberships

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He has specialised in transfer pricing since 1996 and in that time has conducted a wide variety of complex transfer pricing assignments for some of the world's leading multinational companies across industries in Australia and Asia.

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Lyndon has been recognised by the International Tax Review as one of Australia's leading transfer pricing advisors and he was an external consultant to Treasury on the 2013 review of Australia's transfer pricing regime.

Practice areas

Controversy management, APAs, MAPs/ADRs, IP management, restructuring

Sector

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Association memberships

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Academic qualifications

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Over the past 15 years, Natalya was advising companies on the transfer pricing matters both in Australia and UK.

Experience

Natalya frequently assists companies with planning their overseas expansion, or companies entering the Australian market. The focus is on ensuring that the tax payers achieve and defend the compliant transfer pricing structures, that meet their commercial needs.

Natalya also has extensive experience advising companies on the transfer pricing aspects of financial transactions, from planning to compliance and defence.

She is experienced in dealing with the tax authorities, in both Australia and the UK, including successfully concluding transfer pricing risk reviews and audits, and negotiations of Advance Pricing Arrangements.

Sectors

Natalya has extensive experience advising companies in a variety of industries, including Agriculture, Real Estate, Pharma and Technology & Telecommunications as well as groups in the strong growth phase.

Qualifications

- Master of Business Administration
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Professional qualifications

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Garrick is a PwC Melbourne partner with over twenty year's experience providing transfer pricing advice in Australia (Melbourne and Perth) and Europe (Amsterdam) across all facets of the speciality, including transfer pricing planning, documentation compliance, and Australian Tax Office (ATO) engagement.

Garrick's client base includes both Australian multinationals and Australian subsidiaries of foreign multinationals across a range of industries including retail and consumer, automotive, e-business, manufacturing, and mining.

Sector experience includes successful negotiation of bilateral APAs and MAPS, preparation of Australian documentation, development of transfer policies, and ATO transfer pricing risk review and audit negotiations.

Practice areas

Business model optimisation, policy design, IP management, technology services, restructuring, APAs, value chains, audit defence, audit support, dispute resolution, MAPs, controversy management, US outbound, supply chains

Sector specialisations

Agriculture, automotive, aviation, consumer goods and services, energy, food and beverage, gaming, industrials, mining, oil and gas, pharma and life sciences, shipping, tech and telecoms, transport,

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Academic qualifications

Masters in Applied Finance, University of Melbourne, 2000

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COVID-19 impact on TP comparability: An economic view

Anis Chakravarty of Deloitte India and John Wells of Deloitte Tax LLP (US) discuss the long-term impact of COVID-19 on comparable datasets commonly used for transfer pricing benchmarking.

The COVID-19 outbreak is a global phenomenon that has resulted in unprecedented economic disruption. As many countries across the world continue to resort to lockdowns, most sectors of the economy have been impacted. 94% of the Fortune 1000 companies (Fortune 1000 by Erik Sherman, February 2020) have already faced COVID-19 disruptions. The pandemic has led to the stalling of business activity bearing a negative impact on the operating income, profitability, and the liquidity position of companies.

The OECD has warned that the COVID-19 pandemic may be the greatest danger to the world economy since the 2008 financial crisis.

If one examines this from a transfer pricing (TP) perspective, it is expected that the pandemic will have a negative bearing on the operating income of multinational enterprises (MNEs) and impose a considerable burden on the cash flow of MNEs as well as individual group entities resulting in changes in TP policies or expected arm's-length inter-company results.

A critical area likely to be impacted is TP benchmarking studies. In TP, comparability is based on observations of independent entities. During an economic downturn, the margins earned by such independent entities may be reduced, as exceptional economic circumstances start affecting supply chain profitability.

The application of TP methods, among other things, depends on the assumption that the tested party and the comparable companies operate in stable markets with a viable market-driven economy.

Importantly, the data to perform such benchmarks used in a comparable profits method (CPM)/transactional net margin method (TNMM) context are only available with a lag. Typically, the benchmarking analysis assumes that the economy and businesses operate under 'normal market' conditions. This significant assumption has acted, in many ways, as a bridge between the ex-ante analysis and expost analysis.

As businesses are expected to experience only 'normal' business cycles, considerable year-to-year variation is not expected in the arm's-length range of results for a set of scientifically selected comparable companies.

Accordingly, taxpayers and the tax authorities came to expect that TP decisions based on an ex-ante analysis would be supported in an expost analysis as well, and any cycles would be smoothed out by period-weighted averaging of the taxpayer and comparable data.

COVID-19 has disrupted this well-established methodology. The OECD's 'Guidance on the transfer pricing implications of the COVID-19 pandemic' (OECD COVID Guidelines) has described this issue as follows:





"The challenges associated with performing a comparability analysis may vary depending on the impact of the COVID-19 pandemic on the economically relevant characteristics of the accurately delineated transaction".

It is important therefore, to assess the potential long-term impact of an event such as COVID-19 based on economically relevant characteristics.

One proven approach to analyse these impacts is by developing a statistical model using econometric techniques to estimate the historical relationship between the profit level indicators (PLIs) of comparable benchmarks and macroeconomic variables and forecast the effect that COVID-19 may have across industries.

This is the methodology applied by this paper. Strong statistical relationships have been found between PLIs and macroeconomic variables that allow us to forecast the potential impact of the COVID-19 pandemic on comparable datasets commonly used for TP benchmarking.

Use of econometrics in TP

The OECD COVID Guidelines highlight "Statistical methods such as regression analysis or variance analysis that are used to predict the extent to which a certain variable will vary with reference to other variables under certain specific conditions (e.g. the response of corporate profits in certain industries to GDP movements".

The objective of this paper is to perform a study which examines the impact of macroeconomic indicators on the PLIs of previously accepted comparable datasets through a statistical regression analysis.

If a correlation is established, it would indicate how PLIs are expected to be affected/change in the future given a previously observed downturn (global financial crisis) and through natural economic growth cycles. Such a combined cycle may be represented by the period 2007–19.

Through the various statistical regression models it is possible to indicatively understand how the operating margin (OM) and net cost plus

Figure 1: Select macroeconomic indicators

- GDP growth was considered as it provides an overall idea of the state of the economy for a region.
- Scope of study entailed a period ranging for 2007 through 2019, i.e. covering the global financial crisis followed by the subsequent global recovery.
- Objective is to help understand how the PLI of distributors and manufacturers reacted during the crisis and the subsequent recovery.

Relationship between PLI and real GDP growth rates

Relationship between PLI and equity index return

- The price index value of the stock market is an indicator of stock market performance
- It states the underlying demand of a stock which in turn indicates how the particular firms are operating in the economy.
- The study considered the Dow Jones Industrial Average ("DOW") (for NA, FTSE Straits Times Index (STI) (For APAC) and the DAX performance index (DAX) for the (EU region) as a proxy of the market portfolio.

Relationship between PLI and bond yield rate

- The bonds of corporations and emerging markets trade based on their credit ratings, which are driven by their underlying financial strength.
- Stronger economic growth is more likely to be a positive factor for higher-yielding bonds where the issuer's creditworthiness is a primary concern for investors.

margin (NCP) of independent distributors and manufacturers are impacted by the change in key macroeconomic indicators such as (a) regional or country-specific real gross domestic product (GDP) growth; (b) debt market performance (i.e. movements in bond yields); and (c) stock market performance (i.e. returns generated from the key regional equity indexes) due to the global pandemic.

Once the standard models are finalised through the statistical analyses, the paper projects and evaluates the movement in the PLIs during an economic downturn. This predictive model may be considered useful in applied TP during these times of uncertainty.

Limitations on available data

While macroeconomic variables are readily available and reliable, obtaining useful time series data on the operating results of comparables is hampered by both 'survivor bias' and reporting lags.

Survivor bias exists as weaker companies tend to be acquired or go out of business over time, leaving only the strongest companies in the sample. This prevents a robust analysis of how all companies respond during a downturn and biases the results towards the strongest companies. A proper statistical analysis must consider the impact of those comparables exiting the dataset as well as those that remain.

Reporting lags are ubiquitous with most comparable data used outside of the US and means that the impact of the pandemic on such comparables will not truly be known for a year or more after the event. Such lags in data availability underscore the benefit of using the predictive approach described herein.

Lastly, most of the macroeconomic data and all of the comparable PLIs are nonstationary, meaning that they must be first differenced to induce stationarity before being used in a regression. Many prior regressions performed by TP practitioners fail to account for nonstationary and produce spurious regressions as a result.

Determining arm's-length range during COVID-19 times

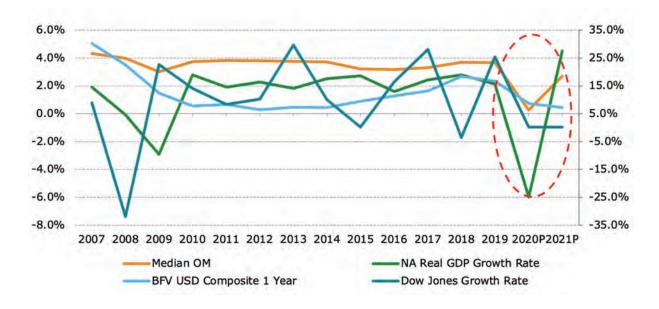
In order to derive comparable PLIs, we leveraged previously performed comparable searches used for TP benchmarking purposes covering the period 2007 through 2013. These searches were segregated into three regions, i.e. North America NA); Europe (EU) and Asia Pacific (APAC) and were further segregated between distributors and manufacturers. This provides a unique data set of companies by which to study the potential impact of the pandemic on distributors and manufacturers across the globe.

The time period for this analysis, 2007 through 2019, was selected as it represents two economic cycles covering the global financial crisis followed by the subsequent global recovery. It encapsulates the period of cyclical low experienced during 2007 through 2013, followed by the cyclical high seen during the period 2014 through 2019.

Key macroeconomic indicators, by region, were selected as independent variables for the analyses. Lagged (prior year) observations of these macroeconomic variables were also utilised in the analysis. A time trend, or 'year' variable was added in equations to account for the deterministic trend found in some of the dependent variables.

The macroeconomic indicators considered in the analysis have been represented above in Figure 1.

Figure 2: Predictive movement of median NA distributor OM and macroeconomic indicators region



X axis denotes the years under consideration Primary Y axis denotes the median OM, NA real GDP growth rate and the bond yield rate Secondary Y axis denotes the Dow Jones growth rates

Regression model

There are multiple statistical methods that may be utilised to establish a relationship between profitability of a company and macro-economic factors. Panel (data) analysis is considered suitable for performing any kind of two-dimensional analysis. Panel data refers to the pooling of observations on a cross-section over several time periods.

Panel data models can be broadly classified into:

- · Static panel data models; and
- Dynamic panel data models.

Both the above models consider time series data and cross-sectional data simultaneously. The basic difference between the two is that dynamic models are rich in terms of economic content since it allows the model to distinguish between short-term and long-term effects of independent variables on the dependent variables.

In a dynamic model, the current value of selected dependent variable depends on its own lagged values. Alternately, static panel model only takes into consideration the short-term impact of the independent variable. In a dynamic model, the estimated coefficient on the current value of the independent variable measures the short-run impact or effect on dependent variable. The long-run effect is larger, because it takes account of both the current and the lagged effects of the independent variable.

An additional feature of the dynamic panel employed here is that it is unbalanced. A balanced panel would only include those comparable companies that report operating results over the whole period, 2007 through 2019. An unbalanced dynamic panel, in contrast, al-

lows for comparable companies to enter and exit the data set throughout the time period and removes the survivor bias discussed previously.

Accordingly, the starting equation is broadly represented as follows:

$$\begin{split} \Delta PLI_{t} &= \alpha + \beta_{1}^{*}\Delta PLI_{t,1} + \beta_{2}^{*}Real_GDP_growth_rate_{t+1} \\ &+ \beta_{4}^{*}Stock_{t} + \beta_{5}^{*}Stock_{t,1} + \beta_{6}^{*}Bond_{t} + \beta_{7}^{*}Bond_{t,1} + \beta_{8}^{*}Year_{t} \end{split}$$

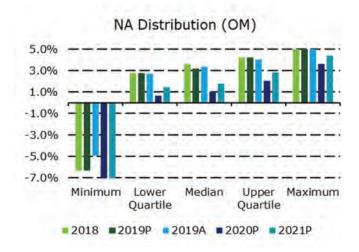
α: Intercept term β: Regression coefficients Δ: Change in the variable t: Current time period t-1: Previous time period

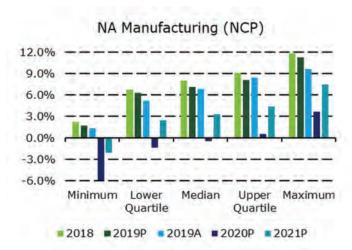
Predictive results

These models and publicly available forecasts of the macroeconomic variables have been used to provide forecasts of the impact of the pandemic on PLIs for 2020 and 2021. This indicative prediction allows us to compute the arm's-length range for the comparable companies during the pandemic and the following year. Figure 2 uses the model pertaining to the NA distributors.

From Figure 2, it may be observed that the predicted PLI dropped significantly in FY2020 as a result of the fall in the macroeconomic indicators during the COVID-19 pandemic. However, the predicted PLI may be expected to improve in FY2021 based on the overall economic improvement in terms of real GDP growth rate, bond yield rates and the return on equity stock indices assuming there are no further shocks to the system.

Figure 3: Predictive modelling results (OM and NCP) on NA distribution and manufacturing comparable sets





A snapshot of these movements in predicted PLIs are depicted in Figure 3.

Conclusion

A robust econometric model that establishes a statistically and intuitively explainable relationship between corporate PLIs and macroeconomic parameters can provide quantitative insights to arrive at a conclusive benchmark range for COVID-19.

This approach is supported by the existing framework of regulations and guidelines that allows taxpayers to make adjustments to comparable companies' profit margins in response to economic circumstances and to enhance comparability of the data under consideration.

What this analysis has demonstrated is that a large unbalanced dynamic panel of PLIs for distributors and manufactures has a strong sta-

tistically robust relationship with macroeconomic data and that this data can be used to predict PLIs globally.

As multinationals around the world are facing uncertainty around how to adjust TP policies, inter-company contracts, and even whether they have triggered critical assumptions in their advance pricing agreements (APAs) as a result of the pandemic related downturn, this statistical approach can enhance TP decisions that may otherwise be taken without any foresight of how comparable benchmarks are responding to the downturn.

Significant contributors to this work are Vrajesh Dutia, Vishaka Saraf, Jayabrata Dasgupta, Nilanjan Halder, Ritisha Dasgupta and Kinshuk Acharya.

Intra-group financing garners more 'interest' now

Maulik Doshi Nexdigm (SKP) Mumbai

The finance function has always been one of the center pillars for success of any business as financial transactions are the most critical and material transactions. In order to get funding across, service liquidity provision, and manage other operational and tax needs, financial transactions are central to financing multinational groups. Over the last few years, there has been an increased focus on financial transactions from a transfer pricing perspective with dwindling tax collection.

The deadly outbreak of COVID-19 led to dire consequences, including an increase in risk aversion in financial markets and other issues. In order to manage additional funding requirements, businesses may have to seek loans and guarantees from group entities, and it's imperative that these financing arrangements are in line with Transfer Pricing Guidelines.

On 11 February 2020, the OECD¹ issued its final Transfer Pricing (TP) Guidance on Financial Transactions (FT Guidelines), of which Chapters A-E will be incorporated as Chapter X of the OECD TP Guidelines.

This report is a follow-up guidance on 'Aligning Transfer Pricing Outcomes with Value Creation' pursuant to BEPS Actions 8-10, and the 2015 report on 'Limiting Base Erosion Involving Interest Deductions and Other Financial Payments' pursuant to BEPS Action 4.²

The FT Guidelines aim to clarify the application of the principles of the 2017 OECD TP Guidelines, in particular the accurate delineation analysis, to financial transactions. It covers loans and guarantees and includes cash pooling, risk-free and risk-adjusted rates of return, and captive insurances.

The said guidelines cover the key intra-group financing arrangements in the nature of intra-group loans; guarantees, cash pooling and hedging. FT Guidelines also identify the factors to be considered while determining the arm's length pricing policy. Some of the essential characteristics of the intercompany financing arrangements are contractual terms, functional analysis, economic circumstances and business strategies, which are similar to assessing arm's length nature in the case of non-financial transactions.

This article mainly focuses on the key aspects of intra-group loans highlighted by the FT Guidelines.

According to the FT Guidelines, specific measures that are relevant in analyzing the arm's length nature of intra-group loan are:

Analyzing lender's perspectives – The lender's perspective regarding the decision whether to grant a loan, how much to lend, and on what terms will involve evaluation of various factors relating to the borrower, wider economic factors affecting both the borrower



and the lender, and other options realistically available to the lender for the use of the funds.

- Analyzing Borrower's perspectives The borrowers seek to optimize their weighted average cost of capital and to have the right funding available to meet both short-term needs and long-term objectives. They also consider the potential impact of changes in economic conditions such as interest rates and exchange rates and the risk of not being able to make timely payments of interest and principal on the loan.
- Identifying commercial/financial relations While accurately delineating financial transactions, one needs to analyze factors affecting the performance of businesses in its operational industry sector. Such factors may be in the nature of economic, business or product cycle, the effect of government regulations, or availability of financial resources in a given industry.
 - The pandemic may put subsidiaries under financial stress, as some may struggle to meet their payment obligations on intercompany loans. In such a case, it may be reasonable to renegotiate more favorable terms than usually available, delay interest payments temporarily, or re-characterize short-term loans as long-term loans. These measures would need to be well documented, demonstrating a close consideration of the options realistically available to both the borrower and the lender.
- **Usage of credit ratings** The borrower's creditworthiness is one of the key factors that independent investors consider in determining

an interest rate to charge. Credit ratings are a useful measure of creditworthiness, and these help identify potential comparables and applying economic models in the context of related party transactions. Due to the pandemic, there may be substantial changes to key ratios like liquid ratio, capital gearing ratio, etc., which will have a cascading effect on the entity's credit rating and, therefore, a need to revisit the credit rating may be required.

Effect of group membership – The effect of group membership is relevant for taking into consideration the conditions under which an MNE would have borrowed from an independent lender at an arm's length. An implicit support from the group may affect the borrower's credit rating or the rating of any debt that it issues³. On account of this pandemic, the financing costs are impacted, leading to higher interest rates and difficulty to obtain loans. To manage these increased costs when obtaining new loans or renegotiating the existing ones, MNEs may need to avail such implicit support of the group to meet their financial obligations. The implicit support may be reflected by an improved credit rating, more closely aligned to that of the MNE group. In the case of sourcing external funding, implicit

support from the group could be combined by explicit intra-group guarantees, thus enabling the group entities to survive in this situation.

Use of MNE group credit rating – The FT guidelines recommend that it may be appropriate to use the MNE group's credit rating for the purpose of pricing loan where the borrower entity is strategically important to the group and where the MNE's indicators of creditworthiness do not differ significantly from those of the

During the current pandemic, a parent may support its subsidiaries even more aggressively to obtain favorable financing terms. It

may be appropriate to consider the group's credit rating instead of the subsidiary's stand-alone rating.

Covenants - According to the FT guideline, generally, the covenants' objective in a loan agreement is to provide the lender a degree of protection to limit its risk. Over a period of time, MNEs have revamped their intercompany loan agreements to be in line with terms contained in third-party loan agreements. While companies experiencing financial difficulties due to this pandemic may breach one or more covenants as mentioned in their intercompany agreements, it will be essential to consider the behavior of unrelated parties and take proactive steps to amend terms or refinance

However, considering the current rate environment, there is a possibility that certain borrowers may be able to take advantage of signifi-

- cantly lower rates, and companies should consider the implications of considering realistic alternatives of refinancing the debt.
- **Guarantees** A guarantee availed from the other party may be used as a support to the borrower's credit. A lender would have to evaluate the guarantor in a similar way in which it evaluates the original borrower while placing reliance on guarantees. While the lender takes such a guarantee into account in setting the terms and conditions of a loan, it would need to be reasonably satisfied that the guarantor would be able to meet any shortfall in a case if the borrower is unable to meet its obligations.

In light of the pandemic, there may be a need to reanalyze the guarantor's credentials and revisit the terms and conditions of the loan based on the current financial situation of the guarantor.

Arm's Length Pricing:

"IMPLICATIONS ON

FINANCIAL

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CONSTANTLY EVOLVING,

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KEY ASPECTS

HIGHLIGHTED IN OECD'S

GUIDANCE ON FTS"

One of the most common financial transactions involves establishing the interest rate for an intercompany loan. However, this also involves determining the supportable 'arm's length' quantum of debt, i.e., pricing the loan terms as if they had been made at arm's length, for which

> a debt capacity analysis is commonly performed. While some jurisdictions may have a specific *thin capitalization regime* that sets these parameters more definitively, the tax regulations in other countries support a more flexible spectrum of acceptable debt-to-equity ratios, as long as the taxpayer has undertaken an appropriate analysis that establishes their leverage parameters.

Concluding Remarks:

The OECD has taken a significant step by issuing FT Guidelines. It is a move towards providing more comprehensive guidance on financial transactions. This step also highlights OECD's expectation to observe significant

progress by multinationals in updating their existing transfer pricing policies on financial transactions to comply with the Guidance.

On the other hand, MNEs with intra-group financial transactions should ensure and retain sufficient documentation so as to demonstrate that their policies are aligned with the FT Guideline.

During this period, where tax treaties are changing at such a rapid pace, MNEs need to ensure that each transaction/arrangement includes both current and potential future treaty interaction, including known treaty changes as a result of the use of the OECD's Multilateral Instrument and continue to closely monitor related developments in this area at both, the country and OECD level. MNEs also need to consider Advance Pricing Agreements and other non-litigative rulings (bilateral or even multilateral) if available, to negate the impact of COVID-19 on the arrangements across MNE groups.

- Organisation for Economic Co-operation and Development
- https://www.oecd.org/tax/beps/beps-actions/action4/

the intercompany debt, as allowed by law.

The impact of implicit support of the group on the credit rating of a subsidiary was confirmed by the Federal Court of Australia in a landmark judgment delivered in the case of Chevron Australia and in the judgment of the Federal Court of Canada in the case of General Electric



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He is a global leader of transfer pricing business group within Nexia International (9th largest accounting network) and has been actively working with member firms to expand global transfer pricing practice in their respective jurisdictions.

He has been a regular invitee to train the Indian tax officials on the latest developments on the transfer pricing front. He is an active participant in conferences pertaining to transfer pricing and international taxation in India and overseas. He also delivered lectures at the Frankfurt School of Finance as a part of their LLM Curriculum. Maulik has been recognized as a Highly Ranked Practitioner by Euromoney's Transfer Pricing - Expert Guides.

Maulik has authored various, thought leadership pieces and articles in Indian as well as international print media on various topics relevant to transfer pricing and cross border taxation.

He is a member of the Institute of Chartered Accountants of India and a mentor to a team of over 40 people, including Chartered Accountants, Lawyers, MBAs, and Economists.



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Amit always takes a forward-looking approach to identify opportunities in tax law and business that can help clients accomplish their objectives and optimize results. He has experience across various industries including Software, ITES, Infrastructure, Oil and Gas, Aviation, Manufacturing, Auto, Retail, Financial Services, PEO, Shipping, Transportation and Logistics industry, Metal & Mining, Automobile, Engineering, Pharma & FMCG sectors.

Under Amit's able leadership, the transfer pricing practice of AKM Global has grown multifold and the firm has been consistently ranking as a Tier 2 firm in International Tax Reviews' "Transfer Pricing Guide" from 2017 to 2021. Amit was nominated as "Asia Transfer Pricing Practice Leader of the Year" in Asia Tax Awards by ITR in 2017. In addition to this, Amit is recognized as a Tax Leader in World Tax Controversy Leaders Guide 2021 and a Transfer Pricing Expert in 2018 & 2019 listed by Euromoney.

Amit is an avid author on tax and regulatory issues and a regular speaker at several international conferences on subjects including India Entry Strategy, International tax, and Transfer Pricing. He actively contributes his views on International Tax, Transfer Pricing and Exchange Control Regulations to the known Television Channels as well as the domestic and international publishing houses including The Economic Times, Business Standard, Financial Express, Indian Express, Reuters, Financial Times of UK, Tax Analysts of US, CNBC, ET NOW, etc.

Amit has co-authored books including "Expatriate Taxation - Decoding the Complexity", that focuses on Income-tax and Regulatory aspects applicable to expatriates in India (including their employers), which was published by Wolters Kluwer (CCH). He has also co-authored a publication, "Transfer Pricing – a Practical perspective" published by Lexis Nexis. In addition to this his book titled "NRI Regulations – Decoding the complexity", published by Wolters Kluwer (CCH), provides insight on Indian legislative requirements applicable to Non-Resident Indians (NRIs).

To serve the industry, Amit is active in various industry chambers in India and is a member of reputed international accounting alliances.

Professional Background

- Fellow member of the Institute of Chartered Accountants of India ('ICAI')
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Rahul Mitra is a practicing Chartered Accountant, with over 28 years of experience in handling taxation matters in India. He specialises in transfer pricing, supply chain management projects, international taxation, BEPS, profit attribution to permanent establishments, etc.

Rahul is currently associated as an Advisor with M/s Nangia Andersen LLP, being a member firm in India of Andersen Global (erstwhile Arthur Andersen) network.

Rahul was a tax partner with PwC and KPMG in India for an aggregate period of 20 years, including having served both the organisations as the leader of their national transfer pricing practices.

Rahul has been nominated by Financier Expert Worldwide as amongst the leading global corporate tax experts in its directory for 2021.

Rahul was invited by the OECD to speak in the 2012 Paris roundtable conference on developing countries' perspective on APAs. Rahul was invited by the Tax Tribunal and the Indian Revenue Board on several occasions to impart training on the topic of transfer pricing to Members of the Tax Tribunal and Senior Officials of the Indian Revenue respectively.

Rahul received the "International Tax Contributing Author of the Year" award in the subject of transfer pricing in 2019 from Bloomberg

Rahul is a member of the global editorial board of the international web-based tax magazine, Bloomberg BNA Transfer Pricing Forum.

Rahul has been consistently rated as a leading transfer pricing professional and tax litigator in India by Euromoney and International Tax Review, since 2010.

Rahul was the country reporter on the topic, "Non-Discrimination in international tax matters", for the IFA Congress held in Brussels in 2008.

Rahul independently handles litigation for top companies at the level of Tax Tribunals; and has won several landmark rulings before Tax Tribunals in the field of transfer pricing, creating precedents in India, in matters relating to Berry Ratio, Marketing Intangibles; Corporate Guarantee; Profit Split Method; Supply Chain nuances etc.

Rahul has handled several APAs and MAPs in India, involving clients from across industries, covering issues like industrial franchise fees under non-integrated principal structures; distribution models with related marketing intangible nuances; financial transactions (loans and guarantees); profit split model for royalties; etc.



VTPA | Vispi T. Patel & Associates Chartered Accountants

Vispi T. Patel & Associates, Chartered Accountants, founded by Vispi T. Patel in 2009 is a boutique tax firm specialising in direct tax, especially, transfer pricing, international tax, litigation and exchange control regulation matters.

The driving force of the firm is innovation and the zeal to excel in professional practice. The firm's founding ethics are the principles of integrity, sincerity and loyalty. Firm consists of a team of professionally qualified and experienced persons who are committed to add value and optimize the benefits accruing to the clients.

The firm was rated by International Tax Review as one of the Best Newcomer Tax Firm in Asia. Vispi was nominated as India's leading Transfer Pricing and Tax Consultant by International Tax Review – World Tax and by Euromoney Legal Media Group. The firm has also been selected as the "Transfer Pricing Advisory Firm of the Year in India" by Corporate INTL Global Awards 2014 and 2020, UK. The firm has also been nominated as an Expert Transfer Pricing Firm by Expert Guides in 2017, 2018, 2019 and 2020 Legal Media Group, Euromoney Institutional Investor PLC.

Brief Overview of Services Offered / Areas of Expertise of firm: Transfer Pricing (TP)

Attaining Management Objectives

- Assisting business organizations to attain value potential as per the management vision
- Mitigating TP risk by attributing correct profit to the economic substance of a transaction
- An end-to-end analysis of the entire value chain and correct demonstration of the actual conduct of business to tax authorities
- Assisting in formulating & evaluating the global transfer pricing policy
- · Mitigating transfer pricing and permanent establishment risk
- Evaluation of value addition to be made by each group entity and ascribing income to such entities

Tax Litigation

- Representing before the Income-tax Appellate Tribunal for various income-tax related matters
- Assisting the clients in preparation and representation for stay of demand matters

- Representing clients before revenue authorities, appellate authorities and Dispute Resolution Panel
- Assistance in drafting of Appeal Memo, e-filing of appeal, preparation of submissions, preparation of paperbook, etc.
- Evolving a defence strategy to depict the true substance of the transaction
- Briefing Senior Counsels for the matters at High Court and Supreme Court

Corporate Tax Advisory

- Domestic tax advisory for various business alternatives
- Assisting in tax advisory and restructuring
- · Advisory for various transactions
- · Withholding tax analysis, compliance and certification
- · Tax Due Diligence
- · Diagnostic review of existing operations
- · Due Diligence of the proposed transactions

International Taxation

- Business Restructuring / Inbound and Outbound Operations
- · Designing an entry strategy
- Evaluating alternative intermediate holding company jurisdictions
- Strategy on international tax
 - Tax Treaty Interpretation
 - Permanent Establishment (PE) exposure
 - · Attribution of profits to a PE
 - Structuring of revenue / capital flows e.g. Royalty, FTS, Dividend, Interest, Capital gains etc.
- Exit planning
- Understanding the link between Transfer Pricing and Permanent Establishment

Economic Consultancy

- Economic profiling the multinational entity
- · Setting the transfer price for the transactions
- Linking core business strategy with the conduct and functionality of the transactions
- Monitoring the pricing policy with the various risk factors like, economic, finance, political, etc.



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Vispi T. Patel founded the firm Vispi T. Patel & Associates, Chartered Accountants.

A Chartered Accountant by profession, Vispi brings on the table expertise in the areas of Transfer Pricing (TP), International Tax, Global Structuring and other allied fields of professional work relating to direct taxation and transfer pricing, and an experience spanning of over 35 years in the profession.

Vispi has been closely associated with the development of Transfer Pricing law in India since its inception. He has represented before various government, business and professional committees.

He is a well known speaker and has addressed many conferences both in India and abroad. He has also written many articles relating to taxation, Transfer Pricing, International Tax, Mutual Agreement Procedure and other allied fields, published in India and abroad, in international tax publications like Tax Analyst USA, International Tax Review UK, IBFD, etc. and in business newspapers. He has also coauthored books on the same subjects.

He is a Fellow member of the Institute of Chartered Accountants of India. He has successfully represented the clients before various forums viz. the tax authorities, first appellate authority and the Income-tax Appellate Tribunal.

Vispi advices on corporate structuring, international taxation issues and transfer pricing issues relating to various industries like Automobile, Engineering, Financial Services, IT/ITeS, Infrastructure, Oil & Gas and Pharmaceutics to name a few.

Vispi was nominated as India's leading Transfer Pricing and Tax Consultant by International Tax Review - World Tax and by Euromoney Legal Media Group. He has also been nominated as a Transfer Pricing Expert by Expert Guides in 2017, 2018, 2019 and 2020 Legal Media Group, Euromoney Institutional Investor PLC.

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"Independent transactions influenced by special relationship" and clarifications of other (new) concepts in the recently introduced revised transfer pricing regulations in Indonesia

Yusuf Wangko Ngantung DDTC Indonesia

The Ministry of Finance ("MoF") recently issued MoF Regulation No.22/PMK.03/2020 ("PMK 22/2020) concerning advance pricing agreements ("APA"). Although the title and preamble of regulation concerns APA, thereby mentioning the need for renewal of the previous procedural rules concerning APA in MoF Regulation No.7/PMK.03/2015 and BEPS Action Plan no. 14 on improving tax related dispute resolution between jurisdictions, nevertheless PMK 22/2020 has also brought fundamental changes in the scope and application of the arm's length principle which arguably also applies outside the context of APA.

Independent transaction influenced by special relationship

One such important change/clarification is the inclusion of "independent transactions influenced by special relationship" in ambit of transfer pricing rules. Previously it was widely assumed that only related parties transactions were included, nevertheless careful reading on Article 18 (3) Income Tax Law suggest that the scope applies to "transactions between parties that have a special relationship". As such, Indonesia applies the concept of "special relationship" which is further defined in Article 18 (4) Income Tax Law to also include de facto control, besides the commonly understood concept of de jure control that is mainly determined by share ownership or voting rights thresholds.

As result, the scope of transfer pricing rules is in fact very wide because de facto control has no precise threshold. A potential implication is that for example procurement of raw materials from independent parties that are negotiated on global basis under a master agreement could fall within the scope of transfer pricing rules or for that matter virtually all transactions under guidance of master agreement that are negotiated on global basis.

Presumably PMK 22/2020 is to clarify further, rather than change, the existing scope of transfer pricing regulations. Still, these developments would indicate that double taxation may occur more frequently because of Country's mismatch of the notion of associated enterprise



in tax treaties that could lead the other Country to reject corresponding adjustments.⁴ The prevention of double taxation in the context of APA's in these transactions would also be questionable since the scope of APA in PMK 22/2020 is limited to "Affiliated Transactions"⁵ and is silent with regard to independent transactions influenced by special relationship.

Endorsement on secondary adjustments but silence on corresponding adjustments

On that note, it also noteworthy that PMK 22/2020 is silent on the topic of prevention of local double taxation, despite that under the current transfer pricing regulations domestic transactions (i.e. transactions between tax residents in Indonesia), which now also includes independent transactions influenced by special relationship, are subject to the risk of transfer pricing adjustments. Even before the extension of the scope of transfer pricing rules in PMK 22/2020 in practice this has resulted in many local double taxation cases, where a transfer pricing adjustment on a domestic transaction is conducted by tax office A, while the same adjustment is not always recognized as corre-

sponding adjustment in tax office B despite that both tax offices are part of the same government institution.6

On the other hand, secondary adjustments have gained a separate provision in Article 22 (8) PMK 22/2020. It is now emphasized that excess profits by a transfer pricing adjustment that are not represented in the actual accounts of the Company will be treated as deemed dividend distribution. As consequence such dividends will be subject to a withholding tax under the Income Tax Law. Frequently this has been already done in practice, and as matter of fact also impacted VAT related secondary adjustments (for example in transfer pricing adjustments in import purchase transactions or local sales transactions). The secondary adjustment provision is further silent on whether such deemed dividend distribution is subject to the precondition of existence of share ownership relation or not.7

Market access or market share as comparability factor

Other noteworthy change in PMK 22/2020 is the inclusion of "market access" or "level of market share" as comparability factor. Previous regulations and tax audit guidelines are silent on this and typically would only account for the traditional five comparability factors in a transfer pricing analysis.

The inclusion of "market" as comparability factor could be viewed in line with the overall global trend, first lead by the OECD BEPS Action Plan that resulted in an update to the OECD Transfer Pricing Guidelines 2017 that includes substantial changes in Chapter VI concerning Intangibles, particularly on Marketing Intangibles and more recently OECD's Unified Approach in Pillar One work in progress that is intended to overhaul the allocation of taxing rights more in favor of market jurisdictions.

Even before OECD BEPS project, tax authorities and courts around the world has already started to apply these principles on marketing intangibles.8 Among other countries judicial decisions from India have often been an inspiration for tax auditors in Indonesia to impose transfer pricing adjustments based on the so-called bright-line test.9 PMK 22/2020 has not however provided further guidance, while further guidance is urgently needed to prevent multi-interpretation issues in practice.

Number of samples required to use interquartile ranges

The use of interquartile ranges has long been recognized in practice and previous transfer pricing guidelines in Indonesia. Article 8 (7) PMK 22/2020 now clarifies the number of samples required to be eligible to use interquartile range calculation to be of minimum three samples. 10 While, in case of two samples a full range may be used. Further the use of a single sample (or more) may justify the use of a single arm's length point provided that "the comparable(s) price value indicator is/are the same".

The above language in PMK 22/2020 is not very clear. 11 There is however a Tax Court decision issued in 2015 concerning the question whether the use of a single comparable is allowed in the context of a TNMM analysis. In case Put-65598/PP/M.IIIB/15/2015,12 the Tax Court concurred with the taxpayers' arguments that single comparable in a TNMM analysis is not practically possible, since the use of a single comparable implies that the comparable must be perfect and there is no such thing as a perfect comparable in transfer pric-

Conclusion

PMK 22/2020 could be viewed as how Indonesia has reacted to update its transfer pricing regulations following the OECD BEPS project, while at same time also as opportunity to clarify the existing regulations. Some elements, such as inclusion of "market" as comparability factor are clearly influenced by BEPS, while others, such as inclusion of "independent transaction influenced by special relationship", endorsement of secondary adjustments, and the use of interquartile ranges are not necessarily new. It would be desirable that the updates in PMK 22/2020 would be further clarified perhaps as amendment on the existing transfer pricing guidelines that were issued before PMK 22/2020 that remain valid as of this date.¹³ These guidelines could be further substantiated by case examples thereby considering past Tax Court decisions.

Lastly, a general statement in the regulations that transfer pricing is also a matter of prevention of double taxation¹⁴ could also provide more certainty for taxpayers to obtain corresponding adjustments.

- 1. Indeed, it would be very unlikely to assume that there are two separate arm's length regimes applicable in Indonesia, i.e. a regime for related party transactions in general and one separate regime specifically for related party transaction under APA's. On the other hand, the existing guidelines in DGT Regulation PER-43/PJ/2010 as amended in PER-32/PJ/2011 and tax audit guidelines in DGT Regulation PER-22/2013 and Circular letter SE-50/2013 that as of today remains valid.
- 2. Carmine Rotondaro, "The Notion of "Associated Enterprises": Treaty Issues and Domestic Interpretations An Overview, International Transfer Pricing Journal (IBFD, January/Febru-
- 3. F.Y. Jabanto, "Belajar dari Kasus Kodak India", DDTCnews (17 April 2020) available at https://news.ddtc.co.id/belajar-dari-kasus-kodak-india-20356.
- D.S. Macquarie, "Makna Internasional dari Konsep Hubungan Istimewa: Apakah Adar", DDTCnews (25 February 2019) available at: https://news.ddtc.co.id/makna-internasional-darikonsep-hubungan-istimewa-apakah-ada-15127.
- Article 2 (2) PMK 22/2020 states "Affiliated transactions" can be covered under APA, while Article 1 (15) PMK 22/2020 defines "Transactions Influenced by Special Relationship comprise of (a) Affiliated Transactions and/or (b) independent transactions influenced by special relationship". Thus suggesting a difference in the scope of transactions that could be covered under APA. Otherwise, Article 2 (2) PMK 22/2020 should just state that "Transactions Influenced by Special Relationship" can be covered under APA.
- 6. The transfer pricing tax audit guidelines in SE-50/2013 only recommends tax auditors to confirm to the other party registered local tax office to check whether the transaction is genuine and whether there is a risk of tax avoidance by utilizing differences in tax rates or by other means, but there is no general obligation to provide for a corresponding adjustment to prevent double taxation for domestic transactions.
- In contrast the elucidation of Article 4 (1) (g) Income Tax Law while recognizing the concept of deemed dividends states that "dividend is the share of profit received by shareholders". In Tax Court decision No. Put-58181/PP/M.III/13/2014, the Tax Court recognizes deemed dividends to the indirect shareholder (grand parent Company) thereby quoting the Income Tax Law, but crucially to be noted here is that share ownership relationship is still required. Arguably therefore is whether deemed dividends could still be recognized for adjustment in transactions between entities under common control (sister companies) or transactions with independent companies influenced by special relationship, where no share ownership relationship exist at all.
- 8. A. Fedi, "Transfer Pricing Aspects of Transactions with Marketing Intangibles in a Post-BEPS world", International Transfer Pricing Journal (IBFD, November/December 2019) 407-419.
- S. Ahuja, "Marketing Intangibles and the bright-line test an Indian perspective", BNA Transfer Pricing International Journal (2011).
- 10. it is still questionable whether three samples are sufficient to warrant a reliable application of interquartile ranges, see: D.R. Chairunnisa, "Polemik Jumlah Pembanding pada Penerapan Rentang Kewajaran", DDTCnews (23 April 2020) available at https://news.ddtc.co.id/polemik-jumlah-pembanding-pada-penerapan-rentang-kewajaran-20491?page_y=1804.
- 11. In the context of the use of single comparable Art. 8(6) PMK 22/2020 states "the comparable(s) price value indicator is/are the same", while in the context of the use of ranges Art 8 (7) PMK 22/2020 states "the comparables price value indicators are different". It is unclear whether the language refers to the comparability level of the values or the comparability level of the selected comparables.
- 12. F.Karyadi and Darussalam, "Indonesia Transfer Pricing, Country Tax Guides IBFD (accessed 4 June 2021).
- 14. At the moment transfer pricing regulations is still mainly viewed as anti-avoidance rule in Indonesia. See elucidation of Article 18 (3) Income Tax Law.



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Wawan is a Vice Managing Partner of TaxPrime. Prior to joining Taxprime, he was a tax officer at the Indonesian Directorate General of Taxes (DGT). His last assignment was at the Large Taxpayers Office Two (LTO 2) for nearly 8 years. He was appointed as one of the team members of the transfer pricing taskforce of LTO 2 and Large Taxpayers Regional Office which has main tasks to assist and resolve transfer pricing cases.

Wawan advises domestic and international tax issues including corporate income tax, VAT, and tax planning. Further, he also specializes in resolving a wide variety of transfer pricing cases involving sale and purchase of commodities, transfer and license of intangibles, intragroup services, and business restructuring. He also assists clients in preparing and developing strategies for transfer pricing documentations (local file, master file, and country-by-country reporting). Wawan is also acquainted with MAPs and APAs.

Wawan has been successfully advising multinational and local companies in enhancing cross-border and domestic transactions, mitigating tax and customs risks, and selecting the most feasible tax and customs facilities. By developing his distinctive strategies, he successfully defended various challenging tax controversies. Due to his remarkable competencies, he is acknowledged as a highly regarded tax controversy leader from World Tax 2021.

TaxPrime, which was established in 2012 and focuses its services on transfer pricing and dispute resolution, is currently equipped with 9 partners, 3 senior advisors, and more than 170 advisors. Wawan's significant contribution to the fast development of TaxPrime is undeniable. For further information about TaxPrime, Wawan and our advisors, please visit www.taxprime.net or send email to contact@taxprime.net.

Practice areas

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

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Danny Septriadi is the Senior Partner of DDTC and a lecturer at Graduate Program in Tax Policy and Administration Science and a Master in Accounting Program at the University of Indonesia. His main research area is international taxation, focused primarily on transfer pricing and he has vast experience in its dispute resolution. Further, he is acknowledged as an expert witness on transfer pricing disputes at the Indonesian Tax Court. He was experienced in Arbitration Disputes as an expert at the Indonesian Chamber of Commerce in London, United Kingdom.

He received a Master's degree in Tax Policy and Administration from the University of Indonesia, and a second Master's degree (LLM) in International Taxation from Vienna University of Economics and Business Administration, Austria, with a master thesis on tax treaty policy. In 2012, he attended "Summer School of Transfer Pricing Programme" held by Universidade Católica Portuguesa, in Lisbon, Portugal. In 2014, he attended "Advanced Course in Transfer Pricing" held by Maastricht Centre for Taxation, Maastricht University, in the Netherlands. Then, in 2015, he attended "Transfer Pricing: Policy and Practice" held by Duke Center International Development (DCID), Duke University North Carolina, USA. In 2017, he attended "2nd International Conference on Taxpayers Rights" held by WU (Vienna University of Economics and Business), Austria. Also in 2017, he attended "Value Chain Analysis – Functional Analysis post BEPS" held by Maastricht University and TPA Global, in the Netherlands.

Danny Septriadi has published several books and numerous articles on transfer pricing and international taxation. He is a source for print media (Kompas, Bisnis Indonesia, and Kontan), and also a speaker at several institutions (Directorate General of Taxes, Fiscal Policy Agency, Secretariat of Tax Supervisory Committee, Secretariat of Tax Court, USDIKLAT Pajak, Indonesian Institute of Accountants, University of Indonesia, Bina Nusantara University).



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Mr Miyajima is a partner in the International Tax Services (Transfer Pricing) group of PwC Tax Japan. During his more than thirty years career at the firm, he spent several years with the Transfer Pricing Group in the Washington DC and New York offices.

In the transfer pricing area, Daisuke has provided advice towards numerous Japanese and foreign clients on their inter-company transactions with related parties and its effect on Japanese and foreign transfer pricing rules. He has also assisted in preparing studies for presentation to the appropriate tax authorities and has successfully defended several well-known Japanese and foreign companies in transfer pricing audits. He is also an expert in the area of competent authority negotiations and advance pricing agreements. While his experience includes clients in virtually every industry, he particularly specializes in the high-tech, automotive, entertainment, and luxury goods industries.

Daisuke has also written extensively on the above areas in various publications and is a frequent speaker at seminars held by PricewaterhouseCoopers and outside organizations.



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Toshio Miyatake is an attorney-at-law and a partner of Adachi Henderson Miyatake & Fujita in Tokyo. He has more than 30 years' experience in international tax practice. His tax practice ranges from tax planning to handling of tax audits, tax litigation and mutual agreement procedure in various tax fields. Especially, he handles a considerable number of transfer pricing cases.

Toshio is a graduate (LLB) of Kyoto University and holds an MCL from the University of Washington School of Law. He taught Japanese international taxation at Harvard Law School as a visiting professor in 1983, and taught at the Law Faculty of Sophia University and the Chuo University Graduate Course of Accounting for a number of years. He also writes and lectures extensively. His writings include the textbook Kokusai Sozei Ho (International Tax Law) in Japanese and various tax articles in Japanese and English.

Toshio is a member of the Second Tokyo Bar Association and the Federation of Japanese Bars. He is a former chairman of the Japanese Branch of the International Fiscal Association (IFA) and served on the executive committee of the IFA from 1994 to 2006. He is also a former chairman of the Tax System Committee of the Federation of Japanese Bars, the Taxation and Legislation Committee of the American Chamber of Commerce in Japan and the Tax Law Committee of the Inter-Pacific Bar Association. He is a member of the International Fiscal Association, the International Bar Association, the Inter-Pacific Bar Association, the Japan Tax Association, the Japanese Society for Tax Law, the Japan Tax Accounting Association and the Tax System Committee of the Federation of Japanese Bars.

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Takeki Nagafuji is a partner in the International Tax Services (Transfer Pricing) group of PwC Tax Japan. Mr Nagafuji has more than 18 years experience in the transfer pricing area, serving both Japanese and non-Japanese multinational clients in various industries, with particular emphasis in the pharmaceutical, medical device, automobile, consumer products and IT industries. He has also spent three years on assignment with the Transfer Pricing Group in PricewaterhouseCoopers LLP Los Angeles office and worked on many Japan-US APA cases.

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Prior to joining the firm, Mr Nagafuji worked for one of the major Japanese bank for more than ten years. Mr Nagafuji has MBA from Yale University and is an U.S. CPA.

Mr Nagafuji leads Diversity&Inclusion initiatives for PwC Tax Japan.



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Mr Noda joined the PwC Tax Japan Osaka office and has been providing international corporate tax and transfer pricing consulting services for more than 10 years.

Mr Noda was on a one-year assignment with the Transfer Pricing Group in PwC Tax Japan Tokyo office in 2007. Subsequently, he returned to Osaka office in July 2008, when the Transfer Pricing Group was established in the PwC Tax Japan Osaka office. He has been providing advice to companies mostly from Kansai to the West. Now, he is providing tax consulting services mainly to the Japanese multinational companies located in all the area.

Mr Noda assists his clients with international tax matters in cross-border tax structuring and transfer pricing policymaking, based on its knowledge on anti-tax havens taxation, withholding taxation, PE (permanent establishment) taxation, Japanese reorganization/consolidation taxation and etc, leveraging his strong expertise in transfer pricing field such as transfer pricing investigation, mutual agreement procedures(MAPs), advance pricing agreements(APAs), and base erosion and profit shifting(BEPS) related documentation. His strength is managing almost all of the tax issues seamlessly for the Japanese multinationals by himself, and it will result in providing high-value advice to the clients without inconsistencies in plural tax areas.

Mr Noda is a leader of international tax services (transfer pricing) of PwC Tax Japan. He is a licensed Japanese certified public accountant and a licensed Japanese certified public tax accountant.

Project Results and Achievements

- Advisory services including transfer pricing investigations, domestic legal proceedings, MAPs, and APAs.
- M&A advisory services in tax due diligence, structuring, global business restructuring, post-merger integration (PMI)
- Tax compliance for consolidated groups and for corporations and individuals.

Publications / Seminars / Other Activities

- Tax magazine author for "Kokusaizeimu", "T&A Master" etc.
- Speaker for PwC Tax Japan seminar and outside resources.



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Chihiro has been working at PwC for nearly twenty years in transfer pricing area, including three years assignment with the Transfer Pricing Group in PricewaterhouseCoopers LLP Los Angeles office. She has been serving both Japanese and non-Japanese clients in various industries, such as automobile, digital, electric, medical, energy, chemical, food and luxury goods.

Chihiro provides advices with transfer pricing policy and risk assessment on cross-border transactions from a perspective of Japanese and foreign transfer pricing, as well as tax audit defense, competent authority negotiations, and advance pricing agreements. She is also involved in the transfer pricing services for post-merger integration and value-chain-transformation.

She is an expert in the area of Transfer pricing on Base Erosion on Profit Shifting (BEPS) as a member of BEPS project in PwC Tax Japan. Leveraging her strong expertise in transfer pricing field, she has dealt with the transfer pricing investigation, negotiations with tax authorities and base erosion and profit shifting (BEPS) related documentation to globally well-known multinational companies.

Chihiro has presented at the PwC and external seminars and written extensively on the Transfer pricing and BEPS. She is also co-author for "BEPS Transfer Pricing Documentation in Japan."



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Since joining the firm in 2001, Ryann has worked in international tax services for multinational enterprises, including many years dedicated to transfer pricing. Her clients are primarily foreign-headquartered companies conducting inbound business to Japan, although she also works with large Japanese multinational corporations on global projects. Ryann has been involved in a variety of projects involving corporate tax and transfer pricing audits, APAs, business restructurings, and transformations. She also has experience in dealing with permanent establishments and the attribution of profits thereto, including managing potential tax risks arising from offshore principal structures.

Prior to coming to Japan, Ryann worked as a Barrister and Solicitor in commercial and private litigation in New Zealand.

Project Results and Achievements

- Bilateral APA for global trading, involving a return on capital
- Successful conclusion of unilateral APAs for clients without the option of the bilateral APA process
- Provision of audit defence assistance for extensive and detailed transfer pricing audits
- Provision of audit defence assistance for a number of corporate tax audits where donation challenges were raised on transfer pricing matters

Publications / Seminars / Other Activities

- Clarifying the Rules: Sustainable transfer pricing in the financial services sector (editor)
- Arbitration under the New Japan-Netherlands Tax Treaty, Bulletin for International Taxation, April/May 2011, p223
- A fresh look at the Japan-US bilateral relationship, BNA Transfer Pricing International Journal, June 2013, p1
- National Tax Agency transfer pricing update update on audit procedures, BNA Transfer Pricing International Journal, April 2013, p35

Professional Vision

My vision is for PwC Tax Japan to be the preferred Japan tax advisor for Japanese and international business, as well as a preferred employer for young Japanese men and women. I would like to achieve this through the development of a highly skilled and professional workforce that is diverse in all aspects of gender, race, age, etc.



SINGAPORE

Future proof now, not later, as transfer pricing scrutiny evolves

Luis Coronado EY Singapore

Look at any of the largest tax audit and litigation cases of the last few years and it is more likely than not that some form of transfer pricing (TP) sits at – or very near – the heart of each one.

It is therefore of little surprise that transfer pricing has again been confirmed as the leading source of risk to tax departments globally, according to 1,265 respondents to the 2021 EY Tax risk and controversy survey. This marks the fourth survey in a row where TP has come in at the top.

But that simple headline belies the very breadth and depth of impacts that the TP discipline continues to have on regulators, tax authorities, taxpayers, and advisors alike.

Emerging technical issues (not to mention evolving tax authority interpretation) are by no means the only areas of challenge within the discipline of TP. The form, costs and approaches to audits have changed, as have the approaches of taxpayers and tax authorities everywhere in trying to secure more effective dispute prevention and resolution approaches, collectively hoping to reduce the incidence of – and mitigate the time, monetary and trust impacts – of major disputes.

Here, all parties realize that the endgame of litigation is best avoided and replaced with tax certainty instead. But approaching the tax controversy lifecycle from the very final phase – that of litigation or audit/dispute (irrespective of tax type) – is perhaps not optimal. Change takes time, and although the Organisation for Economic Cooperation and Development (OECD)'s efforts to drive more tax certainty are welcome, there are still issues to be worked through. That doesn't mean there is nothing for business to do – indeed, as well as providing valuable input to the OECD on where problems are occurring – businesses should actively consider how they can focus their efforts earlier in the TP controversy lifecycle, doing more to try and reduce the incidence of disputes before they occur.

Assessing the risks

While respondents to the survey note that TP is their key tax department risk, rather like an iceberg, it is what is under the surface that is more enlightening.

Specific TP risk areas identified by respondents closely mirror the accelerating globalization of the decade or so preceding the first G20/OECD Base Erosion and Profit Shifting (BEPS) recommendations. They include tax authority challenges to how headquarters and management services transactions are priced between different entities of a company (viewed by respondents as the TP issue most likely to attract further scrutiny). Second, issues related to the ownership



and control of risk around Intellectual Property (the second most selected result) reflecting both the importance and mobility of such assets, not to mention their relationship to licensing fees and/or royalties issues that are so often involved in many major litigation cases). And third, intra-company financing transactions – further illustrating the dramatic effect that such rapid globalization has had on cross-border taxation.

Limitations on the deductibility of costs by a revenue authority that bases its interpretation on domestic rules in lieu of TP adjustments register fourth place. This is a rapidly growing trend, in my opinion, and one that every taxpayer should continue to assess and monitor.

A further survey question asked respondents to name the most significant "unilateral" tax measures causing risk to their business in the last three years. Ask any group of almost 1,300 senior tax leaders this question and one might expect the answer to be "Digital Services Taxes" (DSTs).

But that is not the case – far from it, in fact! "*Transfer pricing inter-pretations that differ from OECD guidance*" secured the highest number of first ranked votes to this question, collecting a third more votes than the second placed option – which again, was not DST, but instead Withholding Taxes – further reflecting the very shift in behaviors of countries.

SINGAPORE

COVID-19 impacts

The COVID-19 global pandemic also delivered – and continues to deliver – a series of unexpected TP outcomes. Primary among experiences of survey respondents were risks experienced as a result of mobile workers becoming stranded abroad due to travel and/or immigration lockdowns, creating both personal tax (and social security) obligations and permanent establishment (PE) risk - including, of course, subsequent profit allocation issues. Overall profit volatility also impacted many companies in 2020, and the difficulty of creating TP benchmarks (comparables) acceptable to a tax authority in 2020 is now coming into sharper focus as scrutiny plays out.

Long-term shifts

Look more broadly and across a longer timeframe though, and the issues affecting TP controversy compound. It used to be that the two key sources of tax risk – the legislation published by a government and its enforcement were by and large the only things that were outside a taxpayers control. Today, that simplicity has been turned on its head - and nowhere more so than in the area of TP. Global trade disputes, for example, have caused upheaval in multiple regions, driving supply chain reconfiguration and resultant new scrutiny of global value chains by revenue authorities.

Even more deeply impactful, shifts in the definition of value creation for tax and TP purposes – historically allocated to activities performed primarily by representatives of a corporation, but now increasingly to end users – are already impacting how revenue authorities expect enterprises to allocate profits, sometimes in advance of global consensus on the issue.

Managing the risks

It is not only specific TP risks that shift and flex over time; so too do the ways in which revenue authorities administer their countries' TP regimes. The survey describes how converging trends such as automatic information exchange (through which a clearer picture of a company's value chain is established), digitalization of the tax administration (especially in the area of predictive analytics, machine learning and Artificial Intelligence) and a further acceleration of multilateralism and collaboration among tax authorities (through which they share ideas and information) together mean that revenue authorities are already well on their way to becoming far more empowered, sophisticated and connected, and tax audits are becoming increasingly forensic, multi-sided and whole-of-group-focused.

Couple these themes with trends yet to truly arrive: a post-COVID-19 landscape where both tax policies and their enforcement will both be used for fiscal consolidation efforts; the possibility of criminal sanctions within audits and changes to the cross-border tax architecture, where the broad effects of the BEPS 2.0 may go well beyond "digital". All things considered; it is hard to misinterpret the perceptions of almost two-thirds (65%) of the largest companies in the survey1 who say they expect the global tax enforcement landscape to become more challenging in the coming three years.

Future proofing, now

It is concerning – but not necessarily surprising – that only a subset of survey respondents may be both fully aware of the shifting enforcement landscape and fully executing the necessary response to protect their businesses. I say not surprising, as 76% of respondents told us that the pace, complexity and volume of national-level tax reforms that have occurred in the last three years have increased their tax risk exposure. But concerning it is, when you consider the following:

- 76% say they don't have full visibility globally of all open tax audits and disputes
- 61% don't follow a well-defined, proactive strategy to secure Advance Pricing Agreements (APAs)
- Just 39% use the Mutual Agreement Procedure (MAP) to resolve disputes wherever and whenever possible
- Less than half (47%) have a clear protocol defining the circumstances in which they will invoke litigation

More can and should be done if these respondents want to weather the storm without experiencing more double taxation, a greater number of unexpected disputes, the greater risk of financial penalties; interest and surcharges, and increased reputation risk. And of course, those factors ignore what might occur within the tax department itself – including too much time being spent on managing incoming enquiries, and potentially decreased C-suite confidence in the tax function.

A better way forward

Organizations that recognize these risks and want to be able to manage tax disputes effectively in the future need to make investments - in people, processes and technology – that span the tax controversy lifecycle, identifying and adopting leading practices across tax risk assessment, tax risk management and tax audit management activities.

Addressing tax risk assessment early and across all tax types and geographies can help stop controversy before it arises. That happens via top-down governance, systems and processes that enhance monitoring, compliance and dispute resolution. Effective tax risk management, meanwhile, can help mitigate the impact of controversy by having a full picture of risks and a comprehensive strategy to manage them. Where such issues are cross-border in nature, that includes both the use of dispute prevention and resolution processes – such as APAs, MAP or even the multilateral International Compliance Assurance Programme.

Tax dispute/audit management – should it be required – focuses on securing quick and effective resolution, allowing the company to move forward. All three processes, if executed fully, should also contain feedback loops back into both tax operations and tax advisory within the enterprise.

Every enterprise is unique - each will have its own cultural and management values, appetite for tax risk and tax litigation, as well as an internal structure that defines how, where and by whom tax issues are managed. Against such a rapidly changing landscape - for not only TP, but all tax types – it is imperative the tax leader considers how the tax controversy department of the future can be built – immediately. Now, not once a new breed of TP disputes start to occur.

^{1.} Those in the \$50-\$100bn annual revenue range

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Luis Coronado is a Partner based in Singapore and is the Global Tax Controversy Leader and Global Transfer Pricing Leader.

Luis has worked in Asia since 2005 and has more than 25 years of advisory experience in international tax, transfer pricing, tax policy and controversy issues.

Before relocating to Asia, Luis spent several years serving domestic and multinational companies in Latin America, namely Mexico, Brazil, Argentina, Colombia, Peru, and Venezuela. He has advised companies on the negotiation of bilateral advance pricing agreements and competent authority resolutions with Australia, Hong Kong, Korea, Indonesia, Germany, Israel, Luxembourg, Singapore, Switzerland, Thailand, Canada, China, Japan, Malaysia, United Kingdom, Mexico, and the US. He has also served many German multinational companies and is fluent in German, having lived in Düsseldorf as a student. He has also worked in Tijuana, Mexico City, Amsterdam, Washington D.C. and Shanghai.

Luis is a frequent speaker at tax seminars and universities in the Americas, Asia, and Europe. He has been an instructor at the International Bureau of Fiscal Documentation (IBFD)'s program for introducing transfer pricing to Latin American governments, as well as in their programs in Amsterdam, Kuala Lumpur and Singapore. He has also taught at the Yangzhou Taxation Institute in China. He has advised the Inter-American Development Bank, the UN's Economic Commission for Latin America and the Caribbean and the World Bank on tax policy issues especially on transfer pricing policy and legislation.

Luis was an international tax professor at Universidad Iberoamericana and Universidad Panamericana in addition to having participated in multiple training sessions for the Tax Administration Service in Mexico. Until recently he was also part of the Accountancy Faculty at Singapore Management University

Credentials

Luis has a Bachelor's degree in International Trade and Customs (Honors) from the Universidad Iberoamericana and a Masters in Business Administration from the University of Southern California. He has also taken courses at American University, IBFD's International Tax Academy, New York University, Harvard University, and Vienna University.

He is a member of the International Fiscal Association and has been voted numerous times into Euromoney's Guide to the World's Leading Transfer Pricing Advisors and Best of the Best. He is also a member of Bloomberg BNA Transfer Pricing Advisory Board and was awarded Asia-Pacific's Transfer Pricing Practice Leader of the Year at International Tax Review Asia Tax Awards 2019. Luis was bestowed the prestigious medal of "Mexicano Distinguido" by the Government of Mexico in 2018.

Luis is the President (Designate) of the Singapore-Mexico Chamber of Commerce, Vice Chairman of the Latin American Business Group's Executive Committee of the Singapore Business Federation and Member of the International Committee of Advisors to the President of the CONCAMIN (Confederation of Industrial Chambers of Mexico).



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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. As Inbound Leader, he has firm-wide oversight responsibility for Samil PwC's foreign-invested client base.

Henry has accumulated over 25 years of experience providing various types of consulting services in the U.S. (Washington D.C. National Tax, Chicago, New York Metro) and Korea. He specializes in providing advice on complex business and tax issues and serves as adviser to some of the leading multinational corporations in the world.

As a transfer pricing specialist, Henry has prepared analyses for the purposes of tax compliance, dispute resolution, tax planning, business restructuring, and advance pricing agreements. He has analyzed a full spectrum of inter-company transactions including buy-sell, commission rates, transfers of intellectual property, cost sharing and buy-in payments, service fees, and loans and has advised multinational clients across a wide range of industries. He has been selected for inclusion in Euromoney/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. He has also been recognized in International Tax Review's Tax Controversy Leaders every year since 2013.

Henry has 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. He is also Chief Compliance Officer and Co-Chair of the Taxation Committee of the American Chamber of Commerce in Korea.

Henry received a Bachelor of Economics degree from the Wharton School of Business at the University of Pennsylvania. He obtained his Masters in Business Administration from the Kellogg School of Management at Northwestern University where he received recognition as a Jane Robertson Scholar and graduated Beta Gamma Sigma.



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Peerapat joined PwC Thailand in 1995. He was made a tax partner in 2001 and has been appointed the leader of PwC Thailand transfer pricing practice.

Peerapat began his tax career in 1986. Prior to joining PwC, he had worked for the policy and planning division of the Thai Revenue Department for eight years. His main responsibilities when working at the Revenue Department were double tax treaties and mutual agreement procedures negotiations.

At PwC, Peerapat has been reviewing and defending transfer pricing practices adopted by multi-national companies in a wide range of industries. His work in transfer pricing includes advisory, benchmarking and documentation, Advance Pricing Agreement, value chain transformation and transfer pricing dispute resolutions.

Peerapat is recognised by the private sector as well as the Revenue officers as a leading transfer pricing expert in Thailand. He has been chosen to be the author of the Thailand TP chapters by the International Bureau of Fiscal Documentation. Peerapat is regularly invited to speak at Thailand leading universities, business organizations, and Thai and foreign tax administrations.

Besides transfer pricing, Peerapat specialises in international tax planning and structuring, double taxation agreements, corporate income tax, withholding tax, VAT, and tax dispute resolutions.

Practice areas

Transfer pricing, international tax planning and structuring, direct and indirect taxes, tax dispute resolutions

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Peerapat holds an MBA, University of Missouri-Columbia, USA and B.SC.(Hons) in Economics, University of Surrey England.



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Leslie Van den Branden is a partner with Grant Thornton Belgium that acquired in October 2017 the Belgian independent niche advisory firm DWVA in Brussels where Leslie heads the tax and transfer pricing practice. DWVA has been established 25 years ago in order to offer both multinationals as midsize enterprises that are active internationally, a high quality preferred alternative to big four consulting firms. At Grant Thornton, Leslie is a member of the EMEA Transfer Pricing Leadership.

He specializes in the design, implementation and audit defense of tax efficient supply chain management projects and hard to value intangibles for clients in a wide range of industries.

Leslie has 25 years of extensive experience (14 years at KPMG and 11 years at DWVA - Grant Thornton) in performing and managing economic analyses and valuations, transfer pricing documentation projects, concluding APA's and assisting clients during transfer pricing audits and mutual agreement procedures in various European countries and industries (automotive, chemical, pharma, heavy industry, logistics, information technology, fashion, construction, oil & energy, banking & finance, food & beverage, etc.).

Additionally, Leslie is frequently dealing with intercompany financial transactions, going from credit rating analyses, debt/equity rationalization and optimization, pricing for cash-pooling to LT financing instruments.

He frequently speaks at Belgian and international transfer pricing seminars and is a regular contributor to various tax and transfer pricing journals. Leslie is also contributing to the OECD consultations on the revision of the OECD Transfer Pricing Guidelines and the BEPS action points concerning transfer pricing matters.



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Sari is the Leader of the transfer pricing competence area in PwC Finland. She is an experienced and entrepreneurial oriented Partner of PwC with more than 20 years of experience in all aspects of transfer pricing and international taxation.

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Pierre Escaut is a senior partner of PwC France transfer pricing practice.

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He has extensive experience in structuring transfer pricing policies, documentation, benchmarking, tax audits assistance including negotiations with tax authorities, and advance pricing agreements.

He has moreover a wide range of industry knowledge (IT, electronics, pharmaceutical, consumer goods, heavy industry, luxury, etc.).

He has written numerous articles on transfer pricing and the IBFD French chapter on transfer pricing.

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Valentin is a Partner at Fidal in Paris. He joined the transfer pricing department of the firm in 2019, which he co-leads. He previously worked 13 years with the international tax department of CMS Francis Lefebvre Avocats.

He is used to providing advice in relation to the design of transfer pricing policies, for instance in the framework of supply chain reorganisations. He also devotes significant time to tax audit settlements, including litigations before the French courts, and procedures for the elimination of double taxation when necessary.

In 2009 and 2010, he was seconded to a client of the IT industry on a part time basis to prepare and deploy the group's transfer pricing policies, in coordination with the Group Tax Director.

Valentin is also experienced in dealing with transfer pricing issues relating to raw materials and in Africa.

He also coordinated the initiatives of the CMS network's Global Transfer Pricing Group from 2013 to 2019.

Furthermore, he has co-written several contributions to the OECD in the framework of answers to call for comments. He has organised and led several trainings for professionals and CMS tax lawyers. He participated in the definition of the content and writing of CMS Transfer Pricing Group's publications such as tax alerts or newsletters. He also participates regularly in the preparation and publication of articles on transfer pricing. In addition, Valentin organises and leads conferences.

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Grant Thornton is an international, integrated and independent organization specialized in audit, advisory and tax services. Globally speaking, the Grant Thornton network is active in more than 135 countries, is employing more than 53,000 persons and its turnover amounts to + 1.3bn€.

Within this tax network, there is a specialized team for transfer pricing, VAT and indirect taxes, Global Mobility, Financial Services.

Pascal has extensive experience in transfer pricing and international tax services for multinational or national groups. He has led several important global engagements in the manufacturing and retail industries covering multiple countries and expertise (tax, legal, global mobility). Pascal is highly experienced in tax audit assistance, litigation and elimination of the double taxation (Dispute Resolution expertise, in particular, APAs, MAPs and EAC.

As far as APAs are concerned, Pascal has managed more than 30 APAs in his career and was the first advisor dealing with multilateral APAs in the FS sector or with bilateral APAs with Japan.

He has worked for 25 years within the KPMG Network, where he was leading a team of more than 20 economist and tax consultants in Paris, France. Then Pascal spent more than two years at Mazars to build the transfer pricing and international tax department.

Pascal is now developing the International Tax and Transfer Pricing department of Grant Thornton Société d'Avocats. He is focusing on high added value services and is assisted by a dedicated team with which he is working for years.

The activity of his team is growing rapidly (more than 25%) and Pascal and his team are in a position to assist clients all over the world in all aspects:

- · Planning;
- Dispute resolution (tax audit assistance, Advance Pricing Agreements, Mutual Agreement Procedures, European Arbitration Convention);
- VCTC (Value Chain Transformation and Compliance) together with the IT consulting services of Grant Thornton;
- CbCR together with the consolidation team of Mazars;
- · Global documentation (Masterfile and local files);
- Training of in house tax and finances teams



Inglorious end of a journey: how the German Constitutional Court stopped the tax administration and the Federal Tax Court, and what taxpayers can learn from it

Dr Ulf Andresen DLA Piper Frankfurt Am Main

I. Introduction

Starting with its judgement I R 73/16 from 2019, the First Senate of the Federal Tax Court had embarked on a journey during which it has served an unparalleled series of decisions against German taxpayers and, thereby, has thrown overboard a consistent and well-reasoned legal position on outbound shareholder loan transactions that had been developed by the same senate under the previous leading judge. These false judgements¹ have caused significant damage and have undermined the trust in the independence of the Federal Tax Court as far as the work of this senate has been concerned.²

With its decision dated 4 March 2021³, the Constitutional Court has repealed that same judgement (I R 73/16) of the Federal Tax Court because it violated the German constitution in depriving the taxpayer of its lawful judge (Art. 101 (1) sent. 2 of the German Constitution ("Grundgesetz")); here the Court of Justice of the European Union ("CJEU").

Beyond the case itself, the Constitutional Court reveals in its explanatory notes of the judgement that the arm's length test (i.e. what third parties do or would have done in a similar situations), and thus the precondition for making and justifying a transfer pricing adjustment in Germany, as a matter of fact, had not been performed

in the present case, neither by the tax administration, nor by the Lower Tax Courts, nor was that detected and corrected by the Federal Tax Court despite the existence of the Hornbach⁴-decision of the CJEU in relation to the very same provision, section 1 of the German Foreign Tax Act. The Constitutional Court used the word "arbitrariness" in this context, and it can be seen as an act of grace vis-à-vis the previous bench of First Senate of the Federal Tax Court, that the Constitutional Court did not dismiss the tested judgement on the basis of Art. 3 (1) Grundgesetz, i.e. the principle of equality in its form of the prohibition of arbitrariness.

"THE DECISION
CONFIRMS THAT
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VIOLATED"



II. Main aspects of the decision

1. Facts of the case

The appealed judgement concerned a settlement account on which a German limited liability company had provided funding to its Belgian subsidiary. The account carried interest at 6% p.a.; the parties had not

agreed on any kind of security for the benefit of the German lender. The depreciation amount from writing off the balance of that account vis-à-vis the Belgian subsidiary has been adjusted, i.e. not been recognized as a tax deductible expense by the administrative appeals tribunal ("AAT") at the responsible tax office by applying section 1 (1) of the Foreign Tax Act, arguing that independent third parties would have agreed on some kind of security and that the lack thereof was a violation of the arm's length principle and required an adjustment in the form of a complete denial of the write-off. The Lower Tax Court of Duesseldorf repealed that deci-

sion of the AAT in its judgement⁵ and relied on the previous case law of the Federal Tax Court in relation to similar cases in the past, the socalled barrier-effect decisions (Sperrwirkungs-Rechtsprechung).6 The tax administration assumably knew that the previous leading judge of the First Senate of the Federal Tax Court, a former civil servant in the tax administration, would look favourably on the appeal of the Lower Tax Court of Duesseldorf's decision not to allow an appeal of its decision ("Nichtzulassung der Revision") and filed a non-admission appeal ("Nichtzulassungsbeschwerde") that was accepted by the Federal Tax Court and led to the judgement I R 73/16.

2. Violation of the fundamental right not to be deprived of one's lawful judge

The Federal Tax Court followed the approach of the tax administration without much ado and - without any critical distance and consideration of contradicting case law including from the CJEU - waved through the so much wanted transfer pricing adjustment, i.e. the nonrecognition of the depreciation of a shareholder loan and the disallowance of the corresponding expense item for tax purposes. By doing that, the First Senate of the Federal Tax Court has violated Art. 267 (3) TFEU by not bringing this case or matter before the CJEU and thus depriving the taxpayer of its lawful judge. The Constitutional Courts dissects the unconstitutional judgement with refreshing clarity.⁷

It explains that no every denial of access to the CJEU automatically qualifies as a violation of Art. 101 (1) sent. 2 Grundgesetz. The Constitutional Court applies the principle of arbitrariness according to which a violation of Art. 267 (3) TFEU has to be assumed only if the interpretation and application of that provision taking into account the leading thoughts of the Grundgesetz do no longer seem to be explainable and are obviously untenable.8 Among the three different categories, the Constitutional Court considered the incompleteness of case law ("Unvollständigkeit der Rechtsprechung") in the dimension that a further development of existing case law of the CJEU does not appear to be a remote possibility only.

Here, the First Senate of the Federal Tax Court had overstepped its competences in that he assumed the existence of an "acte clair" in an arbitrary way or the existence of an "acte éclairé" (no reasonable doubt that existing case law of the CJEU has not left open any aspect of the arm's length principle). In other words, it acted as a judge that it should not have been.

By assuming the existence of an acte clair or eclairé, the Federal Tax Court has ignored and put itself in conflict to para. 54 of the

Hornbach-decision of the CJEU. A further violation may be seen against para. 49, because the Federal Tax Court pledges for a complete non-acceptance of the depreciation while the CJEU provides for partial application of the arm's length adjustment. What makes the decision of the Constituational Court striking, is its clear statement that the whole case lacks any factual proof about what independent third parties actually do or would have done in the present circumstances. The obvious discrepancy vis-à-vis the Hornbach-decision leaves significant room for doubt that the case no I R 73/16 deviated from the correct application of EU law. Consequently, the Constitutional Court had to repeal the judgement I

III. Conclusion

From the taxpayers' perspective it can be concluded in a positive way that the odyssey of the First Senate of the Federal Tax Court has ended. Beyond that, taxpayers are well-advised to pay careful attention in any German tax audit that the arm's length test, as it is applied by the tax administration, is of a quality that would justify a transfer pricing adjustment. Very many of the "suggested" transfer pricing adjustments in German tax audits fall short of that requirement.

In this light, taxpayers are well-advised to reconsider whether a German tax court may be the better place for a transfer pricing controversy than the potentially collusive setting at a MAP table where taxpayers do not have their own seat. Almost all fact patterns can be distilled down to one or two straight-forward legal questions, the foremost in transfer pricing being whether a third-party has or would have paid a different price than was agreed by the taxpayer in its contested related-party transaction. If courts can be convinced based on the decision of the German Constitutional Court that the transfer pricing adjustment falls short of that legal standard, the violation of the arm's length principle, better outcomes are achievable for taxpayers. It is worth noting in this context that the Federal Tax Court usually does not decide on the amount of the taxable income. As a consequence, the Lower Tax Courts or a subsequent MAP may be used to find the arm's length transfer price and, thus, resolve double taxation.

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^{1.} The following articles explain why the decisions must be seen as false judgements: Andresen, Skandal im Sperrwirkungsbezirk, Die Unternehmensbesteuerung 2020, p. 685 following; Andresen/Holtrichter, BFH-Urteil v. 27.11.2019 - "In dubio pro fisco germano" oder "Vom Fremdvergleich zum hinkenden Rechtsfolgenvergleich" Deutsches Steuerrecht 2021, p. 65 following.

It is worth noting though that with the arrival of a new leading judge in January 2021 and the retirement of the previous leading judge recent oral hearings of that senate suggest that period of misjudgments has come to an end.

See German Constitutional Court, decision from 4 March 2021 - case no. 2 BvR 1161/19, Deutsches Steuerrecht 2021, 777 following.

See CJEU, decision from 31 May 20218, case no. C-382/16 Hornbach-Baumarkt.

Vgl. FG Düsseldorf, Urt. v. 10.11.2015 – 6 K 2095/13 K, EFG 2017, 553 ff. (Revision nicht zugelassen).

Vgl. BFH, Urt. v. 24.6.2015 – I R 29/14, BFH/NV 2015 1506-1509 und BFH, Urt. v. 17.12.2014 – I R 23/13, BFHE 248, 170.

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Vgl. BVerfG, (Fn. 10) Rz. 54 m.w.N.

German 2021 Transfer Pricing — A Fundamental Shift in the German Transfer Pricing Landscape

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Fundamental Changes in the Foreign Tax Act1

Sometimes the most radical shifts in life announce themselves in seemingly small details. The same can be said about the fundamental shift that is about to occur in German transfer pricing. A new law has been ratified, succinctly named *Abzugsteuerentlastungsmodernisierungsgesetz*—roughly translated as "law on the modernization of withholding tax relief"—. The final version of the law has introduced far-ranging modifications and wholesale replacements on transfer pricing matters to the German Foreign Tax Code.

Effective beginning in 2022, three core aspects of the Foreign Tax Code will be modified, as detailed below. While many of these changes were expected and move Germany into greater alignment with the OECD Transfer Pricing Guidelines, the practical implications will be far-reaching, in particular because German transfer pricing audits generally go into great detail. Therefore, we expect a new wave of disputes to arise as the tax authorities apply the new standards.

Transfer Pricing Method Selection and Applicability

The German Foreign Tax Code had previously been lagging behind the international consensus in the selection of transfer pricing methods. In particular, it still contained a formal preference for the "standard" transfer pricing methods—the comparable uncontrolled price method, cost-plus, and resale minus, over other methods, such as TNMM and the profit split method. This hierarchy of methods had been abolished by the OECD already in 2010 and, now, Germany effectively aligns with the OECD.

In some respects, the law confirms the existing practice, in particu-

lar regarding the widespread use of TNMM and a clearer reference to the use of interquartile ranges. While these are welcome clarifications, these changes are not expected to have significant practical implications.

However, the new law also includes a clear strengthening of economic analysis, and explicitly prescribes the use of "accepted economical valuation methods" to determine the arm's length price from the perspective of both transacting parties. These provisions will lend a stronger foundation to the use of state-of-the-art economic valuation techniques, which will enable taxpayers to provide better and more comprehensive evidence of their

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transfer pricing practices. On the other hand, it will also increase the technical sophistication of tax authorities' analysis.

DEMPE Concept and Definition of Intangibles

The new provisions of the Foreign Tax Code will now also include both an endorsement of the DEMPE³ concept, as well of the (new) definition of intangibles per the OECD guidelines and the BEPS proiect

Both of these changes can be expected to lead to more transfer pricing controversy. Previously, the German guidelines had explicitly mentioned only intangible assets, but now taxpayers must recognize that anything that is not a financial or physical asset can be considered an intangible as long as it gives rise to some value, even if it is not recognized for further accounting purposes. Furthermore, the economic ownership of these intangibles is to be assessed by a compulsory DEMPE analysis (i.e., an analysis of the entities contributing to the development, enhancement, maintenance, protection, and exploitation of intangibles). Crucially, the law now explicitly states that funding the development, maintenance, or protection of an intangible per se does not entitle the respective entity to the returns associated with an intangible. As such, in transfer pricing matters, the importance of

legal ownership of intangibles is replaced by an assessment of functional ownership, a field that, due to inevitable subjectivity, is prone to future tax disputes.

Overall, the combination of a wider definition of intangibles and a broader assessment of economical ownership will lead to more local entities being classified or reclassified as entrepreneurial companies. The transfer pricing implication is that the use of two-sided methods, such as the profit split method, can be expected to proliferate. For German inbound cases, transfer pricing solutions justified through one-sided TP methods are increasingly likely to be challenged.

Relocation of Functions/Hard-to-Value Intangibles

German transfer pricing rules are (in)famous for the regulations regarding the "relocation of functions" (Funktionsverlagerung), which were introduced in 2010. The new law adapts these rules and aligns them with OECD guidance on "hard-to-value intangibles," although its application is set to be somewhat broader.

The Foreign Tax Code now specifies that any transfer of relevant intangibles (including in the context of a relation of functions) is subject to an adjustment payment if the ex-post results deviate significantly from the ex-ante expectations (EBIT, revenues, etc.) used in the valuation. In line with the OECD guidance, the adjustment payment should be made if the deviations would, under the original valuation methodology, lead to a price that deviates by more than 20% from the original transfer price. In a slight deviation from the OECD's suggestion, in Germany, this reassessment is to be made no later than seven years after the transaction instead of 10 years. Notably, this is also a deviation from the previous rules on the relocation of functions, which had also prescribed a 10-year period.

There are several noteworthy exceptions to the adjustment clause that are explicitly mentioned in the new law, again somewhat in line with OECD guidance. No adjustment clause is required for i) deviations stemming from circumstances that were completely unforeseeable, or ii) if the potential deviations were explicitly and appropriately considered in the original valuation, or iii) if the transfer is accompanied by a license agreement that is based on either revenues or profits of the licensee. Moreover, tax authorities can only make these adjustments if the taxpayers have not used an "appropriate" adjustment clause themselves.

Overall, the application of the relocation of functions will move closer to the transfer of an intangible and will likely be seen in the

same overall framework. This is somewhat confirmed by the fact that two of the three previous exceptions to the exact calculation of the transfer price for a relocated function are deleted from the regulations. Previously, it had not been nessary to value a function based on the detailed guidance if it could be shown that either i) the function contained a single, significant intangible that could be valued, or ii) it contained various intangibles, the sum of which correspondend to the result under the detailed guidance. In practice, these exceptions were of lower importance, in particular since they still contained a reference to the value under the detailed guidance and, therefore, did not lead to much simplification. The only remaining exception applies when a function is relocated without the transfer of any intangible, which is generally assumed if the relocated function is purely routine.

Outlook

The changes will be effective as of the 2022 financial year but, in practice, tax authorities will already consider some elements and updated interpretation of the existing arm's length principle and, thus, try to apply it even to preceding tax years. Nevertheless, some regulations, especially the "hard" ones (e.g., on thresholds for the application of adjustment payments), are only applicable starting next year.

As part of the legislation the new law, the Ministry of Finance is authorized to issue new detailed regulations (Rechtsverordnung) to clarify the application of the law, in particular the arm's length standard. These regulations will be subject to approval by the upper legislative chamber and will likely have profound implications in practice. However, this detailed guidance will take some time to develop and ratify, so taxpayers should prepare now to ensure that their transfer pricing documentation and application—especially regarding DEMPE functions—is in line with the new German regulations.

Außensteuergesetz

Full title is "Gesetz zur Modernisierung der Entlastung von Abzugsteuern und der Bescheinigung der Kapitalertragsteuer."

Where DEMPE stands for the functions that develop, enhance, maintain, protect, and exploit an intangible.



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Dr Ulf Andresen is an international tax partner in DLA Piper's Frankfurt office. He joined DLA Piper in November 2019 after having spent almost 24 years with EY and PwC in Germany and Australia. As a Certified Tax Advisor he is admitted to all German tax courts. In addition he holds a Chartered Accountant qualification in Australia and has been a member of the International Fiscal Association for many years.

Ulf has substantial experience in serving multinational groups of companies in structuring their cross-border activities, in assisting with the implementation of such structures in particular in post-merger integration settings, in evaluating the tax accounting impact, and in defending these structures in tax audits.

Tax audit and other controversy activity including transfer pricing crisis management is his main focus. Major recent projects include the successful termination of a controversial joint audit, the successful conclusion of an APA on brand licensing, the representation of a US and an EU multinationals' interests in transfer pricing matters in German court proceedings, the representation of a US multinational in German court proceedings claiming the violation of the free movement of capital, one of the fundamental freedoms of the Treaty of the Functioning of the European Union as far as the assessment of real estate transfer tax on extraterritorial restructurings is concerned.

He is known for his excellence and creativity in transfer pricing controversy situations. His very broad APA experience covers Belgium, China, Denmark, Finland, France, Ireland, Italy, Japan, Korea, Netherlands, Spain, Sweden, Turkey, United Kingdom and United States where he was involved in the local negotiations with the local tax authorities. Moreover, he is a well-known expert on the taxation of permanent establishments and on transfer pricing in the financial services industry.

His expertise covers the following industries: asset management, automotive including suppliers, banking, chemical, consumer goods, engineering, information technology including software, insurance, and pharmaceuticals.

He is the co-publisher and co-author of the Permanent Establishment Handbook (Betriebsstätten Handbuch) the leading publication on PE taxation in Germany . His PhD-thesis on the arm's length standard received an honourable mention at the 2000 IFA Congress.

Practice areas

Business model optimisation, policy design, IP management, restructuring, APAs, M&A, financial services, corporate taxes, technology, value chains, audit defence, audit support, dispute resolution, pre-litigation, MAPs/ADRs, litigation, controversy management, state aid, tax consulting, international tax advisory, supply chains



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Lorenz Bernhardt is a senior transfer pricing partner at PwC Berlin.

Lorenz has over 20 years experience in tax consulting, in particular in planning, implementation and defense of transfer pricing systems as well as in international tax structuring. He advises large international clients (both German and foreign-headquartered) and has led many projects with a broad variety. He is also acting as a central European transfer pricing advisor for a number of multinational corporations. Additionally, Lorenz lectures on transfer pricing and international tax at professional seminars and at renowned universities. He is regularly named to be one of the top tier transfer pricing advisors in Germany.

Recent projects of Lorenz Bernhardt included:

- Advice on and implementation of large restructuring projects, including treatment under the German transfer of function rules;
- Negotiations and comprehensive filings relating to bilateral Advance Pricing Agreements matters for Blue Chip Groups; and
- Tax audit defense work with a focus on very large cases and highend transfer pricing matters.

Lorenz is also co-heading the transfer pricing practice of PwC Europe (comprising Austria, Belgium, Germany, The Netherlands, Switzerland and Turkey) as well as the PricewaterhouseCoopers' EMEA TP practice.

Lorenz obtained a law degree from the University of Munich and an LLM from New York University School of Law. Before joining the tax practice of an international accounting firm in Germany, he had been working as a foreign associate with Fried, Frank in New York. Lorenz is a German certified tax advisor and has been admitted as attorney-at-law both to the German Bar as well as to the New York Bar.





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Background

Thomas is a senior transfer pricing partner based in Düsseldorf,

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Skills

Thomas has more than 30 years of experience in the design, documentation and defense of transfer pricing systems; IP migration, business restructurings and operating model conversions; structuring of cost allocation and cost sharing arrangements; resolving transfer pricing conflicts with the tax authorities in audits, mutual agreement and arbitration procedures, and by Advance Pricing Agreements; and in the implementation of transfer pricing concepts into the organisation, processes and systems landscape of companies from a transfer pricing point of view.

His clients include many of the largest German multinationals, including DAX 30 companies, as well as many of the largest global corporations investing into Germany.

Thomas has a focus on the automotive industry and is the transfer pricing leader for this industry specialisation in Germany/Switzerland/Austria.

Professional experience

From 2006 to 2014 Thomas led Ernst & Young's global transfer pricing practice. Previously to that, he was the tax managing partner for Germany from 2001 to 2007.

Thomas holds an MSc in Management from the University of Cologne and a PhD in taxation from the University of Aachen.

He is a Certified German Tax Consultant, a member of the Professional Institute of German Tax Consultants and an arbitrator for Germany under the EU Arbitration Convention.

He is a honorary professor at Cologne University for "International Tax Planning: Transfer Pricing and Supply Chain Planning" (in English language) and a regular lecturer at the LLM program at Cologne University and the MBA program of Mannheim University.

Thomas is the co-editor and co-author of the Handbook Transfer Pricing and author of various other publications.

International Tax Review and Expert Guides have recognized Thomas consecutively for many years as one of the "World's Leading Transfer Pricing Advisors" as well as one of the "Best of the Best Transfer Pricing Advisors in the World."



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Roman Dawid is an international tax partner at PwC based in Frankfurt am Main with a specialization in transfer pricing. He has worked as an economist for over 20 years and is specialized in the analysis of complex business processes and intangible valuation.

Dr Dawid has over 18 years of experience as a transfer pricing advisor at Big 4 audit firms. He has advised many large European, US, Canadian and Asian multinational enterprises in various industries in all areas of transfer pricing, including planning, documentation and tax audit defense. His main industry experience includes companies in the automotive and industrial products industry, consumer goods, and (renewable) energy.

Together with his clients, Dr Dawid has developed and implemented global transfer pricing systems. His current focus is on the new OECD BEPS regulations, especially for intangibles (action items 8 - 10), and the transfer pricing for digital business models. He has supported clients in business restructurings and valuations of intangible property. Furthermore, Dr Dawid has supported the successful negotiation of APAs.

Dr Dawid has worked on several research projects and on a number of economic and business publications. He has a teaching assignment in the International Master of Taxation Program at the University of Göttingen. Dr Dawid co-authored the leading German publication on transfer pricing, "Handbuch Internationale Verrechnungspreise", edited by Heinz-Klaus Kroppen. Moreover, he is editor of a book on transfer pricing for practitioners published by Springer-Gabler.

Prior to his career in transfer pricing, Dr Dawid worked in the field of public finance and taxation at Bochum University. Dr Dawid graduated with a PhD in economics from Bochum University and holds a master's degree in economics from Constance University. He also studied at the London School of Economics. He is member of the International Fiscal Association and Verein für Socialpolitik.





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Axel Eigelshoven is a transfer pricing partner in PwC's Düsseldorf office and serves as head of the PwC's German transfer pricing practice. He has more than 20 years of experience in international taxation and transfer pricing.

Axel is working on wide variety of transfer pricing projects including tax audits, IP migration, tax effective supply chain management, permanent establishment issues, APAs and competent authority procedures under the tax treaty and the EU arbitration convention. His clients involve a number of DAX 30 companies, large multinationals and midsize companies. Axel is focused on the automotive, engineering and chemical industry.

Axel lectures at the Mannheim Business School, the Vienna University of Economics and Business and is frequent speaker on transfer pricing at national and international seminars. He is co-author of Vogel/Lehner, Doppelbesteuerungsabkommen, a leading commentary on tax treaties, co-author of Kroppen, Handbuch der Verrechnungspreise, a leading publication on transfer pricing and is contributing the German country chapter in IBFD's Global Transfer Pricing Explorer. Moreover, he has published numerous articles in national and international tax journals.

Axel holds a degree in Business Economics (Diplom-Kaufmann) from the University of Cologne. He is a Certified Tax Advisor (Steuerberater) and is a member of the Tax Advisors Association and the International Fiscal Association.



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Experienced, entrepreneurial and results-oriented Partner of PwC with core competencies in international transfer pricing.

Specialization and expertise

- Leader of the PwC transfer pricing practise in Northern Germany
- Advising multinational companies especially on transfer pricing issues related to restructurings of business models such as: assessment on exit charge risk, remodelling of business models and transactions, financial simulation of transfer pricing effects, assessment of permanent establishment risks
- Development of "end to end transfer pricing" concepts, meaning definition, implementation and monitoring of transfer pricing systems
- An Active member of the Global Core Team regarding the further development and adaptation of transfer pricing documentation systems
- Extensive experience in dispute resolution with a special focus in tax audit defence and multilateral agreement procedures
- Lead editor of PwC Germany's "Transfer Pricing Perspectives" (Quarterly editions on hot transfer pricing issues)

Employment history

 18 years with PwC in Erfurt (Germany), London (UK) and Hamburg (Germany)

Education

- · 2002: Certified German tax advisor
- · 1998: Friedrich Schiller University, Jena in Germany
- Master of Business Administration

Languages spoken

- German
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Jörg Hanken is a Transfer Pricing Partner based in Munich with more than 20 years of experience in international taxation and transfer pricing. He is a member of the PwC Global TP Leadership Team. In his role as Global Transfer Pricing Technology Solutions Leader he is responsible for the development and the roll-out of software solutions in the area of transfer pricing documentation, end-to-end transfer price setting (SAP), service charging, CbC reporting and data analytics. Before Jörg Hanken joined PwC he gained experience as a tax advisor at Arthur Andersen and EY as well as a Head of Tax Central Europe for a Fortune 500 multinational.

Professional experience

Jörg Hanken has significant experience with the analysis, planning, implementation, documentation and defence of transfer pricing structures. He focuses on the end-to-end implementation of transfer pricing which includes the interface between tax and controlling as well as the customization and implementation of software solutions to automate price calculations, margin monitoring, segmentation of P&L's, dashboarding and tool-based preparation of TP documentation (master files, local files, CbCR).

Recent projects are:

- Several tool-based global TP documentation projects for DAX30, MDAX and smaller multinationals
- Several CbCR projects using tools for data collection & data mapping as well as data analytics and simulation
- Many successful proofs of concepts of a highly automated end-to-end TP management solution for SAP clients.
- Planning of contract manufacturing functions located in France, Germany, Hungary, Mexico, Poland, Romania, Thailand, US within the automotive and chemicals industry
- Development of a consistent TP model for construction permanent establishments for large groups including sounding and pre-filings with German and foreign tax authorities
- Development of simplified TP models for groups within the ecommerce business
- Currently, bilateral APAs regarding distribution functions (Germany with Switzerland/ USA), contract manufacturing functions (Germany with Poland/ Romania/ Czech Republic/ Hungary), co-entrepreneur profit split (Germany with Sweden)
- Currently, MAP's regarding distribution functions (France, Switzerland, USA), contract manufacturing (Romania), manufacturing and distribution (USA)
- Jörg Hanken has trained more than 600 controllers at the Controller Academy in intense 3-days transfer pricing seminars. Establishment of the ICV Working Group "Transfer Pricing Management". Co-author of the book "Transfer Pricing Practice Guide for Controllers and Tax Experts" (3rd edition, 2020). Regular national and international TP workshops and seminars/lectures. One of the "Leading Tax Controversy Experts" (International Tax Review).

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Maik Heggmair is a transfer pricing partner at WTS located in the Munich office. He is the Head of the WTS Transfer Pricing team in Germany with approximately 40 economists and TP experts in five locations and he co-leads the Global TP Service Line of WTS Global. In 2018 and 2019 the WTS TP team has been awarded as "German Transfer Pricing Firm of the Year" by International Tax Review.

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Maik has more than 20 years of experience in transfer pricing working as in-house TP expert in industry and for other well-known consulting firms.

Maik has vast experience in international tax structuring and transfer pricing projects including supply chain transformations, tax audit defense and developing global transfer pricing policies and documentation concepts. Maik regularly advised international clients on tax and transfer pricing aspects relating to intellectual property development and migration as well as transfer pricing consequences of business restructurings including the relevant value chain planning issues. He regularly acts as the responsible project leader for various global projects concentrating on TP compliance processes and the digitalization of TP compliance processes based on software solutions.

Within the network of WTS Global, Maik constantly works with the WTS Global member firms in international teams for global clients from various industries. He has vast experience in coordinating international projects involving a significant number of countries in Europe, Asia and Americas.

Maik graduated from the Munich University in economics in 2001 and then joined a Big4 tax consulting firm in Germany where he worked for several years. In 2004 he became a German certified tax advisor and he is a member of the Tax Advisors Association.

Maik has published various articles in national and international tax and transfer pricing journals and he is a frequent speaker at national and international seminars and TP workshops.





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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 has been Transfer Pricing Partner at KPMG and German Tax Leader of the global Value Chain & Digital Transformation practice of PwC.

In the course of his professional career, Dr. Hervé has covered all major TP consulting issues for global clients, from integrated value chain structuring and TP planning to global TP compliance issues and documentation, TP economic solution design, IP valuation, cost contribution solutions, business restructurings, tax audit defence and dispute resolution. His client portfolio covers global multinationals across a broad segment of industries (in particular life sciences, chemical & industrial products, transportation & logistics, automotive, energy, consumer, high-tech).

In the course of his projects and as responsible promoter of broader solution platforms, Dr. Hervé has been particular active in designing innovative solutions for Value Chain Analysis (e.g. a solution approach to rank functional value contributions in a non-distortionary manner, as well as a peer group based analytical approach), Risk Economics (e.g. quantification and risk adjustments solutions for business restructurings and hybrid value functions), Profit Splits (e.g. solutions based on relative bargaining power), TP and tax impact simulation.

Dr Hervé has provided expert opinion reports in relation to European tax audits and has assisted clients with economic analysis for advance pricing agreements with local authorities. In litigation, he has been involved in cases considering IP remuneration and related tax exit charges and their underlying business valuations. He has provided the economic analysis for international arbitrations and has appeared as expert witness in arbitration and tax court hearings.

Prior to becoming a TP professional, Dr. Hervé was lecturer in Economics at the European Institute of the University of Saarland in Germany. In that time, he was involved in economic consultancy work for diverse European institutions (European Commission, European Parliament and Council of Europe),

Dr Hervé holds a summa cum laude PhD in economics from the University of Saarland in Germany. He holds a Master of Economics from the University of Bonn and a Master of European integration from the College of Europe in Bruges, Belgium. He is a Franco-German binational and fluent in English, German and French.



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Dr Jörg Hülshorst is a Transfer Pricing Partner located in Düsseldorf with more than 16 years of experience in advising multinationals in the field of transfer pricing. Before joining PwC Jörg was a Transfer Pricing Partner with another Big Four firm, where he was heading an international expert group for financial transactions.

Jörg has worked as an economist for more than 20 years, assessing, developing and defending transfer pricing systems. Jörg has broad project experience in all economic aspects of transfer pricing, with a particular focus on financial transactions and intangible property valuation. With his economic background, he has also served clients in various international reorganisation or restructuring projects.

He serves multinational clients in all areas of transfer pricing, including planning, documentation, and audit defense. His clients include German Dax-30, European, Japanese, U.S. and other multinational corporations in a wide range of industries, including engineering, machinery, chemicals and financial services.

Jörg is the author/coauthor of various articles on transfer pricing, most notably the White Paper "Europe as One Market" for the European Joint Transfer Pricing Forum and a commentary on Chapter II of the OECD Transfer Pricing Guidelines. He has also published in the field of transfer pricing for financial transactions such as intercompany loans, guarantees and cash pooling.





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Tanja Keser is a partner in the transfer pricing (TP) team of PwC in Munich, Germany. She has 15 years of TP consulting experience, including over six years at PwC Sydney, Australia.

Tanja advises mainly middle-market clients on issues such as simplification and efficiency of TP policies, global TP documentation and defense of transfer pricing systems.

Tanja is co-leading the financial transactions transfer pricing (FTTP) service offering of PwC Germany. She is an expert on topics such as arm's length financing structures, assessing credit quality, benchmarking arm's length interest rates and debt capacity, cash pools and related-party guarantees. Tanja is a frequent speaker on TP aspects of financial transactions both externally and within the national and international PwC network.

She successfully concluded many tax audits and APAs / MAPs for small and medium-sized companies as well as large and complex reorganizations. In addition, she has many years of experience with international reorganizations and valuation of transfers of functions.

Academic qualifications

Tanja holds a Master degree in International Business Administration and studied at universities in Germany, France and Australia.

Languages

German and English



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Christoph Ludwig is a partner in the Transfer Pricing Service Line of Grant Thornton Germany. He has more than 15 years of experience advising clients on transfer pricing and related international tax matters. After more than 12 years at two Big4 firms, he joined Grant Thornton Germany in 2018. Here, he heads the transfer pricing planning and transfer pricing system advisory group.

Christoph advises multinational companies in all phases of the transaction lifecycle; from planning, implementation, and documentation to defending transfer pricing in tax audits or dispute resolution via mutual agreement procedures or advance pricing agreements. However, his focus is on the structuring and alignment of transfer pricing systems in accordance with value creation in the increasingly fast-changing business environment as well as in cases of disruption. Examples of his work include the revision of the transfer pricing system of a division of a German DAX 30 company, the conversion of European distribution models from fully-fledged distribution to limited and low-risk distribution, the introduction of supply chain hubs, and various post-merger integration projects.

Christoph holds a Master's degree (University of Hamburg) and a Bachelor's degree (University of Hertfordshire) in Business Administration. In addition, he was awarded the title of Master of International Taxation (M.I.Tax) by the International Tax Institute of the University of Hamburg for the postgraduate master program. Christoph is the author of several articles on the taxation of business restructuring or permanent establishments and he is a frequent speaker at tax and transfer pricing conferences.

Christoph is a member of Grant Thornton's EMEA Transfer Pricing Steering Committee.

Warth & Klein Grant Thornton is the German member firm of the Grant Thornton International Network, an association of accounting, tax and advisory firms with more than 53,000 employees in 130 countries. In Germany, around 1,300 employees at 11 locations support our clients in achieving their goals.

Practice areas

transfer pricing planning, business restructurings, tax audit support, alternative dispute resolution, taxation of permanent establishments

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Languages

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Qualification and Education

Katharina is a transfer pricing partner with 14 years of experience in consulting multinationals in the field of transfer pricing and international taxation leading the transfer pricing team at PwC Essen. She is a certified tax lawyer ("Fachanwalt für Steuerrecht") and holds a Master of Laws in Taxation (LL.M.).

Professionell Experience

Katharina's projects consists in transfer pricing planning and documentation as well as tax audit defence, MAP, tax courts and APAS. She has also significant experience in permanent establishment projects including questions on respective profit attribution.

Katharina is author of several publications in different German and international tax journals and co-author of Chapter II, IV and V of the OECD-Guidelines in Kroppen, Handbuch Internationale Verrechnungspreise. In addition, she is frequently engaged as lecture for external and internal transfer pricing seminars.



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Prof Dr Axel Nientimp is a tax and transfer pricing partner at WTS located in the Düsseldorf office. He is the Head of Transfer Pricing Strategy & Dispute Resolution. Axel has more than 20 years of experience in international taxation and transfer pricing.

Over the years, he has delivered a broad range of transfer pricing solutions to companies in various industries. His projects cover all aspects of designing, implementing and documenting transfer pricing solutions including the attribution of profits to permanent establishments as well as large supply chain reorganisations. Axel has significant experience in defending multinationals in transfer pricing tax audits and Mutual Agreement Procedures as well as negotiating bilateral and multilateral APA's.

Axel holds a PhD in Business Taxation and a degree in Economics (Diplom-Ökonom) from the University of Bochum. He is a Certified Tax Advisor (Steuerberater), a Certified Tax Advisor for International Taxation (Fachberater für Internationales Steuerrecht) and a member of the Tax Advisors Association. Axel has published a volume on the profit allocation of multinational enterprises and a broad range of articles on transfer pricing and international taxation for professional journals. He is the co-editor of Germany's leading compilation of transfer pricing laws and regulations and commentator of the transfer pricing regulations in Germany's Foreign Tax Code. He is a honorary professor on international taxation at the University of Duisburg-Essen and a regular speaker at universities as well as at national and international conferences and seminars.





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Holger M Peters is a Transfer Pricing Partner of KPMG's office in Hamburg and heads KPMG's Global Transfer Pricing Services team in Northern Germany. In addition, Holger is the National Leader of KPMG's Global Transfer Pricing Dispute Resolution practise in Germany. Before joining KPMG in 2004 Holger has gained professional experience in PwC's tax and legal practise in Dusseldorf.

Holger is a tax lawyer and certified business mediator. He is a member of the German Bar, International Fiscal Association, German Tax Law Society as well as of the Association of Tax Lawyers.

Over the past 20 years Holger has helped multinational companies across a range of industries to effectively manage their transfer pricing risk exposure by setting up comprehensive transfer pricing systems and by helping them documenting and defending their transfer prices.

Holger's main focus is on transfer pricing risk management and dispute resolution, i.e. setting up tax compliance management systems (Tax CMS), negotiating Advance Pricing Agreements (APA), Mutual Agreement Procedures (MAP) as well as tax settlements in local tax audits. His projects comprise dozens of bi- and multilateral APA (including renewals), MAP, and EU arbitration procedures as well as pan-European documentation projects and numerous tax audits, including pre-audit strategic consulting, joint audits, appeals and litigation in the German Tax Courts. Together these projects cover countries in Europe, the Americas and the Asia-Pacific region.

His wide industry experience includes projects in the Consumer Products & Retail business, Transportation & Logistics sector, Automotive industry, Healthcare & Pharmaceutical sector, Energy & Resources industry as well as in the Technology sector.

Holger is a frequent speaker at conferences and regularly publishes nationally and internationally about transfer pricing topics. Due to his recognition as a leading German transfer pricing expert International Tax Review lists Holger as "World's Leading Tax Controversy Adviser in Germany" in its Fifth Edition of the Tax Controversy Leaders Guide (2015) and Legal Media Group's Expert Guides list him in the "Guide to the World's leading Transfer Pricing Advisors - Germany" (2017, 2018, 2019, 2020, 2021). Furthermore, World Transfer Pricing lists him as a "Highly Regarded Practitioner" (2020, 2021) and JUVE Steuerhandbuch (2020) mentions him in the section on "Tax Controversy".

KPMG is a global network of professional service firms providing audit, tax and consulting services with more than 207,000 professionals in 152 countries. In Germany, KPMG belongs to the leading audit and consulting firms with about 11,700 professionals in more than 25 locations. About 100 transfer pricing specialists in Germany cover all aspects of transfer pricing from transfer pricing system design and planning to turnkey documentation solutions and controversy.



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Prof Dr Stephan Rasch is a transfer pricing partner in PwC's Munich office. He has twenty-one years of experience in international taxation and transfer pricing. Before joining PwC in December 2013, Stephan worked with another Big Four firm as transfer pricing partner. Stephan advises clients in tax matters associated with cross-border transactions, including permanent establishment issues and value chain transformations. He has worked on a broad variety of transfer pricing projects for various industries, including the automotive and automotive supplier industry as well as chemical and pharmaceutical industries, the machinery tool, and IT sectors. Stephan's clients include German-based DAX companies as well as European and US multinationals. He serves as Global Relationship and Lead Partner for various companies.

Stephan has led numerous global documentation projects, inter alia for German-based multinational entities implementing and maintaining a modular global core documentation concept. He has also gained significant experience in VCT projects during the last two decades years. He is successfully involved in German and European tax/transfer pricing audits defending the restructuring and/or the transfer of intangible property in business model reorganizations, including particularly cases involving Switzerland as a principal location. Stephan's experience with Mutual Agreement Procedures include bilateral and multilateral cases as well as the negotiation of biand multilateral Advance Pricing Agreements. Finally, he is involved in tax court litigation relating to transfer pricing cases. He has been appointed as German national reporter on Subject 1 "Dispute Resolution" for the 70th International Fiscal Association (IFA) Congress in Madrid in 2016.

Stephan has published a volume on transfer pricing legislation in international German, bilateral and European tax law. He is co-editor and co-author of one of the leading transfer pricing publications in Germany, Handbuch Internationale Verrechnungspreise, as well as coeditor and co-author of Gosch/Kroppen/ Grotherr, DBA-Kommentar, a leading commentary on double tax treaties. He is editor of the Internationale Steuer-Rundschau (ISR), a German international tax journal and contributes articles to national and international tax journals on a regular basis. Stephan is professor of international tax law at the University of Augsburg and is a frequent speaker on transfer pricing at national and international seminars.

Stephan is a member of the Munich Bar, the International Fiscal Association (IFA) and the IFA Bavaria board. Stephan holds a PhD in International Tax Law and a degree in law from the University of Bochum. He is a tax lawyer (Rechtsanwalt/Fachanwalt für Steuerrecht).





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Martin has significant experience with the approach of German and foreign tax authorities towards transfer pricing and has been involved in several transfer pricing projects including dispute resolution, carrying out value chain transfer pricing studies, implementation of entrepreneur structures, licensing structures and tax consulting within Advance Pricing Agreement procedures (including the first APA between Germany and Switzerland). He has led many projects for multinationals to set up global transfer pricing structures including the BRIC countries. His clients involve mainly large multinationals and midsize companies. Martin is focused on the automotive, engineering and health care industry.

Martin is frequent speaker on transfer pricing seminars. He is copublisher and author of Renz/Wilmanns Internationale Verrechnungspreise – Handbuch für Praktiker, co-author of Bernhardt, Verrechnungspreise and contributing the Transfer Pricing chapter in Beck's Handbuch der AG. Moreover, he has published numerous articles in tax journals.

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Dr Achim Roeder is a transfer pricing partner with more than 20 years of experience in inter-national taxation and transfer pricing. His clients include leading German and international mul-tinationals from diverse industries with an emphasis on large German corporates. His projects cover transfer pricing planning in respect of European supply chain reorganisations as well as transfer pricing implementation and documentation. Achim is regularly involved in German-centric transfer pricing controversy and has been appointed as an expert witness in transfer pricing court cases.

Achim lectures on international tax law at the University of Bochum and is a frequent speaker at German and international conferences. His publications include a volume on the economics of anti-avoidance legislation in international German tax law as well as various other publica-tions covering a broad range of transfer pricing and economic topics. Achim holds a PhD in Business Taxation, a Diploma in Business Economics, and a Master of Arts from the University of Bochum. He is a certified German tax advisor (Steuerberater).





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Marc Schnell is a transfer pricing director located in our office in Munich. He has more than 20 years of experience in consulting multinationals in the field of transfer pricing and holds a diploma degree in economics.

Marc is working on a broad variety of transfer pricing projects for various industries, including automotive, engineering, medical devices, household appliance components, dairy, market research and the cosmetics industry.

Marc works as a transfer pricing economist and focuses on transfer pricing planning, documentation and controversy management. He has successfully completed various Advance Pricing Agreements and Mutual Agreement Procedures, based on relevant double tax treaties and the arbitration convention of the European Union. In this context, he maintains relationships to senior transfer pricing representatives at the level of the Bavarian as well as the German Central Tax Office.

He currently focuses on advising multinationals on the challenges of the OECD's BEPS project, transfer pricing process aspects and the arm's length analysis of financial intercompany transactions.

Marc has published numerous transfer pricing articles in German and international tax journals. Moreover, he is a frequent speaker on transfer pricing seminars.

Practice areas

Transfer pricing planning, documentation, controversy management, Advance Pricing Agreements and Mutual Agreement Procedures

Sector specialisations

Automotive, engineering, medical devices, semiconductor, household appliance components, dairy, market research and the cosmetics

Association memberships

International Fiscal Association

Academic qualifications

Diploma degree in economics, Ruhr-Universität Bochum, 1994-2000

Languages

German, English



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Daniel is a Director of our Frankfurt transfer pricing team with 15 years of practical experience in transfer pricing. He joined PwC in 2014 after working more than 8 years as a transfer pricing advisor at another Big 4 audit firm He studied Economics at the university of Konstanz and Carleton University, Ottawa. He holds a Master of Science in Economics and is a Chartered Financial Analyst (CFA) and member of the CFA Society.

Daniel has extensive experience in global Masterfile/ Countryfile documentations, performing functional and risk analysis, conducting benchmarking studies, pricing of intercompany financing transactions (loans, guarantees, cash pooling), valuation of tangible and intangible assets, profit splits, cost allocations, profit attribution to branches, defending transfer prices in tax audits as well as APAs/ MAPs. Furthermore, he has advised many clients with regard to the implementation of transfer pricing systems.

Daniel was seconded for six months as on-site transfer pricing manager to the European head office of a North American automotive supplier and has worked four months as secondee in the New York transfer pricing practice of another big four company. Furthermore, Daniel has published a number of articles on transfer pricing in tax journals and is co-author of the book "Verrechnungspreise -Grundlagen und Praxis".





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Susann has 20 years of experience in consulting multinationals in the field of transfer pricing. Her expertise encompasses transfer pricing structuring, operational implementation and transfer pricing process design, advise connected to Advance Pricing Agreements/Mutual Agreement Procedures, Joint Audits and tax audit defense.

Susann's clients include several DAX 30 multinationals, as well as other US, European and Asian corporations representing a wide range of industries. During the last years, Susann led a number of projects involving permanent establishments, complex restructurings including transfer of functions and post-merger integrations. Susann is a member of PwC's German Retail and Consumer Competence Team and the International Retail and Consumer Transfer Pricing Network. As such Susann has in-depth knowledge of industry-specific transfer pricing aspects.

Susann is a certified speaker on German Federal Certified Tax Consultant Association's seminars and events and regularly speaks on international tax and transfer pricing conferences. She is a co-author of one of the leading German publications Borberg Praxishandbuch Verrechnungspreise and publishes frequently in national and international tax magazines on transfer pricing. Her recent publications include articles about digital permanent establishments, articles about recent OECD developments regarding tax challenges of the digitalisation and an article about MAP regulations in Russia.

Susann studied business economics and tax law at the Dresden Technical University, Germany, and Japanese and International Tax Law at the KEIO University Tokyo, Japan. She later enrolled at Maastricht University for postgraduate studies of international tax law. She is a German certified tax advisor (Steuerberater).



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During more than 35 years of advising international corporations and leading law firms, Alex has specialised in the defence of major international transfer pricing and IP cases. He has developed solutions for measuring value contributions and damages which have become the industry standard. He has led hundreds of large transfer pricing, IP and State Aid projects and defence cases for clients in a wide range of industries all over the world. In recent years, he has defended against transfer pricing audits and litigation in North America, Scandinavia, Europe and Germany.

Alex is arbiter in Mutual Agreement Procedures between Germany and other countries dealing with big transfer pricing cases.

Together with his son, Jean-Benoit Voegele who is leading the transfer pricing EY office in Basel (CH), he has established new standards for the separation and quantification of IP, damages and the use of profit splits. They have developed value chain and value network analysis for digital business strategies and have advanced the discussion within the industry by frequently explaining their methods at conferences and in publications.

Using economic reasoning, he leads arbitrations and testify as expert witness in court. His insights have helped shape transfer pricing and audit standards in Germany and Europe. Alex and Jean-Benoit regularly exchange views with tax inspectors through publications and seminars. In negotiations, they find well-structured and understandable arguments that are convincing and relatable.

Alex and Jean-Benoit regularly publish articles and books on transfer pricing and intangibles. They are authors and editor of the two leading German commentaries on Intangibles, transfer pricing, and economic consulting: "Transfer Pricing" and "Intangibles" of C.H.Beck. They are also authors in "Steuerplanung und Compliance" of NWB and other books and teach at lecturing courses such as at the Management Circle. Their publications have anticipated many aspects of the Base Erosion and Profit Shifting (BEPS) discussions, such as the use of profit split methods or the analysis and quantification of risk. Alex has spoken at more than 350 conferences and seminars on transfer pricing, Intangibles and arbitration in Europe, the United States and Asia.

Alex holds a PhD in economics and an MSc in tax and business administration from the University of Mannheim. He is a German Wirtschaftsprüfer, Steuerberater and French Commissaire aux comptes.

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Ludger is a Tax/Transfer Pricing Partner of PwC in Germany. He coordinates PwC's TP activities in the region West. He has more than 20 years of experience in all aspects of transfer pricing and international tax planning.

Ludger is certified as German Tax Advisor (Steuerberater). He holds a Diploma in International Business from the University College Dublin (Ireland), an MBA from the University of Aachen and a PhD from the University of Bayreuth.

Ludger has worked for two of the Big 4 consulting firms in their tax and transfer pricing departments. He was also member of the board and head of the transfer pricing group of a German-based tax consulting firm. Furthermore, he worked as Tax Director Head of Global Transfer Pricing for a major German-based multinational company.

Both as an in-house consultant in industry and as an outside expert Ludger has planned and implemented numerous transfer pricing systems. He has worked extensively on Value Chain Transformation projects both inbound and outbound.

He has extensive experience solving controversies through defending tax audits and supporting mutual agreement procedures as well as advance pricing agreements (APAs).

Experience:

- Planning and Value Chain Analysis
- Dispute resolution (audits, MAPs and APAs)
- Business restructurings
- Documentation
- Implementation of TP systems

Industry of Specialization:

- Pharma and Life Science
- Chemical Industry
- **Consumer Products**
- Energy



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Dirk Wilcke is a partner at PwC Frankfurt's transfer pricing team. Working in transfer pricing for 12 years, he has built a reputation for delivering complex and innovative assignments.

His main industry focus is in automotive, industrial products (including chemicals) and pharmaceuticals. Over the years he has managed various large scale transfer pricing projects, including projects in the realm of

- transfer pricing planning and implementation,
- intellectual property planning and valuations,
- value chain analysis and transformation,
- intragroup financing and pricing of debt,
- tax audits and dispute resolution.

He currently spends most of his time on supply chain transformations, global transactions/M&A, financial modelling and end-to-end aspects of transfer pricing.



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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.

Recent matter highlights

Prof Guglielmo Maisto advises national and international clients operating in a variety of industries such as fashion and luxury, financial service, automotive on some of the most complex and sensitive transfer pricing cases. Among his recent experiences he advised a leading listed group in the tax settlement with the Italian Revenue Agency arising from a tax investigation carried out by the Italian Tax Police towards foreign companies of the group and concerning permanent establishment claim as well as transfer pricing aspects.

Practice areas

- APAs
- · state aid
- · international tax advisory
- controversy management
- tax consulting

Association memberships

- Italian Bar Association (1980)
- Italian Certified Public Auditors Association (1995)
- International Fiscal Association
- · The Law Society
- American Bar Association
- · International Bar Association
- · Istituto 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.

MAISTOEASSOCIATI

No state aid to Amazon, rules the General Court of the EU

Antonio A Weffer and Elodie Schmidt Baker McKenzie Luxembourg

On 12 May 2021, the General Court of the European Union overturned the decision of the EU Commission ("Commission") rendered on 4 October 2017 (S.A. 38944) according to which Luxembourg granted state aid to Amazon.¹ Based on the Commission's decision, Amazon was supposed to pay back EUR 250 million to Luxembourg. However, the General Court of the EU decided otherwise and ruled that there was not enough evidence to prove that Amazon was granted a selective advantage deriving from the non-arm's length character of certain intragroup transactions.

What are the facts?

Further to a restructuring of the various activities of the group worldwide in 2003, the Amazon Group, located in the US, decided to incorporate two Luxembourg companies, Lux SCS and LuxCo1, in 2006, in order to carry out its European operations. Lux SCS concluded several agreements with the US entities to obtain the right to exploit certain intellectual property (IP) rights (i.e., technology, customer data and trademarks). Lux SCS, in turn, concluded a license agreement with LuxCo1 under which the LuxCo1 obtained the right to use the IP in exchange for the payment of a royalty. Finally, Lux SCS concluded an agreement for the licensing and assignment of IP rights with the UKCo, FrenchCo and GermanCo (please see the illustrative chart below). Under the tax ruling of 23 October 2003 negotiated with the Luxembourg tax administration (LTA), LuxCo1 requested confirmation that the transfer pricing arrangement determining the rate of annual royalty that LuxCo1 was to pay to Lux SCS, as supported by a transfer pricing report, was an "appropriate and acceptable profit" for LuxCo1 in accordance with the Luxembourg transfer pricing legislation. In another tax ruling request, Lux SCS requested confirmation of the tax treatment of Lux SCS, its partners located in the US and the dividends received by LuxCo1. The second tax ruling was relying on the fact that Lux SCS was a limited partnership (société en commandite simple) that did not have a separate tax personality from its partners and, therefore, it was not subject to corporate income tax and net wealth tax in Luxembourg. Both tax rulings were approved by the LTA. However, on 4 October 2017, the Commission found that the first tax ruling endorsing the transfer pricing arrangement to determine LuxCo1's corporate tax liability, as well as the related corporate income tax returns, constituted state aid for the purpose of Article 107 (1) of the Treaty on the Functioning of the EU (TFEU).

What is the issue at stake?

The General Court of the EU had to determine whether the Commission was right in considering that the LTA granted an advantage in favor of LuxCo1 consisting in an exceeding amount of royalty payment by LuxCo1 to Lux SCS that — in the Commission's view — artificially reduced the



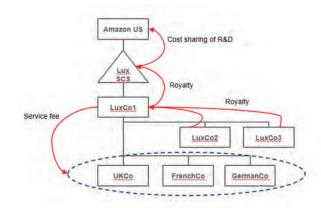


taxable basis of LuxCo1. The General Court of the EU had to look at each of the Commission's findings related to the transfer pricing methodology as indicated below:

- · Primary finding relates to the error as regards the "tested party" for the purpose of applying the transactional net margin method (TNMM). According to the Commission's position, Lux SCS should have been defined as the "tested party" instead of LuxCo1.
- Subsidiary findings:
 - · An error in the choice of the transfer pricing method (i.e., TNMM): the Commission argued that Amazon should have used the profit split method to assess the right remuneration of LuxCo1.
 - An error in the profit level indicator: the Commission argued that LuxCo1's remuneration should have been higher.
 - An error in the inclusion of a ceiling mechanism in the context of the TNMM: the Commission took the position that the floor and ceiling mechanism described in the tax ruling resulted in a selective advantage.

Both Luxembourg's and Amazon's arguments were based on the facts that there was no selectivity proven by the Commission and that the royalty was at arm's length.

Illustrative chart of the Amazon state aid case



Legal grounds

As a preliminary remark, while direct taxation is the appanage of the EU member states, they must consistently comply with EU law² and, therefore, with the EU state aid rules.

The EU rules on state aid are enshrined in Article 107 (1) of the TFEU, which states that:

Any aid granted by a Member State or through State resources in any form whatsoever which distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

Further to Article 107 (1) of the TFEU, and as interpreted by the Court of the Justice of the EU (CJEU) and the Commission,³ a tax measure must meet cumulative conditions to be qualified as state aid:⁴

- the support is granted by the state or through state resources
- · it's an aid granted to undertakings
- it favors one or more undertakings there is a selective advantage
- it provides an "economic advantage" to its beneficiaries
- the support distorts or has the potential to distort competition
- · it affects trade between EU countries

The Commission as well as the General Court of the EU in their respective decisions have to ensure that the cumulative criteria are met to conclude on the existence of state aid.

Key takeaways of the decision

The General Court of the EU overturned the Commission's decision by considering that Luxembourg did not grant any state aid to Amazon.

- bound by the 2017 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines"),⁵ the General Court of the EU said those are based on important work carried out by experts and reflect the international consensus achieved with regard to transfer pricing. In the case at hand, as it relates to facts that occurred before the adoption of the 2017 OECD Guidelines, the General Court of the EU exclusively referred to the development as enshrined in the 1995 version of the OECD Guidelines. No retroactive application of the 2017 OECD Guidelines on the case related to the years 2006 and beyond could be envisaged (i.e., no dynamic interpretation).
- An error in the transfer pricing methodology is not sufficient to confer an economic advantage: If a methodological error in the tax measure under consideration is detected, as it was recognized by the General Court of the EU in the case at hand, it cannot be sufficient to conclude that it necessarily leads to a tax burden reduction. Indeed, the existence

- of state aid cannot be presumed or inferred from a calculation error that has no impact on the result. Indeed, transfer pricing is not an exact science, thus arithmetic differences do not imply abuse of law.⁶
- Risk and functions assessment: The fact that Lux SCS did not have any employees, whereas LuxCo1 did, did not mean that LuxSCS did not bear any risks and functions.
- Tax optimization is not sufficient to constitute an advantage: The fact that an entity belonging to a group of companies was created solely for the purposes of tax optimization and that it receives a royalty for intangible assets developed within the group of companies in question is not sufficient to conclude to an advantage. Indeed, the consequences of the mismatch arising from the hybrid nature of Lux SCS (i.e., fiscally transparent from a Luxembourg perspective and opaque from a US perspective) are not the subject of the contested decision.

Conclusions and potential impact on other pending cases

The outcome of the Amazon state aid case is not surprising as the General Court of the EU held a similar position in the Apple case⁷ last year. Indeed, the arguments to allege that the remuneration paid in the context of intragroup operations is not arm's length must be strictly documented and evidenced by the Commission in order to demonstrate the existence of a selective advantage in accordance with Article 107(1) of the TFEU.

However, this may not be the end of the Amazon case as the Commission may file an appeal with the Court of Justice of the EU, as they did in FIAT's case (still pending).

Beyond the case, such interpretation may have an impact on other pending decisions at the Commission's level and result in unexpected outcomes, such as in the Nike, Inter Ikea and Huhtamäki cases, as well as in cases related to beneficiaries of individual excess profit.

Furthermore it is worth mentioning that, on the same day as the Amazon decision, the General Court of the EU also ruled in the Engie case and this time endorsed the Commission's position, according to which Luxembourg granted state aid to Engie by confirming the nature of interest to income paid on loans converted into equity (not transfer pricing related).

Based on the above, and taking into account that the Commission can investigate for a period of 10 years, we believe that any advance pricing agreement or advance tax agreement granted within the said period of time should be carefully monitored, especially in this era when disruption is the new normal and tax authorities tend to invoke dynamic interpretations of the law as a preventing measure toward taxpayers' way of doing business.

^{1.} Judgment in Cases T-816/17 Luxembourg v Commission and T-318/18 Amazon EU Sàrl and Amazon.com, Inc. v Commission of 12 May 2021

^{2.} Court of Justice of the EU, 12 July 2012, C-269/09, Commission v. Spain, para. 47.

^{3.} EU Commission's notice on the application of state aid rules.

^{4.} Court of Justice of the EU, 24 July 2003, C-280/00 Altmark Trans and Regierungspräsidium Magdeburg, para. 74.

^{5.} OECD (2017), "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017," OECD Publishing, Paris, https://doi.org/10.1787/tpg-2017-en.

^{6.} OECD (2017), "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017," OECD Publishing, Paris, https://doi.org/10.1787/tpg-2017-en, para. 3.55 as well as in the 1995 (para. 1.45) and 2010 (para. 3.55) versions.

^{7.} General Court of the EU, 15 July 2020, T-778/16, Ireland v Commission

^{8.} Article 17 of the COUNCIL REGULATION (EU) 2015/1589 of 13 July 2015

Luxembourg: Ahead of the curve on transfer pricing matters

Loek de Preter, Caroline Goemaere, Christophe Hillion and Marc Rasch (L-R clockwise)

PwC Luxembourg

Over the last decade, Luxembourg has taken great steps forward in aligning its transfer pricing ("TP") regulations to the international standards. Although long before 2011, adherence to the arm's length principle was already embedded in the tax law. TP has gained more and more attention in the last decade with detailed TP guidance and is now a hot topic in Luxembourg with an actively sophisticated audit practice.

Luxembourg is considered to be ahead of the curve with financial services TP. The adherence of taxpayers to the arm's length principle is currently tested through a significant increase of TP related audits.

What are the hot topics in Luxembourg that you should consider going forward? Our TP partners at PwC Luxembourg share some of the important topics with you.

Financing transactions in general

As one of the main financial centres in Europe, the focus on TP is on financial transactions. Specific TP circulars have been issued on the treatment of entities that are granting financing to related parties that are (partially) funded by debt from (un)related parties. The Luxembourg tax authorities applied a notion of equity at risk far before the issuance of the OECD Chapter X in 2020.

The Luxembourg tax authorities are specialised in financial transactions. They have the appropriate tools in assessing the arm's length nature of these types of transactions. To mitigate significant reassessments upon TP audits, taxpayers should be well prepared if they have intercompany transactions related to financial transactions.

Debt to equity requirements

One of the recent focus areas in Luxembourg is the adherence of the arm's length principle in respect to the debt / capital structure. Whereas Luxembourg has no specific thin capitalisation rules embedded in its tax regulations, a general administrative market practice has been applied for financing of participations. The level of debt to equity (D/E) generally applied was 85 to 15.

With the publication of the OECD Chapter X in 2020, the existing administrative market practice came under pressure and a proper D/E analysis has become eminent to demonstrate the ratio applied. Absence of a proper support may result in adverse tax con-

"TRANSFER PRICING HAS GAINED MORE AND MORE ATTENTION IN THE LAST DECADE WITH DETAILED TP GUIDANCE AND IS NOW A HOT TOPIC IN LUXEMBOURG WITH AN **ACTIVELY SOPHISTICATED** AUDIT PRACTICE"









sequences whereby excess debt may be requalified as equity, and hence, part of the interest expenses may be non-deductible.

Value chain considerations

A value chain analysis ("VCA") assesses the relative contributions of the key value drivers and considers the functional profile of each entity in order to determine the arm's length pricing resulting in an allocation of system wide profit aligned to operational and legal reality.

Performing such analysis requires the identification, in close cooperation with management, of the core value drivers creating competitive ad-

vantages for multinationals in their peer group.

The traditional TP approach is one-sided with a focus on the least complex entity or routine service provider to demonstrate, with an economic analysis, that pricing and the resulting profit adhere to the arm's length principle. VCA includes a two-sided approach and allows for the identification of the profitability level of entities with a non-routine characterisation, which is equated to the relative value contribution.

The key steps of the value chain analysis

identify core competencies that drive value within the industry peers ("key value drivers");

- Quantify ranges of (relative) value for each key value driver for the peer group;
- Create comparison of your value chain and determine relative profit allocation to the respective legal entities based on their key value drivers and contribution to overall profitability;
- Determine arm's length transfer policy (ex-ante) and transactional pricing or identify any gap with existing pricing (ex-post) and determine adjustments to be made.

VCA can be applied to different situations:

a. VCA for planning and compliance

Master Files should lay out a blueprint of a multinational company's value chain while giving an overview of their TP policies. Value chain and TP policies should be aligned with Development, Exploitation, Maintenance, Protection and Enhancement (DEMPE) functions and economic substance to be sustainable.

Local files should give a full overview of the local business associated with the controlled transactions being documented.

When setting the prices ex ante, a choice can be based on the Value Chain Alignment (VCA) and a point with a benchmark range can then be made. The result of a combined VCA and benchmarking ("BM") allows to support the profit allocation in both countries.

If at the time of creating the transaction, such is not done, we can test whether the outcome is arm's length with a BM report and see if the compensation (and resulting profitability) falls in the range. If for example, your actual compensation is at the lower end of the full range, without a VCA there would however not be a support for the position in the range (low or high) and arguments would then need to be developed.

b. VCA for controversy

A response to – or preparing for – tax audit challenges require a functional analysis and careful review of the facts. In a controversy, the level of detail goes beyond a typical TP documentation. The economic substance, the creation of value, and the assumption and control of risks associated with value creating activities become relevant and these are typical elements of a VCA.

For situations where the Luxembourg footprint and functional profile is strategic and high value creation, one would expect an adequate profit, exceeding a routine level. A VCA can demonstrate the relative contribution of the Luxembourg entity and provide support for the arm's length remuneration.

The value chain analysis should be tailored to each client and industry. PwC Luxembourg has developed a specific VCA approach for asset managers to assist our clients in setting the prices ex-ante but also to defend their position when Luxembourg or foreign tax auditors challenge the arm's length nature of the intercompany transactions.

Valuation

With the ongoing focus on TP by Luxembourg tax authorities, valuation has become increasingly important. Every time something of value is transferred, e.g. intangibles, an arm's length compensation should be considered. The 2017 OECD Guidelines include guidance on estimation of the arm's length pricing for the transfer of something of value (e.g. intangibles).

Whereas in the past general valuation approaches based on fair market value construct have been applied for tax / TP related matters, with the more recent developments, whereby the Luxembourg tax authorities are focusing on comparability and adherence to the arm's

length principle, a valuation for tax/TP purposes should be based on the specific TP considerations (e.g., seller's and buyer's perspectives, tax amortisation benefits, exit tax...) . We expect to see a significant increase in the necessity of valuations for tax purposes in Luxembourg in the upcoming years.

TP audits

When taxpayers receive a notification to provide TP documentation to the Luxembourg tax authorities, the timing to reply is considered short. Extensions can be requested, but there is no provision in the law to rely on a certain period to provide the TP documentation.

During these audits, usually detailed information is requested that includes much more than only pricing for intercompany transactions and extends to obtaining an understanding of how the tax-payer is managing and controlling their assets and liabilities. In addition, the Luxembourg tax authorities can request a visit to the premises in Luxembourg to understand in more detail the actual substance. These audits take a significant time to manage and, in the absence of sufficient support, there could be a risk that the documentation is considered non-compliant, which causes a shift of the burden of proof that would generally result in a reassessment of the taxable result.

Table 1: Overview TP audits



In the case of an unsatisfactory result, there is a range of local proceedings as well as mutual agreement procedures ("MAP") available. Depending on the jurisdiction and approach, a MAP, EU arbitration, Tax dispute resolution mechanism, and/or domestic proceedings in the other country – all aiming to avoid double taxation - are available for taxpayers. Luxembourg has issued specific MAP guidance to facilitate the process with the Luxembourg tax authorities.

These proceedings cause significant time and expenses to be resolved. Adequate TP documentation and defence may avoid corrections and having to enter these proceedings, or reduce the work going forward.

Luxembourg is known and remains a business-friendly environment. The main difference compared to a decade ago is that now it is eminent to have adequate TP support on the intercompany transactions available upon request. The increasing speed of the changing global TP landscape highlights the importance of having adequate TP in place. We can support you to either adequately prepare and defend your TP arrangements in multiple countries, be it to prepare TP policies and documentation ex-ante, during tax audits or in subsequent proceedings.

PwC Luxembourg has been at the forefront of TP matters in Luxembourg and has the first and largest dedicated TP team within Luxembourg. With our 40 TP specialists we cover any TP matter for Industrial and Financial Services clients in Luxembourg and abroad.



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Loek joined PwC Luxembourg as a Transfer Pricing Partner in April 2015, bringing with him his expertise, leadership, and connections to support PwC Luxembourg growing the TP practice.

In his over 27 years of experience, Loek gained vast experience in international tax structuring, transfer pricing, and value chain transformation projects.

Prior to joining PwC Luxembourg as a TP Partner in April 2015, Loek was since 2016 a PwC Germany Partner and was the German TP leader for the PwC Automotive Industry Network. He focused on value chain analysis, tax audits and business restructuring projects, servicing clients in various industries including Automotive, Pharma, Chemicals, Technology, Telecommunication, Industrial Manufacturing, and Banking.

As an economist, Loek started his career in The Netherlands with the Ministry of Finance in the Netherlands and then joined PwC.

After leaving PWC in the Netherlands, he gained Industry experience with British Gas, American Standard, and Bombardier Transportation.

Selected client and project experience

- Alignment of the TP policy to the operating models following acquisition / carve out / merger;
- Migration/planning projects involving a Principal centre led companies / IP owner structures with development of TP Policies aligned with centralized business models and cost sharing arrangements;
- Various projects to restructure the Global TP policy to accommodate the geographical footprint developments;
- Aligning TP policies to be compliant with OECD and German regulatory framework;
- Global Documentation Projects;
- Tax Audit Defence.

Specific Industry Competencies:

Automotive, Asset Management, Private Equity, Pharma, Technology

Areas of expertise

- Value Chain Transformation
- Exit Tax
- Tax Audits
- OECD

Education:

• University Brabant – Fiscal Economist

Languages:

- Dutch (native)
- German (native)
- English (fluent)
- French (intermediate)



LUXEMBOURG



Caroline Goemaere

PwC Luxembourg

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Caroline is a Partner - Transfer Pricing Services at PricewaterhouseCoopers in Luxembourg. She has about 19 years of experience in advising multinational corporations on all aspects of transfer pricing. Before joining PwC Luxembourg in 2012, Caroline worked with PwC Brussels and PwC New York.

Experience summary

Caroline's primary focus area of expertise is the design and implementation of transfer pricing for multinational companies. In her role, she advises large companies on the design, documentation and implementation of appropriate transfer pricing policies.

Main areas of expertise

- Transfer Pricing Services;
- Financial Transactions;
- Value Chain Transformation:
- Intellectual Property.





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Christophe is the Transfer Pricing Partner in the PwC Luxembourg practice covering the insurance industry. He also focuses on the asset management industry and its idiosyncratic transfer pricing matters.

Focus area

Christophe has been working on the most salient transfer pricing and tax issues faced by insurers and asset managers stemming from the new regulatory and tax environments those industries face to minimize their ensuing compliance burdens while maintaining a strong and efficient tax positions.

His experience covers the transfer pricing documentation processes on a local and globally coordinated bases of existing intercompany arrangements. Christophe has also extensively worked on the design of transfer pricing policies for newly established structures for global insurers and asset managers. He has also been involved in unilateral and bilateral advanced pricing agreements with the Luxembourgish Tax Authorities and the Internal Revenue Services.



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Marc is a Partner in the Transfer Pricing team in Luxembourg advising clients on any type of Transfer Pricing matters.

Marc is specialised in transfer pricing, with a focus on financial transactions, banking, operational industry, country-by-country reporting and dispute resolution. He has over 20 years of experience in transfer pricing and international taxation. Prior to joining PwC in Luxembourg, he worked in Paris and in the Netherlands. Marc regularly publishes transfer pricing articles and participates as a speaker at seminars.

Marc has substantial experience in the financial services, consumer goods, pharmaceutical, chemical, entertainment, apparel, automotive, and food & beverages sectors. Marc has been nominated as one of the leading TP specialists in Luxembourg by Euromoney/International tax review

Specific Industry Competencies

Specialised in Transfer Pricing, International corporate tax

Areas of expertise

- · Financial transactions
- Advanced pricing agreements
- Dispute resolution

Main clients

- Multinational companies
- Banks

Education

- Master, Fiscal economics, Katholieke Universiteit Brabant, ('Tilburg University'), Tilburg, the Netherlands
- International (Tax) Law, Keele University, Keele, United Kingdom (Erasmus exchange program)

Languages

- Dutch (native)
- English (fluent)
- French (intermediate)





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Antonio A Weffer is a tax principal in Baker McKenzie's Tax Practice Group and the head of the transfer pricing practice in Luxembourg, which has won the International Tax Review's 'Luxembourg Transfer Pricing Firm of the Year' award fifth years in a row, between 2016 and 2020. Antonio is recognized as a highly regarded practitioner in the World Transfer Pricing 2021 Guide and named as Leading Individual by Legal 500 EMEA in 2021 for the second consecutive year.

Recognized as a global leader in the field of transfer pricing, Antonio has more than 20 years of international tax experience, dealing with complex financial and non-financial multinational enterprises' cross-border transactions, reorganizations and M&A in numerous industries. Within Baker McKenzie, he focuses his practice on transfer pricing and valuation documentation, benchmarks, and other economic compliance services for the worldwide business community. Antonio's expertise has also strengthened the global practice of Baker McKenzie's vast network dedicated to transfer pricing, regarded as one of the highest rated and renowned law firms in the world.

Among his representative cases are:

- Advised the world's largest infrastructure asset manager, with growing
 infrastructure and social infrastructure portfolio of more than USD
 129 billion under management, on the restructuring of the
 financing/capital structure of one of its major fund structures with
 investments in multiple European countries and total commitments of
 GBP 2.7 billion.
- Advised a unique highly renowned industrial designer looking for integrated transfer pricing solution to align the highly complex, competitive and continuously evolving value chain model of the industrial designing industry.
- Assisted the Luxembourg management company of an international asset management group licensed under the UCITS regulation, in the context of the tax audit of its intra-group transactions, concluded with related companies located in Switzerland, Germany, Italy, France and Austria.
- Assisted a New York-based distressed-focused hedge fund investment adviser in testing the arm's length nature of a total interest expense in the context of a multifactorial debt instrument, through which investments were mainly made in Western Europe.
- Assisted a leading European financial services firm, specialised in equity brokerage, equity capital markets and asset management, in the restructuring process of their asset management division, designing a new business model and functional structure for the entities involved.

Antonio is an active member of several international tax associations, such as the IBFD and the Luxembourg branch of the IFA. He is a regular contributor on international tax issues through articles, lectures in International Tax Programs and as a speaker at worldwide seminars and conferences on international tax. Notably he was the IFA reporter on subject 2 during the 2017 International Annual Congress.

Antonio has obtained a LLM in international taxation, a MBA and a Master's degree in tax law and public finance.



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Antonio Russo is a partner with Baker McKenzie Amsterdam, he is Chair of the Global Tax Practice, comprising 1000+ practitioners, and co-heads the Amsterdam Transfer Pricing Team which has been awarded the *International Tax Review* Award for The Netherlands Transfer Pricing Firm of the year in 2005, 2006, 2007, 2010, 2012, 2014, 2015, 2018, 2019 and 2020. Antonio specializes in transfer pricing policy design and implementation, as well as valuation of investments and intangible assets.

Antonio's international experience covers tax planning and restructuring engagements and has performed transfer pricing studies for clients in a wide range of industries. He also provides assistance to clients with developing strategies for the conclusion of APAs as well as tax audit defense in multiple European countries, the Americas and Asia

Antonio is contributing, and has in the past actively contributed, to the OECD consultations on the revision of the OECD Transfer Pricing Guidelines. Antonio lectures at various seminars and conferences in Europe, Americas and Asia. He is involved with training Tax Authorities on transfer pricing: Italian, Danish, Singaporean and Korean Tax Authorities among others. He is a Fellow of the International Tax Center of the University of Leiden where he regularly teaches transfer pricing. He has been visiting lecturer with other universities, such as the Nanyang Technological University (Singapore) University of Padova (Italy), the European Tax College at the University of Leuven (Belgium) and the Aarhus University (Denmark). Furthermore, Antonio regularly lectures at the IBFD International Tax Academy (ITA). He built up a diverse portfolio of publications from the IBFD to BNA publications, and contributes articles to Intertax, International Tax Review, the Journal of International Taxation and Highlights & Insights on European Taxation. He is been ranked among the best experts in transfer pricing for several consecutive years on the Euromoney Expert Guides, Legal 500 and Chambers. According to the latest Legal 500 survey, Antonio Russo is 'by far one of the most qualified transfer pricing experts'.

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Harmen van Dam, tax expert, heads Loyens & Loeff's International Tax Services practice group and the Transfer Pricing team. For a diverse group of clients, including Fortune 100 companies, Harmen avoids or resolves transfer pricing disputes by means of Advance Pricing Agreements, audits procedures, corresponding adjustments and mutual consultation procedures. Many projects involve the centralisation of activities. Clients particularly appreciate Harmen's pragmatic approach and drive to come up with innovative solutions.

With actions taken by the OECD, new regulations and more scrutiny from the tax authorities, we are seeing an overall increase in audits (in both rigor and quantity) and a growing tendency towards litigation. Similar developments are taking place within the EU, where we see "transfer pricing" state aid procedures. With this in mind you need a team that is one step ahead of the latest regulations and fine points of law, is able to help you avoid litigation where possible (but ready to litigate when necessary), and can guide you through the increasingly detailed and often conflicting statutory transfer pricing rules in multiple jurisdictions. Loyens & Loeff's experienced Transfer Pricing team of over 40 people advises businesses in Planning & Strategy, Dispute Resolution (including litigation and State Aid procedures), and Documentation (Master File, Local File and Country-by-Country report). Small and client-focused teams provide premium advice, both pragmatic and precise.

With more than 900 tax and corporate lawyers Loyens & Loeff is unique in its multidisciplinary services. Our approximately 350 tax specialists represent the largest tax practice of any law firm in Europe, if not worldwide. According to the tier-1 rankings of International Tax Review (World Tax and World Transfer Pricing), Chambers Europe and Legal 500 our tax practice is unrivalled within the Benelux.

Overall Loyens & Loeff is an independent law firm which provides tax advisory, notarial and civil law services with its primary offices in the Netherlands, Belgium, Luxembourg and Switzerland. In addition, we have offices in many financial capitals throughout the world.

Harmen holds a law degree from the University of Leiden (1991) and a degree from the New York University School of Law (LLM in taxation, 1996). He teaches regularly at the International Tax Center in Leiden and the Academy of the Dutch Association of Tax Advisers.



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Gerben Weistra is a transfer pricing expert with over 20 years of experience. He has provided advice to companies, governments, tax advisory firms and law firms on a range of international tax, transfer pricing and valuation issues. He has performed and directed transfer pricing engagements in a variety of situations, including policy setting, implementation, compliance, tax audits and dispute resolution. Gerben provides advice on both a regular consulting basis and on a collaborative sourcing (co-sourcing) basis.

Gerben is partner at Ectacon, a modern, hands-on and fully independent transfer pricing consultancy. Ectacon, founded in 2015, connects tax and economics. Based in Amsterdam, Ectacon combines specialist knowledge and broad experience with a practical and pragmatic approach.

Ectacon's goal is to support clients with a carefully considered strategy in transfer pricing and related international tax and economic matters. Ectacon is fully independent and regularly works with transfer pricing specialists, tax advisors and economic experts worldwide.

Ectacon performs and supports all transfer pricing activities relating to setting, implementing, monitoring and defending transfer pricing, and preparing transfer pricing documentation and economic analyses. Ectacon provides expertise on both a regular consulting basis and on a co-sourcing basis.



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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)



RUSSIA



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Natalia Kozlova is a Partner in PwC Moscow office, leading Russian Transfer Pricing practice.

Natalia has more than 20 years of tax professional experience working with major Russian and multinational clients in the areas of Tax planning, design of tax efficient organizational, management and ownership structures and in tax risk management.

In the year 2019 Natalia took leadership over Russian Transfer Pricing practice. Having gained extensive practical experience in working with multinational and Russian companies on corporate tax and transfer pricing matters, Natalia is currently advising her clients on development of pricing methodologies, adapting global Transfer pricing models to Russian requirements and assisting her clients in applying and negotiating Advanced Pricing Agreements with Russian competent authorities.

In 2020, Natalia, acting as a tax adviser of one large multinational group, assisted the client in reaching an agreement with the Russian Federal Tax Service on the transfer pricing methodology used for a key intercompany transaction related to use of intangibles, which was subject to Advance pricing agreement (APA). This is the very first case in Russia in which an IP transaction was subject to an APA negotiation, and in which the methodology was successfully pre-agreed and the APA signed in December 2020.

Practice areas

Business model optimisation, IP management, APAs, value chains, dispute resolution

Sector specialisations

automotive, consumer goods and services, food and beverage, industrials, media

Academic qualifications

Natalia graduated from Finance Academy at Government of RF, diploma in Taxation with honors.

Natalia has a qualification of certified public accountant (CPA) since

Languages

Russian, English

Social media

Facebook: https://www.facebook.com/PwCRussia Instagram: https://www.instagram.com/pwc_russia/

Twitter: https://twitter.com/pwc_russia

YouTube: https://www.youtube.com/user/pwcrussia/featured

Telegram: https://t.me/PwCTaxPro



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Jose is a partner within the international tax and global transfer pricing services department at KPMG in Spain.

He holds a law degree from the *Universidad Complutense de Madrid* (UCM) and a master's degree in tax law from the *UCM* and the *Centro de Estudios Financieros* (CEF).

Jose joined KPMG in 2005. Since then he has worked exclusively within the international tax and global transfer pricing services team.

He has more than 12 years of experience in tax planning, analysis and documentation of intercompany transactions for major multinational corporations as well as in international investment projects for Spanish Groups.

He also has led many projects related to tax audits and dispute resolution cases in transfer pricing issues for national and international companies. Additionally, he has helped companies negotiate advance pricing agreements (APAs) and coordinate MAPs within several countries.

Jose has broad experience leading projects on the design and implementation structures for licensing intangible assets within multinational groups, some of them listed companies.

He is a member of KPMG's value chain management global group (VCM) and a member of the firm's global TP dispute resolution team (GTPDR) area of expertise where he dedicates a significant portion of his time.

Jose is a professor teaching the master's course in international taxation at the *Instituto Superior de Derecho y Economia* (ISDE), as well as taxation courses at the *Centro de Estudio Financieros* (CEF). He is a regular speaker at international tax and transfer pricing seminars.

He is Author of some articles on CEF's International Taxation handbook as, "Economía Digital y el entorno BEPS" and "Fiscalidad del comercio electrónico and Especial referencia a la atribución de beneficios a establecimientos permanentes". (E-commerce – 4th ed. 2010).

As adittional merits, he was selected as *Tax Controversy Expert* by the *International Tax Review in 2016* and listed in *Best Lawyers* 2016 in the practice area of *Tax Law*.

Jose is Spanish native speaker and fluent in English and German.



SPAIN



Maria Teresa Quiñones KPMG Edificio Torre Cristal. Paseo de la Castellana, 259 C Madrid 28046 Spain Email: tquinones@kpmg.es Website: kpmg.es

Teresa is the head of the transfer pricing practice in Spain and former leader of KPMG's transfer pricing services for the LATAM Region.

As part of her more than two decades of transfer pricing experience, Teresa has held various positions in countries such as Argentina, the United States of America, Mexico and Spain. Before joining KPMG Spain, Teresa was based in Mexico City and lead KPMG's transfer pricing services for Mexico and the LATAM Region. As LATAM leader, Teresa supported the development of transfer pricing practices in Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, and Panama.

Teresa stands out for advising multinational clients from various industries, such as consumer products, logistics and transportation, chemical, pharmaceutical, automotive, energy, entertainment and finance. The nature of the projects she has developed includes (1) planning, documentation, valuations; (2) Value chain analysis/solutions, including transfer pricing and tax implications; (3) Valuation of shares and intangibles and implementation of cost sharing agreements/arrangements; (4) Regional and global documentation projects for multinational groups involving various transactions (i.e., transfer of intangibles, sale of finished products and raw materials, various services, etc.); (5) Transfer pricing inspection processes (not only in Spain, Mexico and the U.S. but also in Argentina, Guatemala, El Salvador, Honduras, Panama and Colombia); (6) Advance pricing agreements; (7) Competent authority procedures (MAPS); and (8) Due diligence activities.

Teresa has also been involved in value chain analysis/structures covering different LATAM countries as well as with dispute resolution processes in LATAM.

In Mexico City, Teresa was a visiting professor at *Universidad Nacional Autonoma de México* (UNAM), the Mexican Institute of Public Accountants, and the *Escuela Bancaria y Comercial*.

Teresa is also a member of the International Fiscal Association and a frequent speaker in seminars organized by Thomson Reuters and the Mexican Institute of Public Accountants.

Teresa is Spanish native speaker and fluent in English.



SWEDEN



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Maria is leading the Swedish Transfer pricing practice and joined the Swedish transfer pricing team in 2005. She started up the transfer pricing practice in Gothenburg in 2008 and has also headed our International Tax department. As of 2013 she is also heading the Value Chain Management Services at KPMG in Sweden. In her role as head of transfer pricing and responsible for the value chain management service offering, Maria practices international corporate tax law and work together with other service lines within KPMG to provide the best solution for the client in regard to operational restructurings and value chain analyses.

Practice areas

Business model optimization, restructuring, value chains, audit defense, international tax advisory

Sector specializations

Kay specialization: Automotive, consumer goods and services, industrials, tech and telecoms

Maria is one of the leading practitioners on the Swedish market and although she works across a variety of sectors, including industrial, automotive and telecom.

Association memberships

Certified tax advisor - FAR, Sweden's professional institute for authorized public accountants

Academic qualifications

Master in Business Administration and Finance, Jönköping International Business School

Languages

Swedish, English



SWEDEN



Annika Lindström **KPMG AB** Vasagatan 16 111 20 Stockholm Sweden Tel: (46) 70 377 61 71 Email: annika.lindstrom@kpmg.se Website: www.kpmg.se

Annika is heading the Swedish Tax & Legal practice since October 2020. Her area of expertise is in transfer pricing and she headed the Swedish transfer pricing practice from 2005 until 2018 and was also a member of the EMA Global transfer pricing management group. Annika has managed and worked with a wide range of transfer pricing assignments in most major industries. She has more than 25 years of experience within the financial area, including auditing, accounting, process development, project management and transfer pricing.

Practice areas

Business model optimisation, restructuring, cost-sharing arrangements, value chains, dispute resolution

Annika has experience from many different areas within transfer pricing and is specialized within the following areas:

- Restructurings;
- Advance Pricing Agreements (APA) and Mutual agreement procedures (MAP);
- Tax audits:
- Establish defensible BEPS compliant pricing models; and
- Transfer pricing documentation.

Sector specialisations

Automotive, construction and materials, consumer goods and services, financial services, industrials

Annika has various sector experience within the automotive industry, logistics, retail and consumer markets, engineering, chemical, financial, IT and forestry industry.

Association memberships

Certified tax advisor - FAR, Sweden's professional institute for authorized public accountants

Academic qualifications

Masters degree in Economics and Business Administration from Stockholm University

Languages

Swedish, English



SWITZERLAND



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Maurizio is a Partner at PwC in the Transfer Pricing group in Zürich, Switzerland. Maurizio has been working in transfer pricing for almost 15 years.

Prior to join PwC, Maurizio has gained experience working in Germany in transfer pricing and as part of his PwC career he also had to opportunity to support the inhouse transfer pricing function of an industrial company for almost 3 years.

He gained profound experience in a variety of transfer pricing projects, such as transfer pricing planning and documentation, intercompany agreements, function shifts, restructuring projects, dispute resolutions and transfer of IP.

Maurizio's focus area lies in the advice on value chain transformation across and end-to-end transfer pricing processes.

Recent matter highlights

- Advised large multinational group to implement centralised principal structure in Europe and securing the model with various unilateral and bilateral APAs
- Implementation of greenfield structures for three very promising Swiss-based start-ups expanding in Europe and worldwide
- Leading worldwide roll-out of automated TP documentation solution for various multinationals 70+ countries

Practice areas

Transfer Pricing planning:

- Business model alignment
- · Economic modelling
- · Policy design
- IP management / structuring

Other Transfer Pricing fields:

- TP Compliance
- Restructurings
- Cost-sharing arrangements
- Operational transfer pricing
- IT Transfer pricing solutions

Dispute resolution:

- · Audit defence
- Audit support
- Dispute resolution
- MAPs
- Litigation
- Arbitration
- Controversy management



SWITZERLAND



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Yan has specialized in transfer pricing for over 15 years, having worked in London, Stockholm and Geneva. He has a strong focus on complex transfer pricing projects including supply chain planning, business and IP valuation, determination of exit payments, application of profit split methodologies, attribution of profits to permanent establishments and controversy management (unilateral Swiss rulings, APAs & MAPs).

Yan serves inbound multinationals that have their European or EMEA headquarters in Switzerland as well as outbound multinationals that have their global headquarters in Switzerland and a worldwide footprint.

Yan is a frequent speaker at PwC conferences as well as tax conferences organised by bodies such as EXPERTsuisse, OREF and YIN.

Yan teaches the transfer pricing module at the Swiss Tax Academy.

Practice areas

- · Business model optimisation
- · Policy design
- APAs
- · Audit defence
- MAPs/ADRs

Sector specialisations

- · Consumer goods and services
- Industrials
- · Oil and gas
- Pharma and life sciences
- · Shipping

Academic qualifications

Management Sciences (London School of Economics and Political Science)



SWITZERLAND



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Benjamin's experience includes advising multinational companies on structuring of global manufacturing and distribution value chains, development of global transfer pricing documentation projects, migration of intangible property, establishing global trademark royalty schemes and the development of service fee concepts. Benjamin has gained various experiences in value chain and business model transformation projects including post-merger integration. Benjamin has substantial experience assisting companies in preventing tax audits and managing international tax controversies through the proactive use of Advance Pricing Arrangements (APAs), tax rulings and Mutual Agreement Procedures (MAPs).

Practice areas

Transfer Pricing Advisory:

- Business model optimisation
- Economic modelling
- Policy design
- IP management
- Transfer Pricing Technology services

Transfer Pricing matters:

- Cross-border project management
- Restructuring
- Cost-sharing arrangements
- Dispute resolution
- M&A
- Value chains

Dispute resolution:

- Audit defence
- Audit support
- · Dispute resolution
- MAPs/ADRs
- Controversy management



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Jim Matthews is a Transfer Pricing and Value Chain Transformation Partner at PwC Switzerland. Jim joined PwC in 2005 and holds a Master of Science degree in Finance. Jim has extensive transfer pricing experience, including value chain transformation. Jim has worked in multiple PwC offices worldwide, including Switzerland and the United States.

Practice areas

Transfer Pricing Advisory:

- Business model optimization
- Economic modelling
- Policy design
- IP management
- Transfer Pricing Technology services

Transfer Pricing matters:

- Cross-border project management
- Restructuring
- Cost-sharing arrangements
- Cryptocurrency
- Value chains

Dispute resolution:

- Audit defence
- Audit support
- APA
- Dispute resolution
- MAPs/ADRs
- Controversy management

Transfer Pricing advisory:

- Transfer Pricing consulting
- International Transfer Pricing advisory
- US Inbound
- US Outbound

Sector specialisations

- Consumer goods and services
- Commodities
- Industrials
- Pharma and life sciences
- Tech and telecoms

Academic qualifications

Master of Science degree in Finance



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David McDonald is a PwC Transfer Pricing partner based in Zürich, Switzerland. David is the leader of PwC Europe's Financial Services Transfer Pricing practice and a member of PwC Switzerland's Transfer Pricing leadership team.

David has two primary focus areas. He provides transfer pricing support to financial services institutions including fund managers, private banks, commercial banks, investment banks, traditional investment managers, hedge fund and private equity managers, family offices, real estate groups, P&C and life insurers, captive insurers, insurance brokers and reinsurers.

David also provides support on loans, guarantees, cash pools, hedging and treasury services – for all types of multinational group, including both financial services and non-financial services groups.

David focuses on providing practical, pragmatic, technically sound, transfer pricing support and assistance to his clients. He believes that there is rarely one single appropriate way of applying a transfer pricing model and that it is important to design new policies that fit with his clients' processes, systems, aims and context — whilst obviously avoiding all options that create unnecessary transfer pricing risk.

David has worked as a transfer pricing expert since 2000 and during this time with PwC he has worked in the UK, Hong Kong and Switzerland. He has advised on transfer pricing topics impacting most developed and many developing countries, and he has a broad knowledge of the approaches and issues that arise in different parts of the world.

Practice areas

- Transfer Pricing Planning
- Transfer Pricing Policy Setting
- Transfer Pricing Benchmarking
- Transfer Pricing Compliance
- Transfer Pricing Dispute Resolution

Sector specialisations

- Banking
- Financial services
- Insurance
- · Investment management
- Real estate

Academic qualifications

- MBA, University of Oxford, 2005.
- Economics BSc, University of Warwick, 2000



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Getting started with operational transfer pricing

Sophie Brown, James Phillips and Ross Pflaeger of Deloitte UK discuss why implementing an operational transfer pricing policy is a daunting task for so many businesses.

What is operational transfer pricing?

Operational transfer pricing (OTP) is the specialism within transfer pricing (TP) that ensures the accurate and efficient implementation of a group's TP policy in its books and records.

As a very simple example, if a TP policy states that local distributors should generate a 3% operating margin, OTP constitutes all the necessary finance, tax, IT and other processes that need to take place to make this happen.

As another example, if a TP states that contract manufacturers operate on a cost + 5% basis, OTP would involve determining the sales prices at which manufactured goods are sold between different companies and then ensuring that the overall profitability at year-end is right as manufacturing costs (direct or indirect) and volumes fluctuate throughout the year.

It would also involve ensuring that any one-off or specific cost types (such as restructuring, equipment depreciation, forex or other variances) are picked up and treated correctly so that at the time of filing of the tax return all aspects of the TP policy have been correctly applied and the local manufacturer has achieved an appropriate arm'slength outcome given its functions, assets and risks.

Whilst conceptually simple, implementing even a relatively simple TP policy can be surprisingly hard in practice. It involves ensuring multiple stakeholders including finance, tax, supply chain, legal and IT, among others, collaborate effectively and efficiently so that what needs to be done gets done.

Why is OTP particularly important now?

The TP landscape has always been complex and disputes with tax authorities can have potentially significant financial impacts. However, since the OECD's BEPS project, there has been a broad increase in the compliance and reporting environment in which group's operate and tax authorities have better resources and technology available to assess whether results are in line with the TP polices.

Country-by-country reporting data and details of intercompany transaction amounts, for example in local files and in international dealing schedules in some countries, are now regularly and automatically collected in machine-readable format by tax authorities for subsequent analysis. Standard audit file for tax (SAF-T) files provided in audits then allow detailed examination of core journal and accounting entries taken directly from the company's enterprise resource planning (ERP) systems.







Putting it differently, tax authorities remain extremely interested in a group's TP policies and now have significantly more data readily available to examine and form the basis for enquiries.

Going forward, including taking into account the G20/OECD's pillar one and pillar two proposals, the data demands from tax authorities and requirements on businesses for reliable timely data are expected to increase exponentially. Examples of near real-time data sharing are becoming more and more common in the indirect tax environment and tax authorities have already indicated that corporate income tax and TP are likely future areas for expansion of such programmes.

Given this significant increase in the data that tax authorities will have, businesses will need to be sure that their data is accurate and that TP policies are being applied as they should be. As data availability increases it will become ever more quickly apparent to a tax authority if this is not the case.

Where a tax authority can show that a TP policy has not been correctly applied, a reassessment would be expected.

What causes OTP issues for groups?

OTP issues often come to light as the result of four distinct, but often interlinked, aspects. These are:

- External challenges;
- Internal challenges;
- Data and process inefficiencies; and
- People aspects.

These aspects are examined in more detail below.

External challenges

One of the major ways in which potential issues with a company's OTP are identified is as a result of demands from external parties. External parties challenging a group on its OTP could include:

- · Tax authorities challenging calculations, cost bases and TP outcomes in tax audits;
- Financial auditors challenging TP outcomes as part of statutory audits;
- Regulators, particularly in certain regulated sectors such as financial services, challenging the speed and accuracy of the implementation of complex TP policies; and

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 Joint venture parties seeking greater clarity on charges being made from regional or central headquartered companies.

These external parties effectively want groups to be able to demonstrate the accuracy, completeness and efficiency of how TP policies are implemented.

If OTP policies are challenged in any of the ways detailed above, the ability to provide formally established OTP policy documents along with detailed supporting calculations and audit trails to evidence correct implementation can be invaluable in providing reassurance to the interested party that the TP policy has been correctly implemented.

Conversely, if a group cannot demonstrate that its TP policies have been appropriately implemented this can create significant costs for a group in terms of longer audits, higher risk ratings, higher capital requirements (in the regulated financial sector) and lower recovery of the group's central costs.

Internal challenges by stakeholders, senior management or functions

Similar in many regards to external challenges, internal challenges tend to focus on interested stakeholders asking the tax department for evidence that TP policies have been correctly implemented.

Internal stakeholders can include company boards or the c-suite who are seeking to gain assurance that the high-level TP policies they have approved have been implemented as intended. Particular focus for these stakeholders can involve seeking to control potential reputational risks that might arise if a group's TP was found to have been incorrectly implemented.

Finance transformation projects also drive internal OTP focus as tax departments are required to document processes that might not have been wholly formalised and known throughout the organisation or define and implement new ones.

Equally, the opportunity created by a once-in-a-decade finance transformation for tax to determine its data needs also requires clarity on OTP processes, calculations and desired outcomes and an ability to explain this to systems builders or integrators.

Data and process inefficiencies and failures

Data and process issues often relate to the group recognising that it is wasting valuable time and internal resources on low value-added tasks such as repetitive mechanical calculations.

A lack of accurate forecasting and profit monitoring in-year caused by data or process inefficiencies can also lead to large year-end or post year-end adjustments which can attract significant scrutiny from tax authorities. Such adjustments can also cause significant second-order issues with indirect tax declarations and filings.

The final, classic, example of a data and process failure is the spreadsheet that has been built up over time that has become a 'black box' that cannot be fully understood or audited but is relied upon to generate the outcome.

People aspects

For OTP to be successful, the people involved in the processes need to understand their role and responsibilities and the wider context of how what they do fits into the overall end-to-end TP process.

There can be a few challenges for OTP on the people front. These can include:

 'Key person' risk where one or a small group of individuals are the only ones to have the in-depth knowledge required to make TP work. This creates substantial operational risk for the business were the person to leave;

- Lack of formalisation of processes hampers onboarding new team members or, for example in the context of shared service implementation projects, ensuring that the right people are doing the right processes; and
- Unhappy or inefficiently used senior resource required to do manual tasks due to poor OTP setup.

Facing OTP challenges head-on

Given the scale of the task, sometimes trying to resolve OTP issues can seem daunting.

To help with this issue, within Deloitte's OTP practice, a group's end to end OTP process is classified into the following constituent parts:

- Data
- People
- Processes

All of these are then supported by a fourth component, technology. Using this approach to categorise the different components of an OTP process, a standard framework is then applied taking into account the 'current' and 'target' state for each of these constituent parts.

This standard framework involves first mapping out current processes, including identifying all key interfaces with other stakeholders, and then identifying gaps or issues in the current process for each aspect.

These first two 'map and gap' phases of the framework allow for the systematic determination of how OTP processes work currently and identifying within these what current challenges, improvement areas and key overall themes there are within the end-to-end process.

Having established this baseline, the next phase is to design the 'target' state for the OTP model going forward. In this phase, it would be established who is best placed to perform each task, determine timelines and assess what tasks are low value-add or repetitive which could be automated.

In defining the 'target' state all stakeholders, with different objectives and constraints, need to be bought in to see the advantages for them in achieving the 'target' state.

Finally, the transition process from 'current' state to 'target' state would be determined and evaluated. This involves creating a transition plan and managing change activities such as handing over existing tasks to new process owners, defining new responsible, accountable, consulted, informed (RACI) matrices, recalibrating department budgets and reporting lines as needed and, as the transition continues, refining and updating the 'target' state to take into account practical aspects encountered during transition.

This framework model allows an organisation to break down what might seem to be an insurmountable problem into individual tasks which can be spread over time allowing incremental, step-by-step progress towards a clear and understood end goal.

Critical to success

Knowing you should improve your OTP processes is one thing. Finding the resources and time to tackle what can seem a dauntingly large problem quite another.

Breaking down OTP into the constituent parts of data, people, processes and technology for analysis can help deal with the issue of scale. Ensuring all stakeholders agree to, and see the benefit from the future state, is also critical to success of any OTP project however large or small, as is strong change management.

Taking the first pace on what feels like a long journey can often be hard but generating quick wins can put a real spring in your step.

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Preparation of TP documentation is a balancing act

Kate Allin and Clive Tietjen of Deloitte UK describe why transfer pricing documentation is a balancing act between a growing compliance burden and increased scrutiny from the tax authorities.

The transfer pricing (TP) compliance and reporting environment continues to evolve with an increasing burden placed on businesses with respect to requirements to prepare, and in growing cases, submit TP documentation as well as TP forms and disclosures.

Alongside this, there is growth in TP controversy, with tax authorities challenging businesses' TP arrangements. TP documentation plays a key role in defending those challenges and mitigating penalties as well as helping businesses to organise and structure TP analysis.

Businesses need to balance meeting the growing compliance requirement whilst also ensuring that TP documentation is helpful towards navigating tax audits.

In this article, the changing compliance and controversy environment is explored, as well as discussing what 'audit ready' TP documentation could mean and considering practical approaches for tackling TP documentation in this environment.

Continued growth in TP compliance and reporting – recent developments

Since the release of the Action 13 as part of the OECD's BEPS project, there has been an ongoing introduction of new TP compliance and reporting requirements in individual jurisdictions.

In the last 12 months alone, a new submission requirement in Denmark has been introduced (requiring the master file and local file to be submitted at the same time as the tax return for years ending December 31 2021 onwards), a revamp of the Italian TP documentation requirements (which means the master file and local file must be finalised and time stamped by the tax return deadlines for years ended December 31 2020 onwards) and, most recently, the launch of a consultation on the UK's TP documentation requirements.

The consultation proposes to align the UK's TP documentation requirements with the OECD's master file and local file approach, but also considers the introduction of an evidence log, which would set out the key facts and evidence on which the technical opinions are based, and an International Dealings Schedule, which would set out cross-border transactional data.

At the OECD level, there has also been the release of guidance addressing the impact of the COVID-19 pandemic on TP, which is another area businesses will need to consider when preparing TP documentation covering 2020 and 2021.

Therefore, while the initial flurry of new requirements that came after Action 13 may have slowed, requirements are still growing and with an increased focus on submission of local files or other information to tax authorities, to support risk assessment and controversy activities.





Growth in TP controversy – why documentation is more than just compliance

The TP controversy environment has become increasingly busy and focussed

Tax authorities are becoming more sophisticated in their approach to identifying audit cases, often using data analytics and risk assessment techniques. There is also exchange of information between tax authorities, meaning information shared with one tax authority may be shared with others.

In audits themselves, there is often very detailed fact-finding and analysis and sometimes there has been increased challenges and push for full two-sided analysis, favouring of more complex profit split approaches and granular analysis of comparables used in benchmarking studies. As a part of this, TP documentation may be considered to be evidence of the level of diligence the business has put into its TP arrangements, and a perceived lack of diligence can result in the application of penalties.

It is clear that TP documentation is truly a global compliance requirement and tackling this in an efficient manner is key for businesses. Therefore, the focus in recent years has been a shift towards centralised preparation of local files with the aim of achieving consistency in content across files where there are common transactions. This makes sense from an efficiency and risk management perspective. However, where there is greater TP complexity and risk, TP documentation prepared using this approach alone, may not put the business in the best position to navigate tax authority audits.

Businesses need to consider, in areas where there is greater TP risk, making the step up towards preparing what is sometimes referred to as 'audit ready' TP documentation.

What does 'audit ready' TP documentation mean?

'Audit ready' TP documentation extends the focus beyond meeting local compliance requirements and provides additional support with respect to, and provides an effective first response to, aspects of the TP analysis on which a tax authority may ask questions.

'Audit ready' TP documentation will likely go beyond meeting the OECD and/or relevant local TP documentation requirements. The areas of

additional focus will vary depending on the nature of the facts, but some examples are considered and discussed below.

Understanding local functions and contributions to value chain The functions and contributions to the value chain of the transacting parties underpin any TP analysis and it is becoming more commonplace for tax authorities to perform local fact gathering including interviews during audits. Therefore, it is important that there is a detailed understanding of local functions such that it is more likely that the TP analysis within the TP documentation will be consistent with tax authority views from their fact gathering.

While the use of common functional descriptions across local files is a good starting point and ensures efficiency and consistency, this could be verified with local functional analysis interviews and local file content adapted such that it is providing a bespoke and granular functional description of the local entity.

Taking this a step further, consideration of how the local entity contributes to the overall value chain, and articulating this in the local file, is also an important step for supporting the TP analysis and something tax authorities may consider during an audit.

Thorough consideration of selection and application method

Tax authorities are increasingly raising questions on businesses' choice of TP method, particularly where there is use of the transactional net margin method (TNMM), with tax authorities sometimes seeking use of the comparable uncontrolled price (CUP) or profit split methods instead.

Therefore, carefully considering all the available methods and documenting in detail the reasons for accepting/rejecting each one, could be a key feature of 'audit ready' TP documentation, such that it is clearly articulated that the choice of method is the most appropriate for the specific case, and a business should not be challenged that it has defaulted to using the most commonly applied or straightforward method.

Careful application of the selected TP method could also be a key feature. The use of benchmarking studies as part of using the TNMM is popular. In an 'audit ready' local file, examples of detailed consideration of the benchmarking approach may include:

- Detailed consideration of the selection of profit level indicator and ensuring this appropriately reflects the functions of the tested party. For example, a common tax authority challenge in this area is the reward of sales linked services with a net cost plus mark up rather than an operating margin;
- Focus on the search strategy and evaluation of industry codes, inclusion
 and exclusion words, independence criteria and revenue thresholds and
 whether this will capture businesses with comparable functions and
 circumstances to the tested party; and
- Very detailed review of the search output including criteria for rejected companies and careful evaluation of the comparability of accepted companies.

This additional analysis can be captured within the local file and, for the TP method applied, careful consideration of the technical accuracy of the method application and consideration of whether a secondary corroborative method could be used, can form an important part of 'audit ready' TP documentation.

Consideration of external factors affecting the business

External factors affecting the business can often have an impact on the TP analysis, particularly when analysing comparability. A current example of this is the impact of the COVID-19 pandemic. Ensuring this has been considered in light of the OECD and relevant local country guidance, with the impact and any consequences on the TP clearly set in the TP

documentation, could be an important additional step for preparing TP documentation with respect to 2020 and 2021.

Capturing additional evidence that supports the position

Describing many of the additional facts and analysis suggested above within the local file can be as important as doing the analysis itself, when preparing TP documentation that is 'audit ready' and evidencing the level of diligence that has gone into the entity's TP. This can also be supported by evidence that is kept separately to the local file itself.

Getting the balance right

Preparation of 'audit ready' TP documentation could bring a number of benefits in the event of tax authority audit, in particular reduction in time/resources spent dealing with the audit (as a quicker resolution may be reached) and a reduction in penalties as TP documentation goes above and beyond requirements, and due care and diligence into supporting the TP position is clearly demonstrated.

The additional diligence involved in preparing 'audit ready' TP documentation may also identify issues with the existing TP arrangements that might not otherwise have been spotted and allows these to be addressed for future years.

However, for multinational businesses with a large TP compliance burden, preparing an 'audit ready' local file for every entity will clearly be time consuming and costly, and for some entities the benefit is unlikely to outweigh the cost.

Many businesses already take a cost-benefit approach to TP documentation, placing more focus on TP compliance in some entities than others. The process often heavily focuses on the nature of the compliance requirement. Broadening the focus and including the idea of 'audit ready' TP documentation as an additional layer and categorisation of entities is a good way to get the balance right and identify where the inclusion of more detailed analysis in the TP documentation would bring the most benefit. Tax authoritiesincreasingly use risk assessment techniques to identify tax audit cases and mirroring this approach, and considering some of the factors tax authorities consider, could help identify where 'audit ready' TP documentation could be prepared.

Focus could also be placed on transaction types and transactions that are likely to be audited in multiple countries could be identified. This may allow additional analysis to be performed and included in multiple local files, although, for the local file to be 'audit ready' it will also need that robust verification of the local functions, which does need to be performed on an entity-by-entity basis.

Financing transactions could be a good candidate for a more thorough review at transaction level, as these are typically less dependent on local functions from a TP perspective.

The TP compliance and controversy challenge – using the 80/20 principle

The benefits of 'audit ready' TP documentation in the current environment are clear, but so is the fact that this is not an approach that can be taken for every entity within the resource constraints of most businesses.

The Pareto principle states that for many outcomes roughly 80% of consequences comes from 20% of the causes, or the 'vital few'. This likely holds true for TP for most businesses, and therefore identifying the 'vital few' and applying the above principles to prepare robust 'audit ready' TP documentation, while continuing to focus on compliance with local requirements for other parts of the business, should provide an effective approach for balancing the growing TP compliance and TP controversy demands being placed on businesses and their resources.

'The show must go on': Tax and TP leadership recruitment market post-COVID-19

Oleg Rak of Mason Rak shares insights into the tax and transfer pricing recruitment market and leadership acquisition trends in a post-COVID world.

'The show must go on' is the title of an unforgettable song that could very well describe the situation in the tax and transfer pricing (TP) market when it comes to leaders growing their business during and post COVID-19. Why? Thanks to market optimism, firms are rushing through the acquisition of strategic tax talent to make up for the quiet months during the pandemic.

The expanding needs of accounting firms, law firms and other professional services firms are also entertained by growth mindsets and of course, further inspired by worldwide tax legislation changes exacerbated by COVID-19.

With over 15 years' experience in the field, Oleg's insights are food for thought on the global landscape in the tax and TP recruitment realm, characterised by a stronger than ever demand for creative and strategic senior leadership that need to drive and shape tomorrow's business in the post-COVID-19 world.

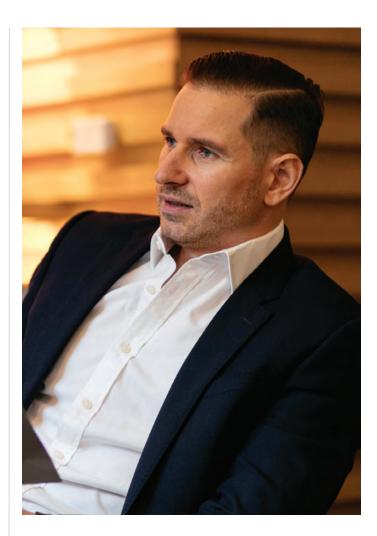
'I want it all' - on sourcing TP leaders

First of all, before we get into the current market trends, I would like to learn more about your work, Oleg. As a search firm, I can see that Mason Rak are focusing exclusively on senior TP leadership assignments. What is unique about your approach?

At Mason Rak, we live and breathe tax executive search and recruitment and this is all we do day-in and day-out. We work only with the very best in the field as we focus exclusively on TP leadership appointments for professional services clients globally. We dominate this niche with our unrivalled global network and powerful market intelligence that allowed us to create a unique search experience for our clients, which consistently delivers the results they demand.

I believe clients choose us because of the premium service we deliver – we are truly global, we created a powerful methodology, coupled with cutting-edge technology that enable us to identify the highest calibre candidates for the assignment globally. For example, at the moment, I am in the near completion stage on some complex senior leadership search assignments and team acquisitions in the US, Europe and Middle East.

We create a real impact in the market and help clients to build world class teams to the extent that we can predict what will happen in 2022–2023 in a particular jurisdiction based on our involvement this year.



In terms of the professionals we work with as our candidates, they choose us because we are fully dedicated and act as their trusted advisor at every step of the process, making sure there is a perfect match between the candidate and the client, but also between the individual and the role.

A professional we have recently placed described that our approach is completely different from any other search firms they worked with – we do not simply 'try to force a square peg into a round hole' but we make sure the new role is a fantastic personal fit, considering a wide range of factors that impact one's professional and personal wellbeing.

We are here to advise the candidates holistically – from discussing their values, their risk and decision-making, their career aspirations and personal circumstances to examining and establishing what culture, role and location would work best for them.

'A kind of magic' – on current market trends

Now tell us more about current market trends. How do you address demand post-COVID-19? Where are the global hubs/jurisdictions that are building their TP practice capabilities?

Since Q4/2020, we have been busier than ever, which can only mean that the market did not only make a comeback but rather it is expanding substantially.

Entire regions are being built whereas established practices are accelerating their expansion efforts to remain competitive in their jurisdictions. For instance, TP has just been introduced in Qatar and there is a high demand from emerging markets for senior professionals from advanced jurisdictions.

Since the beginning of 2021, over 20% of TP professionals we worked with secured strategic roles across the Middle East, a region that is characterised by accelerated career progression and superior compensation packages.

In Europe and North America, law firms are proactively building their TP capabilities and becoming a strong alternative to accountancy firms. Even in established jurisdictions, there are new entrants from firms that strategically added TP services to their tax departments. We worked with global and local law firms and advise them on the TP growth to increase their market share through the acquisition of leading TP experts.

We are pleased to note a fantastic movement in the market towards a more diverse and inclusive TP leadership landscape and fully participate in shaping our clients' evolving human capital strategy. For example, over 50% of the candidates that secured leadership positions are women, an example of a change in the industry that was once heavily male-dominated.

'I want to break free' - on WFH, life changes, priorities

COVID-19 has prompted many people to reconsider priorities, especially work. Many professionals are considering prospects outside their current firms for reasons such as career prospects, commuting, family time, hybrid and remote work, passion projects. In light of this, how do you reconcile the needs of your clients with the needs of your candidates? What advice do you usually give to your clients when it comes to attracting and securing the best TP talent?

It is more important than ever to discuss now what really drives people. I facilitate over 200 strategic moves for TP professionals to date and I know these discussions are crucial at an initial stage of the process.

We act as a trusted advisor to senior professionals to make sure their career growth strategy meets their values and demands. In recent months, the word 'legacy' has indeed come up very often, yet the pre-COVID-19 drivers such as compensation, a different culture at work, a different approach to work-life balance, family life remained the same.

Hybrid work also makes an interesting point – 56% of the respondents in one study we conducted think it's the only way moving forward, so it seems clients should remain flexible when it comes to such arrangements. Such discussions become even more important, when it comes to moving to a different jurisdiction – we use our expertise and judgement to establish a perfect fit in terms of culture, role and location and match our candidates' needs accordingly.

The reality is professional services firms across the globe are becoming more competitive than ever in terms of attracting and retaining the best talent. Our advice in these endeavours makes the real difference – our clients have a real competitive advantage when it comes to winning this race because we truly understand our candidates' values, risk and decision-making, career aspirations and personal circumstances, so we can guide our clients into tailoring exceptional offers and roles to the senior professionals we work with.

'The show must go on' - final thoughts

For the senior tax and TP professionals reading this article, what would you suggest would be the best strategy to accelerate their career growth in 2021–2022?

First of all, they need to understand where they are at in their career cycle and what would they like to establish as their ultimate goal, for example moving overseas to accelerate their career growth or increase their compensation package. Once established, they must consider how their next step fits into their longer-term vision.

Secondly, they need to understand their exit strategy – how long are they planning to invest in that particular platform/firm/role?

Thirdly, despite the fact that the demand for senior tax and TP leaders is growing rapidly, the competition is also very fierce and to secure a truly great prospect, they need to outperform – they need to be very sharp and go through a rigorous process that require a thorough preparation for interviews and build their business case. This is where we play a crucial role to differentiate their candidacy, our expertise and insights enable us to easily make them stand out. We help to build their brand and help them all the way through to the offer stage and beyond.

To find out more about Mason Rak and how they can support you in your new career chapter, or if you would like to have an in-depth discussion about the global tax and TP market, please contact Oleg Rak on oleg.rak@masonrak.com or call +44 786 911 3281.



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Ted joined Duff & Phelps in 2018 as a Managing Director in the London office and leads their European Transfer Pricing practice. He brings more than 25 years of experience, advising multinational clients on transfer pricing matters in the US, the UK, Europe, Africa and Asia, and in diverse sectors including life sciences, financial services, mining and minerals, hi-tech, media, engineering and consulting services, and industrial products. A PhD economist, Ted has also been engaged as an expert witness and specialises in developing pragmatic solutions to complex transfer pricing issues, often involving IP with a complicated history of development, including:

- The interaction between TP and Valuation methods;
- Supply chain and IP planning and compliance during post-merger integration;
- · Transfers of IP in response to regulatory change;
- Cost-sharing buy-ins and buy-outs;
- Alignment of IP ownership and DEMPE functions;
- Valuation of contractual provisions using option pricing methods;
- Head office intangibles;
- Arbitration involving minority shareholder claims of unfair treatment;
- Implications of bankruptcy and financial distress for transfer pricing.

Ted began his transfer pricing career in Los Angeles. He has been based in London since 1997, and has worked as a partner in two of the Big 4 accounting firms and as a managing director in an economics consulting firm. Prior to being recruited by Duff & Phelps, Ted established his own independent transfer pricing consultancy. He has contributed to numerous papers and guides on transfer pricing, has spoken at numerous conference around the world, and has been recognized as one of the World's Leading Transfer Pricing Experts. Ted graduated with a B.S.Ch.E. from Case Western University and received his PhD from the Claremont Graduate University.



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Ruth is a highly experienced transfer pricing professional with expertise in advising on the development of global transfer pricing policies and implementing pragmatic transfer pricing solutions for multinationals. Her industry sectors of focus include Pharmaceutical and Life Sciences, TMT, Real Estate and Hospitality and Investment Management and Advisory Services.

Ruth particularly enjoys working with her team to provide clients with transfer pricing solutions and robust economic analysis in the light of the OECD's Base Erosion and Profit Shifting project (BEPS).

Ruth is engaged in ongoing advisory work with MNEs regarding the potential impact of Pillar 1. Ruth has undertaken PE advisory work for multiple businesses and worked on policy development and economic analysis for the restructuring of both European and global businesses, in which she also provided input to transfer pricing strategy presentations for the board.

Ruth has worked on the design, implementation and documentation of the intercompany transactions of procurement centres, centralised Intellectual Property holding structures and cash pooling arrangements. Ruth also has extensive experience in global documentation projects in the new Master / Local file format and has undertaken CBCR advisory work and visualisation of CBCR data.

Ruth also has a wealth of experience in defending transfer pricing policies with a strong focus on risk management and fit for purpose documentation. Ruth has been successful in defending transfer pricing policies in a large number of jurisdictions including the UK, US, Australia, France, Germany, Poland, Russia and Brazil.

Ruth has successfully supported clients in the preparation, negotiation and agreement of Advance Pricing Agreements, Advance Thin Capitalisation Agreements and MAPs and is now regularly consulted by both HMRC and corporates in relation to potential litigation.

In addition, Ruth is a regular contributor of transfer pricing articles in Tax Journal. She is the chairperson and panel moderator at TP Minds International. Ruth has also responded to OECD public consultations on Cost Contribution Arrangements, Profit Splits and PE profit attribution and spoken at the OECD Working Party 6 meeting in Paris.

Recent areas of client demand have been the pricing of financial transactions and an understanding of the impact and direction of travel with respect to the taxation of the digital economy.

Prior to joining FTI Consulting, Ruth spent over fifteen years providing transfer pricing advice at Deloitte, BDO Stoy Hayward and Andersen (formerly Arthur Andersen). Ruth is a Chartered Accountant and Chartered Tax Adviser.



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Oscar Campero is a transfer pricing consultant in the Mexico City office of Chevez, Ruiz, Zamarripa y Cia. He began his professional practice back in 1995 in Acer Computer Mexico's special projects department. He joined the Firm in 1998 where he was promoted to Partner on 2009. Oscar Campero is part of the Transfer Pricing practice at Chevez, Ruiz, Zamarripa y Cia. in the advisory on the identification of the transfer prices applicable for intercompany transactions and international tax strategies. He focuses on advising clients in the context of global tax risks arising from dealings between related parties as well as in the negotiation of APAs, BAPAs and MAPs. He also is an expert in tax and transfer pricing controversies. The scope of the services he focuses on also includes the financial valuation of companies, stocks and intangible assets, dumping and antitrust cases.

Oscar is President of the Transfer Pricing National Committee at the Financial Executives Mexican Institute (MEF), he is member of the Transfer Pricing Commission of the Mexican Institute of Public Accountants (IMCP) as well as founder and member of the Iberoamerican Transfer Pricing Specialists Association (AIEPT). He has collaborated in several articles and books on transfer pricing matters which have been published by different recognized institutions. Oscar has also taught transfer pricing courses and seminars at the Instituto Tecnologico Autonomo de Mexico (ITAM), as well as at the Universidad Iberoamericana (UIA), the Universidad La Salle, UNAM, ITR, ATLAS among other institutions.

Oscar is a graduate of the Instituto Tecnologico Autonomo de Mexico where he obtained his bachelor degree in Economics. He obtained an Executive Master's degree in Business and Administration by the University of Texas (UT) at Austin, together with the Instituto Tecnologico de Estudios Superiores de Monterrey (ITESM). He has taken several taxation, transfer pricing and valuation courses, particularly in the ITAM, the Council for International Tax Education (CITE) and the Financial Analyst Mexican Society (SOMAF) among others



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He is a Partner at Chevez, Ruiz, Zamarripa y Cía in Mexico City. His main areas of specialization are merger and acquisitions, and cross-border transactions including transfer pricing. He has also been heavily involved in unilateral and bilateral advanced pricing agreements (APA's) and alternative dispute resolutions. He is a former professor of the Iberoamericana University. He currently teaches on taxation at the master program in law of the Panamericana University. He is a lawyer from the Universidad del Valle de Mexico. He is also a CPA from the Universidad Autónoma de Guadalajara and took a postgraduate program in tax law at Panamericana University.

Ricardo is a frequent speaker at international tax fórums mainly at the International Fiscal Association (IFA) and former president of the IFA Mexico branch as well as the Latin America Regional Committee of said Institution. He has published several articles on taxation in international publications.



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Experience

- Ricardo has over 28 years of experience in tax matters and more than 24 years in Transfer Pricing.
- Is founder and was the first President of the Transfer Pricing Commission at the Mexican Institute of Public Accountants (IMCP)
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- Ricardo has been named for several years as one of the leading advisors in the field of his specialty by the magazine "International Tax Review". He was also included in the 2009 edition of the publication "Expert Guides, The Best of the Best", as one of the best Transfer Pricing consultants in the world.
- Ricardo has authored several articles on Transfer Pricing, including
 his participation as guest author by International Tax Review for
 the 2008/09 edition of the Mexico chapter of "Transfer Pricing
 Review.". Author of a chapter in the book of Precios de
 Transferencia edited by the IMCP. Author of a book chapter
 "Introducción a la Fiscalidad Internacional" edited by the IMCP.
- Speaker in several International TP forums and seminars before taxpayers and tax officials of various American and European countries. Ricardo's teaching experience is very extensive, mostly in Universities and in Transfer Pricing special programmes designed for graduates and tax officials.
- During his career, Ricardo has participated as TP advisor for many Multinational Enterprises and Large Mexican Groups, being involved in documentation, planning, restructurings, valuations, defense and APA negotiations.



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Partner at Chevez, Ruiz, Zamarripa y Cía. Certified tax specialist focused on high-level tax and transfer pricing advisory and consulting. Has been engaged as advisor of multinational groups in several tax and transfer pricing controversies which involve deductibility issues related with unique and valuable contributions such as advertising and promotion expenses, intercompany transactions and arm's length determination, supply chain restructuring, among others. He has also been engaged as advisor in alternative dispute resolutions such as mutual agreement procedures between the Mexican tax authorities and foreign competent authority, as well as within the Acuerdo Conclusivo procedures.

For more than 19 years of experience, he has been engaged in diverse kind of projects with cross border transactions or involving mergers and acquisitions which require advisory and/or compliance on transfer pricing for tax, banking or pension fund purposes, financial valuations of equity and intangibles, as well as economist expert in anti-dumping controversies.

He also advises multinational groups in connection with contemporaneous transfer pricing documentation, including master file and country by country report as established by the OECD and already required in Mexican tax legislation.

He is an active member of the International Fiscal Association (IFA) and former chair of the transfer pricing committee of IFA Mexican Branch. He also participates in the transfer pricing committee of the Mexican College of Public Accountants (Colegio de Contadores Publicos de Mexico).

He has been a speaker in diverse tax and transfer pricing forums and seminars, including the annual seminar at IFA Mexican Branch, annual transfer pricing conference at University of San Diego, Mexican College of Public Accountants, among others. He was panellist regarding Actions 10 and 13 of the BEPS initiative at the IFA Latin-America Congress held in Lima, Peru. For 2019, he is the chair panellist of the Seminar BEPS actions 8,9 and 10 to be held at the IFA Latin-America Congress to be held in Panamá City, Panamá.

Master degree in Finance from Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM), Campus Santa Fe, and Bachelor degree in Economics from Instituto Tecnológico Autónomo de México (ITAM). He has collaborated in several publications such as Guide to International Transfer Pricing. Law, tax planning and compliance strategies published by Wolters Kluwer; Coordinator and co-author of the book "Temas selectos de precios de transferencia" published by Editorial Themis; Transfer Pricing and Customs Valuation by the International Bureau of Fiscal Documentation (IBFD).



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Eyal is an attorney and economist, and is considered one of Israel's leading transfer pricing specialists. Eyal heads the transfer pricing practice at Herzog Fox & Neeman and boasts over 20 years of experience in advising multinationals on their local and international intercompany transfer pricing and commercial transactions. As part of his practice, Eyal also advises international companies on a wide range of Israeli corporate, tax, and commercial matters.

Eyal often participates in discussions with the Israeli Tax Authorities and consults them on new circulars and on the implementation of the BEPS, transfer pricing methods, and other regulations in Israel, and has considerable experience in all aspects of international transfer pricing planning and intercompany transactions, including in crossborder transactions involving tangible and intangible assets, goods, and services. Eyal is experienced with handling APAs and MAPs involving the Israeli Tax Authorities and represents MNEs in audits and in front of the Israeli courts. Eyal also handled audits outside of Israel, where he assisted foreign companies with tax audits in their domicile.

Eyal is an expert in drafting transfer pricing documentation and intercompany agreements, including the required Master File, Local File, and transfer pricing studies, in accordance with both Israeli and foreign requirements. Eyal is experienced with US, OECD, EU and Israeli transfer pricing challenges faced by corporations, and in assisting foreign companies in incorporating and regulating their transfer pricing and taxation in Israel.

Eyal is involved in all of a corporation's transfer pricing lifecycle, both inbound and outbound from Israel, from the planning, analysis, and documentation, to support in audits and representing in court. Eyal is also versed with complex transfer pricing matters involving international tax planning, customs, and VAT in Israel.

In addition to his legal practice, Eyal has also been an adjunct professor at the Haifa University Faculty of Law for more than 10 years. He also often lectures to the Israeli CPA Association and to foreign governments' representatives on the subjects of transfer pricing and business in Israel.

Eyal is a Board member of the Israel-LATAM Chamber of Commerce, of the Israel-German Chamber of Commerce, and of the German-Israel Legal Association. In his private capacity, Eyal volunteers with the Unistream Association, an organization that helps Israeli teenagers from underprivileged areas to realize their potential by teaching them entrepreneurial skills, and acts in a voluntary capacity as a mentor in the Tel-Aviv University.



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BEPS and Transfer Pricing Expert.

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Recent projects for large MNEs include:

- Favourable Dispute Resolutions with local tax authorities;
- Unilateral Tax Rulings and Multilateral Advance Pricing Agreements;
- · Support with Global and Regional Action 13 compliance regulations;
- Technical training for clients and MoFs/TAs;
- · Transfer Pricing Policy Design and Business Restructurings;

Legal Media Group Best of the Best (Top 30 Transfer Pricing Advisers Worldwide) 2020.

World Tax Guide Recommended Advisor 2020.

Winner of the Bloomberg Tax Author of the Year Award in 2020.

Nominated as ITR EMEA TP Leader of the Year in 2019.

Speaker at numerous events, has published hundreds of articles and launched the Transfer Pricing Planet Podcast Series for the Middle East.

Multiple quotes in the US, UK and Middle East broadsheet newspapers and financial press plus featured on CNBC Arabia.

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"Shiv is comfortably the best TP adviser I have dealt with, given his ability to understand the business and his awareness of how the real world works. He differs from other advisers with a refreshing degree of commerciality and pragmatism." Head of Tax, FTSE100 Retailer

"Shiv provides high quality and reliable transfer pricing advice. Puts our previous transfer pricing advisers to shame". COO, DayMen Group

"Shiv demonstrates a strong commitment to technical quality and a level of dynamic engagement I don't see being provided by others advisors." Head of Tax, \$500bn AuM Investment Manager.

"Christie's have been working with Shiv for almost ten years. He takes a commercial and proactive approach and has continually assisted us in managing transfer pricing risk and audits with favourable resolution." Head of Tax, Christie's.

"Shiv is very knowledgeable in his field of expertise and is a well respected thought leader. He and his team provide excellent quality work and are able to bring a different perspective to the table." Head of Tax, Seaco Global.

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The Impact of OECD GloBE Proposals in the Middle East

Shiv Mahalingham The Cragus Group Dubai

Shiv Mahalingham, of Cragus, sets out a summary of the key proposals for Global Anti-Base Erosion under Pillar Two and looks at the potential impact on the Middle East, North Africa (MENA) region (a region that is at present characterized by the introduction of new/revised transfer pricing regulations).

The Organization for Economic Co-operation and Development (OECD) continues to drive public consultation on the initial proposal for Global Anti-Base Erosion (GloBE) under Pillar Two (to address the tax challenges of digitalization of the economy). The new administration in the United States has also thrown support behind the ini-

By way of reminder, the GloBE Pillar One proposals address the broader challenges of the digitalized economy and focus on the allocation of taxing rights. GloBE Pillar One debates where tax should be paid and in what amount—especially where digital companies may not have a significant physical presence in a jurisdiction in which they operate. The GloBE Pillar One proposals are converging toward a system of taxation that would allocate more taxing rights to the place where the customer is located.

The timeline agreed to by all relevant parties (G-20/OECD/OECD IF) is to develop a consensus-based solution as soon as possible.

One hundred and thirty five jurisdictions (including Bahrain, Kingdom of Saudi Arabia (KSA), Jordan, Oman, Qatar, United Arab Emirates (UAE)) have now signed the Base Erosion and Profit Shifting (BEPS) Inclusive Framework (IF); whilst this is a commitment to cooperate with the OECD 36 member states on key areas, the IF minimum standards do not include "Action 1: Tax

Challenges Arising from the Digital Economy." By way of reminder, the IF four minimum standards are as follows:

- · Action 5—Countering harmful tax prac-
- Action 6—Countering tax treaty abuse
- Action 13—Introducing country-by-country reporting
- Action 14—Commitment to mutual agreement procedures

Despite no commitment under Action 1, the GloBE Pillar Two proposals fall under Action 5 and as such have relevance for the IF jurisdictions.

"TAX ADMINISTRATIONS WILL CONTINUE TO CONSIDER THE LEVEL OF ECONOMIC SUBSTANCE IN THEIR RESPECTIVE TERRITORY"



Note that the GloBE proposals confirm (as stated in the BEPS Action 1 Report) that it would be difficult, if not impossible, to ringfence the digital economy from the rest of the economy for tax

Therefore, the scope of the GloBE Pillar Two proposal is not limited to digitalized businesses. By focusing on the remaining BEPS challenges, it proposes a systematic solution designed to ensure that all internationally operating businesses pay a minimum level of tax.

GloBE Pillar Two Proposals

The current proposals for the digital economy include a minimum rate of tax on the income of multinational businesses among the following four elements:

1. An income inclusion rule that would tax the income of a foreign

branch or a controlled entity if that income was subject to tax at an effective rate that is below a minimum rate.

- 2. An undertaxed payments rule that would operate by way of a denial of a deduction or imposition of source-based taxation (including withholding tax) for a payment to a related party if that payment was not subject to tax at or above a minimum rate.
- 3. A switch-over rule to be introduced into tax treaties that would permit a residence jurisdiction to switch from an exemption to a credit method where the profits attributable to a permanent establishment (PE) or derived from immovable property

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(which is not part of a PE) are subject to an effective rate below the minimum rate.

4. A subject to tax rule that would complement the undertaxed payment rule by subjecting a payment to withholding or other taxes at source and adjusting eligibility for treaty benefits on certain items of income where the payment is not subject to tax at a minimum rate.

A Minimum Level of Corporate Income Tax?

The OECD GloBE Pillar Two proposals note that a minimum tax rate "does not change the fact that countries or jurisdictions remain free to set their own tax rates or not to have a corporate income tax system at all." However, these rules would be implemented by way of changes to domestic law in other locations and tax treaties and would incorporate a coordination or ordering rule to avoid the risk of double taxation that might otherwise arise where more than one jurisdiction sought to apply these rules to the same structure or arrangement.

There is the argument that the establishment of a minimum level of corporate income tax in no or only nominal tax jurisdictions ("NOONs") would raise tax collections for the jurisdiction. If MENA jurisdictions do not introduce a minimum level of taxation, these tax collections would flow to other Jurisdictions.

What Will the Minimum Level of Corporate Income Tax be?

Based on experience with other tax jurisdictions, a corporate income tax rate below 10% might be considered "low" (but not nominal which may be the case for a corporate income tax rate below 5%). The results demonstrate rates that range from 0% to 35%. It is likely that the next iteration of the GloBE Pillar Two proposals will include an indication of what the minimum tax rate should be.

Carve Outs

The GloBE Pillar Two proposals look in some detail at local versus global financial accounts and the mechanism that may render such an approach to taxation feasible. In addition, it is specified that there should be a carve out in certain situations. The author would envisage these situations to be as follows:

- · de-minimis—below a certain threshold;
- commercial substance—if it can be demonstrated that transactions are not artificial and have strong commercial (non-fiscal) benefits in addition to any incidental fiscal benefits;
- contradictions with other areas of taxation law (e.g. transfer pricing);
- · (predominantly) non-digital businesses.

Impact on Traditional Transfer Pricing

Tax administrations will continue to consider the level of economic substance in their respective territory and whether the amount of tax payable is commensurate with that level of substance in line with transfer pricing regulations. This is the very essence of transfer pricing and NOONs (such as the UAE or Bahrain) in which you can demonstrate substance will be more supportable than those in which you cannot.

A minimum rate of tax may change the financial numbers in the accounts, cash tax position and tax returns but it need not render the transfer pricing policy inert. That said, there is time to shape the debate and many tax administrations (including the IRS) have called for the GloBE Pillar Two proposals to respect and retain the integrity of the arm's length principle.

Shiv Mahalingham is a senior Transfer Pricing and BEPS Expert with circa twenty five years of experience advising large MNEs.

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Peter is a leader of Grant Thornton's global transfer pricing group and is based in Toronto. The group consists of 25+ transfer pricing professionals; including economists, tax experts, financial analysts, valuators and accountants. With expertise in a variety of tax and transfer pricing matters, the group specializes in transfer pricing planning and strategy; capital structure planning; merger and acquisition tax planning; intangible property migration; business restructurings; tax authority audit dispute management; appeals, tax court, and competent authority support; advance pricing arrangements (APAs); and transfer pricing documentation.

Peter's experience includes supporting many of North America's largest public and private companies in a multitude of industries including pharma, financial services, resources, professional services, manufacturing, automotive, oil and gas, information technology, distribution and retail, among others.

Peter also specializes in assisting companies with establishing governance processes and procedures for transfer pricing - an increasingly important area, as tax authorities around the world shift focus onto a risk-based approach. Peter has led the establishment of transfer pricing governance frameworks for some of the largest corporations in North America.

Professional qualifications and memberships

- BComm (Honours) Queen's University, Kingston
- Master of Taxation (Mtax) University of Waterloo
- Chartered Financial Analyst (CFA)

Notable presentations and publications

- Peter was recognized as an expert in the "Guide to the World's Leading Transfer Pricing Advisors" Euromoney 2021
- "Operational Excellence in Transfer Pricing" Presenter, TP Minds National Conference (Canada), 2021
- "Beyond Documentation: How to Plan, Implement, Document, and Defend Your Transfer Prices" - Presenter, TEI Conference -Taxation in a New World, 2021
- Peter was recognized in 2020 by Euromoney as a Rising Star in Transfer Pricing, one of only two practitioners to receive the award in all of Canada
- "Transfer Pricing Beyond the Pricing" Author, Expert Guides Magazine, 2019
- "The Changing Landscape in transfer pricing: 10 practices you need to implement today" - Author, Expert Guides Magazine, 2018
- Grant Thornton's Transfer Pricing Practice was awarded the prestigious International Tax Review Transfer Pricing Advisory Firm of the Year (Canada) award in 2018 and was shortlisted in 2019, 2020, and 2021!



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Brad is the Joint Global Head of Transfer Pricing for Grant Thornton International Limited and the National Leader of Grant Thornton's transfer pricing practice in Canada. For over 25 years, Brad Rolph has helped multinational companies address their transfer pricing issues. He has been qualified as an expert in the economics of transfer pricing at the Tax Court of Canada. He is recognized as one of Canada's leading transfer pricing advisors and was the first economist hired by any accounting firm in Canada to practice transfer pricing exclusively.

Brad's areas of expertise include planning, implementing, documenting and defending intercompany transactions for tangible goods, services and intangibles; developing economic models to price complex financial transactions; resolving audit disputes at the field, appeals and Competent Authority level; negotiating unilateral or arranging bilateral advance pricing arrangements; and providing litigation support, and expert witness evidence and testimony.

Brad has served companies based in Canada, the United States, the United Kingdom, Ireland, Finland, France, Germany, Saudi Arabia and Japan. He has dealt with issues in industries such as aerospace, mining, metals and minerals, pulp and paper, transportation, heavy manufacturing, steel, utilities, automotive, chemical, pharmaceutical, food and beverage, electronics, financial services, wholesale trade, apparel, software, consumer goods, and entertainment. He also has extensive experience with Japanese trading companies and businesses in the digital economy.

Brad is a frequent speaker and commentator on transfer pricing matters. He has been published in International Tax Review, Euromoney and Tax Management International. He was one of the branch reporters for Canada at the 71st Congress of the International Fiscal Association in Rio de Janeiro addressing the future of transfer pricing. On two occasions, Brad has been a tutorial leader at the CPA's In-Depth Transfer Pricing course.

Professional qualifications

- · Bachelor of Arts (Honours), Economics Wilfrid Laurier University
- Master of Arts Degree, Economics Queen's University
- Completed course work and comprehensive theory exams in economics at the Ph.D. level – York University



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Roderik Vehmeijer is a partner with Grant Thornton's national transfer pricing group and is based in Toronto.

Roderik has more than 20 years of professional transfer pricing experience advising both privately-held and publicly-listed companies across a wide range of industries; including financial services, mining, petrochemicals, engineering, consumer brands, manufacturing, food processing, IT services, business services, real estate, technology, media and telecommunications.

Roderik assists clients with their transfer pricing needs – including transfer pricing planning, implementation of transfer pricing policies, global, regional and local documentation projects, country-by-country reporting assistance, audit defense management, advance pricing arrangement negotiations, competent authority proceedings and transfer pricing litigation support.

Roderik also has international transfer pricing experience working for two years in Singapore, where he advised companies with operations in Asia Pacific on transfer pricing matters.

Professional qualifications and memberships

Roderik has a Master of Arts degree in economics from the University of British Columbia, as well as a Bachelor of Business Administration degree from Simon Fraser University.



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As a partner in the Grant Thornton Tax practice, Lori specializes in providing clients with a range of transfer pricing services. Leveraging 17 years of transfer pricing experience, and nine years as an economist for the federal government, she supports clients in the areas of planning, documentation and transfer pricing controversy at the field, appeals and competent authority levels.

Throughout the years, Lori has helped many clients navigate the (APAs) advance pricing arrangements process, determine a sound and defensible transfer pricing model, acquire representation with the respective authorities and achieve successful restructurings. Her career has taken her across the world, allowing her to gain transfer pricing experience in the United States, South America, Europe and Asia. She participated in the first Canadian-US joint audit—and worked extensively with the first entrant into the US Client Assistance Program (CAP). Her industry focus areas include but are not limited to manufacturing, mining, oil and gas, pharmaceutical and construction.

Outside of the office, you can find Lori teaching the CICA's transfer pricing in-depth course—specifically, the second transfer pricing module which she co-developed. She has also contributed to the OECD's ongoing work in this field by providing input into its guidance for transfer pricing in emerging countries. Lori frequently speaks on the topic of transfer pricing for such organizations as the National Association for Business Economics, TEI and the Canadian Tax Foundation.

Professional aualifications

- Bachelor of Arts, Economics University of Toronto
- Master Degree, Economics Queens University, Kingston
- Certified Public Accountant (CPA)



Is the OECD Inclusive Framework Digital Project the Beginning of the End of the Arm's Length Standard?

Michael F Patton

DLA Piper¹ Los Angeles

"This is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning." Sir Winston Churchill.²

As this article is being written, the OECD inclusive network continues work on its Digital Pillar 1 and Pillar 2 Blueprint proposals with the goal of agreeing a consensus-based approach by middle of July 2021. Without major revisions to the Blueprint published in August 2020, the OECD work will mark the first time that the OECD has officially sanctioned material deviations from its previous acceptance of the arm's length standard as the agreed benchmark for taxing the results of controlled party transactions. Will adoption of the OECD Pillar 1 and Pillar 2 proposals mark the beginning of the end of the arm's length standard as the internationally accepted norm for taxing the results of controlled transactions or merely represent a limited exception to what previously has been accepted by the world's major tax authorities as the appropriate standard to evaluate and tax the results of related party transactions?

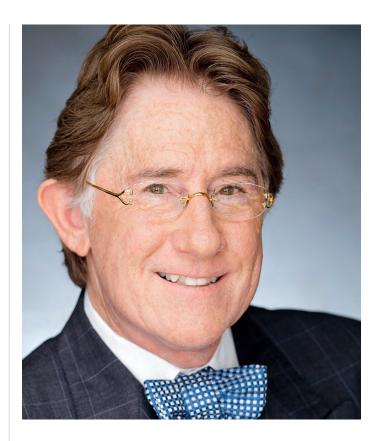
While Amount A of Pillar 1 can be viewed as a limited exception to the primacy of the arm's length standard, Amount B of Pillar 1 creates a slippery slope for a significant erosion of the arm's length standard applied to a much wider base of transactions that could result in the beginning of the end of the arm's length standard as the benchmark to evaluate controlled party transactions.

Pillar 1 Amount A and the New Taxing Rights

Pillar 1's Amount A creates a new taxing right ("nexus") for situations where a permanent establishment ("PE") would not exist under Article 5 of the revised OECD Model Treaty. The new Amount A nexus rules are designed to fix a problem with existing PE rules, which are said to be too restrictive in allowing taxation of businesses that commercially exploit a market through new digital business models.

As currently drafted, Amount A would apply to two types of businesses:

- Businesses that provide automated standardized digital services to a large and global customer or user base. Covered digital services include:
 - online search engines;
 - social media platforms;
 - online intermediation platforms, including the operation of online marketplaces, irrespective of whether used by businesses or
 - digital content streaming; online gaming; cloud computing services; and online advertising services.
- Consumer-facing businesses when customer engagement is carried out from a remote location, with active non-physical presence in the target market. Consumer facing businesses include:



- Personal computing products (e.g. software, home appliances, mobile phones, etc.);
- Clothes, toiletries, cosmetics, luxury goods;
- Branded foods and refreshments;
- Franchise models, such as licensing arrangements involving the restaurant and hotel sector; and
- Automobiles

Besides applying to limited types of business enterprises, the new Amount A taxing right is intended to apply only to enterprises that exceed a certain revenue floor and exceed a certain level of pre-tax profit. The most discussed thresholds for applying Amount A are consolidated net revenues of €750 million and a minimum pre-tax profit of 10 percent of net revenues, with 20% of the pretax profit in excess of 10% being subject to the Amount A taxing

Once the minimum revenue and profit levels have been met, the Amount A taxable income will be determined by a formula applied to the taxpayer's consolidated financial statement "Amount A business" (which could be a segment of a broader business) pre-tax profit. The Amount A tax would then be divided among the Amount A tax jurisdictions based on an agreed formula.

The OECD Blueprint candidly admits that Amount A reflects a deviation from the arm's length standard. However, given the scope limitations of Amount A as well as the relatively high revenue and profit thresholds, Amount A will affect a relatively low number of companies, resulting in a limited exception to the use of the arm's length standard.

Pillar 1's Amount B and Mandatory Minimum Tax

Pillar 1's Amount B is intended to apply to situations where a business engages in "routine distribution and marketing" operations through a subsidiary or a PE. Unlike Amount A, there are no business scope, net revenue, or pre-tax profit limitations to application of Amount B. Rather than being aimed at taxing new business models of the digital economy, the problems Amount B are designed to address are: 1) a lack of transfer pricing enforcement resources among many of the approximately 140 countries participating in the OECD inclusive framework Digital project; and 2) reducing the number of controversies between inclusive framework member countries over profits attributable to routine distribution operations.

The Amount B proposal would require companies with routine distribution and marketing operations to compute taxable income based upon a minimum taxable income amount determined by reference to "comparables". Comparables could be determined by industry grouping and by geography or region. For example, Country X might analyze public data for EMEA based auto parts and electronic component distributors and require that auto parts distributors base taxable income on a minimum EBIT of 4% of sales revenues and electronics component distributors base taxable income on a minimum EBIT of 4.5% of sales revenues. However, unlike the current application of the arm's length standard, the "comparables" for Amount B and the profit targets would reflect a "one size fits all" approach to a wide variety of taxpayers without the opportunity for taxpayers to choose or adjust the comparables to reflect their own unique circumstances.

As is the case with Amount A, Amount B will be determined without regard to the actual local country taxable profit (or loss) of the entity being taxed. In substance, Amount B is a formulary amount based on a non-"facts and circumstances" application of the transactional net margin method ("TNMM" or CPM in the US). Because Amount B applies without business activity scope, net revenue, or pre-tax profit limitations, Amount B will have wide application.

Other Situations and the Arm's Length Standard

Under the Blueprint, situations where a taxpayer has a taxable presence under traditional tax nexus rules and the functions performed are other than routine distribution and marketing will be governed by normal arm's length transfer pricing rules, which will apply to the determination of taxable income attributable to the jurisdiction where business activities take place.

Since 2017 when the OECD Transfer Pricing Guidelines (the "Guidelines") were revised to reflect the BEPS project, normal arm's

length transfer pricing rules have included the rules set forth in Chapter VI of the Guidelines, which are intended to align the profits attributable to intangible income (broadly defined) with the functions undertaken, assets used and economic risks assumed to create such income. Central to the functions defined in Chapter VI are the DEMPE functions to: Develop, Enhance, Maintain, Protect and Exploit intangibles that result in taxable income. Because DEMPE functions are not included within the scope of Amount B, all income attributable to non-routine intangibles would be allocated under normal arm's length principles to those entities (and jurisdictions) where assets are used, economic risks undertaken and DEMPE functions performed to create the non-routine income attributable to the intangibles at issue.

The Amount B Slippery Slope: Slip Slidin' Away

As previously explained, Amount B responds to two concerns raised by OECD inclusive framework member countries: 1) a lack of resources to administer the facts-and-circumstances based arm's length standard and 2) a desire to reduce controversy in a common transfer pricing situation. As documented in the annual reports published each year by the IRS APA Program, approximately 85% of the US APA cases involve controlled distribution, manufacturing or service transactions that are resolved using the CPM/TNMM. By definition, the TMNN/CPM does not apply to transactions involving exploitation of non-routine intangibles. Assuming that Amount B reflects a reasonable solution to the two tax administration concerns identified, it would seem that the scope of Amount B could be extended to include routine manufacturing and service transactions, thereby significantly eroding the base of controlled party transactions subject to normal arm's length principles and analysis.

Why Erosion of the Arm's Length Principle Matters

A fundamental principle underlying the arm's length principle is tax fairness, namely that controlled party transactions should be taxed as if the transactions were entered into by unrelated parties dealing with each other at arm's length. In arm's length transactions, unrelated parties do not always earn minimum levels of profit and can incur losses. However, profits below the mandated minimum or losses are not permitted under Amount B. Under such circumstances, the question becomes whether the expected gains in simplifying tax administration (by eliminating facts-and-circumstances based transfer pricing enforcement) and reducing tax controversies are worth the erosion of tax fairness. Before proposing Amount B, the OECD answer to the last question was, "no."

In order to preserve tax fairness that underlies voluntary tax compliance, it will be important for the OECD to leave room for application of a facts-and-circumstances exception to Amount B through APAs, rulings or similar administrative measures.

¹ Mike Patton is a Partner in the Los Angeles office of DLA Piper (US) LLP. The opinion and conclusions expressed in this article are the author's and do not represent the views of DLA Piper (US) LLP.

² Remarks to General Alexander after the General advised Churchill to "Ring out the bells" to celebrate the British victory in Egypt in 1942 over the Nazi German forces.

Q&A with David Forst

Partner

Fenwick & West

How has the Covid-19 pandemic impacted your work?

Tax work is busier than ever There has been both an increase in economic activity needing sophisticated tax work and increasing complexity of tax law around the world. Both of these factors has driven an extraordinary demand for tax services.

How has your practice had to adapt, and how do you expect it to change further?

The basic principles of tax are constant, with evolutionary rather revolutionary adjustments. Therefore, adaptation is also evolutionary. I'd say the largest area of adaptation is the increased possibility of double and multiple jurisdiction around the world.

How much of that impact will have a permanent, lasting effect? $\ensuremath{\mathrm{N/A}}$

What are the biggest challenges relating to that impact do see as presenting the most challenging obstacle going forward, and how do you plan to tackle it?

N/A

What is the most significant change to your region/jurisdiction's transfer pricing legislation or regulations in the past 12 months?

There have been no material changes in the last 12 months, but the ever-constant issue in both the U.S. and around the world is the extent to which tax authorities will continue to adhere to the arm's length standard. I have found that adherence to the arm's length standard varies with jurisdiction (and sometimes within the same jurisdiction), and this requires ever-more vigilance and attention.

What has been the most significant impact of that change?

There has been a steady increase in recordkeeping and documentation requirements. There has also been increased prospects of double taxation which the various national taxing authorities and taxpayers are having to address in their own ways.

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

There have been more tax controversies across multiple jurisdictions for the same taxpayer. If the global tax consensus continues to erode, I would expect to see more multi-jurisdictional controversies.

How has this changed the way you offer TP advice



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

OECD Pillars are increasing the already high prospects of double taxation worldwide. It is becoming increasingly challenging to manage transfer pricing in a manner that adheres the model of a single jurisdiction, and only that jurisdiction, subjecting a dicrete tranche of income to tax.

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

More controversy with increased prospects of double taxation

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

It will make managing transfer pricing more difficult and time-consuming

How are issues surrounding the taxation of the digital economy affecting your work?

See above.

How would you describe the tax authorities' approach to transfer pricing in your region/jurisdiction?

On the aggressive side.

Deloitte.

About Deloitte's Global Transfer Pricing network

Deloitte is proud to have over 3300 transfer pricing professionals across over 150 countries and territories focused on helping our global clients to navigate all aspects of the TP lifecycle – Plan, Manage, Streamline and Resolve

Our regional TP leaders have taken time to acknowledge and thank their talented performers who continue to serve many of these important and valued global clients.



Americas

"I want to thank our talent for setting the new standard of excellence in helping our clients and people excel in the Americas region. I am excited to see the impact they will make as market leaders." —John Wells, Deloitte Americas Transfer Pricing

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Asia Pacific

"I am delighted to celebrate the distinctive impact of the talent we have in Asia Pacific Transfer Pricing in recent years—together they are uniquely Deloitte."—Fiona Craig, Deloitte AsiaPac Transfer Pricing Leader

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EMEA

"I am pleased to recognize some of our EMEA talent who work together "As One" across geographic, functional, and business borders to deliver excellence." —Shaun Austin, EMEA TP Leader

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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 US 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 US 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 US He also has a notable background in teaching speaking techniques based on his competitive debating experience.

Representative Clients

Adaptec; Analog Devices; Cameco; CBS; Dover; G.M. Trading; L Brands; Textron; The Limited; Sanofi SA; Xilinx.

Recognitions

- The Legal 500 recognized Kenneth in its Tax Contentious (2014 2019), International Tax (2014 2016) and Domestic Tax: West Coast (2015) categories
- Euromoney: Expert Guides honored Kenneth for Transfer Pricing: US (2018)
- Named 2021 Tax Leaders by the International Tax Review's Tax Leaders Expert Guide

Kenneth received his J.D., cum laude, from the New York University School of Law, where he was a member of the law review. He received his M.B.A. from the University of California, Berkeley and his B.A., summa cum laude, from the University of Redlands, where he was first in his class.

Kenneth is admitted to practice in California and New York. He is also admitted to practice before the US Tax court and numerous federal courts.

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David focuses on international corporate taxation. David has been named 2021 Tax Leaders by the *International Tax Review's* Tax Leaders Expert Guide. He is included in *Euromoney's* Tax Advisors Expert Guides (World's Leading Tax Advisors, World's Leading Transfer Pricing Advisors and was named one of the Top 30 US Tax Advisors). He is also in *The Legal 500 Hall of Fame* and is regularly recognized in the *Law and Business Research*'s International Who's Who of Corporate and Tax Lawyers. David is listed in Chambers USA America's Leading Lawyers for Business, and has 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.

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Jim has been named 2021 Tax Leaders by the *International Tax Review's* Tax Leaders Expert Guide. *Euromoney* named Jim eight times as one of the world's top 25 tax advisers, most recently in 2019.

He is the only US tax adviser to receive a Star Performer rating (higher than first tier) in *Chambers USA* (2019). He also is one of the three "most highly regarded" US tax practitioners according to *Who's Who Legal* (Law & Business Research).

Legal 500 has included Jim in its "Halls of Fame" for both Corporate Tax and International Tax. Chambers Global (2019) also has him in the first tier in both of these categories, one of only two US tax advisors to be first tier in both.

Fuller also is one the US's top 30 transfer-pricing advisors, according to *Euromoney* (2019).

Fenwick has represented 6 of the Fortune Top 10 companies, over 50 of the Fortune 100 companies, and over 100 of the Fortune 500 companies in federal tax matters. Fuller and the firm have served as counsel in over 150 large corporate IRS Appeals proceedings and over 75 large-corporate federal tax court cases. Some of these have been for Fortune Top 10 companies.

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 "US (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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Dr Elizabeth King Rosenthal is the founder of Beecher Consulting, an independent firm specializing in transfer pricing and valuation issues. She has worked in these fields for over 25 years, first as an industry economist with the Internal Revenue Service, then as a senior manager with Price Waterhouse, and is now a principal with Beecher Consulting. She has prepared numerous documentation studies for large and small companies in traditional and emerging industries, assisted clients in a planning capacity, and represented Fortune 100 companies in APA negotiations. She has testified as an expert in the US federal courts, and has served as a mediator on a large disputed transfer pricing matter.

Dr King Rosenthal has published extensively on transfer pricing and valuation issues. Her publications include 'Taxing Platform Businesses with Highly Digitized Business Models', 90 Tax Notes International 1279, June 11 2018; 'Rethinking the Border Adjustment Tax: The Role of Intra-Group Trade Flows', 46 TM International Journal 588, October 13 2017; 'Deconstructing the Income Method, Resurrecting Cost Sharing', 90 TM Transfer Pricing Report 10, September 22 2011; 'The Case Against the Income Method' (with C. Fanaroff), 126 Tax Notes 3, January 18 2010; Transfer Pricing and Corporate Taxation (New York: Springer Science + Media LLC 2009); 'Commodities Trading and Global Dealing: Transfer Pricing Challenges and Proposed Methods,' in Tax Director's Guide to International Transfer Pricing (Newton: Global Business Information Strategies 2008); 'The Valuation of an Assembled Workforce Intangible' in The Valuation of Intangible Assets in Global Operations (Westport: Quorum Books 2001); 'The Role of Economic Analysis in Transfer Pricing' in Lowell, Cym H et. al., International Transfer Pricing (New York: Warren Gorham & Lamont 1994, 1997); and Transfer Pricing and Valuation in Corporate Taxation (The Netherlands: Kluwer Academic Publishers 1994). Elizabeth has held a post-doctoral position at the Harvard Business School, received her PhD in economics from New York University, and earned her BA from Sarah Lawrence College.





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Ben Miller is a Partner at Bennett Thrasher, where he leads the firm's Transfer Pricing practice. He works with clients to design, implement and maintain transfer pricing policies that align strategic business objectives with local and foreign transfer pricing rules and regulations. Ben currently serves as DFK International's Vice Chair for Transfer Pricing, assisting with the international coordination and advancement of tax advisory services among member firms, and is also the co-leader of the LEA Global Transfer Pricing Special Interest Group.

Recent Matter Highlights:

- Transfer Pricing for Family Office: Designed and implemented an
 efficient, user-friendly, scalable practice to identify and allocate costs
 incurred by family office employees that are eligible to be charged to
 family-owned operating companies. The strategy significantly
 reduces the taxable loss position for the family office and the taxable
 income positions of many family-owned businesses, thereby
 providing a meaningful and ongoing tax benefit to the family.
- Transfer Pricing for Domestic Tax and Management Purposes: Designed and implemented a transfer pricing system intended to appropriately allocate the combined operating profit or loss attributable to multiple entities engaged in the supply-chain of a handset (i.e., smart phone) insurance business through the application of the RPSM. The model allows the company to effectively manage the performance of the entities involved in this supply chain in order to become more streamlined, efficient and ultimately profitable while also bring the organization into compliance with domestic transfer pricing rules.
- Global TP Documentation: Prepared transfer pricing documentation (Master File and Local Files) in accordance with the current, dynamic regulatory environments of Germany, Ireland, Singapore and the US for historical transfer pricing positions over a three year period (2018-2020) that saw two global business restructurings. When delivering the documentation to the client, Bennett Thrasher presented transfer pricing planning opportunities that reduce the group's annual income tax burden by more than our 3X of our onetime advisory professional fees.

Practice Areas

Policy design, tax consulting, international tax advisory, US inbound, US outbound, supply chains

Sector Specialisations

Consumer goods and services, industrials, pharma and life sciences, real estate, shipping, tech and telecoms

Association Memberships

DFK International, Leading Edge Alliance (LEA) Global, American Economic Association

Academic Qualifications

PhD (Economics), Georgia State University, 2008 MA (Economics), Georgia State University, 2006 BSBA (International Economics) and BA (Spanish Language), University of Florida, 2004



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Larissa concentrates her practice on US tax planning and tax controversy with an emphasis on international transactions. She has broad experience advising clients on mergers and acquisitions, restructurings and 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 in 2020 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." Larissa has been named 2021 Tax Leaders by the International Tax Review's Tax Leaders Expert Guide. Euromoney's Women in Business Law named Larissa America's Best Transfer Pricing Lawyer in 2017 and 2018, and she is consistently named as one of the World's Leading Transfer Pricing Advisors. 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 2017 list of Top Women Lawyers in California and honored with the Women of Influence award by the Silicon Valley Business Journal in 2017.

Larissa has successfully represented clients in federal tax controversies at the audit level, and in appeals, the US Tax Court and other federal courts. She was counsel in the important taxpayer victory case *Analog Devices v. Commissioner* (2016), and the successful resolution for Sanofi in *Aventis v. United States* in the US Court of Federal Claims. She is currently serving as counsel for VF Corporation/Timberland before the Tax Court in *TBL Licensing v. Commissioner.* Larissa is known for her collaborative working style and is an expert at negotiating intricate tax issues.

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 US international tax for the *Tax Notes International*. She is also on the executive committee of the International Fiscal Association and serves as President of the Women in IFA Network.

Larissa has advised on numerous noteworthy transactions, including:

- Tim Hortons in its high-profile \$11.4B inversion transaction with Burger King, which won ITR's America's M&A Deal of the Year award
- Facebook in its serial acquisition program, including in the \$2B acquisition of Oculus VR as well as the acquisitions of Redkix, Ozlo, LiveRail, Nascent Objects, Wit.ai, PrivateCore and CrowdStar
- Goldman Sachs and 13 major New York banks in their investment in Symphony Communications, which won ITR's America's Banking Tax Deal of the Year
- JPMorgan, Barclays and ICAP in their investment in Cloud9 Technologies, which was shortlisted for ITR's America's Banking Tax Deal of the Year
- Consortium of 40 leading domestic and foreign banks, including Citibank, Bank of America and Merrill Lynch in their consortium investment in R3, which won *ITR*'s America's Financing Services Tax Deal of the Year





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Mike Patton is a partner in DLA Piper's Tax practice, based in Los Angeles. He focuses his practice on international transfer pricing.

Mr Patton has assisted many multinational corporations in a variety of industries in resolving IRS or foreign tax authority transfer pricing and other tax disputes as well as in planning major cross-border transactions. He was instrumental in obtaining the world's first Advance Pricing Agreement and he has assisted clients in negotiating more than 100 APAs.

Mr Patton was previously an attorney in the IRS Chief Counsel's Office where he had national responsibility at IRS for technical issues, regulations and litigation of cases relating to transfer pricing. Mr Patton was editor of and a major contributor to the Treasury/IRS Transfer Pricing White Paper. The White Paper laid the theoretical ground work for the profit-based transfer pricing methods adopted by the US and the OECD.

Mr Patton has been named one of the Best of the Best US transfer pricing advisors as well as one of the leading Asia Pacific tax advisors by Euromoney and the Legal Media Group. He is an editorial advisory board member of Tax Management, Inc. and is the author of the BNA portfolio Treatment of Advance Pricing Agreements.

Education

University of Maryland J.D. with honors Order of the Coif Georgetown University Law Center LL.M. University of Maryland B.A.

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Guy Sanschagrin, CPA/ABV, MBA is a Principal at WTP Advisors, a boutique international tax services firm. He leads the firm's transfer pricing and valuation practice. He has extensive experience providing transfer pricing, valuation, economics, and business process improvement services. Guy's expertise includes supply chain, risk assessment, transfer pricing design, cost sharing, exit charge/intangibles valuation, APAs, OECD and local country/US documentation. He also provides business valuation for M&A transactions, buy in transactions, minority shareholder disputes and tax purposes.

Recognizing an opportunity to organize and manage the transfer pricing function for companies and their global business, Guy drove the development of TransPortal, a global transfer pricing management platform. As co-founder and CEO, Guy sets the strategic direction for TransPortal, oversees on-going product development, and provides technical transfer pricing support.

Guy is an Adjunct Professor of Transfer Pricing at the University of Minnesota's Carlson School of Management. He is a frequent speaker at seminars and webinars and is a published author on numerous transfer pricing topics, including "Review of and Insights on the IRS Transfer Pricing Examination Process" and "Assessing Value Creation for Transfer Pricing" for Tax Notes International.

Prior to joining WTP Advisors, he spent over 12 years with the Big 4. This tenure included a three-year assignment as Ernst & Young's Belgium national transfer pricing practice leader. Early in his career, Guy was an industrial engineer performing and leading dozens of business process improvement initiatives.

Education and Certifications

- MBA in Finance and International Business, University of Chicago **Booth School of Business**
- BS in Industrial Engineering, Northeastern University
- CPA, Minnesota
- Certified as Accredited in Business Valuation (ABV) by the AICPA

Civic and Professional Organizations

- AICPA, member
- Board member and past president of the Minnesota Association of Business Valuation Professionals (MABVP)
- Former Board of Directors member and Treasurer/Finance and Audit Committee Co-Chair of Global Minnesota (FKA Minnesota International Center / MIC)







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Richard Slowinski is a partner in Alston & Bird's Federal & International Tax Group. For more than 25 years, he has advised clients on tax matters, with a focus on transfer pricing. Richard's international clients span multiple industries and trust him to advise on avoiding double taxation, structuring operations in low-tax jurisdictions, and securing IRS and foreign tax authority approval on transfer pricing methodologies carefully tailored to their businesses. He is skilled in dispute resolution, including examination, appeals, advance pricing agreements (APAs), competent authority, and litigation. Richard's clients rely on his sophisticated planning and transactional advice and country-by-country reporting experience.

Recent representative matters include:

- Securing one of the few US-Swiss APAs involving IP transfers and other complex transactions.
- · Negotiating industry-leading Residual Profit Split Methods.
- Advising on tax issues in sophisticated pharmaceutical cross-border collaboration arrangements.
- Developing solutions to address transfer pricing, BEAT, and other tax issues for companies.
- Advising companies on federal tax issues related to the effect of the coronavirus pandemic on supply chains, including deductibility of expenses, shut-down issues, net operating losses, and the impact on APAs.

Practice areas

Cost-sharing arrangements, APAs, dispute resolution, MAPs/ADRs, international tax advisory

Sector specialisations

Automotive, consumer goods and services, electronics, financial services, pharma and life sciences

Association memberships

- United States Council for International Business (USCIB)
- · American Bar Association, Transfer Pricing Subcommittee
- Maryland State Bar Association
- · Bar Association of the District of Columbia
- Catholic University of America, Columbus School of Law, board of visitors
- · Bucknell University, Parents Association, board of directors

Academic qualifications

- Georgetown University (LL.M., 1993)
- The Catholic University of America (J.D., 1991)
- Bucknell University (B.A., 1987)

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THE GUIDE TO THE WORLD'S LEADING FEMALE FINANCIAL AND CORPORATE LAWYERS

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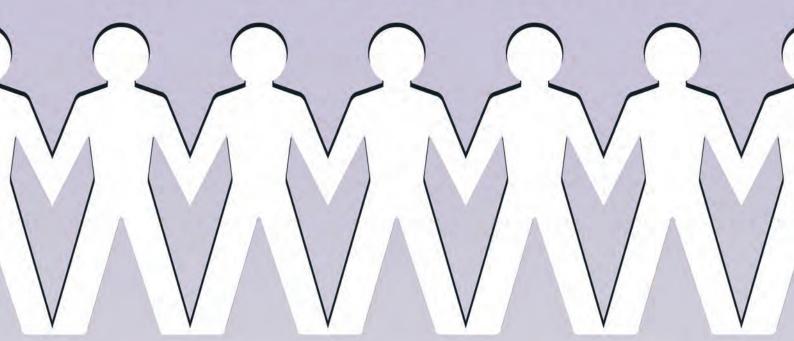
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