2014 global transfer pricing tax authority survey

Perspectives, interpretations and regulatory change
We are pleased to introduce our 2014 global transfer pricing tax authority survey. As always, it is a pleasure to provide the insights of tax authorities in a wide range of transfer pricing jurisdictions. We trust you will find this survey instructive and of practical use in dealing with your organization’s transfer pricing issues in the countries represented here. Please do not hesitate to contact us or your current EY transfer pricing contact with any feedback or questions.

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Executive summary

1. Tax authorities are continuing to increase their transfer pricing resources, which in turn are leading to a general increase in the number of inquiries and audits. No individual tax authority surveyed has reduced its resources over the last two years.

2. A key change of focus has been on business restructurings, as we see the specific measures introduced in the 2010 edition of the Organisation for Economic Co-operation and Development’s (OECD) transfer pricing guidelines becoming part of the audit cycle.

3. Industries that are attracting particular attention from tax authorities include the traditional sectors of pharmaceuticals and automotive on a global basis, with the financial services sector a key focus area in Europe, and natural resources becoming increasingly targeted in territories possessing these resources.

4. While the OECD’s base erosion and profit shifting (BEPS) framework has naturally not as yet formally been a key audit factor, it is an increasing influence on and reflective of the approach of tax authorities. In particular, its greater demands for transparency, increased information and assessing the performance of key activities related to the generation of profits can indirectly be seen as codifying the current trends of tax authorities regarding the increased use of multi-sided profit- and risk-based assessments when selecting and assessing audit cases.

5. Tax authorities are continuing to push for the use of local country comparables with respect to benchmarking analyses, although wider regional benchmarking sets are still accepted where local comparables cannot be readily identified.

6. Transfer pricing specific penalties are now both more widespread and stringent; however, they can still usually be reduced should the taxpayer possess local transfer pricing documentation.

7. Formal advance pricing arrangement programs are now available in an increased number of countries, although the proportional uptake among taxpayers in these countries has not been high yet due to factors such as the infancy of the program or, in some instances, significant acceptance barriers, while time frames for completion continue to remain long.

8. Where transfer pricing adjustments are imposed, the mutual agreement procedure program is used widely within Europe as well as typically in more mature tax jurisdictions. Its effectiveness is, however, still limited in many emerging countries, in particular in Latin America, therefore maintaining the risk of double taxation.

9. The use of separate importation prices between transfer pricing and customs valuation is still the norm in many jurisdictions, and while there is a gradual increase in information sharing and integrated audits, this is still not common practice.
Key recommendations

Taxpayers should review that the outcomes from their transfer pricing arrangements are leading to commercially realistic outcomes, in particular reflecting the location of the performance of key value driving activities.

Self-assessing the ability to be able to readily respond to the increased likelihood of challenge in lieu of the greater levels of resources at the disposal of tax authorities, and greater number of territories possessing transfer pricing rules, will allow for appropriate remediation actions to be put in place as necessary.

Possessing adequate documentation and other forms of analyses are still the key first defense barrier. These should, however, be considered in the paradigm of the approaches outlined in BEPS Action Plans 8 and 13, which align with the increasing trend toward requests for multisided analysis and other value chain and profit-related information, and which could potentially become codified in some territories as early as 2016.

This makes it more critical for the tax function to be part of the discussion regarding business change, in particular, given the focus of tax authorities on this area. The transfer pricing implications of such changes should be assessed accordingly, including ensuring substance alignment, as well as considering responses to tax authority scrutiny.

The use of pre-emptive defense strategies, such as APAs or other formal rulings, is still the best approach to achieve certainty, and their overall use will continue to rise as more and more territories introduce formal APA programs.
When supporters of a football team see their manager presented with a host of expensive new signings, they expect instant success. However, it can sometimes take the manager a season or two to integrate the new stars into the team and identify the best way of deploying them. Once the manager has worked this out, the team starts to perform well.

Something similar has been happening in the world of transfer pricing. Over the last few years, national and supranational bodies have responded to public pressure by drawing up a host of potent new laws and guidelines designed to shore up their tax base.

Until now, tax authorities typically have not fully utilised the capabilities available to them under these new laws and guidelines as they transitioned from prior approaches. But, according to our survey, things are now changing. As a result, the whistle has sounded on the next phase of the series involving tax authorities and taxpayers.

Corporate taxpayers face a stronger transfer pricing challenge from empowered authorities

Since the global financial crisis, governments around the world have seen public finances come under renewed pressure. As governments took hard tax and spending decisions, media scrutiny of the tax contribution made by businesses intensified. Many media outlets have focused on transfer pricing, a crucial area of the tax landscape in today’s globalized business world. Some have singed out companies that they perceive to have been pushing the boundaries on transfer pricing.

In turn, legislatures around the world have turned their attention to the issue. The UK Parliament’s Public Accounts Committee (PAC) is a prime example of this, having held hearings on transfer pricing, with similar sessions have taken place in other countries. And scrutiny does not only come from the media and national legislatures. Supranational bodies such as the OECD, G20 and the EU are having a louder say too.

In short, whereas transfer pricing has long been a prominent issue for tax directors and some officials in tax authorities and government departments, it is now firmly on the agenda of world leaders.

The result is that taxpayers’ transfer pricing arrangements have come under closer examination than ever before. In such a climate, the reputational risks of getting transfer pricing wrong are very serious. That is why EY’s latest Tax risk and controversy survey found that transfer pricing is the number one tax controversy issue for businesses today.

So, what specific changes are taking place in the transfer pricing landscape?

The European Commission is examining whether some decisions by tax authorities in Ireland, the Netherlands and Luxembourg comply with EU rules on state aid. Scrutiny has been magnified by the advance of the BEPS agenda, led by the OECD.

The 2010 OECD Transfer Pricing Guidelines are being implemented or closely followed by legislatures around the world. As a result, taxpayers are starting to feel the effects of these new pronouncements. The most prominent example is the perception that business restructurings are being used as a trigger for the reduction of tax payments in a number of countries. Following a time lag after the publication of the guidelines, tax authorities are now mobilizing on the issue. Businesses must be prepared for more scrutiny of their restructurings. Financing transactions, even outside the financial services industry, are receiving similar attention.

There has also been an increase in the number of tax policies introduced with the purpose of increasing the local tax base, especially in the area of outbound commodities. This applies to mineral-rich countries including Chile, Colombia, Argentina, Australia and Indonesia, and is further evidenced in the focus from a transfer pricing perspective on this sector in these countries along with other natural resource rich countries such as Canada, Mexico, Norway, Russia and Kazakhstan.

Meanwhile, draft UN transfer pricing guidance was released in 2011. This covers significant and controversial issues such as location savings, and applies to all emerging markets. Prominent rapid-growth markets such as China, India, Brazil and South Africa have already expressed their position on the guidance.
Interaction with the BEPS Agenda

While the Organisation for Economic Co-operation and Development’s project on Base Erosion and Profit Shifting is yet to be finalized, the Action Plan materials released to date are already changing the approach of tax enforcement authorities. Examiners are asking more about the holistic business environment, in particular by seeking to understand the value-driving activities across a group. They are also increasingly performing multi-sided profit and risk-based assessments when selecting and assessing audit cases.

This increased focus by tax authorities on the location of value-driving activities and multi-sided profit assessments is aligned with the proposed Action Plan 8 on Intangibles. Action Plan 8 currently focuses on allocating intangibles-related returns to the performance of the key value-driving development and exploitation activities. This means that only entities that actively control the value driving development and exploitation functions relevant to intangible assets are entitled to claim profits linked to them. Entities that serve more passive functions only, such as financing or legal ownership, would not.

The increase in general information requests also aligns with the requirements outlined to date within Action 13 regarding Transfer Pricing Documentation and Country-by-Country Reporting. In this respect, the drive for increased transparency, information and the assessment of local profit outcomes against those across the MNE’s value chain indirectly codifies these current trends. Providing this information will quickly become the norm once Action 13 is implemented at the national level. It will be critical that companies effectively manage these requirements, especially as transfer pricing documentation continues to remain the first line of defense in an examination, as well as typically being necessary to mitigate penalties in the event of an adjustment. Such changes could come into place as early as 2016, depending on the speed at which governments look to incorporate the relevant BEPS Action Plans into local country legislation.
The pattern of play
Against the changing regulatory backdrop, our survey reveals some significant trends:

- There has been a clear increase in the resources that governments around the world have provided for tax authorities to enforce transfer pricing policies. This trend is particularly pronounced in emerging countries, especially in Asia, where transfer pricing rules tend to be relatively immature.

- The extra resources have meant that there has been a general increase in the number of tax inquiries and audits, and in the number of advanced pricing arrangements (APAs) being completed.

- From a transactional perspective, business restructurings are now a key driver of tax authority scrutiny - especially in the location where the restructuring has occurred. This is a relatively new area of transfer pricing analysis and has lagged behind the OECD guidance on this subject.

- Certain industries in particular have attracted attention from tax authorities. These include pharmaceuticals, automotive and, especially in some EU jurisdictions, financial services.

- Tax authorities are continuing to increase their use of profit- and risk-based assessments when selecting cases to audit. This form of assessment mirrors the trend toward the use of the transactional net margin method (TNMM) as a way of corroborating profitability assessments made by other methods. To date, TNMM has been used for this purpose increasingly frequently in Australia and New Zealand.

- When undertaking benchmarking, authorities have started to push for local country comparables. However, in practice, such comparables are difficult to find. In such circumstances, the trend is to default to a wider regional benchmarking set. This is clearly preferable to the use by tax authorities of secret comparables. Although such use continues to occur, fortunately it is now less frequent than it was a decade ago.

- Previously, where penalty regimes applied to transfer pricing adjustments, sanctions were relatively low. Typical penalties are now more stringent, but they can be reduced should taxpayers maintain robust local transfer pricing documentation.

- Despite the formal introduction of APA programs in a number of emerging countries, the uptake of them among taxpayers has not been high. In jurisdictions where they have been introduced recently, it is clear that the APAs are not tried, tested or, apparently, trusted. One country that has bucked this trend is India, with huge uptake recently. Its example demonstrates that APAs can work in new markets through implementing measures that build the confidence of taxpayers regarding how the program is to be applied. In other jurisdictions, where APAs have been more firmly established, the increase in uptake is limited by the significant barriers that need to be overcome in order to be accepted onto an APA program. For example, there must be a high level of complexity and the transaction cannot be seen as eroding the tax base.

- An alternative to APAs is the mutual agreement procedure (MAP). However, while this program is used widely in parts of Europe, its effectiveness is limited in many emerging countries.

- A combination of these factors, and the still continued propensity to settle matters outside of court, has seen litigation remain a last option measure.

- There is still not much convergence within most countries between transfer prices and customs valuations. While there is some informal sharing and integrated audits, this is not common practice. The use of separate importation prices is still the norm. Since both codes are predicated on the arm's length principle, the divergence of approach between the two within an authority can be inconsistent and unacceptable.
So, the landscape has changed and new trends have emerged. What practical action can taxpayers take in response?

- Get ready. Be proactive in your response to scrutiny. Given the greater volume of information requests, and the often short timeframes involved, it helps to be quick off the mark. Assess risks yourself, particularly when considering transactions, such as business restructurings, that attract special attention from tax authorities.

- Examine your business. Understand what changes it is planning and what the transfer pricing impacts could be. Monitor whether existing transfer pricing models are being adhered to from an operational perspective, or whether they need to be adapted.

- Respond. Transparency demands are mounting. In the BEPS-influenced environment, you will need to provide a greater level of transparency about your global transfer pricing model and the results that it generates. Assess where risks may lie and put corrections in place where required.

- Engage. You can enhance pre-emptive defense strategies in key markets by engaging with local tax authorities. Consider bilateral and unilateral APAs, and other formal rulings.

- Focus. The performance of multi-sided analyses, including a focus on the returns on intangibles, is becoming clear. Ensure that pricing analyses are robust and focus on the control of risks relating to the ownership of intangibles and other key activities that drive value.
Our survey points to some important developments on the horizon:

• The introduction of the business restructurings chapter and proposed intangibles chapter in the OECD Guidelines are beginning to have an impact. Early signs suggest that, in the next couple of years, tax authorities will increase their activity in BEPS-related areas.

• There will be a mandatory requirement for much more transparency on the location of companies’ profits, under country-by-country reporting.

• Transparency will drive the need for multi-sided transfer pricing analysis and documentation. Such analysis and documentation does not just describe the activity in one country. It describes the whole of the value chain and defends the split of profits, as opposed to just the profitability of a single entity in a certain country.

• The changing view of tax authorities toward the need for multi-sided analysis, complete disclosure and the defense of the allocation of profits across the value chain will likely lead to the greater use of profit splits.

• More focus on the challenges of transfer pricing of financial transactions, even for non-financial institutions.

• Once the new APA regimes become tried, tested and trusted, many more companies will look to enter APA programs in a bid to manage uncertainty in emerging markets.
2014 global transfer pricing tax authority survey

Americas jurisdictions
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Resources the taxing authority is devoting to transfer pricing

Centralized consulting and transfer pricing audit teams handle transfer pricing reviews in Argentina. The head of the consulting team and the two supervisors of the transfer pricing audit teams are dedicated to transfer pricing. There have been no significant increases in the number of resources (head count) devoted to transfer pricing in recent years. Notwithstanding, taxpayers have been imposed with the burden of filing a number of additional transfer pricing returns.

Industry focus

The industries currently under specific transfer pricing focus are the automotive, oil and gas, and pharmaceuticals industries, as well as the export of commodities (mainly grain and oil and gas). Factors taken into account in identifying specific industries for scrutiny include the industry’s profitability.

Geographic focus

Historically, the Argentine tax authority did not specifically target transactions with certain jurisdictions for transfer pricing reviews. However, the tax authority has started to focus on transactions with low-tax jurisdictions.

Types of transactions under scrutiny

Tangible goods transactions are the main focus of transfer pricing reviews. In particular, import and export transactions through international intermediaries have been the focus of recent transfer pricing audits. Also, services received and royalty payments have been under scrutiny.

Transfer pricing penalties

The transfer pricing penalty regime is included in the legal procedure law “Ley de Procedimiento Tributario.” In the last two years, transfer pricing penalties have been assessed in 75% to 100% of all transfer pricing adjustments. This number is expected to remain approximately the same in the next two years. The average penalty rate (as a percentage of the additional tax) in this period has been over 100%. However, under the 2003 tax reform, the penalties related to transfer pricing adjustments for tax omitted currently fall in a range of 100% to 400%.

Audit case selection

The selection of audit cases is typically driven by factors such as the following:

- The (low) profitability of the taxpayer
- Previous transfer pricing audits of the taxpayer
- The nature of the related-party transactions undertaken by the taxpayer
- The volume of the related-party transactions undertaken by the taxpayer
- The presence of a foreign intermediary in the imports or exports with a foreign related party

Indirect and customs tax

In Argentina, the transfer pricing enforcement resources sometimes work with customs authorities in an integrated way. It is not mandatory to use the same transfer price for both corporate direct tax and indirect tax purposes.

Comparable data

The Argentine tax authority allows for the use of foreign comparables along with local comparables. During audits, as part of the comparability analysis, the tax authority requires a copy of the full financial statements of the comparable companies selected by the taxpayer. In practice, the selection of comparable companies in certain countries is limited due to the lack of full financial statements.

In presenting the comparable data, the Argentine tax authority requires that the local entity’s financial year be compared with the three-year average of the comparable companies, including the usual asset intensity adjustments (e.g., accounts receivable, inventory and accounts payable). Under particular circumstances, the three-year average of the tested party, including asset intensity adjustments, may also be considered. The interquartile range (with a particular calculation) is the mandatory method for determining the allowable arm’s-length range. There is no mandatory requirement to use the weighted average as opposed to the simple average. A brief explanation of the appropriate profit level indicator is required, but there are no mandatory requirements with respect to pooling or averaging of financial data.

Transfer pricing methods

The Argentine transfer pricing regulations include a best method rule, under which the most appropriate method is that which satisfies the following conditions:

- It is most compatible with the corporate and business structure
- It has the best quality and quantity of information available for adequate justification and application
- It has the most adequate comparability level between related-party and unrelated-party transactions or between the companies under review
- It requires the smallest number of adjustments to eliminate comparability differences
In practice, the tax authority usually uses the TNMM for all transactions except for interest or commodities transactions. For commodities transactions, a specific “sixth-paragraph method” or the comparable uncontrolled prices (CUP) method is used. During the 2003 tax reforms, the sixth-paragraph method was introduced to analyze transactions involving the export of goods with a publicly known price on transparent markets, provided that the requirements listed in ITL Section 15, paragraph 8, are not met. Specifically, in the case of exports to related entities (involving grains, oilseeds and other products of the land; oil and gas and their derivatives; and, in general, goods with publicly known quotations on transparent markets) in which an international intermediary other than the intended recipient of the goods is involved, the best method would be the use of the quotation price that was mentioned on the last day the merchandise was loaded. If the agreed-upon price is higher, this price should be analyzed further. The sixth-paragraph method will not be applicable if and when the international intermediary complies with all of the following (cumulative) requirements, also referenced as the “a-b-c test”:

a. The international intermediary demonstrates effective presence in the jurisdiction of residence, having a commercial office or premises where the business is managed, complying with the legal inscription and filing of audited balance sheets. The assets, risks and functions undertaken by the international intermediary are adequate in view of its commercial operations.
b. The international intermediary’s main business does not consist of receiving passive income or the trading of goods to or from the Argentine Republic or with other members of the Economic Group (e.g., MNE).
c. The international intermediary’s cross-border trade with other members of the Economic Group (e.g., MNE) does not exceed 30% of the total amount (value) of annual transactions conducted by the international intermediary.

The Argentine tax authority considers the CPM inappropriate. Also, the acceptability of the residual profit split method is unknown. Under the first full transfer pricing rules (December 1998), the residual profit split method was included, but in the following tax reform (December 1999), it was deleted without comment. Therefore, it is not clear whether this method is currently available for application.

Although the transfer pricing rules allow the executive power to create other transfer pricing methods, thus far no new methods have been created.

Advance pricing agreements (APAs)
The Argentine tax authority does not have a formal APA program.

Mutual agreement procedures (MAPs)
As per the OECD Country MAP Statistics, no cases were received in 2010, and one transfer pricing competent authority case was received in 2009. Before 2009, only two cases were received. As per the latest available information, all three cases remained unresolved.

Yield/performance of transfer pricing reviews
Generally, the effectiveness of transfer pricing reviews is measured by an increased tax yield and the percentage of review cases where an adjustment is made to taxpayer income. No statistics are currently published on the yield of transfer pricing reviews.

Transfer pricing disputes
There has been a recent increase in tax controversy cases in Argentina. Several ongoing cases are currently undergoing domestic appeal and litigation. Jurisprudence exists in more than a dozen cases settled at the administrative level.

Current influences on transfer pricing
Although OECD rules are not mandatory in Argentina, there has been a tendency in recent court cases to consider the OECD Transfer Pricing Guidelines as interpretive of or complementary to the Argentine transfer pricing regulations. Additionally, the tax authority tends to use the OECD Transfer Pricing Guidelines when there are no specific provisions in the Argentine regulations. Formally, there have been no changes in local transfer pricing rules based on recent developments such as base erosion and profit shifting; notwithstanding, certain regulations issued by tax authorities have cited this initiative to ground the resolutions.
Resources the taxing authority is devoting to transfer pricing

A specialized division at the Brazilian federal tax authority, Special Delegation for Largest Taxpayers (DEMAC) in São Paulo, handles transfer pricing reviews. Currently, there are three offices in Brazil (São Paulo, Rio de Janeiro and Belo Horizonte) with transfer pricing resources. All transfer pricing resources are based in DEMAC. A fourth office located in the south of Brazil may be established in the future. The number of transfer pricing resources is expected to increase slightly over the next two years.

Most of the transfer pricing resources are specialists, but based on the constitutional entrance requirements, the majority have a broad background and are not necessarily tax or transfer pricing specialists before starting their assignments. The background of the resources varies with most having a scientific background.

The Brazilian tax authorities do not rely on external resources such as consultants, industry specialists and expert witnesses and do not participate in formal training programs. However, the tax authorities interact with other tax authorities in the framework of the UN; OECD; or the Brazil, Russia, India, China and South America (BRICS) tax authorities meetings.

The recent BEPS and OECD intangibles initiatives have not resulted in increased resource commitments.

Industry focus

Factors such as industry profitability and significant industry activities in Brazil are taken into account in identifying specific industries for scrutiny. The tax authority is currently focusing on the automotive, banking and capital markets, consumer products, mining and metals, oil and gas, pharmaceutical, technology and telecommunication sectors. The list of industries under scrutiny is not widely communicated to taxpayers.

Geographic focus

Geographic considerations do not drive the selection of taxpayers for transfer pricing reviews. However, Brazilian transfer pricing rules apply to transactions with unrelated third parties located in low-tax jurisdictions. The top counterparty jurisdictions are the United States, South Korea, Switzerland, the Netherlands and Singapore. The list is driven by transaction volume per trading partner and main inbound investors.

Types of transactions under scrutiny

Transactions involving tangible goods (60% of the total caseload), intragroup services (20% of the total caseload), cost-sharing or cost-pooling arrangements (10% of the current caseload) and cross-border lease agreements (10% of the total caseload) are currently specifically targeted for transfer pricing reviews. In addition to the above transactions, tax authorities have also started targeting business restructurings and financial transactions.

Transfer pricing penalties

Brazilian law does not provide for the imposition of specific transfer pricing penalties. In recent years, penalties have been applied in 75% to 100% of cases involving transfer pricing adjustments. Where penalties are imposed, they tend to amount to 75% of the additional tax, but in some cases, this has been reduced to 25%.

Audit case selection

The selection for transfer pricing audit is made by DEMAC. A variety of considerations are taken into account in determining which taxpayers should be audited, including the following:

- The volume of related-party transactions undertaken by the taxpayer
- Inconsistency between information provided, such as customs declarations, electronically filed financial statements and SISCOSERV or SISCOMEX
- The standard audit cycle program
- The nature of the related-party transaction undertaken by the taxpayer
- Business restructurings
- Previous tax audits of the taxpayer

Indirect and customs tax

The work of transfer pricing enforcement resources is integrated (to the extent of sharing information) with that of indirect tax specialists. Tax authorities have access to all customs declarations (electronically filed). Verifying this information is the first step of any transfer pricing audit. Coordinated audit processes are rarely conducted with customs authorities.

There is no requirement to apply the same base for customs or indirect tax and transfer pricing purposes given the differences between the rules. As part of a transfer pricing audit, the transfer pricing auditor always verifies the information included in the corporate income tax return and transfer pricing calculation with the information included in the SISCOMEX database (which includes the information filed with the customs authorities).
Comparable data

Brazilian transfer pricing rules have no regard to the concept of comparable data or benchmarking of an arm’s-length result. The margin or markups are generally determined by law. However, the Brazilian transfer pricing rules include an “unrelated market price approach” where a price comparison for the same or similar product is accepted. The method, albeit similar to the CUP/CUT as described in the OECD Transfer Pricing Guidelines, has underlying differences that need to be considered when applying the method. This method, however, can provide alignment with global intercompany transfer pricing policies considering the high statutory margins when applying the other methods.

Transfer pricing methods

There is no hierarchy of transfer pricing methods. The taxpayer is free to choose any of the methods provided by the Brazilian legislation if the required information or documentation is available. Since 2013, the transfer pricing method cannot be changed during a tax audit unless the method is rejected by the tax authorities due to a lack of supporting documentation. According to the Brazilian rules, comparable uncontrolled price (PIC), cost plus and resale price are the only acceptable methods.

For transactions involving products considered commodities for Brazilian transfer pricing purposes, only the PECEX (export) and PCI (import) are permitted methods. These methods are intended to be a simplified CUT method adopted by the OECD Guidelines.

Interest expenses and interest income since 2013 are subject to a specific transfer pricing method. The maximum deductible expense or the minimum taxable income is determined by reference to market rates for Brazilian government bonds or LIBOR plus a spread to be determined by the tax authorities based on the underlying currency and the term of the loan. Loans in USD or BRL and fixed interest rate are subject to the comparable respective market rate for Brazilian government bonds with the same currency whereas all other agreements are subject to the 6-month USD LIBOR plus spread. The current spread is 3.5%.

Advance pricing agreements (APAs)

Brazil does not have a formal APA program. However, in certain cases, a domestic ruling regarding the interpretation of the law is possible.

Mutual agreement procedures (MAPs)

Despite the fact that Brazil has signed a number of conventions for the avoidance of double taxation, the Brazilian internal legislation lacks regulations for using MAPs. This impairs communication with tax authorities from other countries. As a result, no MAP has ever been implemented in Brazil.

Yield/performance of transfer pricing reviews

There is currently no information available on yield or performance of transfer pricing reviews.

Transfer pricing disputes

Currently, there are approximately 500 cases pending litigation. There is no information available regarding appeals or upcoming cases.

Current influences on transfer pricing

Brazil recently introduced significant changes to the Brazilian transfer price legislation, which can be seen as a step toward a more economic approach. For example, where the resale minus method is applied on import transactions, the necessary gross margin is now determined by industrial sector. Another relevant change includes the treatment of related-party interest income and expenses, as mentioned earlier.

The most relevant change in light of BEPS, although not necessarily triggered by the initiative, has been the recent change to the transfer pricing rules for the import or export of commodities. Recently, the Brazilian tax authorities have issued technical interpretations covering domestic and international cost-sharing agreements and for the first time officially accepted the concept of cost-sharing agreements. In addition, other technical interpretations dealt with the application of tax treaties. As a result of these technical interpretations, additional tax planning strategies might be available to facilitate tax-efficient cost-sharing arrangements.
Resources the taxing authority is devoting to transfer pricing

The Canada Revenue Agency (CRA) administers taxes in Canada. Most of the CRA’s specialized transfer pricing resources are centrally located in the International Tax Division of the International and Large Business Directorate in Ottawa. The CRA also has specific transfer pricing resources dedicated to the resolution of double taxation through competent authority assistance and APAs in the Competent Authority Services Branch. On occasion, external experts have been consulted during the appeals and audit stage. However, this activity is primarily undertaken at the appeals and court stages.

Industry focus

The CRA has Industry Coordinating Offices that focus on the pharmaceuticals, oil and gas, financial institutions and automotive industries. While the CRA does not generally target specific industries, factors including whether the industry has significant activities in Canada (or within certain parts of the country) and the profitability of the industry are nevertheless important in driving target industry selection. Although the CRA does not officially communicate a list of priority industries to taxpayers, it does conduct outreach programs through which general comments on planning and resources are provided to the international tax community.

Geographic focus

Geographic location is not a driver for the selection of taxpayers for review. However, the CRA’s risk assessment model typically involves a review of various factors, including the involvement of low-tax jurisdictions as counterparties to the taxpayer’s related-party transactions. In current transfer pricing reviews, the top five counterparty jurisdictions are the United States, the United Kingdom, Barbados, British Virgin Islands and Germany.

Types of transactions under scrutiny

The CRA does not generally target specific transfer pricing transactions. However, the CRA’s risk assessment model typically involves a review of various factors, including the types of transactions undertaken.

Transfer pricing penalties

Subsection 247(3) of the Income Tax Act (ITA) provides legislative authority to impose transfer pricing documentation penalties. The CRA has set up an internal Transfer Pricing Review Committee (TPRC) to help ensure the consistent application of transfer pricing documentation penalties. The TPRC decides to apply penalties based on whether a taxpayer has made reasonable efforts to determine and use arm’s-length prices or allocations, as described under Subsection 247(4) of the ITA.

Since the introduction of transfer pricing penalties, penalties have been applied in more than 50% of cases where the transfer pricing adjustments breached a de minimis threshold of CAD5 million or 10% of the taxpayer’s gross revenue. This represents less than 3% of all transfer pricing adjustments proposed by the CRA. Where penalties are imposed, they are applied at a rate of 10% of the transfer pricing income adjustment.

The number of transfer pricing penalties imposed is expected to decline over the next two years, as the CRA expects a decrease in the rate of noncompliance with Canadian documentation rules. The CRA’s previous compliance efforts have led to an increase in voluntary compliance.

Audit case selection

Based on publicly available information from the CRA, for large businesses (those with annual revenues of CAD250 million or greater) the CRA has adopted a new risk-based Approach to Large Business Compliance (ALBC) to guide its overall audit selection and allocation of resources to files. Under this new approach, each large taxpayer is risk assessed by the CRA using internal information and a National Risk Assessment Model (NRAM) that considers the following main risk factors in assessing the risk for each large business:
\begin{itemize}
  \item Prior audit history
  \item Corporate governance (Tax/Audit Committee, oversight)
  \item Corporate structure (controls, etc.)
  \item Openness and transparency (relationship with the CRA)
  \item Participation in aggressive tax planning schemes
  \item Unusual and/or complex transactions
  \item Major acquisitions or disposals
  \item Industry sector issues
  \item International transactions
\end{itemize}

**Indirect and customs tax**

Based on our prior experience, there is a low level of interaction with indirect tax and customs agencies.

**Comparable data**

Based on our experience, local comparables are preferred; however, North American comparables are widely used.

**Transfer pricing methods**

The 2010 OECD Transfer Pricing Guidelines suggest that there is no strict hierarchy of transfer pricing methods. Rather, the focus should be on the quality of available data and, consequently, what the most appropriate method will be. At the same time, the OECD Transfer Pricing Guidelines continue to suggest that there is a natural hierarchy of methods, as referred to in Paragraph 2.3. The CRA agrees that the method that will provide the most direct view of arm’s-length behavior and pricing should be applied. The CRA’s Information Circular IC87-2R has stated that only a natural hierarchy exists within the methods. Both IC87-2R and Paragraph 2.3 of the 2010 OECD Transfer Pricing Guidelines state that the traditional transaction methods (e.g., CUP method or resale price method (RPM)) are preferred to a transactional profit method.

**Advance pricing agreements (APAs)**

A formal program is available for both unilateral and bilateral APAs. Unilateral APAs are generally considered for taxpayer transactions with countries with which Canada does not have a tax treaty or with tax treaty partner countries that do not have an APA program. Bilateral APAs are encouraged in all other cases as they resolve potential double taxation issues.

Access to the APA program is discretionary. Acceptance depends on various factors, including the following:

\begin{itemize}
  \item The suitability of the proposed covered transactions under the program (for example, business restructuring transactions typically would not be accepted)
  \item The taxpayer’s rationale and support for the characterization of the transactions when relevant
  \item The proposed transfer pricing methodology and the taxpayer’s willingness to consider alternative characterizations and methodologies
\end{itemize}

Given the discretionary nature of the service, the CRA may not be able to accommodate all APA requests because its ability to provide the service is based on the availability of resources.

During fiscal year 2012-13, 24 prefiling meeting requests were received, 21 applicants were accepted into the APA program and 99 applications were in process. Of the current caseload, the vast majority (90%) were bilateral APAs and the rest were unilateral. The majority of the current caseload involved the United States, Japan and the United Kingdom.

The average time required to complete a bilateral APA is 48.4 months, and the average time for a unilateral APA is 32.9 months. EY Canada’s experience is that the APA process is often lengthy because of the following factors:

\begin{itemize}
  \item Increase in complexity and number of transactions covered by the average APA since the CRA implemented the program
  \item Delays caused by the requirement for additional taxpayer information at the due diligence or negotiation stage
  \item Delays in exchange of position papers as one competent authority may take longer than the other
  \item Significantly longer time to complete a case relating to the finalization of post-settlement documentation (paperwork between competent authorities) and also final agreement by the taxpayers to the agreement achieved between the respective tax authorities (almost one-third of total completion time)
\end{itemize}

The CRA has increased due diligence efforts prior to accepting a transaction into the APA program. For the program to be successful, unfettered cooperation of taxpayers and free flow of information are required. To use existing resources more efficiently, the CRA is encouraging taxpayers, at the profile stage, to provide a more thorough explanation of proposed transactions and corresponding transfer pricing methodologies in order for the CRA to evaluate the transactions’ propriety. This increased due diligence asks for more information on certain types of transactions, including transactions involving intangible assets. This information is requested so that the CRA can make an informed decision about whether to accept or reject an APA request. The CRA is providing more feedback during and after the profile meeting with the intention of helping taxpayers come up with a balanced and complete submission.
Mutual agreement procedures (MAPs)
During fiscal year 2012-13, 107 competent authority requests were received and 98 cases related to transfer pricing adjustments were completed. In fiscal year 2012-13, 114 cases were negotiated, of which 105 cases of taxpayers who sought assistance obtained full relief from double taxation. Two cases resulted in partial relief, while the remaining seven cases did not obtain relief.
There are no special provisions for the payment of taxes and interest while the mutual agreement process is under way. With respect to practices during the MAP process, the scope of Canada's tax conventions does not extend to cover interest and penalties. As a result, the Canadian competent authority does not waive or negotiate any portion of the interest and penalties resulting from reassessments or adjustments.
In general, collection action on unpaid taxes, interest and penalties may commence 90 days after the date of a taxpayer’s (re)assessment. If a taxpayer files a Notice of Objection, the CRA must further defer collection until 90 days after the Minister has either confirmed or varied the (re)assessment. If the taxpayer then files an appeal with the Tax Court of Canada, the CRA must defer collection action until the court renders a decision.
However, a “large corporation,” as defined under Subsection 225.1(8) of the ITA, is required to pay one-half of the assessed amount within 90 days of the date of its assessment. If the large corporation does not file a protective appeal or objection, the remaining balance of 50% must be paid.

Yield/performance of transfer pricing reviews
The effectiveness of transfer pricing reviews is reflected by the level of voluntary compliance observed. This voluntary compliance with the ITA and Canadian tax conventions is the overall goal of the CRA.

Transfer pricing disputes
There were 209 ongoing MAP requests related to transfer pricing adjustments as of 1 April 2013. The CRA’s tracking system does not identify cases held in abeyance at the competent authority when taxpayers pursue their disputes under domestic law. Cases in arbitration are included under MAP statistics because arbitration is a method to resolve double tax issues.
The CRA does not publish information relating to MAP cases with specific treaty partners (including those MAP cases that proceed to arbitration). Furthermore, the confidentiality provisions of the ITA and tax treaties prevent the provision of information that may tend to reveal the identity of taxpayers or the specific cases that have been negotiated with treaty partners.

Current influence on transfer pricing
While additional policies or guidance may be issued by the CRA in the coming years, these are expected to be largely consistent with OECD guidance.
Resources the taxing authority is devoting to transfer pricing

There is a centralized transfer pricing group within the International Audit Department (IAD) of the Servicio de Impuestos Internos (SII) that is responsible for the design, implementation and coordination of transfer pricing audits. This group works together with the audit groups of all the regional offices of the SII in the execution of transfer pricing audits. The transfer pricing group based in the central unit currently has six resources. There is also a transfer pricing group of large taxpayers composed of five resources in the regional office. The number of transfer pricing resources has not increased during the past two years.

There are four transfer pricing specialists and seven professionals with relevant experience in transfer pricing. The full-time employees (FTEs) currently involved in transfer pricing examinations are economists (50%), accountants (42%) and lawyers (8%).

The transfer pricing group of the IAD is composed of specialists with experience in the Big Four and several professionals with experience in tax and other related topics. In the last two years, the specialists have been training other professionals within the transfer pricing groups of the SII. As a result, the level of transfer pricing knowledge within the SII has changed significantly during the last two years.

The SII does not rely on external resources such as consultants, industry specialists and expert witnesses. The transfer pricing groups receive training from other tax authorities, such as those of Spain and Mexico. They also attend training courses conducted by the OECD. The recent BEPS and OECD intangibles initiatives have resulted in increased resource commitments.

Industry focus

The industries currently under specific transfer pricing focus are the asset management, automotive, consumer products, mining and metals, pharmaceuticals, chemicals, paper, forest products, winery and food industries. The factors driving the selection of these industries are a significant level of activity in Chile, the importance of intangible property to the industry and industry profitability. The list of industries under scrutiny is not widely communicated to taxpayers and is reviewed three to four times a year.

Geographic focus

The tax authority targets transactions involving Chile's major trading partners, perceived low-tax jurisdictions and domestically headquartered companies. Transactions with certain other jurisdictions are systematically selected for transfer pricing audits based on practical considerations such as low profitability, risks in financial transactions and services, and risks in business restructuring and intangibles.

Types of transactions under scrutiny

Transfer pricing reviews focus on tangible goods, intellectual property, intragroup services, financial transactions, cost-sharing or cost-pooling arrangements and business restructurings.

Transfer pricing penalties

Chile has a specific transfer pricing penalty regime. When the tax authority has made a transfer pricing adjustment, the applicable penalty is 5% of the adjustment, plus interest accrued during the period adjusted. Additionally, when taxpayers fail to file the transfer pricing return, the penalty varies between 10 and 50 tributary units (approximately between USD8,700 and USD43,500). There are no processes in place to ensure consistent application of transfer pricing penalties. Over the course of the next two years, the assessment of penalties is expected to increase. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection

Transfer pricing audit cases are selected by the transfer pricing group of the IAD, which is part of the Audit and Compliance Directorate.

Profitability; business restructurings; a risk-based assessment by the tax authority; nature and volume of related-party transactions undertaken by the taxpayer; previous audits of the taxpayer; and VAT, employment, customs or other indirect tax reviews have all been relevant factors in initiating a transfer pricing review.

Indirect and customs tax

Transfer pricing enforcement resources do not work in an integrated way with indirect tax specialists. There is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data

The tax authorities accept local and foreign (regional) comparables, as long as comparability is established.

In preparing and presenting comparable data, there are specific requirements in relation to the number of years of financial information, the method for calculating the allowable arm’s-length range, the use of simple versus weighted averages, the method for determining the appropriate profit level indicator, or pooling or averaging of financial data. Financial adjustments to comparable data are optional, if justifiable.
Transfer pricing methods
Currently, Chile does not follow a hierarchy of transfer pricing methods. Chilean transfer pricing regulations allow the use of OECD methods and permit the use of other methods (described in the Chilean transfer pricing regime as Residual Methods) when the OECD methods cannot be applied or if other methods give more reliable results. No method is considered inappropriate.

Advance pricing agreements (APAs)
Chile has a formal APA program for both unilateral and bilateral APAs. The Chilean transfer pricing regime gives the right to taxpayers to submit an APA application, and the tax administration has the authority to accept or reject the APA application. There are four APA applications currently in process. The SII has very limited experience in APAs.

Mutual agreement procedures (MAPs)
Currently, the SII has no MAPs with other tax authorities.

Yield/performance of transfer pricing reviews
There is currently no information available on yield or performance of transfer pricing reviews.

Transfer pricing disputes
Of the cases currently ongoing, 67% are under domestic appeal (preceding court case) and 33% are under litigation. There are no ongoing cases under MAP or arbitration.

Current influences on transfer pricing
Current developments have not resulted in a change in transfer pricing policies or practices in Chile.
Resources the taxing authority is devoting to transfer pricing

Since 2013, the function of the transfer pricing group has been decentralized from the Central Office of Tax Authorities to the local administrations, particularly the Large Tax Payers Administration. The Central office is currently in charge of designing audit programs and reducing its field activities. In valuation cases, the tax authorities rely on external sources.

Industry focus

Transfer pricing audits in Colombia currently focus on taxpayers in the consumer products and mining and metals industries with a particular focus on commodity transactions. The significance of activities in Colombia and industry profitability are the factors that drive the industry focus. The selection of industries is not widely communicated to taxpayers.

Geographic focus

Tax authorities target transactions with counterparties in tax havens and perceived low-tax jurisdictions. In October 2013, the Colombian government issued a decree listing 44 jurisdictions that qualified as tax havens. The top three counterparty jurisdictions are the Cayman Islands, Singapore and Panama.

Types of transactions under scrutiny

Transactions involving tangible goods, intragroup services, trading of commodities and financial transactions (in order of scrutiny) are targeted by the tax authorities for transfer pricing reviews.

Transfer pricing penalties

Colombia has a specific transfer pricing penalty regime in place. There are no processes in place to ensure consistent application of transfer pricing penalties. Under the current regime, penalties have been assessed in 100% of proposed transfer pricing adjustments. According to the Tax Code, the Colombian transfer pricing penalty regime establishes a fine of 160% of the additional tax, levied in all cases. Nevertheless, a recent Court decision (1st Level) determined that, in some cases, a penalty is not applicable when a discussion regarding the correct application of the law is in place without the intention of fraud by the taxpayer. The penalty rate could also decrease in the case of acceptance by the taxpayer. Over the next two years, the assessment of penalties is expected to remain approximately the same. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection

Case selection for transfer pricing audit is governed by a central decision-making body. As a general rule, the Sub-direction of International Tax Audit determines the cases to be audited. Profitability, risk-based assessment by the tax authority, and the nature and volume of transactions undertaken by taxpayers are relevant factors considered in selecting cases for review.

Indirect and customs tax

Transfer pricing enforcement resources and indirect tax specialists work in an integrated way. The tax authorities perform integrated audits called TACI audits. These audits are performed simultaneously by professionals in the tax, customs, exchange regime control and international tax areas. There is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data

The use of both Colombian and foreign comparables is accepted. As a general rule, only the financial information of the fiscal year under analysis is accepted, both for the tested party and the comparables, and any exception should be widely explained. The interquartile range is the preferred statistical method by which to calculate the arm's-length range, but other statistical methods could be used.

Transfer pricing methods

There is no priority of transfer pricing methods in Colombia. However, the best method rule applies and no method is considered inappropriate. There are special rules for cost contribution arrangements based on a benefits approach.

The purchase of used fixed assets is based on the original price at which the asset was acquired by a third party, and depreciation is calculated according to Colombian rules. As an alternative, when the assets are in a different condition or the information is not available, an appraisal by a third independent party must be undertaken. In the case of transfer of shares, where comparability is difficult to assess, a financial valuation should be conducted using the net present value (NPV) of free cash flow method.

Advance pricing agreements (APAs)

In Colombia, the APA program was determined by the Tax Law in 2002 and initiated in 2013 when the first APA was signed. Colombia has a formal APA program for both unilateral and bilateral APAs, and approximately seven applications are received annually. The right to an APA program is determined by the Tax Law. Of the current caseload, most are unilateral APAs. As per the legislative provision, the average length of time required to complete an APA process is nine months.

Mutual agreement procedures (MAPs)

The Colombian tax authority does not currently deal with any MAPs.

Yield/performance of transfer pricing reviews

The effectiveness of transfer pricing reviews is measured by the percentage of review cases where an adjustment is made to taxpayer income. The Colombian tax authority does not publish statistics on yield.

Transfer pricing disputes

There is currently no information available on transfer pricing disputes.

Current influences on transfer pricing

The OECD initiatives are the main drivers of changes to the transfer pricing policy. Colombia is a candidate to become a member of the OECD and is seeking to follow its recommendations.
Resources the taxing authority is devoting to transfer pricing

The SAT’s transfer pricing unit was established in 1997 as part of the Central Administration of International Taxation. In 2004, the Central Administration of Transfer Pricing Audits (ACFPT) was created to lead efforts related to transfer pricing reviews, transfer pricing rulings, APAs and the resolution of transfer pricing cases under mutual agreement procedures (MAPs). The ACFPT is part of the SAT, dependent of the General Administration of Large Taxpayers. ACFPT personnel are centrally located in Mexico City.

Approximately 50 full-time employees (FTEs) specialize in transfer pricing within the ACFPT. Two years ago, the number of FTEs was approximately 40. All of the transfer pricing executives are based in the central unit. An APA/MAP Program has been developed within the ACFPT, where approximately one-quarter of the resources have been assigned. However, all of the ACFPT resources (including those participating in the APA/MAP Program) continue to be involved in transfer pricing examinations. There are currently no decentralized auditors at the ACFPT; all the transfer pricing work is controlled by the ACFPT in Mexico City. The size of the unit is expected to grow by 20% over the next two years.

At least half of the transfer pricing resources at the ACFPT have a minimum of seven years’ transfer pricing experience. The remainder of the resources are tax specialists with some transfer pricing experience. Of these, approximately 40% are accountants, 35% are economists, 5% are lawyers, and 20% have finance and business administration backgrounds.

The background of the resources has changed from accountants to other areas of specialization with more economists and financial service specialists and a few general business analysts. It is not expected that this mix of resources will change significantly in the next two years. The ACFPT’s reliance on external resources is limited. The ACFPT relies on external sources only to address issues raised in court cases. The SAT does not rely on other tax administrations for training. The ACFPT actively participates in the OECD Working Groups, and its resources benefit from OECD training and instructors. ACFPT’s personnel also attend training and seminars organized by the Inter-American Center for Tax Administration (CIAT). The ACFPT actively collaborates with other tax administrations in their training. Transfer pricing resources are expected to increase in the mid to long term due to BEPS developments.

Industry focus

The automotive, banking and capital markets, consumer products, media and entertainment, mining and metals, oil and gas, pharmaceuticals, real estate, technology, telecommunications, and power and utility industries receive particular scrutiny. Significant activities in Mexico, the importance of intangible property, industry profitability and routine examinations have been relevant factors in driving the selection of industries for particular focus.

The selection of industries for specific scrutiny is not officially communicated to the taxpayers, but it is informally discussed in seminars and forums. The list of industries under specific focus is not reviewed periodically. The selection of taxpayers for transfer pricing audits is not based merely on specific industries and sectors, but rather on several risk factors.

Geographic focus

The tax authority does not specifically target transactions with certain jurisdictions for review. However, perceived low-tax jurisdictions are sometimes targeted. The current review caseload involves the United States, Switzerland, Germany and the Netherlands.

Types of transactions under scrutiny

Transfer pricing reviews cover transactions involving tangible goods (50% of current caseload), contract manufacturing activities (30% of current caseload), intangible property (10% of current caseload), intragroup services (10% of current caseload), financial transactions (reviewed in most transfer pricing audits), cost-sharing or cost-pooling arrangements (reviewed in most transfer pricing audits) and business restructurings.

Transfer pricing examinations usually involve a review of at least two or three types of transactions. In addition, once a transfer pricing audit has commenced, all intercompany transactions carried out by the taxpayer during the fiscal year under examination are carefully analyzed.
Transfer pricing penalties

The Federal Tax Code (FTC) establishes the penalties applicable for different types of infractions, for example, if an omission (total or partial) of taxes is discovered by the tax authorities during an audit process. These penalties are not only applicable for transfer pricing audits, but for all tax audits where a tax omission has been found. In cases where the taxpayer has fulfilled the transfer pricing documentation requirements, the penalty is reduced by 50%. In addition, specific penalties are applicable for a failure to file the transfer pricing return. There are processes in place to ensure consistent application of transfer pricing penalties. In the past two years, at least three-quarters of transfer pricing adjustments have resulted in an assessment of penalties. On average, these penalties have been between 50% and 75% of the additional tax. The assessment of penalties is expected to remain the same over the next two years.

The BEPS and OECD intangibles initiatives have not resulted in an increased imposition of penalties. However, within the recent BEPS project the deductibility of some expenses is being questioned (specifically, royalties, interest and technical assistance deductions arising from intercompany transactions with fiscally transparent entities).

Audit case selection

The case selection for transfer pricing audits is conducted by the Central Administration of Programming and Planning (ACPP), which is an area within the Large Taxpayers Administration at the SAT. The ACPP operates independently of the ACFPT. The ACFPT is not responsible for the selection of transfer pricing audits. The ACPP determines the taxpayers which should be examined for transfer pricing purposes considering several risk factors that include taxpayer profitability, evidence of business restructurings, risk-based assessment by the SAT, nature and volume of related-party transactions undertaken by the taxpayer, and previous tax audits.

Indirect and customs tax

Transfer pricing enforcement resources often work in an integrated way with indirect tax specialists because the customs, indirect and transfer pricing authorities are all part of the SAT. The SAT does not require that the same transfer price be used for corporate direct and indirect tax purposes. The transfer pricing methods established in the Mexican Income Tax Law (MITL) are different from those used for customs purposes.

Comparable data

Local country comparables are not necessarily required. Permissible regions are determined depending on the kind of transaction and the market in which the tested party operates. Transactional comparables –comparable uncontrolled price (CUP) and comparable uncontrolled transactions (CUT) – are explicitly specified as preferable for transfer pricing analysis, and only when these are not available can comparable companies be used.

When presenting comparable data, there are requirements in relation to the method of calculating the allowable arm’s-length range (interquartile range) and for the selection of the profit level indicator. The MITL establishes that for the purposes of applying the resale price method (RPM), the cost plus method or the transactional net margin method (TNMM), the taxpayer will be considered as complying with the methodology, provided that the cost and the sales price are demonstrated to be in line with the arm’s-length principle. In addition, according to the MITL, income, costs, gross profit, net sales, expenses, operating profit, assets and liabilities should be calculated based on financial reporting standards.

There are no specific requirements with respect to the number of years of financial data analyzed and the use of a weighted or simple average. However, the MITL allows the use of two or more years of financial information of comparables (when the business or market acceptance cycle is justified) in order to improve comparability.

The financial adjustments to comparable data (e.g., working capital adjustments, asset intensity and country risk adjustments) are not specifically stated in the law. However, tax authorities are open to discuss adjustments and address taxpayers’ queries about acceptable adjustments on a case-by-case basis.

Transfer pricing methods

Mexico prioritizes the CUP method as the best method in comparison to other methods indicated in the MITL. It must be demonstrated that the method used is the most appropriate or most reliable in accordance with the available information, and preference must be given to the resale price method and the cost plus method once it has been proven that the CUP is not applicable. The SAT does not consider the comparable profit method (CPM) appropriate. This policy on transfer pricing methods is based on legislative provisions, specifically Article 180 of the MITL.
Advance pricing agreements (APAs)

A formal program is available for both unilateral and bilateral APAs. The number of applications is typically between 10 and 25 per year. However, due to new legislation approved on the recent tax reform, this number may increase significantly (unilateral filings) in 2014. Bilateral APA filings are also expected to increase due to the increase in the number of audits, which may lead taxpayers to consider a bilateral APA. All taxpayers are allowed to participate in the APA program.

There are approximately 30 applications in progress, including both unilateral APAs (70% of the current caseload) and bilateral APAs (30% of the current caseload). This composition may change with the new legislation approved on the recent tax reform. Bilateral APAs mostly involve the United States, Switzerland and Germany. A unilateral application typically takes between 12 and 18 months to complete whereas bilateral applications take between 20 and 24 months to complete.

In several cases, taxpayers do not disclose all the required information, which complicates the APA process and in turn increases the time required for completion. Nevertheless, the number of resources in the APA area has been increasing in recent years in order to improve the APA process. The process can be accelerated if taxpayers become more familiar with the APA process.

Mutual agreement procedures (MAPs)

During fiscal year 2012, 15 new MAP cases were initiated while in 2011 and 2010 only 5 and 4 MAP cases were received, respectively. Of the 15 MAP cases initiated in 2012, 4 cases were related to transfer pricing. The average time for a case to be resolved is 21 months. In the last five years, less than 5% of cases have been closed without relief from double taxation. MAPs involving the United States, Switzerland and Germany make up a significant portion of the MAP caseload.

If a MAP is initiated as a consequence of an adjustment in transfer pricing, the collection of taxes due to the adjustment could be suspended while the MAP is under way. Once the MAP is completed and where tax is due in Mexico, interests related to those taxes (called surcharges) may be waived by the SAT as long as the other tax authority participating in the MAP is able to grant the corresponding adjustment to the related party without paying interest.

Yield/performance of transfer pricing reviews

The effectiveness of transfer pricing reviews is measured by an increase in the tax yield, the percentage of review cases where an adjustment is made to taxpayer income and the number of examinations concluded. There are no public statistics on transfer pricing audits yield; however, overall tax yield (i.e., not by sector) is published on an annual basis.

Transfer pricing disputes

Of the ongoing transfer pricing cases, 30% are at the domestic appeal stage (preceding court action), 55% are in litigation (a judicial appeal with tax courts) and 15% are under MAP.

Current influences on transfer pricing

Transfer pricing policies in Mexico are influenced by the BEPS and OECD initiatives. Mexico, as part of the OECD, has implemented changes to local transfer pricing legislation (the transfer pricing methods hierarchy was introduced in the legislation in 2006) based on OECD initiatives. Moreover, the recent Mexican tax reform, approved at the end of 2013 and effective from January 2014, included BEPS considerations, specifically targeting fiscal structures, which result in base erosion and profit shifting.
Responsible taxing authority is devoting to transfer pricing
In 2013, the Peruvian Tax Authority (SUNAT) transferred the centralized International Control and Transfer Pricing Department to the Principal Taxpayer Division based in Lima. Information on the size and makeup of Peru’s transfer pricing resources is not currently available; however, it is understood that most are accountants and economists with practice expertise. Transfer pricing auditors have received significant training during the last couple of years.

Industry focus
The automotive, consumer products, pharmaceuticals, fishing and retail industries are currently a focus of SUNAT for transfer pricing scrutiny. Significant activities in Peru and cross-border transactions generally drive the selection of industry for particular focus. However, the list of industries under specific focus for transfer pricing reviews is not widely communicated to taxpayers.

Geographic focus
Although the Principal Taxpayer Division, under which the International Control and Transfer Pricing Department sits, is based in Lima, the department has nationwide responsibilities. Therefore, the geographic location of the taxpayer is not a driver for a transfer pricing audit.

The Peruvian Tax Authority specifically targets transactions undertaken by Peruvian taxpayers with companies that are resident in low-tax jurisdictions.

Types of transactions under scrutiny
SUNAT is applying a risk assessment process in order to initiate a transfer pricing audit. In practice, transactions such as the transfer of tangible goods, intragroup services and intercompany loans received from foreign related parties are currently targeted for transfer pricing reviews.

Transfer pricing penalties
Penalties are applied on the basis of a penalty regime contained in the Tax Code. Peru’s penalty regime for non-compliance with formal documentation requirements is based on objective criteria, and it is defined in the regulations. This helps to ensure the consistent application of the penalty regime throughout the country. Compliance with formal documentation requirements is expected to be closely monitored in the future. Therefore, failure to comply with the requirements is expected to be increasingly penalized.

Audit case selection
Case selection for transfer pricing audits is governed by SUNAT’s Operational Programming and International Control and Transfer Pricing departments. The taxpayer’s year-end financial result, nature and volume of related-party transactions and the standard audit cycle are relevant factors in the risk assessment process.

Indirect and customs tax
The linkage between transfer pricing and indirect tax was removed in FY 2012.

Comparable data
Currently, there is no legal requirement to use local, regional or global comparables. The interquartile range is mandatory to calculate the arm’s-length range. There is no guidance in force regarding the application of working capital adjustments.

Transfer pricing methods
Local regulations follow OECD Transfer Pricing Methods. Current regulations implicitly require the use of the best method rule. The use of all the traditional transfer pricing methods is considered appropriate, apart from the comparable profit method (CPM), which is not provided for in the legislation. There is currently no guidance permitting the use of other methods.

Advance pricing agreements (APAs)
Peru has both unilateral and bilateral APA programs. However, bilateral APAs are only available if an income tax treaty is in force. Detailed regulations with respect to an APA application process were published in 2013, and it is estimated that an application will take less than 24 months to be signed. No agreements have been signed yet. All taxpayers can apply to the APA program.

Mutual agreement procedures (MAPs)
MAPs are not available in Peru.

Yield/performance of transfer pricing reviews
There is currently no information available on transfer pricing reviews.

Transfer pricing disputes
There is currently no information available on transfer pricing disputes.

Current influences on transfer pricing
The recent BEPS developments are having an impact on the transfer pricing policies and practices in Peru.
Resources the taxing authority is devoting to transfer pricing

In 2009, the Dirección General Impositiva (DGI) created a cell in order to review cases related to transfer pricing, with this cell part of the International Tax Department. It has increased in size over time, and has become increasingly active in undertaking reviews and audits accordingly. In Uruguay, the professionals currently involved in transfer pricing examinations are accountants.

Industry segments

The number of industries which are commonly under scrutiny has increased recently. The main industries focussed on are automotive, banking and capital markets, insurance, asset management and pharmaceuticals.

Geographic focus

The DGI does not specifically focus on transactions involving particular countries.

Types of transactions under scrutiny

The DGI does not focus on certain transaction types ahead of other transaction types.

Transfer pricing penalties

Uruguay has a specific transfer pricing penalty regime. According to the law introduced in 2012, penalties are imposed in cases where there is non-compliance with respect to transfer pricing documentation requirements. In cases, where companies violate the formal requirements established in the framework of the transfer pricing regime (e.g., fail to file the transfer pricing report and the tax return), the maximum penalty that could be imposed is approximately US$230,000 depending on the severity of the breach (e.g., in the case of repeat behaviour of this kind).

Audit case selection

There are no specific factors which are taken into account as part of the selection of cases for audit, which a combination of items considered. In addition, certain clients have regular audit cycles, which impacts on case selection.

Indirect and customs tax

In Uruguay, the transfer pricing cell within the International tax department of the DGI, and it works closely with the indirect tax team, which is also part of the DGI. To date, it does not however work closely with Uruguayan customs teams.

Comparable data

In Uruguay, local country comparables are preferred. Regional comparable data is permissible at the discretion of the taxpayer. There is no specification for how comparable data is presented in an analysis, however, in general a three year analysis of financial data is used, with the simple average method preferred for calculating the arm's length range.

Transfer pricing methods

The amended Corporate Income Tax Law together with Decree No. 56/009 establishes the methods to be used in order to determine whether the transactions subject to transfer pricing regulations have been carried out on an arm's length basis. The Law provides that the most appropriate method should be used for the type of transaction in question, with there being no priority of transfer pricing methods. Guidance on the use of cost contribution or cost sharing arrangements is not available.

Advance pricing agreements (APAs)

While it is possible to obtain an advance pricing agreement, they have not been widely used, with only one agreement in place with the DGI.

Mutual agreement procedures (MAPs)

Mutual agreement procedures are currently not available in Uruguay.

Yield/performance of transfer pricing reviews

The DGT does not release information regarding the yield from and performance of transfer pricing reviews.

Transfer pricing disputes

While the activities of the DGI in the area of transfer pricing has led to some transfer pricing disputes, to date none of these have proceeded to court, as they have either been settled prior to this stage, or are ongoing.

Current influences on transfer pricing

The main influence on local transfer pricing matters is the activities of the OECD, with the BEPS initiative in particular having an increasing level of influence.
Resources the taxing authority is devoting to transfer pricing

There is a special unit in the Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT) to handle transfer pricing reviews. The transfer pricing division is decentralized, with the main enforcement areas in the East, West, Center and Capital District. There is currently no information available with respect to the number and makeup of transfer pricing full-time employees (FTEs) in the SENIAT. However, it is estimated that 80% of the resources are based in the central unit. The number of FTEs has increased by approximately 25% from two years ago. The size of the unit is expected to grow by another 20% over the next two years.

Approximately 30% of the transfer pricing FTEs are transfer pricing specialists who deal with major taxpayers and more complex cases. The rest are generalists. Most of the resources (60%) have degrees in tax management, while the rest have accounting (30%), legal (5%) or economics (5%) backgrounds. In recent years, resources have become more qualified to perform transfer pricing examinations, have gained experience and skills (e.g., with respect to the use of databases and methodologies), and have participated in training locally and abroad.

The tax authority relies on other tax administrations, such as the Mexican tax authority, for training purposes.

Transfer pricing resources are expected to increase in the near future due to recent BEPS and OECD intangibles developments.

Industry focus

The consumer products, oil and gas, pharmaceuticals and telecommunication industries receive particular scrutiny. Significant industry activity in Venezuela, industry profitability and sudden reductions in income tax payments by certain companies or industries all have been relevant factors in driving the industry focus. The selection of industries for specific scrutiny is not currently widely communicated to taxpayers.

Geographic focus

The SENIAT does not specifically target transactions with certain jurisdictions for transfer pricing reviews. However, the current review caseload involves (in order of caseload) the United States, the Netherlands, Switzerland, Colombia and Panama.

Types of transactions under scrutiny

Transactions targeted for transfer pricing reviews are financial transactions (30% of the current caseload); tangible goods (30% of the current caseload); intangible property (20% of the current caseload); and technical assistance, engineering/technology services and other professional services (20% of the current caseload).

Transfer pricing penalties

Venezuela has a transfer pricing penalty regime in place, as well as processes to help ensure the consistent application of transfer pricing penalties. Over the last two years, penalties have been assessed in more than three-quarters of the proposed transfer pricing adjustments. Of these, the average penalty rate has been more than 100% of the additional tax. Over the next two years, it is expected that the assessment of penalties will increase.

Audit case selection

Case selection for transfer pricing audits is governed by a central decision-making body. The volume and nature of the related-party transactions; taxpayer profitability; and VAT, employment, customs or other indirect tax reviews (in that order) are all relevant factors for initiating reviews, followed by inconsistencies between transfer pricing reports, the income tax return and the transfer pricing informative return.

Indirect and customs tax

Transfer pricing enforcement resources work in an integrated way with indirect tax specialists and actively share information. There is a requirement to use the same transfer price for corporate direct and indirect tax purposes.

Comparable data

There are currently no requirements for local country comparables. For regional comparable data, the preferred approach is to use the same continent as the taxpayer. However, the use of global data is permissible and depends on the nature of the transaction and the taxpayer’s industry.

When presenting comparable data, multiyear financial data can be used; notwithstanding, it is common to use a three-year average for comparable data and the arm’s-length range comprising the interquartile range (which is required to be calculated using the excel-quartile function). However, there are no specific requirements with respect to the use of the weighted or simple average, selection of profit level indicator, or the pooling or averaging of financial data. Financial adjustments to comparable data (e.g., working capital, asset intensity and country risk adjustments) are allowed if justifiable.
Venezuela (Cont’d.)

Transfer pricing methods
Venezuela publicly prioritizes the comparable uncontrolled price (CUP) method as the best method in comparison to other methods. All other traditional methods, apart from the comparable profits method (CPM) as distinct from the transactional net margin method (TNMM), are considered appropriate. Local rules with respect to nontraditional methods follow those of the OECD Transfer Pricing Guidelines.

Advance pricing agreements (APAs)
A formal program for both unilateral and bilateral advance pricing agreements (APAs) is currently available as a legislatively drawn right to taxpayers (stated in the Income Tax Law). However, it has become impractical for most Venezuelan taxpayers to apply for an APA due to requirements for the submission of sensitive information by the taxpayer and the time and resources required to negotiate an APA. As a result, the SENIAT has not received any APA applications. There are no initiatives in place to change or speed up the APA process.

According to the legislative provisions, the APA must be completed within 12 months of submission to the SENIAT and is subject to the submission of documentation prior to the present application.

Mutual agreement procedures (MAPs)
No competent authority cases or mutual agreement procedure (MAP) applications have been received.

Yield/performance of transfer pricing reviews
The effectiveness of transfer pricing reviews is measured by the increase in tax yield, the percentage of review cases where an adjustment is made to taxpayer income and the amount of the adjustment per FTE. There are no published statistics on the yield or performance of transfer pricing reviews in Venezuela.

Transfer pricing disputes
Of ongoing transfer pricing cases, 60% are at the domestic appeal stage (preceding found court action) and about 20% are in litigation (a judicial appeal with tax courts). Of the pending cases, approximately 50% of these are at the domestic appeal stage and 90% are in litigation.

Current influences on transfer pricing
Transfer pricing policies in Venezuela are influenced by the current economic environment and the World Customs Organization developments.
Resources the taxing authority is devoting to transfer pricing

The Internal Revenue Service (IRS) administers taxes in the United States. Traditionally, IRS transfer pricing resources were largely decentralized. However, in 2010, the IRS created the Office of Transfer Pricing Operations (TPO) to centrally oversee and coordinate all transfer pricing resources and enforcement. The TPO is housed within the Large Business and International (LBI) IRS division.

At the audit and examination level, transfer pricing reviews are primarily conducted by international examiners (IEs) and economists. All IEs work for one of the five Industry Directors. Industry Directors are responsible for the direction and assignment of the work performed by IEs.

Currently, IEs are grouped within the International Business Compliance (IBC) group. The IBC’s substantive responsibilities include all areas of international tax, including transfer pricing. The IRS also has approximately 120 economists who work with IEs on international examinations and 7 attorneys (based at the Associate Chief Counsel – International (ACCI)) assigned to transfer pricing who support the operations of the IRS, including providing advice to IEs and taxpayers and drafting administrative guidance.

In February 2012, the IRS moved the former APA Program from the Office of Chief Counsel to the TPO, and combined it with the United States competent authority staff responsible for transfer pricing cases, thereby forming the Advance Pricing and Mutual Agreement (APMA) Program. The APMA program currently has approximately 104 employees who focus on advance pricing agreements (APAs) and mutual agreement procedure (MAP) cases of all types, including those presenting transfer pricing issues. The APMA program has focused on increasing the number of economists on the team, and has added approximately 20 additional economist resources since 2011.

The IRS relies on external resources, including consultants, industry specialists and expert witnesses. The IRS does not rely on other tax administrations for training.

Industry segments

In 2006, the IRS adopted the Issue Tiering strategy to make sure that high-risk compliance issues were appropriately addressed and treated consistently. In October 2011, the IRS announced its plan to discontinue the tiering system in favor of a Transfer Pricing Practice (TPP) group approach, which handles issues on a national basis using expert resources. The TPP is also part of the TPO and is led by the TPO Director.

The IRS is organized under six broad industry segments: Communications, Technology & Media (CTM); Financial Services (FS); Global High Wealth (GHW); Heavy Manufacturing and Pharmaceuticals (HMP); Natural Resources & Construction (NRC); and Retailers, Food, Transportation & Healthcare (RFTH). With the exception of the GHW industry segment, one can reasonably expect to find active transfer pricing audit activity across all sectors. These broad industry segments target taxpayers whose transactions encompass the bulk of cross-border activity engaged in by taxpayers, particularly with regard to intangible assets. The IRS organizes its resources by reference to industry segments, and endeavors to train IEs on an industry basis.

Geographic focus

The IRS does not specifically target transactions in certain jurisdictions. Rather, it determines transfer pricing reviews based upon a risk assessment of which tax rate and tax treaty elements may be factors. Based on the latest data available, the top three counterparty jurisdictions (in order) are Japan, Canada, and the United Kingdom, which combined account for 80% of total bilateral APAs executed in 2013.1

Types of transactions under scrutiny

Particular types of transactions targeted for transfer pricing reviews include the following:

- Intangible property, i.e., the transfer of intangible assets, particularly the outbound intangible property migration of US multinationals
- Intragroup services, particularly high-value services
- Cost sharing or cost-pooling arrangements
- Stock-based compensation
- Business restructurings

Transfer pricing penalties

There is a penalty regime specific to related-party transactions subject to 26 U.S.C. § 482. Formerly, the IRS had a Transfer Pricing Penalty Oversight Committee, which was a cross-functional group initiative tasked with ensuring the consistent application of the substantial or gross valuation misstatement penalty under 26 U.S.C. §§ 6662(e)(1)(B)(i) (substantial) and 6662(h) (gross) and the net Section 482 adjustment penalty under 26 U.S.C. § 6662(e)(1)X(i).2 The committee was dissolved in 2011 once the IRS concluded that its examiners were applying penalties consistently. The IRS plans to make consistent application of penalties a regular component of its training plan.

2. For further guidance on the application of the transfer pricing-specific penalties, see Treas. Reg. § 1.6662-6.
Audit case selection
Case selection for transfer pricing audits is not governed by a central body. Various considerations are taken into account when determining which taxpayers to audit, including:
- Results of a risk-based assessment
- The nature of the related-party transactions
- A standard audit cycle or program
- Taxpayer's previous tax audits

For audit case selection, the IRS reviews Forms 1120 (US Corporation Income Tax Return), 5471 (Information Return of US Persons with Respect to Certain Foreign Corporations) and 5472 (Information Return of a 25% Foreign-Owned US Corporation or a Foreign Corporation Engaged in a US Trade or Business), including attached schedules, for relevant information that may trigger transfer pricing reviews. Further, since 2010, certain taxpayers have been required to file Schedule UTP, on which they must disclose and rank, as well as provide a brief description of, each uncertain tax position. Schedule UTP must be filed with Form 1120. In the first year that Schedule UTP was required, the IRS disclosed that transfer pricing was in the top three issues reported.

The IRS also has a Compliance Assurance Process (CAP) program, which allows large corporate taxpayers to work with the IRS to identify and resolve potential tax issues before the tax return is filed. With respect to transfer pricing issues, the CAP guidelines strongly encourage taxpayers to seek an APA.

Indirect and customs tax
The transfer pricing enforcement resources are not required to integrate with the indirect tax team, and there is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes. However, 26 U.S.C. § 1059A mandates that any property brought into the United States in a transaction between related parties (within the meaning of U.S.C. § 482) may not be assigned a basis or inventory cost higher than the customs value attributable to that property.

Comparable data
The IRS looks for comparables that provide the most reliable data. While local or regional comparables are preferable, they are not always available. In such cases, comparables from other locations may be considered.

In presenting comparable data, there are requirements with respect to the number of years of financial data analyzed. The default period is one year; however, a multiyear analysis may be appropriate, depending on the case. Regardless of whether single year or multiyear data is used in the analysis, the years to which the uncontrolled comparables’ data and tested party’s data relate must be the same.

The arm’s-length range is defined in Treas. Reg. § 1.482-1(e), which notes that the arm’s-length range comprises all the results of all uncontrolled comparables, when all material differences have been identified, each difference has a reasonably ascertainable effect on price or profit, and an adjustment has been made to eliminate the difference. The Regulations further note that the reliability of the range is increased if there are material differences between the uncontrolled comparables and the tested party that cannot be adequately adjusted for by using the interquartile range.

There are no specific rules regarding the use of weighted or simple averages, other than the best method rule and meeting the high standards of comparability and reliability. The IRS takes into account different approaches when analyzing different cases, and the selection of averaging methods depends on data availability and reliability.

Regarding the comparable profits method (CPM), Treas. Reg. § 1.482-5(b)(4) provides guidance on the methods for determining the appropriate profit level indicator.

The application of financial adjustments to comparable data (e.g., working capital adjustments, asset intensity and country risk adjustments) is required, if such adjustments will bring the uncontrolled comparables to a sufficient level of comparability and reliability.

Transfer pricing methods
The IRS does not have a hierarchy of transfer pricing methods, and the analysis should be based on the best method rule under Treas. Reg. § 1.482-1(c), which requires using the method that produces the most reliable measure of an arm’s-length result. The best method rule is based on the economic analysis undertaken, and unspecified methods may be used if they are proven to be more reliable than an application of any of the specified methods.
Advance pricing agreements (APAs)
The United States has a formal APA program for both unilateral and bilateral APAs. In 2013, 111 APA applications were received and 145 were completed. The long-term trends show an increasing number of executed agreements, and APMA has the discretion to accept or reject an APA application.
APMA reported that as of the end of 2013, 331 applications were pending. Of the 331 pending applications, 147 were renewals. Of those 147 renewals, 20 were unilateral, 126 were bilateral, and 1 was multilateral. For the remaining 184 pending APAs, 31 were new applications for unilateral APAs, 151 were applications for new bilateral APAs and 2 were new applications for multilateral APAs. During 2013, 145 APAs were executed: 39 unilateral, 105 bilateral and 1 multilateral. Of the current caseload, roughly 85% are bilateral or multilateral and 15% are unilateral. The average time required to complete both unilateral and bilateral APAs was 36.2 months.
In connection with the creation of the APMA program, including increasing employee resources, significantly more APAs were executed in 2012 and 2013 than in 2011 (42 in 2011), and increased efficiency of the program is expected to continue. More recently, APMA released Notice 2013-79 in December 2013, announcing proposed amendments to the current Rev. Proc. 2006-9, which establishes procedures for requesting MAP relief. While not as harsh as the proposed amendments to Rev. Proc. 2006-9, Notice 2013-79 does include some significant changes. For example, under Rev. Proc. 2006-9, payment of tax and interest is currently suspended while MAP proceedings are under way. However, proposed changes mandate that the suspension of Interest during MAP proceedings will be at the discretion of the tax authorities. While the updated Revenue Procedures in Notices 2013-78 and 2013-79 are still in proposed form, taxpayers have been put on notice as to the direction in which APMA plans to take both programs.

Mutual agreement procedures (MAPs)
In 2013, 266 transfer pricing competent authority cases were received, and 159 cases were resolved. The average time for a case to be resolved was 26.1 months in 2013. There was a significant rise in resolved cases with the elimination of double taxation in 66% of disputes in 2013. As with the Revenue Procedure governing APAs, APMA also released Notice 2013-78 in December 2013, announcing proposed amendments to the current Rev. Proc. 2006-54, which establishes procedures for requesting MAP relief. While not as harsh as the proposed amendments to Rev. Proc. 2006-9, Notice 2013-78 does include some significant changes. For example, under Rev. Proc. 2006-54, payment of tax and interest is currently suspended while MAP proceedings are under way. However, proposed changes mandate that the suspension of Interest during MAP proceedings will be at the discretion of the tax authorities. While the updated Revenue Procedures in Notices 2013-78 and 2013-79 are still in proposed form, taxpayers have been put on notice as to the direction in which APMA plans to take both programs.

Yield/performance of transfer pricing reviews
There is currently no published information on the yield or performance of transfer pricing reviews.

Transfer pricing disputes
In the United States, fewer than 6 ongoing transfer pricing disputes, where the tax administration has completed assessment and communicated the order, are in litigation, while 524 MAP cases were pending as of the end of 2013.

Current influences on transfer pricing
Current influences on transfer pricing include BEPS, OECD initiatives and the current economic environment.

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6. See Notice 2013-76, at Section 11.
2014 global transfer pricing tax authority survey

Asia-Pacific jurisdictions
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Resources the taxing authority is devoting to transfer pricing
The Australian Tax Office (ATO) employs a mix of transfer pricing specialists and generalist tax officials to deal with transfer pricing cases. Reviews are performed by case teams, which typically consist of generalist ATO Officers, with assistance from Technical Officers who have extensive transfer pricing experience. The team is further assisted by the economist practice. On rare occasions, external resources are used for transfer pricing matters.

Consistency is safeguarded by the Transfer Pricing Review Panel (TPRP), which is a group of experienced ATO Officers. The TPRP is involved in case selection, reviews, audits and APAs.

While there is currently a program to reduce the overall number of employees in the ATO, the broad area of profit shifting (including transfer pricing and aggressive tax planning) has been singled out as one of the key focus areas for the ATO, and AUD159 million has been allocated to strengthen enforcement in this area. The publicly stated expectation is that this additional funding will result in at least AUD1 billion in additional taxes being raised.

Industry focus
There is no formal program for prioritizing any particular industry or industries for review. In practice, factors such as the industry having a significant presence in Australia and the industry’s profitability are taken into account in identifying industries and, within this, taxpayers for scrutiny. This, in combination with the ATO’s focus on BEPS, is resulting in a considerable amount of time spent focusing on the high-tech, resources and finance industries.

Geographic focus
Geographic considerations have not historically been drivers for the selection of taxpayers for transfer pricing reviews. Transactions between Australia and its major trading partners (such as Japan, the United States, the United Kingdom, New Zealand and Korea) historically represented the majority of cases. However, more recently, a substantial amount of time is also spent focusing on transactions with low-tax jurisdictions.

Types of transactions under scrutiny
All intercompany transactions are subject to scrutiny and the relative case load has historically been significantly influenced by the prevalence of certain transaction types, including the following:

- Tangible goods transactions
- Intangible property transfers
- Intragroup services
- Supply chain restructurings
- Financial transactions

When adjusting for the “normal” prevalence of transactions, recent key focus areas have been in relation to e-commerce, business restructures and financing. For example, a substantial portion of companies that disclose business restructures on the International Dealings Schedule (a schedule lodged with the tax return) have been selected for review. This has been a key development in recent times.

Transfer pricing penalties
The ATO has the power to impose transfer pricing penalties, and there are administrative requirements and published rulings to ensure consistent application of the transfer pricing penalty provisions. The penalty provisions do not apply in cases where losses are reduced or eliminated and the assessment does not result in cash tax being payable. Taxpayers have objection and review rights with respect to penalties applied.

Over the last few years, penalties have been applied in 25% to 50% of cases where transfer pricing adjustments were assessed. Where penalties are imposed, they generally have ranged up to 25% of the additional tax generated. In addition, a general interest charge of 12% to 14% can be charged.

The ATO is currently reassessing its approach to penalties following the introduction of new transfer pricing legislation. A draft practice statement was released on the topic in April. While the practice statement is still in draft and only deals with one type of penalty, it is anticipated that both the incidence and quantum of penalties will increase.

Audit case selection
The ATO has a sophisticated approach to selecting taxpayers for transfer pricing scrutiny. It collects transfer pricing related information for all taxpayers and analyzes this information through its risk engine. The risk engine raises a variety of flags, including the following:

- Companies that are not sufficiently profitable or loss making
- Companies with large “risky” transactions, such as IP-related transactions (e.g., royalties)
- Companies that do not have certain expected transactions, such as royalty income that one may expect for outbound Australian multinationals
- Companies that have disclosed that they have been involved in a business restructure

The list of potential candidates for review is then analyzed in more detail, and the TPRP decides which taxpayers to review and which resources to allocate. Other factors such as a history of aggressive tax planning and the compliance history of the company are taken into account in this decision process. The ATO reviews companies of all sizes, including a sizable number of small companies.

The ATO recently selected a substantial number of business restructuring cases for review, and it is expected that these reviews will commence progressively over 2014.
**Indirect and customs tax**

The ATO does not actively work together with Australian Customs, but information is exchanged on an ad hoc basis. Given the differences in rules, it is generally accepted that there are situations where pricing for Customs and transfer pricing purposes differ.

In addition to income tax, the ATO administers Goods and Services Tax (GST – akin to VAT) and there is some ad hoc exchange of information between officers responsible for administering each of these taxes.

**Comparable data**

The ATO has a strong preference for the use of Australian comparables where available. In selecting Australian comparables, the ATO uses Australia-specific databases, which contain substantially more Australian companies than the information found in regional and global databases. In addition, the ATO is prepared to relax comparability criteria if this means Australian comparables can be identified and used.

The ATO typically does not accept regional (Asian) comparables, but may accept the use of US and UK comparables if no Australian comparables can be found and if the overseas companies and/or transactions are sufficiently comparable and the economies exhibit similar characteristics relevant to the industry or transactions.

**Transfer pricing methods**

The ATO focuses on using the most appropriate method as described in the OECD Transfer Pricing Guidelines. As such, there is no strict hierarchy of methods. Under the new legislation, a key change is that there will often be a requirement to determine the most appropriate method for the pricing of the transaction as well as using a corroborative method to determine whether the overall outcome of the commercial or financial relations is commercial. This second method will typically be a profit method.

**Advance pricing agreements (APAs)**

Australia has a formal APA program that has historically been actively used by taxpayers and the ATO to resolve complex cases and disputes. There has, however, been a shift in ATO attitudes over the last year whereby the ATO has become stricter upon which taxpayers are accepted into the APA program. This has particularly affected companies that are considered by the ATO to be involved in BEPS-related activities.

While APAs will not therefore be the right solution in all cases, the ATO does, however, remain committed to the APA program and continue to support APAs in appropriate cases.

**Mutual agreement procedures (MAPs)**

The ATO does not release statistics on MAP cases. However, virtually all MAP cases result in full relief from double taxation either in Australia or the other country. This relief is typically obtained in a reasonable time frame.

The ATO is currently reviewing whether the number of competent authorities is sufficient or whether this will need to be increased in the future. It is expected that the increased focus on BEPS, financing transactions and the reconstruction of transactions under the new transfer pricing rules will result in an increase in disputes. In addition, several experienced competent authorities have recently left the ATO. Both factors may impact the number of new competent authorities.

**Yield/performance of transfer pricing reviews**

The ATO does not publicly release data on yields or the performance of transfer pricing reviews or litigation. Based on publicly available data, substantial additional revenue is expected to be generated in the transfer pricing arena. This includes AUD1.9 billion in relation to historical cases as a result of the introduction of Subdivision 815-A (which broadly allows the Commissioner to make transfer pricing adjustments in line with treaty provisions so that they reflect a commercially realistic outcome) and an expected AUD1 billion as a result of increased funding. If one adds the increased arsenal that the ATO has at its disposition as a result of the introduction of Subdivisions 815 B through D (which focus more broadly on arm’s-length conditions as opposed to the historical narrow focus on arm’s-length prices), it is clear that substantial transfer pricing adjustments can be expected.

**Transfer pricing disputes**

As mentioned previously, the ATO does not publicly release data on transfer pricing disputes or litigation.

**Current influences on transfer pricing**

As indicated above, the ATO is focused on BEPS and is actively reviewing cases where it suspects BEPS activities are taking place. In addition, the ATO and other Australian institutions are actively involved with the global BEPS discussion, both in the OECD and G20 context. Australia holds the current presidency of the G20, and the Prime Minister has stated that “the leakage through transfer pricing will be a key focus of the G20 summit.”
Resources the taxing authority is devoting to transfer pricing

Mainland China State Administration of Tax (SAT) has an anti-avoidance division under the International Tax Department that specializes in transfer pricing, while each local State Tax Bureau (STB) at the provincial or municipal level has a team specializing in transfer pricing. Nationwide, there are approximately 1000 transfer pricing specialists, of whom 200 resources are based in the central unit at the SAT and the remaining resources are based at the local STB level. At present, 30% to 50% of the full-time employee (FTE) resources involved in transfer pricing examinations are transfer pricing specialists. The number of resources has grown exponentially. To illustrate this point, two years ago, there were approximately 100 transfer pricing FTEs and there are now 1,000 transfer pricing FTEs. Despite the rapid growth in recent years, the number of transfer pricing resources is still expected to increase by a further 20% over the next two years with the hope of increasing fiscal revenue through transfer pricing audits. At present, it is unclear whether the recent BEPS and OECD intangibles initiatives will result in further increasing resource commitments.

Most of the resources are accountants, economists and lawyers. The background of resources currently involved in transfer pricing examinations has not changed in recent years and is not expected to change over the coming two years. The SAT relies on external resources, including consultants, industry specialists and expert witnesses. Transfer pricing resources participate in internal training initiated by the SAT and OECD experts.

Industry focus

The asset management, automotive, banking and capital markets, biotechnology, consumer products, pharmaceuticals, real estate and technology industries receive specific transfer pricing scrutiny from the SAT. The importance of intangible property to the industry and industry profitability drive the selection of these industries for particular scrutiny. The list of industries selected for scrutiny is not widely communicated to taxpayers, and the list is not expected to change in the next three to five years. With the development of the economy, a focus on the digital economy and networking is expected to increase.

Geographic focus

The SAT does not specifically target transactions with certain jurisdictions for transfer pricing review. The majority of current transfer pricing reviews involve transactions with (in order of caseload) the United States, Japan, Korea, Europe and tax haven countries.

Types of transactions under scrutiny

Transactions involving intangible property, intragroup services, tangible goods, financial transactions, stock-based compensation and cost-sharing or cost-pooling arrangements (in that order) are targeted for transfer pricing reviews, with service fees and royalties paid abroad a key area of focus following the release of a circular in July 2014 by the SAT regarding anti-tax avoidance assessments on significant cross-border charges in these areas.

With the perfection of transfer pricing laws and regulations, share transfers and restrictions may also become new areas of focus.

Transfer pricing penalties

In Mainland China, there is a specific transfer pricing penalty regime. Processes are in place to ensure consistent application of transfer pricing penalties. Over the past two years, less than 25% of proposed transfer pricing adjustments have resulted in the assessment of penalties. Where these penalties have been assessed, the average penalty rate has been under 25% of the additional tax. Over the next two years, the assessment of penalties is expected to remain the same. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection

Transfer pricing audit case selection is governed by a central decision-making body. Taxpayer profitability, evidence of business restructurings, risk-based assessment by the SAT, the nature and volume of related-party transactions, standard audit cycle and previous tax audits of the taxpayers are relevant factors that initiate transfer pricing reviews. The focus on service transactions is expected to increase in the future.

Indirect and customs tax

Transfer pricing enforcement resources do not work in an integrated way with indirect tax specialists, and there is no stated requirement that the same transfer price be used for both corporate direct and indirect tax purposes.
Comparable data
The SAT does not require the use of local comparables. However, comparables from the same region are required, i.e., Asia-Pacific region. Financial data of comparables should be evaluated for a number of years (e.g., three to five years). The preferred profit level indicators are Mark-up on Total Costs (MTC) and the Operating Margin (OM). There are no specific requirements in relation to the method for calculating the allowable arm’s-length range, the use of weighted average versus simple average, or the pooling or averaging of financial data; however, financial adjustments to comparable data (e.g., working capital, asset intensity and country risk adjustments) are not allowed. Most of the comparable data is obtained from listed companies. The SAT may pay more attention to intangible assets and financing activities in the future.

Advance pricing agreements (APAs)
A formal program for both unilateral and bilateral APAs is available. Approximately 30 applications are received annually, with 2 or 3 applications settled annually. Taxpayers have the right to access the APA program, or participation is at the discretion of tax authority. There are currently 150 applications in process. The top jurisdictions involved in bilateral APAs include Japan, the United States and Korea. The average time required to complete an APA process is two to three years for both unilateral and bilateral APAs. Key reasons for such a lengthy APA process include a shortage of resources and knowledge gaps regarding industry profit levels between taxpayers and the SAT. The SAT is planning to increase resources to speed up the APA process.

Yield/performance of transfer pricing reviews
The effectiveness of transfer pricing reviews is measured by the increased tax yield and percentage of taxpayers in compliance with documentation requirements. The SAT publishes statistics on the tax yield, and the average yield per investigation is RMB100,000,000.

Transfer pricing disputes
There is currently no information available on transfer pricing disputes.

Current influences on transfer pricing
BEPS, the current economic environment and OECD initiatives may influence the transfer pricing policies and practices in China.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing audits are undertaken by the Directorate of Transfer Pricing and International Taxation headed by the Director General of International Taxation (DGIT) who reports to the Central Board of Direct Taxes (CBDT). Directorates have been set up in eight cities across the country, and each has jurisdiction over transfer pricing audits of taxpayers domiciled in its respective location. There are approximately 70 full-time employees (FTEs) posted at different directorates. The transfer pricing administration is decentralized, and transfer pricing resources, spread across eight cities, help the local tax officers in transfer pricing examinations. Transfer pricing resources have not changed from two years ago and are expected to remain the same for the next two years. The resources are a mix of economists, lawyers and accountants.

All Transfer Pricing Officers (TPOs) are from the Indian Revenue Service and are responsible for transfer pricing matters only. The TPOs regularly participate in training programs organized by the Indian Revenue Service and other tax administrations, such as those in Korea, Canada, the United States and Australia as part of the OECD’s collaboration with the Indian Revenue Service to provide training sessions.

External sources are not relied upon; however, in exceptional situations, generic industry studies carried out by professional organizations are used. For example, the National Association of Software and Services Companies (NASSCOM) report may be used for the software industry. Tax resources attend training conducted by the OECD.

Presently, BEPS and OECD are under active consideration by the Transfer Pricing Directorate and India has been actively involved in BEPS discussions. However, BEPS has not resulted in any commitment in terms of additional resources devoted to transfer pricing.

Industry focus

Transfer pricing examinations do not have any particular industry focus.

Geographic focus

The CBDT does not specifically target transactions with certain jurisdictions for transfer pricing reviews. However, the 2011 Finance Bill introduced an anti-avoidance provision in the Indian Tax Law to discourage transactions with persons located in countries or territories that do not effectively exchange information with India (under the Notified Jurisdictional Area).

Types of transactions under scrutiny

Generally, transfer pricing examinations do not have any particular transaction focus. Taxpayers selected for transfer pricing scrutiny will have all international related-party transactions examined to ensure they meet the arm’s-length conditions. In recent assessment proceedings, however, financial transactions, intragroup services and cost-sharing arrangements have come under close scrutiny.

Transfer pricing penalties

India has a specific transfer pricing penalty regime. While penalties are prescribed under law, there is no consistent application. Evolving jurisprudence will gradually help settle this matter. In the last two years, under a quarter of proposed transfer pricing adjustments have resulted in an assessment of penalties.

Audit case selection

Case selection for transfer pricing audits is not governed by a central decision-making body. Transfer pricing reviews are usually initiated on the basis of the volume of related-party transactions undertaken by taxpayers. In this regard, the CBDT has issued an internal circular to tax officers, which prescribes the threshold of aggregate transaction value beyond which cases are required to be referred to the TPOs by the jurisdictional tax officer for a transfer pricing audit. In other cases within the threshold, the jurisdictional tax officers have the power to undertake transfer pricing review as well as refer the case to the TPOs for examination after the necessary internal approvals are undertaken.

Starting fiscal year 2012, the government has also introduced the applicability of transfer pricing provisions on certain specified domestic transactions with related parties. The threshold aggregate limit for the applicability of transfer pricing provisions on specified domestic transactions is INR50 million. Accordingly, taxpayers specifying domestic transactions are also required to maintain transfer pricing documentation that would be subject to transfer pricing audit examination.

Indirect and customs tax

TPOs do not work in an integrated way with indirect tax specialists. However, a joint working group comprising senior officers from the Income Tax and Customs Departments was constituted to study transfer pricing in the context of income tax and customs laws and to suggest interdepartmental cooperation measures. There is currently no requirement to use the same transfer price for corporate direct and indirect tax purposes.

Comparable data

The use of local comparable data is case-specific. For Indian tested parties, local comparables are required, and for foreign tested parties, overseas comparables are acceptable. In the case of a foreign tested party, regional comparable data covering the same or similar geographical region is permitted. There are no specific provisions in the legislation for the determination of permissible regions. When presenting comparable data, there are various requirements. The law provides for the use of data for the year under review and up to two years prior to it if the data has a bearing on the pricing of the international transaction entered into with overseas associated enterprises. Further, where more than one arm’s-
Transfer pricing methods

There is currently no priority of transfer pricing methods. Indian transfer pricing regulations have prescribed five methods that could be used by taxpayers for the determination of the arm’s-length price. These include the comparable uncontrolled price method (CUP), resale price method, cost plus method, residual profit split method and transactional net margin method (TNMM). In general, no method is inappropriate and the applicability of the method depends upon the nature of transaction and availability of information to make a comparison. However, the comparable profit method and comparable profit split method are not provided for under Indian transfer pricing legislation.

In addition to the methods specifically provided for under the Indian transfer pricing legislation, the CBDT has notified one other method (applicable for tax years 1 April 2011 and onward). Under this “other method” prescribed in the rules, the arm’s-length price is effectively determined based on an approximation of the price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises.

As mentioned above, there is no specific preference outlined in the Indian transfer pricing legislation in relation to the applicability of one method over the other. Taxpayers have to select the most appropriate method for determining the arm’s-length price based on the nature of the transaction with associated enterprises and the availability of internal and external information for benchmarking.

Advance pricing agreements (APAs)

Indian transfer pricing legislation has a formal APA program that was introduced in the 2012 Finance Act, and the rules were modified in August 2012. The APA program provides for unilateral, bilateral and multilateral APAs. In the first year of the APA program in India, approximately 150 applications were received from taxpayers. In 2013, 206 unilateral and 26 bilateral APA applications were received. There has been no withdrawal or cancellation of APAs as yet.1 The Indian APA program mandatorily provides for a prefile APA application, which could be filed by the taxpayer on an anonymous basis as well. Following this, the taxpayer can file a formal APA application with the Indian tax authorities. Once the formal APA application is filed by the taxpayer, the application is required to be processed by the Indian tax authorities unless there is an error in the APA application. The error has to be communicated to the taxpayer, and the taxpayer is given time to rectify the error.

Of the current case load, approximately 20% of the applications are for bilateral APAs and the majority of these cases involve the United Kingdom, Japan and the United States.

There is no fixed timeline prescribed under the Indian APA program for the completing the APA process. Since it is a newly introduced provision and recent setup of the APA process, it is difficult to determine how much time it would take to complete an APA. Along with the APA program, alternate advanced ruling (AAR) options are also available.

Mutual agreement procedures (MAPs)

While specific data regarding MAPs is not currently available, India has entered into a memorandum of understanding with certain countries containing an agreement that the collection of tax demand and interest would be suspended while a MAP is under way. It is noted that several MAP cases involving the United Kingdom and Japan were resolved in 2013.2

Yield/performance of transfer pricing reviews

There is currently no formal mechanism in place to measure the effectiveness of transfer pricing reviews; however, in 2013, 3,617 transfer pricing audits were completed, out of which 1,920 cases resulted in an adjustment grossing INR596 billion (approximately USD10 billion).3

Transfer pricing disputes

There is currently no information available on transfer pricing disputes.

Current influences on transfer pricing

Current developments such as BEPS will have an impact on transfer pricing audits. However, it is difficult to measure the impact on individual or setup cases.

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Resources the taxing authority is devoting to transfer pricing

Transfer pricing audits in Indonesia are largely conducted by the tax auditors within each of the tax offices (the “Tax Offices”, including the Large Tax Office I and II, the PMA Tax Offices I to VI, and Regional tax offices) rather than being conducted by a central transfer pricing audit team. The auditors in the Tax Offices are supported by a specialised transfer pricing team within the central tax offices of the Directorate General of Taxation (“DGT”). There is a large number of Tax Auditors working on transfer pricing audits across the Tax Offices and in the central tax office team.

Transfer pricing related MAP and APAs are primarily processed by the DGT II team. This team works with the Directorate of Audit and Collection on MAP and APAs. DGT II has increased significantly in size over the last year through the hiring of junior level personnel.

Industry focus

The DGT releases a circular each year highlighting national revenue targets for tax collections, which are cascaded down to each Tax Office, as well as the industry focus of the tax auditors. In 2014, the industries identified in circular SE- 15/PJ/2014 as a focus for examination were property and financial services.

Geographic focus

There is no specific geographic focus for transfer pricing examinations.

Types of transactions under scrutiny

The DGT targets all types of transactions for scrutiny. The scrutiny of taxpayer’s transactions increased in 2014 with the release of increased guidance from the DGT to tax auditors on how they should audit transfer pricing and, correspondingly, increased reporting lines for the reporting of transfer pricing examinations back to the central tax office.

In particular, as a result of this guidance there has been a renewed focus by the DGT on services and intangible related transactions as well as an increasing focus on taxpayer’s debt to equity ratios.

Transfer pricing penalties

There is a penalty of 2% per month - up to 48% - on any tax underpayment arising from an adjustment of income and costs corresponding to related party transactions as a result of the tax audit process.

Audit case selection

Transfer pricing examinations are typically commenced by tax auditors as a part of a general tax audit. Taxpayers that exhibit the following characteristics are at a higher risk of being subject to the audit process:

- A large number of related party transactions
- A tax refund position
- Losses
- Lower net profit in comparison to similar enterprises or to the industry average. The DGT issues internal Circular Letters that provide benchmarking for various industries. Taxpayers that fall below these benchmarked ranges have an increased risk of audit
- Increasing gross revenues/receipts, but no change in the volume of profits

In 2014, the DGT has also requested that the central tax office undertake 30 special tax audits on transfer pricing. Special tax audits are a special audit that has a longer time limit for the tax auditor to complete which allows tax auditors to undertake a more detailed audit than would occur under a regular tax audit.

Indirect and customs tax

The DGT does not work in combination with the Customs Authority. Indonesian taxpayers may however be subject to contradictory adjustments from the DGT and the Customs Authority.

Comparable data

The DGT prefers comparable uncontrolled price (CUP) data, both internal and external, wherever possible. If data to apply the CUP method is not available, the DGT then prefers the use of internal comparable data to external comparable data.

When applying a method that requires the selection of comparable companies, the DGT has a hierarchy of comparable companies that they will accept, specifically:

- Initially, the DGT prefers Indonesian comparables
- If Indonesian comparables are not available, then the DGT prefers South East Asian (ASEAN) comparables
- If ASEAN comparables are not available, then the DGT prefers Asia-Pacific comparables excluding (as more developed nations) Japan, Korea, Australia and New Zealand
- If comparables are still not available at this stage, then the DGT will accept a full set of Asia-Pacific comparables

In searching for these comparable companies, the DGT requires Indonesian independence criteria to be matched as well as a range of qualitative and quantitative screens to be applied as outlined. Financial adjustments to the comparable data are not commonly accepted.

1. Regulation number PER-22/PJ/2013 and its related circular number SE-50/PJ/2013
2. As outlined in regulation number PER-22/PJ/2013 and its related circular number SE-50/PJ/2013
Transfer pricing methods
Although the existing transfer pricing guidelines mention the priority of certain transfer pricing methods, the DGT in practice applies the most appropriate method in line with the OECD Transfer Pricing Guidelines. The DGT prefers to analyse each transaction separately (i.e. select and apply a transfer pricing method) and only analyses transactions on an aggregate basis in reasonable circumstances.

Advance pricing agreements (APAs)
Indonesia has a relatively new APA program with the program that effectively commenced at the end of 2011. The first APA is still to be agreed. There are a large number of APA applications in progress though. These APAs are in various stages from pre-filing to post formal filing discussions.

The APA applications filed to-date are both unilateral and bilateral and deal with a number of different jurisdictions, including Japan, Singapore, Netherlands, and the United States.

Mutual agreement procedures (MAPs)
Indonesia has a relatively new MAP program for transfer pricing with the program commencing in 2010 with the release of the relevant regulation. The DGT has negotiated and is currently negotiating a large number of transfer pricing related MAP cases relating to a large number of jurisdictions.

A new circular relating to the implementation of the outcome of MAP negotiations is expected in 2015.

Yield/performance of transfer pricing reviews
National revenue targets for tax audits detailed in SE-15 for 2014 were IDR24 trillion which is a significant increase from IDR18.5 trillion for 2013 and IDR13.3 trillion for 2012. These audits are cascaded to the Tax Offices and one of the key measures of the effectiveness of transfer pricing (and other tax) examinations.

Transfer pricing disputes
The Indonesian domestic dispute resolution process involves:
• The Objection process - which is a review process within the DGT itself
• The Appeal (or Tax Court process) - where cases are heard at Tax Court which sits under the Ministry of Finance; and
• The Supreme Court - which is independent of the DGT and the Ministry of Finance

The domestic dispute resolution processes in Indonesia are well used, with a large number of cases currently at each stage of the dispute resolution process.

Current influence on transfer pricing
There are no specific influences on transfer pricing locally, and the recent OECD developments have not impacted on the transfer pricing policies or practices in Indonesia.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing examinations in Japan are centrally coordinated by the National Tax Agency (NTA) as part of the Ministry of Finance. The Review Divisions (Large Enterprise Examination) of regional tax bureaus (RTBs) are in charge of reviewing transfer pricing cases. The Large Enterprise Examination Division monitors management and operation of these reviews through the RTBs. In rare cases, the NTA consults and relies on external resources, including consultants, industry specialists and expert witnesses. It does not currently rely on other tax administrations for training.

Industry focus
Transfer pricing reviews in Japan do not currently have any specific industry focus. The selection of industries under focus is not widely communicated to taxpayers.

Geographic focus
Selection for a transfer pricing audit is not currently based on geographic considerations.

Types of transactions under scrutiny
The decision to initiate a transfer pricing review is not based on transaction types.

Transfer pricing penalties
Japan does not have a specific transfer pricing penalty regime. The general penalty regime applies. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection
Case selections are not governed by a central decision-making body and are made on a case-by-case basis.

Indirect and customs tax
There is no requirement that the same transfer price be used for corporate direct and indirect tax purposes.

Comparable data
The NTA's preference for local country comparables depends on the facts and circumstances of a case, e.g., the degree and extent of market differences that would affect comparability.

A circular has clarified that transfer pricing adjustments will not be applied if the price of the foreign related transaction falls within a certain range derived from the arm's-length price when multiple comparable transactions exist. It is recommended that the comparable data be adjusted if comparables exhibit material differences with the tested party. The Administrative Guidelines provide some practical case examples for such adjustments.

Transfer pricing methods
There is no hierarchy of transfer pricing methods based on legislative provisions. While all the traditional methods are considered appropriate, there is no provision for the use of the comparable profit method (CPM) as opposed to the transactional net margin method (TNMM) under the Japanese domestic law.

Advance pricing agreements (APAs)
A formal unilateral and bilateral APA program is available in Japan. The APA program is operated based on administrative directives, which do not entitle taxpayers to any legal rights. Past experience indicates that taxpayer applications are very rarely denied. The APA program receives on average over 100 applications annually. There are currently approximately 300 applications in progress. Of the current caseload, the majority are bilateral APAs.

Mutual agreement procedures (MAPs)
The NTA receives between 20 and 30 transfer pricing competent authority cases annually. While a case is pending for competent authority resolution, taxpayers can apply for tax relief.

Yield/performance of transfer pricing reviews
While the NTA publishes statistics on increases to taxable income, it does not disseminate information on yield. Measuring the performance of transfer pricing reviews, therefore, is difficult.

Transfer pricing disputes
There is currently no information available with respect to ongoing or pending transfer pricing disputes at either the domestic appeal (preceding court action) or litigation stages.

Current influences on transfer pricing
Current influences on transfer pricing include BEPS, OECD initiatives and the current economic environment.
Resources the taxing authority is devoting to transfer pricing

The National Tax Service (NTS) does not have a centralized transfer pricing group. Transfer pricing resources are under the International Taxation Bureau. There are approximately 40 resources in the NTS headquarters of the International Taxation Bureau and 210 resources in the Regional Tax Office International Taxation Bureau involved in transfer pricing examinations.

The number of transfer pricing resources was about the same two years ago. The number of transfer pricing resources is not expected to increase over the next two years.

The background of the transfer pricing resources varies and has not changed in recent years. However, the transfer pricing resources have to pass the civil service examination. The NTS does not rely on external resources or other tax administrations for training.

The recent BEPS and OECD intangible initiatives have not currently resulted in increased resource commitments. However, the Korean Government (Ministry of Strategy and Finance) chaired the first Regional Consultation on BEPS for the Asia-Pacific Region in February 2014, and the NTS surveyed major Korean taxpayers asking the taxpayers’ opinion on potential tax regulation changes following the OECD BEPS discussion.

Industry focus

The NTS does not target particular industries for scrutiny. However, there is a tendency to focus on outbound transfer pricing. The selection of industries under specific focus is not widely communicated to the taxpayers.

Geographic focus

The NTS does not specifically target transactions with certain jurisdictions for transfer pricing reviews. Based on the current caseload of transfer pricing reviews, the top five counterparty jurisdictions include Japan, the United States, China, Germany and the United Kingdom.

Types of transactions under scrutiny

Particular types of transactions targeted for transfer pricing reviews (in order) are tangible goods, intragroup services, intangible property transactions (i.e., royalties, licensing) and financial transactions.

Transfer pricing penalties

There is a specific transfer pricing penalty regime in place. Where the tax office determines that the transfer prices applied are different from the arm’s-length price and a tax adjustment is made, the taxpayer must pay additional corporate income tax, an underreporting penalty of 10% of the additional corporate income tax and an underpayment penalty (i.e., interest on the corporate income tax assessed, which is approximately 10.95% per annum). If the taxpayer does not submit the required transfer pricing information (e.g., transfer pricing report) within 60 days upon request, a maximum penalty of KRW100 million shall be levied. Processes are in place to ensure the consistent application of transfer pricing penalties specified in the Law for the Coordination of International Tax Affairs (LCITA) Article 12 (sanctions against non-performance of obligation for transfer pricing information submission).

The underreporting penalty is specified in the Framework Act on National Taxes Article 47-3 (additional tax on underreported return). The underpayment penalty is specified in the Framework Act on National Taxes Article 47-4 (additional tax on over-refunding return).

Over the past two years, more than three-quarters of proposed transfer pricing adjustments have resulted in the assessment of penalties. Of these, the average penalty rate has been less than 25% of additional tax. The assessment of penalties is expected to increase in the next two years. The recent BEPS and OECD intangibles initiatives have not currently impacted penalties.

Audit case selection

The case selection for a transfer pricing audit is governed by a central decision-making body. Transfer pricing reviews are generally part of a standard audit cycle.
Indirect and customs tax
The NTS and Customs rarely share information. However, pursuant to the amendment to the LCITA (2011, 12.31), the taxpayer may request a tax refund to the NTS when the customs value is adjusted upward through a customs audit. There is currently no formal requirement to use the same transfer price for corporate direct tax and indirect tax purposes.

Comparable data
Korean transfer pricing regulations require the application of local country comparables that are typically required to determine the arm’s-length price where the Korean entity is the tested party. The NTS has issued specific requirements for the presentation of the comparable data, e.g., method of calculating the arm’s-length range and method of determining the profit level indicator. Financial adjustments to comparable data (e.g., working capital, asset intensity and country risk adjustments) are recommended.

Transfer pricing methods
There is no priority of transfer pricing methods, and the NTS does not consider any method inappropriate. Guidance is available with respect to the use of the cost-sharing and income approach (discounted cash flow for valuations). The position outlined above is not based on legislative provisions, policy statements or working practice. The order of preference of transfer pricing methods is not publicly stated. According to the 2012 APA annual report released by the NTS, 192 cases of the 223 APAs concluded (86%) applied the transaction net margin method. No 2013 information is as yet available.

Advance pricing agreements (APAs)
The NTS has a formal APA program that includes both unilateral and multilateral APAs. The NTS received 58 applications in 2012, of which 46 were bilateral/multilateral APAs and 12 were unilateral APAs. There are 135 applications currently being processed. All taxpayers have the right to access the APA program. The United States, Japan and the United Kingdom are the top countries involved in bilateral APAs. The average completion time is one year and nine months for a unilateral APA and two years and three months for a bilateral APA. Delays in the APA process are due to a lack of meetings between the taxpayer and the tax authorities and a lack of resources at the NTS. The NTS is taking measures to speed up the process by increasing the number of mutual agreement meetings.

Mutual agreement procedures (MAPs)
Taxpayers can request a suspension of a tax assessment as well as a suspension of a tax payment while a MAP claim is in process. However, whether such suspension is granted is determined on a case-by-case basis and the suspension may only be available in limited circumstances.

Yield/performance of transfer pricing reviews
The effectiveness of transfer pricing reviews is measured by an increase in tax yield. The NTS does not publish yield statistics.

Transfer pricing disputes
There is currently no information available on transfer pricing disputes.

Current influences on transfer pricing
BEPS and the current economic developments have influenced transfer pricing policies and practices in Korea. It is expected that stricter obligations to prepare transfer pricing documentation may be introduced as a result of the BEPS initiatives. Due to an increase in local companies expanding into foreign markets, there is an increased focus on outbound transfer pricing.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing resources are centralized at the Inland Revenue Board (IRB) headquarters in Kuala Lumpur at the Multinational Tax Department (MTD). The MTD currently comprises 38 full-time employees (FTEs), an increase of 23 FTEs from 2011.

All of the transfer pricing resources dealing with cross-border transactions are based in the central unit. There are five FTEs dealing with transfer pricing among local entities as well as smaller cross-border cases. Two years ago, the MTD had only 15 FTEs involved in transfer pricing examinations.

All FTEs in the MTD have received extensive transfer pricing training, and most of them have an accounting background. The academic background of the transfer pricing resources has not changed in recent years and is not expected to change significantly in the next two years.

The MTD collaborates with representatives of the OECD and the Japan International Cooperation Agency (JICA) for training of personnel. Training of MTD personnel is carried out by the OECD, which in turn may provide resources, including those from tax administrations in Australia, Germany, Japan, the Netherlands, New Zealand, the United Kingdom and the United States.

Industry focus

There is no specific focus on industries. Instead, transfer pricing scrutiny is based on a risk analysis conducted by the MTD. The MTD does not currently target transactions for review based on jurisdiction. Of the current caseload of transfer pricing reviews, the top counterparties involved are Malaysia’s business partners, including Japan, the United States, Australia and Singapore (in the same proportion).

Geographic focus

Transfer pricing scrutiny is dictated by a risk analysis conducted by the MTD. The MTD does not currently target transactions for review based on jurisdiction. Of the current caseload of transfer pricing reviews, the top counterparties involved are Malaysia’s business partners, including Japan, the United States, Australia and Singapore (in the same proportion).

Types of transactions under scrutiny

The MTD’s risk analysis does not target specific transactions.

Transfer pricing penalties

There are no specific transfer pricing penalties. The MTD does provide specific guidance on the range of penalties applicable in the event of transfer pricing adjustments. The IRB has a specific internal directive with regard to the imposition of penalties for transfer pricing cases.

Over the past two years, penalties were assessed for more than three-quarters of the proposed transfer pricing adjustments. These penalties ranged between 25% and 50% of the additional tax. Over the next two years, the rates of penalties applied are expected to remain the same. However, as awareness and compliance levels increase, there may be fewer adjustments requiring the imposition of penalties.

Audit case selection

The cases selected for transfer pricing audits are determined and approved by a committee within the MTD. The selection process is based on a risk analysis.

Indirect and customs tax

Transfer pricing enforcement resources do not currently work in an integrated way with indirect tax specialists. However, there have been discussions of greater collaboration between the two agencies in the future.

There is currently no requirement that the same transfer price be used for corporate direct and indirect tax purposes.

Comparable data

The MTD has a strong preference for local comparables and will likely accept pan-Asian comparables only if it can be demonstrated that a search for local comparables yielded insufficient or unreliable results.

The MTD would consider accepting the Association of South East Asian Nations (ASEAN) countries, pan-Asian or global comparables based on a case-by-case basis.

There are no formal regulations or legislation with respect to the presentation of comparable data. However, there is some guidance in relation to IRB’s approach in the Malaysian transfer pricing guidelines. In practice, the MTD generally accepts methods of calculating the arm’s-length range and determining appropriate profit level indicators based on the OECD Transfer Pricing Guidelines. The number of years examined vary, but average between three to six years and the MTD generally examines financial data on a year-on-year basis, i.e., tested party results from a particular year are compared to results of the comparables for that particular year.

Financial adjustments (e.g., working capital, asset intensity and country risk adjustments) to comparable data are optional, if justifiable.
Transfer pricing methods
There is a priority of transfer pricing methods in Malaysia. Traditional transfer pricing methods are preferred to the transactional methods. The comparable uncontrolled price (CUP) method, resale price method (RPM), cost plus method, transactional net margin method (TNMM) and residual profit split method are all acceptable methods. The comparable profit method (CPM) and the comparable profit split method are not accepted. There is currently no guidance permitting the use of other methods. The position outlined above with respect to preferred transfer pricing methods is based on the IRB transfer pricing rules and guidelines. The order of preference of transfer pricing methods is publicly stated.

Advance pricing agreements (APAs)
A formal program is currently available for both unilateral and bilateral APAs. The average completion time for either APA process is between one and two years. Taxpayers are free to apply for either program; however, their participation is subject to the taxpayer fulfilling the appropriate criteria as set out in the APA guidelines and the tax authority’s approval. Generally, there is a lack of understanding of the APA processes and requirements and a lack of overall quality in supporting documentation needed for APA approval. Certainly, a greater degree of effort is required in ensuring that a particular APA application has taken into account the IRB’s concerns, including performance indicators that are verifiable and measurable. Additionally, there needs to be greater commitment from taxpayers to strictly adhere to the terms and conditions agreed upon under the APA. Education among taxpayers is an ongoing process, which may be augmented by tax agents and other business advisors of taxpayers.

Mutual agreement procedures (MAPs)
MAPs with Japan account for the majority of applications. Malaysian legislation requires taxpayers to make the settlement of the balance of tax assessed, including assessments arising from transfer pricing adjustments even though the taxpayer intends to appeal the assessment via a MAP.

Yield/performance of transfer pricing reviews
Performance is measured by a combination of tax yield and level of compliance. Other measures, including percentage of review cases where an adjustment is made to taxpayer income, percentage of review cases where an adjustment is sustained on appeal and percentage of taxpayers assessed as high risk, are taken into account to some extent. Statistics on MTD’s performance are submitted every year. However, these results are not necessarily individually reflected in the overall Annual Report of the IRB, which is available to the public.

Transfer pricing disputes
There is currently no information available on transfer pricing disputes.

Current influences on transfer pricing
Transfer pricing policies may not necessarily change in light of the recent developments. However, the MTD’s practices would certainly take into account developments in the economic environment and developments within the OECD.
Resources the taxing authority is devoting to transfer pricing

Inland Revenue administers taxes in New Zealand. Transfer Pricing Principal Advisors and Corporate Finance Advisors are part of a single team. However, the Advisors are spread between Auckland and Wellington. An external economist is sometimes consulted for reporting purposes. Currently, there are four full-time employee (FTE) resources involved in transfer pricing examinations and they are centrally located. The number of resources has remained unchanged over the last two years and is not expected to change in the next two years. All four transfer pricing specialists have a strong technical background in transfer pricing. Three FTEs are accountants, and one is an economist. Inland Revenue does not use consultants, industry specialists or expert witnesses in performing transfer pricing examinations. However, Inland Revenue may call upon an expert to witness in the event of litigation. Inland Revenue does not rely on any other tax administrations for its training needs. The recent BEPS and OECD initiatives have not resulted in an increased resource commitment.

Industry focus

Transfer pricing audits in New Zealand do not have a specific industry focus. The selection of a taxpayer for audit depends on an overall risk assessment as opposed to industry participation. Australia represents the largest country in terms of transactions reviewed as it dominates New Zealand's trade and investment flows. Transfer pricing reviews of transactions involving the remaining jurisdictions are much smaller and sporadic in number and, again, are a reflection of New Zealand's trade and investment flows generally.

Geographic focus

Transactions entered into with associated parties located in low-tax jurisdictions are likely to be scrutinized more closely by Inland Revenue. However, Inland Revenue does not give priority to these transactions for transfer pricing reviews. Based on the current caseload of transfer pricing reviews, the top four counterparty jurisdictions are Australia, the United States, the United Kingdom and Asia (including Japan).

Types of transactions under scrutiny

Based on the current caseload, the transactions under scrutiny are intangible property transactions, intragroup services, financial transactions, cost-sharing or cost-pooling arrangements, business restructurings, importing losses from overseas subsidiaries using non-arm's-length subsidies and support payments, controlled foreign corporations (CFCs), thin capitalization transactions and market support payments. Financial transactions, intangible property transactions and business restructurings rank high on the breadth of transactions targeted by Inland Revenue.

Transfer pricing penalties

New Zealand does not have a specific transfer pricing penalty regime. The general tax penalty regime applies to transfer pricing adjustments as well. Inland Revenue abides by strict administrative and governance processes internally for determining penalties. Legislative requirements also require consistent application of penalties. Over the last two years, however, penalties were applied in less than 25% of cases where transfer pricing adjustments were issued. The average rate of penalty has been less than 25% of additional tax in these cases. Over the next two years, the rates of penalties applied are expected to remain the same.

Audit case selection

In New Zealand, a centralized process is adopted for case selection for overall risk assessment, including transfer pricing matters.

Indirect and customs tax

Inland Revenue and New Zealand Customs do not actively share information, but liaise on emerging developments. Inland Revenue does not see significant differences between customs values and positions taken by taxpayers.

If taxpayers experience issues with Customs in respect of their transfer pricing, Inland Revenue may discuss the issue with Customs. Such discussions will depend on whether the transaction is covered by an APA, whether a request is made by the taxpayer and whether Inland Revenue is subject to secrecy obligations.

Comparable data

Inland Revenue has no requirement for local country comparables. As New Zealand is a small market, the tax authority accepts comparables from other jurisdictions. Inland Revenue prefers, ranked in order, comparables from Australia, the United States, Canada and the United Kingdom. However, comparables from other jurisdictions are accepted if the taxpayer is able to justify comparability. As a requirement, comparables must be from countries that have generally accepted accounting practices or financial reporting requirements or rules similar to New Zealand.

In presenting comparable data, Inland Revenue generally expects five years of data. In addition, weighted averages of data and the application of interquartile ranges are required. Pooling or simple averaging of financial data is not acceptable.
Inland Revenue supports the use of the methodologies set out in the OECD Transfer Pricing Guidelines that encourage cross-checks against the main indicator to ensure the result is reasonable.

Financial adjustments to comparable data are optional, if the need for an adjustment is clearly identified and the adjustment strengthens the comparability.

**Transfer pricing methods**

Inland Revenue does not prioritize transfer pricing methods; however, it prefers that taxpayers use a secondary method to corroborate the results from the primary method, if feasible. Inland Revenue does not consider any method to be inappropriate.

**Advance pricing agreements (APAs)**

New Zealand has both a unilateral and bilateral APA program. All taxpayers have the right to access the program. In 2013, 21 APA applications were received. Currently, there are 11 applications in process, of which 7 are completed and 4 are in the process of being completed. Of the 11 applications in process, 10 are for unilateral APAs and the remainder is for a bilateral APA. The majority of concluded bilateral APAs have been with Australia. Inland Revenue aims to complete the unilateral APA process within six months of the formal application. The bilateral APA process with Australia is also expected to be completed within six months. However, negotiations with other tax authorities are expected to take longer. Hence, a bilateral APA case may take up to two years to resolve.

The turnaround of the APA process in New Zealand is relatively efficient. Inland Revenue attributes the success of the APA program to the use of an early pre-lodgement and scoping meeting with the taxpayer, which helps in facilitating a faster resolution.

**Mutual agreement procedures (MAPs)**

Inland Revenue received approximately three transfer pricing competent authority cases for resolution, of which two cases were resolved and one is ongoing. The most common jurisdictions involved are Australia and Canada. While MAP is under way, full payment needs to be made. However, Inland Revenue withholds interest and penalty payments.

**Yield/performance of transfer pricing reviews**

Inland Revenue does not measure effectiveness on “hard numbers”; rather, the key driver for Inland Revenue is “coverage,” i.e., the aim to have a wide coverage of cases with an emphasis on high-risk taxpayers. Yield statistics are not published.

Inland Revenue would generally regard the situation whereby it is making a significant number of transfer pricing adjustments as a failure as this would suggest a widespread level of noncompliance with New Zealand tax legislation.

Inland Revenue’s goal is to maintain a climate whereby MNEs should not feel comfortable that their transfer pricing arrangements will not be reviewed and they can purposefully misprice transactions.

Inland Revenue attempts to identify trends early and encourage taxpayers to seek clarity on their tax positions ideally prior to or shortly after entering into a material or complex associated party transaction(s) to avoid time-consuming and costly disputes in the future.

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**Transfer pricing disputes**

There are two ongoing cases under domestic appeal and one case under MAP.

**Current influences on transfer pricing**

There have not been any significant changes due to recent developments.
Resources the taxing authority is devoting to transfer pricing

At present, occasional transfer pricing audits are conducted as part of the regular audits of the Large Taxpayers Group or the Revenue District Offices of the Bureau of Internal Revenue (BIR). Specific transfer pricing audits are not yet in place as the rules on transfer pricing audits are still being drafted. Transfer pricing audits are expected to be cascaded to the Revenue District Offices (RDOs) in the near future.

There is an ad hoc special committee on transfer pricing that is tasked with drafting Revenue Regulations (RRs), Revenue Memorandum Circulars (RMCs) and Revenue Memorandum Orders (RMOs) to provide clarification and more detailed rules on transfer pricing issues relating to advance pricing agreements (APAs), transfer pricing documentation, transfer pricing audit risk assessment and mutual agreement procedures (MAPs). These RRs, RMCs and RMOs are expected to be released in late 2014.

Approximately 20 officers of the BIR are members of the ad hoc special committee. Selected officers and employees of the BIR National Office are attending training to gain knowledge on various aspects of transfer pricing. If transfer pricing rules are issued, it is anticipated that more examiners will be conducting transfer pricing audits.

The tax authorities rely on training conducted by the OECD and Association of Southeast Asian Nations (ASEAN) countries.

Industry focus

The BIR does not focus on particular industries for transfer pricing scrutiny. However, large taxpayers will be targeted as they are most likely to be engaged in related-party transactions.

Geographic focus

The BIR does not focus on a particular geographic area for transfer pricing scrutiny.

Types of transactions under scrutiny

The BIR also does not focus on particular transactions for transfer pricing scrutiny.

Transfer pricing penalties

The Philippines does not have a specific transfer pricing penalty regime. The transfer pricing regulations adopt the provisions of the Tax Code and other applicable laws in the imposition of penalties on any taxpayer that fails to comply with or violates the provisions and requirements of the regulations. In the case of a transfer pricing adjustment, general penalties of 25% as a surcharge (50% in fraud cases) and 20% interest per annum are applicable.

Audit case selection

As mentioned above, transfer pricing audits are conducted as part of the regular audits of the Large Taxpayers Group or the Revenue District Offices of the BIR. The BIR is in the process of developing practices and procedures for carrying out specific transfer pricing audits.

Indirect and customs tax

Given the limited number of transfer pricing resources, there is currently no direct interaction between transfer pricing and indirect tax specialists.

Comparable data

There is no specific regulation with respect to the use of local comparables, but in practice, the BIR prefers local country comparables. The BIR also keeps a benchmark of the profitability of companies in several industries. There are no specific requirements with respect to the number of years of financial data to be used, method for calculating the arm’s-length range, the use of weighted average versus simple average or pooling of financial data. The factors to be considered in selecting the appropriate profit level indicator are characterization of the business, availability of data and the extent to which the profit level indicator produces a reliable arm’s-length range.

Adjustments to comparable data should be made if there are differences between the transactions of the comparables and that of the tested party. Recognized adjustments include accounting, functional and risk adjustments.

Transfer pricing methods

There is no priority of transfer pricing methods, and no method is considered inappropriate. Taxpayers are allowed to use the most appropriate transfer pricing method. There is no guidance available with respect to other non-traditional methods such as cost contribution or cost-sharing arrangements.

Advance pricing agreements (APAs)

The transfer pricing regulations give taxpayers the option to utilize both unilateral and bilateral APAs. However, the ad hoc committee is currently in the process of drafting the APA rules.

Mutual agreement procedures (MAPs)

The Philippines is a party to many tax treaties that contain the MAP article, and therefore, MAP relief is available. However, the ad hoc committee is currently in the process of drafting more detailed MAP rules.

Current influences on transfer pricing

BEPS and other OECD initiatives may influence the transfer pricing policies and practices in the Philippines.

2014 global transfer pricing tax authority survey
Resources the taxing authority is devoting to transfer pricing

A specialized transfer pricing team in the Corporate Tax Division focuses on transfer pricing reviews and advises corporate tax assessors on transfer pricing reviews, while the International Tax Branch deals with APA and MAP issues. There are currently five dedicated transfer pricing full-time employees (FTEs) under the Corporate Tax Division (overseeing transfer pricing consultations and reviews) and six at the International Tax Branch (overseeing APAs and MAPs). All of these resources are based in the central unit. In addition to these resources, assessors in the Corporate Tax Division may also raise transfer pricing queries in the course of reviewing tax returns.

Two years ago, both the Corporate Tax Division and the International Tax Branch had five dedicated resources. The number of transfer pricing resources is expected to remain the same in the Corporate Tax Division whereas resources in the International Tax Branch are expected to increase (about two FTEs) over the next two years.

All the resources currently involved in transfer pricing examinations have some transfer pricing experience. Most of these resources are accountants, while a few are economists and one is a lawyer. The background of the resources is not expected to change over the next two years. External sources are not relied on; however, the IRAS participates in transfer pricing-related discussions in organizations such as the OECD and the Study Group on Asian Tax Administration and Research (SGATAR). Transfer pricing specialists of the tax administrations of OECD countries conduct training as part of the OECD’s collaboration with the IRAS to provide training sessions for the region. The recent BEPS and OECD intangible initiatives have not resulted in increased resource commitments.

Industry focus

No specific industry bears particular scrutiny by the IRAS.

Geographic focus

The IRAS does not specifically target transactions with certain jurisdictions. However, it has shown interest in related-party transactions where the counterparty is in a tax jurisdiction with a lower prevailing corporate tax rate than Singapore.

As many companies in Singapore perform regional headquarters functions, there are a number of cases involving Singapore-based companies’ transactions with related parties in the region (e.g., Malaysia, Thailand, Indonesia, China, Japan, Korea and Australia). There are also a number of cases involving Singapore-based companies’ transactions with their European (e.g., the United Kingdom, Germany, France), American, Canadian, Japanese and Korean headquarters.

Types of transactions under scrutiny

In Singapore, particular types of transactions are not currently targeted for transfer pricing reviews. However, tangible goods transactions and intragroup services form the majority of cases, followed by intangible property transactions and cost-sharing or cost-pooling arrangements.

Transfer pricing penalties

Singapore does not have a specific transfer pricing penalty regime. The general penalty system applies. Although it is a general system, it ensures consistent application of transfer pricing penalties.

There have not been any transfer pricing adjustments in the last two years where penalties have been assessed. Over the next two years, the assessment of penalties is, however, expected to increase.

The recent BEPS and OECD intangible initiatives have not impacted the application of penalties.

Audit case selection

Transfer pricing audit cases are selected by officers or assessors in the corporate tax division of the IRAS, either as part of a formal transfer pricing consultation (TPC) process, or as part of the review of the taxpayer’s corporate tax returns. Profitability, business restructurings, and the nature of related-party transactions undertaken by the taxpayers are all relevant factors in initiating a transfer pricing review.

Indirect and customs tax

Transfer pricing enforcement resources in Singapore do not work in an integrated way with indirect tax specialists. There is no legal requirement that the same transfer price be used for corporate and indirect tax purposes; however, the same transfer prices are typically used.

Comparable data

The IRAS does not require Singaporean comparables. If the tested party is a Singaporean taxpayer, Asia-Pacific comparable data is generally permissible. There are no explicit requirements regarding the presentation of comparable data. However, three or five years of financial data are usually considered, the interquartile range is generally adopted, and the weighted average is typically used. There are no specific requirements regarding the selection of a profit level indicator. However, if the berry ratio has been used, the IRAS generally prefers to use markup on total costs (MTC) or operating margin (OM) as a corroborative analysis. The use of public data is preferable.

Financial adjustments to comparable data are optional, if justifiable.
Transfer pricing methods

There is currently no priority or preferred order of transfer pricing methods, and no method is considered inappropriate.

The Singapore Transfer Pricing Guidelines refer to the five transfer pricing methods mentioned in the 2010 OECD Transfer Pricing Guidelines. Paragraph 3.2.5.3 of the Singapore Transfer Pricing Guidelines provides that “a taxpayer can select any of the five methods, or even a modified version [of a method] to comply with the arm’s-length principle, as long as the taxpayer maintains and is prepared to provide sufficient documentation to demonstrate that its transfer pricing prices are established in accordance with the arm’s-length principle.”

There is no specific guidance on cost-contribution or cost-sharing arrangements, but the IRAS has not excluded the applicability of cost-contribution arrangements or cost-sharing arrangements if the outcome is in accordance with the arm’s-length principle.

The position outlined above is based on policy statements (IRAS circulars) and working practice.

Advance pricing agreements (APAs)

There is a formal APA program currently available that includes unilateral, bilateral and multilateral APAs. Approximately 12 to 15 applications are received annually. Access to the program is at the discretion of the tax authority. At present, there are about 30 applications in process.

The majority of the cases are bilateral APAs, and a majority of these cases involved Japan and Australia. On average, a bilateral APA takes between 18 and 30 months to complete, while a unilateral APA takes between 12 and 18 months. In the case of a unilateral APA where the counterparty to the related-party transaction is a resident of a jurisdiction that does not have a comprehensive tax treaty with Singapore, the unilateral APA is considered to be under the advanced ruling system.

The IRAS issued administrative guidance on APAs in an IRAS Supplementary Circular on 20 October 2008. The IRAS is typically responsive during the APA process, provided the taxpayer is also responsive to the IRAS’ requests or queries.

Mutual agreement procedures (MAPs)

Approximately three transfer pricing competent authority cases are received annually and take approximately two years to resolve. Most competent authority cases involve Japan.

If a MAP is initiated by a treaty partner, no corresponding adjustment is allowed until resolution of the MAP case. If the transfer pricing adjustment is initiated by the IRAS, the taxpayer would be expected to pay any taxes and interest while MAP negotiations are under way.

Yield/performance of transfer pricing reviews

The transfer pricing consultation process is relatively new (the process began in 2008). Therefore, at the moment, the IRAS appears to be assessing the level of awareness of transfer pricing among Singapore taxpayers, the extent of transfer pricing documentation and compliance, and the appropriateness of the transfer pricing methods adopted. Statistics on transfer pricing review performance are not currently available.

Transfer pricing disputes

Currently, there are no transfer pricing disputes in litigation or arbitration. Statistics with respect to domestic appeals (i.e., preceding court action) are not readily available. There are currently about 10 ongoing cases under MAP.

Current influence on transfer pricing

The IRAS is involved in the relevant working party meetings at the OECD and actively monitors international trends. On 1 September 2014, the IRAS issued a consultation paper on transfer pricing documentation that proposes contemporaneous documentation and a master file approach, shifting the burden of proof toward the taxpayer. The proposals in the consultation paper are aligned with the OECD’s discussion draft on transfer pricing documentation under Action 13 of the BEPS Action Plan, although a country-by-country reporting template is not included. The consultation period ends on 24 September 2014, and the final transfer pricing documentation rules are expected to be released by the end of the year.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing examinations are mainly conducted by the five National Taxation Bureaus (NTBs) under the supervision of the Taxation Administration (TA), Ministry of Finance (MOF). Transfer pricing examinations are subject to the final review and approval of the TA. In addition to the NTBs, the Tax Auditing Division of the MOF may also conduct independent transfer pricing examinations of cases involving significant tax issues.

The TA has a strong team of 15 experienced transfer pricing audit personnel, with 6 officers and 5 reviewers on a routine basis and the remainder on a supportive basis. The resources are not full time transfer pricing specialists; however, they are well trained and have considerable knowledge of transfer pricing.

Within the NTBs, tax officials are generally responsible for all income tax examinations, including transfer pricing. Transfer pricing documentation can be requested as part of the income tax examination. If related-party transactions are complicated, a team of three to five experienced tax officials is formed to conduct the special audit.

The First Examination Division of the NTB, which conducts the income tax returns of profit-seeking enterprises, is qualified to perform transfer pricing audits. Selection of the auditor is based on the officer’s level of experience and expertise.

Most of the resources involved in transfer pricing reviews are officials with accounting and finance backgrounds. The number of transfer pricing resources is expected to increase over the next two years, and a larger number of tax officials are expected to be trained for transfer pricing examinations.

Tax authorities do not rely on external resources such as consultants, industry specialists or expert witnesses. Training needs for the transfer pricing resources are met by training and annual meetings organized by the OECD and other international organizations. Occasionally, consultants and/or external transfer pricing specialists from other countries are invited to conduct in-house training for tax officials. In addition, seminars and internal training on the implementation of transfer pricing audits are regularly organized by tax authorities. Topics cover case selection, identification of comparables, comparability adjustments, negotiations with taxpayers and solutions to problems in practice.

The TA and NTBs will likely both devote additional resource towards transfer pricing following with the current development of the OECD’s BEPS initiative. The conclusions from the initiatives will likely be a key reference to any future revisions of local regulations.

Industry focus

In Taiwan, no specific industry is targeted for transfer pricing audits.

Geographic focus

In Taiwan, enterprises having significant or frequent controlled transactions with related parties in tax havens or low-tax jurisdictions receive particular scrutiny. Although major trading partners and domestically headquartered companies are not drivers of transfer pricing audits, in practice, most companies selected for transfer pricing audit happen to have intercompany transactions with Taiwan’s major trading partners or happen to be domestically headquartered. In addition, while carrying out transfer pricing audits, the tax authorities pay special attention to whether Taiwan’s tax benefit is negatively affected due to enterprises having transactions with related parties located in aggressive tax jurisdictions.

Transactions are systematically selected for transfer pricing audits because of the stated policy of the government or relevant ministry.

Types of transactions under scrutiny

The following types of transactions are currently the focus for transfer pricing reviews within Taiwan: tangible goods, intangible property transfers (e.g., royalties, licensing), intragroup services and financial transactions.

Transfer pricing penalties

Taiwan has a specific transfer pricing penalty regime as prescribed under Article 34 of the Taiwan transfer pricing regulations. The NTB is empowered to make transfer pricing adjustments and assess the taxable income of related taxpayers in accordance with Article 110 of the Taiwan Income Tax Act and transfer pricing regulations. There are processes in place to ensure consistent application of transfer pricing penalties. Article 110 of the Income Tax Act applies to the following tax omission and underreporting situations:

• The reported price of the controlled transaction is more than two times or less than 50% of the arm’s-length price assessed by the NTB
• The increase in taxable income of the controlled transactions adjusted and assessed by the NTB is more than 10% of the annual taxable income of the enterprise and more than 3% of the annual net operating revenue
• The taxpayer cannot provide a transfer pricing report as required by the transfer pricing regulations, and no other document is proposed to indicate that the transactions are conducted at arm’s length
• Other de facto tax omission or underreporting is discovered by the NTB where the amount of evasion is significant

Penalties are applicable only when the taxpayer meets the constitutive elements of the penalty. If the taxpayer has filed the annual income tax return (including a final report on total business income
or income earned from liquidation) in accordance with the provisions of the Act, the applicable penalty will not be more than twice the amount of tax evaded. Over the last two years, the percentage of transfer pricing cases where a penalty is applicable is less than 25%, and the average penalty rate where penalties have been assessed was less than 25% (as a percentage of additional tax). The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection

While the MOF initiates a transfer pricing audit plan listing the biannual plan and objectives, case selection is the sole responsibility of the NTB. Various considerations are taken into account in determining which taxpayers to audit, including profitability, risk-based assessment by the tax authority, nature and volume of related-party transactions undertaken by the taxpayer, standard audit cycle or program and previous tax audits of the taxpayer.

The NTB uncovers potential audit cases by setting key criteria into a database and estimating the transfer pricing adjustment that would be necessary. Once a taxpayer is selected for audit, the NTB forms a team of three to five tax officers with a lead auditor to perform the special audit. At the conclusion of the audit, the case would be reported to the MOF for final review. The MOF currently has a group of 10 people performing routine reviews. According to the biannual audit plan, audits are conducted based on one or more of the following criteria:

- The complexity of intercompany transactions
- Intangible assets transactions
- Significant or frequent controlled transactions with related parties in tax havens or low-tax jurisdictions
- Taiwan entity reporting a loss or lower profit than its related parties or the global consolidation
- The scale of intercompany transactions
- Whether significant operating losses have been incurred

Indirect and customs tax

The transfer pricing enforcement resources are not integrated with the indirect tax team. There is also no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data

The NTB has no preference for local country comparables. However, global and regional comparables (i.e., within the same continent as the taxpayer) are acceptable depending on the case. In most cases, the comparable profit method (CPM) is adopted and three years of financial data are analyzed. Although the interquartile range is generally applied for calculating the arm’s-length range, the detailed comparability adjustments will be increasingly addressed. The weighted average is preferred to the simple average, and an appropriate profit level indicator is selected based on a functional and risk analysis and entity characterization.

Adjustments to comparable data are mandatory where appropriate, but there is no guidance under the Taiwan transfer pricing regulation with respect to working capital, asset intensity or country risk adjustments.

Transfer pricing methods

The Taiwan transfer pricing regulations do not observe a hierarchy of transfer pricing methods. Taxpayers are allowed to follow the most appropriate transfer pricing method although the comparable profit split method is considered inappropriate.1

Advance pricing agreements (APAs)

APAs are mentioned in Chapter 5 of the 2005 transfer pricing regulations and the implementation rules released on 21 September 2007. Taiwan’s transfer pricing regime formally provides for both unilateral and bilateral APAs. During 2008 to 2013, the program received two to three cases annually. The program requires that the following eligibility conditions be satisfied before an APA application is submitted:

- The total value of the transaction that is the subject of the APA should be at least NT1 billion, or the annual amount of such transactions should be at least NT500 million
- No significant tax evasions should have been committed by the taxpayer in the past three years
- The prescribed documentation and transfer pricing report should have been well prepared
- The preparation of the transfer pricing report has been completed
- Any other criteria as may be specified by the MOF should be satisfied

By 31 July 2014, eight APAs were approved (from six companies). Three applications are currently in process; two of them are bilateral, with the other unilateral. The prescribed processing time for unilateral APAs is one year, with

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1. In Taiwan, transactional net margin method (TNMM) and CPM are deemed to be the same; however, Taiwan uses the term CPM.
two extensions, at six-month intervals. There is no prescribed processing time for bilateral APAs.

In order to be consistent with the arm’s-length principle, the NTB and taxpayers invest a great deal of time in selecting the most appropriate comparable companies, which delays the APA process. The overall APA process is expected to quicken if the application is well prepared and each transaction is analyzed individually in accordance with Taiwan’s regulations and the NTBs and taxpayers become more experienced.

**Mutual agreement procedures (MAPs)**

In Taiwan, there is only one correspondent adjustment claim, which is with the Netherlands and is still under negotiation.

**Yield/performance of transfer pricing reviews**

The NTB measures the effectiveness of its transfer pricing reviews through indicators such as increased tax yield, percentage of review cases where an adjustment is made to taxpayer income, percentage of review cases where an adjustment is sustained on appeal, percentage of taxpayers assessed as high risk and percentage of taxpayers in compliance with documentation requirements. The NTB publishes statistics on yield or performance only for internal references.

**Transfer pricing disputes**

There is only one ongoing case under MAP.

**Current influence on transfer pricing**

The current economic environment and OECD initiatives (including BEPS) have influenced the transfer pricing policy and practice in Taiwan. Despite having its own transfer pricing regulations, Taiwan still refers to the OECD Transfer Pricing Guidelines and any significant changes to the OECD Guidelines would have a potential influence on the Taiwanese transfer pricing practice. Tax officers attend OECD annual meetings to stay up to date on current global transfer pricing regulations and the audit environment.
Resources the taxing authority is devoting to transfer pricing

The transfer pricing team within the Thai Revenue Department (TRD) is responsible for transfer pricing reviews of large multinational companies. The team currently consists of 11 members (approximately the same number two years ago). Most of the resources are accountants, while a few are economists or lawyers. There is no specific plan to increase the number of resources over the next two years.

From time to time, the transfer pricing team conducts workshops with other tax authorities, mainly in ASEAN countries, to build and share knowledge.

Industry focus

The TRD conducts transfer pricing reviews using its own database analyzed on an industry basis. Significant activity in Thailand is the primary focus for the selection of industries. The selection of industry is not widely communicated to taxpayers.

Geographic focus

There is no specific geographic focus in transfer pricing review case selection.

Types of transactions under scrutiny

The tax authority does not target specific types of transactions for audits. However, business restructuring transactions tend to be one of the major transfer pricing audit trigger points since they typically lower the Thai company’s profitability and amount of tax payable.

Transfer pricing penalties

There is no specific transfer pricing penalty regime in Thailand. A penalty of 100% is imposed on corporate income tax shortfall where the tax authority’s assessment is delivered via a tax summons. Due to the fact that most taxpayers in Thailand voluntarily file a tax amendment to adjust profits at the end of a transfer pricing audit (instead of being assessed via a tax summons), penalties have been imposed in less than 10% of cases.

Audit case selection

Transfer pricing audit case selection is mainly based on a reduction or fluctuation in profitability, reduction in the amount of tax payable, profits reported lower than the industry average, and the nature and volume of related-party transactions.

Indirect and customs tax

Transfer pricing resources do not work in an integrated way with indirect tax specialists. There is no requirement that the same transfer price be used for corporate direct and indirect tax purposes.

Comparable data

The TRD primarily accepts local comparable companies. If local comparable companies are not available (which is quite rare), regional comparable companies will be considered on a case-by-case basis. Financial adjustments to the comparable data are only allowed if justifiable.

Transfer pricing methods

Although the existing transfer pricing guidelines mention the priority of certain transfer pricing methods, the TRD in practice applies the most appropriate method in line with the OECD Transfer Pricing Guidelines.

Advance pricing agreements (APAs)

A formal bilateral APA program is currently available. The TRD generally receives three to five applications annually. The majority of APA applications are bilateral with Japan. The average length of time required to conclude the APA is between two and three years, depending on the number of meetings held each year (usually two a year).

The TRD is planning to add more cases in each APA discussion meeting and increase the number of meetings held each year as a means to expedite the APA process and reduce the time required to conclude APAs.

Mutual agreement procedures (MAPs)

So far, five MAP cases with the Japanese tax authorities have been concluded. It takes two to three years to conclude a MAP case. The TRD usually requires the Thai taxpayer to pay the tax shortfall before initiating a MAP.

Yield/performance of transfer pricing reviews

The effectiveness of transfer pricing reviews is measured by the percentage of review cases where an adjustment is made to taxpayer profit and the number of cases being reviewed. Yield statistics are not publicly available.

Transfer pricing disputes

There is currently no information available on transfer pricing disputes.

Current influence on transfer pricing

The recent OECD developments have not impacted the transfer pricing policies or practices in Thailand.
Resources the taxing authority is devoting to transfer pricing

The General Department of Taxation (GDT) administers taxes in Vietnam. Since the introduction of formal Vietnam transfer pricing regulations in 2005 (effective 2006), a centralized transfer pricing team was formed at the Division of Tax Modernization and Reform of the GDT. The centralized team’s responsibilities include leading the development of a transfer pricing policy and monitoring transfer pricing regulatory implementation, as well as participating in transfer pricing audits. The team is located in Hanoi and consists of 23 full-time employees (FTEs), up from 10 FTEs two years ago.

Large local tax authorities are in the process of setting up and developing separate teams responsible for transfer pricing administration, including audits. For instance, the Ho Chi Minh City Tax Department and the Hanoi tax department are developing a core team focusing on transfer pricing advisory and audit activities. These members are currently working for different divisions but can be deployed on transfer pricing reviews based on case-specific requirements. Over time, the local resource’s training and developmental needs are expected to be met by the centralized resources.

The establishment of the centralized team responsible for transfer pricing at the GDT and the plan to form a formal and separate team administering transfer pricing at certain local tax departments indicate that the tax authority is becoming progressively more sophisticated and increasingly focused on administering transfer pricing.

The resources at the centralized team are tax generalists with certain transfer pricing knowledge. The resources are mostly economists, accountants or lawyers.

The tax authority has contracted with industry specialists to provide training to tax auditors undertaking transfer pricing reviews. In addition, resources at both the centralized and local levels are sent for transfer pricing training overseas in locations such as Australia, Indonesia, Korea and Japan where transfer pricing is more advanced. Furthermore, the European Commission is entrusted with capacity building of tax authorities whereby intensive classroom training on transfer pricing and exchange programs are facilitated by the World Bank, the OECD and practitioners including EY. The aim of this project is to support the Vietnamese tax officers by equipping them with the knowledge, appropriate tools and practical skills necessary to effectively implement and enforce Vietnamese transfer pricing regulations.

On 21 May 2012, Vietnam’s Ministry of Finance (MOF) issued Decision No. 1250/QD-BTC approving the National Action Plan for the period 2012–2015. Besides the increase in transfer pricing audit cases (at least 20% of the annual tax audit cases are devoted toward transfer pricing audits), an important component of this program is to provide training to build up capable human resources in order to enhance the Vietnam tax authority’s capacity for transfer pricing administration. With the introduction of the advance pricing agreement (APA) program, increases in transfer pricing audit activities and recent developments of the transfer pricing guidelines in the world, including the introduction of BEPS and OECD intangibles, it is expected that Vietnam will dedicate more resources to transfer pricing administration in the future.

Industry focus

The real estate, automotive, pharmaceutical, oil and gas, electronic and electrical, garments, textiles and footwear industries receive specific transfer pricing scrutiny. The industries under specific scrutiny are widely communicated to taxpayers. The list of industries under specific focus could change or be reviewed depending on business performance, economic circumstances or regulatory changes.

Geographic focus

Geographic considerations are not drivers for the selection of taxpayers for review. However, the Vietnam tax authority focuses on companies with investors from Japan, Korea, Taiwan, Hong Kong, Mainland China and the United States.

Types of transactions under scrutiny

Transactions involving the processing of service fees, tangible goods, intragroup services, transfers of intangible property, financial transactions and the disposal of fixed assets are targeted by the Vietnam tax authority (in that order) for transfer pricing reviews. However, the focus on transactions is flexible and will vary based on actual cases.

Transfer pricing penalties

Vietnam does not have a specific transfer pricing penalty regime. However, the tax authority is empowered to adjust the value of transactions found to be inconsistent with market prices. In addition, such taxpayers shall, depending on the nature and severity of the violation, be sanctioned under the relevant penalty provisions contained in the Law on Tax Administration as well as criminal law.

There are no formal processes in place to ensure consistent application of transfer pricing penalties. Due to the increase in transfer pricing audits, there has been an increase in cases where transfer pricing adjustments have been made resulting in additional tax collection and imposition of penalties. In the last two years, transfer pricing penalties have been assessed in 75% to 100% of all transfer pricing adjustments. According to the general tax penalty regime in Vietnam, a taxpayer is subject to a penalty of 10% (increased to 20% from 1 July 2013) of additional taxes in cases of incorrect tax declaration and 100% to 300% of additional tax in cases of tax evasion. No direct impacts from the OECD BEPS and intangibles initiatives have been noted at this time.
Audit case selection
The selection of cases for transfer pricing review is governed by the central decision-making body at the GDT, as well as the authority at the local level. Various considerations are taken into account in determining which taxpayers to audit, including factors such as (in order of importance) taxpayer profitability; risk-based assessment by the tax authority; the nature or volume of related-party transactions undertaken by taxpayers; VAT, employment, customs or other indirect tax reviews; previous tax audits of the taxpayer; and evidence that the taxpayer has restructured its business. Given the enhanced legislation and enforcement of transfer pricing audits in Vietnam, taxpayers are expected to face a more challenging transfer pricing landscape in the next two years. Vietnam is also developing an audit manual and safe harbor rules at this time.

The following categories of taxpayers are typically targeted for reviews/audits:

- Enterprises that report losses either for consecutive years or during their tax incentive period but continue to expand their businesses despite such losses
- Enterprises with significant related-party transactions
- Enterprises under suspicion of transfer pricing abuse
- Enterprises that are not compliant with the transfer pricing regulations

Indirect and customs tax
The cooperation between transfer pricing enforcement resources and indirect tax specialists is limited. There is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data
There is no regulatory provision specifying the permissible region for the selection of comparables. However, based on recent audit experience, tax authorities strongly prefer local comparables. In the absence of local comparables, regional comparables may be acceptable. The benchmarking search should be expanded first for comparable economic circumstances, then to Southeast Asia, Asia-Pacific more generally, and other regions.

In preparing and presenting comparable data, Circular 66 indicates that a minimum of three consecutive years of financial data should be used. Under the provisions of the Circular, it is also mandatory to make adjustments to account for material differences between comparable data and tested parties. Circular 66 also provides that although the taxpayer has applied the specified transfer pricing methods, if the business situation of the taxpayer is affected by a force majeure event such as a natural calamity, the taxpayer may adjust the transfer prices reflecting the actual circumstances.

Transfer pricing methods
Circular 66 specifies the following five transfer pricing methods: comparable uncontrolled prices (CUP), resale price method (RPM), cost plus, comparable profits method (CPM) and profit split.

While Circular 66 does not impose a rigid methodological hierarchy, it nevertheless gives some indication of the efficacy of each method applicable to specific transactions. In practice, the tax authority gives preference to the CUP method as long as reliable CUP data is available. The Circular places emphasis on the use of “internal comparables” whenever they are available.

Circular 66 also provides guidance for the application of transfer pricing methods in special cases. Where enterprises are unable to select comparable uncontrolled transactions in the comparability analysis specified in the Circular due to the unique or distinctive characteristics of related-party transactions, they can apply a generalized method or use historical comparable data.

Advance pricing agreements (APAs)
The Amended Law on Tax Administration No. 21/2012/QH13 effective 1 July 2013 establishes the legal basis for APAs in Vietnam for the first time. Under this law, an APA is defined as an agreement between the tax authority and taxpayer for a period of time, which sets the basis of the tax calculation, pricing method or arm’s-length price of related-party transactions prior to the submission of tax and customs declaration dossiers, where appropriate.

Subsequent to the introduction of the Amended Law on Tax Administration, the GDT issued Circular 201 in February 2014 providing detailed guidance on the application of APAs. Unilateral, bilateral and multilateral APAs are available, and for up to a five-year period. Bilateral and multilateral APAs can be applied with tax authorities in countries and territories that have signed double tax treaties with Vietnam to avoid double taxation and prevent income tax evasion.

The approach outlined is similar to that contained within the OECD Guidelines. Taxpayers subject to corporate income tax in Vietnam can apply for an APA before filing their corporate income tax return. However, there is no clear guidance on the eligibility criteria for APA applicants.

Vietnam (Cont’d.)

**Mutual agreement procedures (MAPs)**
Vietnamese tax treaties contain provisions relating to mutual agreement procedures (MAPs). Given the only more recent enforcement of transfer pricing in Vietnam, the number of cases received annually is small.

**Yield/performance of transfer pricing reviews**
The tax authority measures the effectiveness of transfer pricing reviews through indicators such as an increase in the tax yields and level of awareness among the public and taxpayers in general of transfer pricing compliance requirements and associated risks in the event of noncompliance. According to the statistics published on tax yields during 2012, there had been VND3.3 trillion of adjustments and VND622.8 billion of additional tax collection and penalties. In the first nine months of 2013, transfer pricing audits had resulted in transfer pricing adjustments amounting to VND1.6 trillion and additional tax collection and penalties amounting to VND481 billion.

**Transfer pricing disputes**
Given the relatively new applicability of transfer pricing regulations in Vietnam and the early stage of audit activities by the tax authority, a very limited number of transfer pricing disputes have been raised in the last two years.

**Current influences on transfer pricing**
Vietnam transfer pricing regulations are broadly consistent with the OECD Transfer Pricing Guidelines and as such are affected by them. The introduction of the UN Manual could also have an impact.
2014 global transfer pricing tax authority survey

EMEIA jurisdictions
### Americas
- Argentina 14
- Brazil 16
- Canada 18
- Chile 21
- Colombia 23
- Mexico 24
- Peru 27
- Uruguay 28
- Venezuela 29
- United States 31

### Asia-Pacific
- Australia 36
- China 38
- India 40
- Indonesia 42
- Japan 44
- Korea 45
- Malaysia 47
- New Zealand 49
- Philippines 51
- Singapore 52
- Taiwan 54
- Thailand 57
- Vietnam 58

### EMEA (Europe, Middle East, and Africa)
- Austria 64
- Belgium 66
- Czech Republic 69
- Denmark 71
- Egypt 73
- Estonia 74
- Finland 76
- France 77
- Germany 80
- Hungary 82
- Israel 84
- Italy 85
- Kazakhstan 88
- Latvia 90
- Lithuania 92
- Netherlands 93
- Norway 95
- Poland 96
- Portugal 98
- Romania 100
- Russia 102
- Slovak Republic 104
- Spain 106
- Sweden 109
- Switzerland 111
- Turkey 114
- UK 116
Resources the taxing authority is devoting to transfer pricing

There is one centralized group within the Austrian tax authority that is responsible for international affairs and transfer pricing. There are approximately 30 full-time employees (FTEs) involved in transfer pricing examinations, of which 10 are based centrally. The rest of the FTEs are based in the field.

All of the current resources have very strong transfer pricing backgrounds. At least 60% of the resources have an economics background.

In the past, the Austrian tax authority trained its personnel internally. Special transfer pricing courses are offered at the Federal Tax Academy, but external resources such as annual seminars and meetings with scholars and tax advisors are also organized. Occasionally, training is conducted with other tax authorities within the European Union. There has been no increase in transfer pricing resources due to BEPS and other OECD initiatives.

Industry focus

Companies and transactions that relate to the automotive, consumer products, pharmaceuticals and technology industries receive particular scrutiny. The importance of intangible property to the industry and industry profitability have been relevant factors in drawing scrutiny to these industries. The selection of industries under specific scrutiny is not widely communicated to taxpayers. Currently, the list of industries under specific scrutiny is seldom reviewed.

Geographic focus

The tax authority specifically targets taxpayers engaged in transactions with major trading partners, domestically headquartered companies and companies located in perceived low-tax jurisdictions. Specifically, Austrian entities are under scrutiny if they have trading partners or transactions with companies located in jurisdictions with no or low taxes due to beneficial tax rulings, tax holidays or other incentives.

Transactions involving the Netherlands, Germany, Switzerland, Ireland, Cyprus, Malta and Luxembourg rank high among the current caseload of transfer pricing reviews.

Types of transactions under scrutiny

Transactions involving tangible goods (20% of the total caseload), intangible property (35% of the total caseload), intragroup services (20% of the total caseload) and financial transactions (25% of the total caseload) are currently specifically targeted for transfer pricing reviews.

Transfer pricing penalties

No specific transfer pricing penalty regime is currently in place, and specific penalties are not expected to be introduced in the near future.

Audit case selection

Transfer pricing audits are not currently governed by a central decision-making body. Reviews are usually initiated based on (in order of importance) evidence of business restructurings, taxpayer profitability, a standard audit program, the volume and nature of the related-party transactions undertaken, and previous tax audits of the taxpayer.

Indirect and customs tax

Transfer pricing enforcement resources work in an integrated way with indirect tax specialists and actively share information. However, there is currently no requirement that the same transfer price be used for corporate direct and indirect tax purposes.

Comparable data

While local country comparable companies are preferred, regional comparables are accepted if no local comparables can be identified. Comparable companies located in the European Union (EU) are preferred. Depending on the case, comparables located in the “old” EU member states (15 countries) may be highly preferred to comparable companies located in the “new” EU member states (13 countries that mainly include Eastern European countries). Generally, every comparables search must be in line with principles set forth in the OECD Transfer Pricing Guidelines.

An analysis of three years of financial data is generally required. The interquartile range is the method used to calculate the allowable arm’s-length range. If transfer prices are outside the range, they are adjusted to the median. The application of the full range is acceptable only if the comparables are virtually perfect comparables to the tested party and the full range is narrow. The weighted average is preferred to the simple average.

There is no preferred method of determining the proper profit level indicator. There is no preference with respect to pooling or averaging of financial data; however, the pooling method has rarely been applied.

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1. “Tax rulings” refer to rulings where the recipient of intragroup payments has concluded or negotiated with its home country a tax ruling for beneficial tax treatment (e.g., low or no taxation) for income resulting from royalties.
At the moment, there is no specific guidance available with respect to financial adjustments (e.g., working capital, asset intensity and country risk adjustments). These are accepted on a case-by-case basis.

**Transfer pricing methods**
The Austrian tax authority relies on the OECD Transfer Pricing Guidelines. In cases where a traditional transactional method and a transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferable to the transactional profit method. The comparable profit method and the comparable profit split method are accepted only in exceptional cases. Guidance is available with respect to the use of cost-sharing and cost-contribution agreements as well as business restructurings, which are taken from Chapter 8 and Chapter 9 of the OECD Transfer Pricing Guidelines, respectively. The use and order of preferred or allowed methods outlined above are publicly stated and are based on the Austrian Transfer Pricing Guidelines of 2010, published by the Ministry of Finance.

**Advance pricing agreements (APAs)**
It is currently possible to apply for unilateral, binding and appealable advance rulings issued by the competent tax office on the tax treatment of a particular (but yet-to-occur) transfer pricing issue. Under specific circumstances, it is possible to request that the Austrian tax authority participate in negotiations for a bilateral APA on the basis of Article 25(3) of the relevant double tax treaty. A formal bilateral APA program may be implemented in the next two to three years.

On average, 30 applications for unilateral APAs and between 5 and 10 applications for bilateral APAs are received each year. While there is a right of access to the unilateral APA program for taxpayers, right of access to the bilateral APA program is at the discretion of the tax authority, which takes into account the volume of transactions and the willingness of the other jurisdictions involved.

There are between 5 and 15 unilateral APA applications and approximately 5 bilateral APA applications currently in progress. Unilateral APAs form the bulk of the current caseload (80%), while the rest are bilateral. Most of the bilateral APAs involve Germany, Canada and the United States. Average completion time for unilateral APAs is between three and six months after filing the final ruling request, while completion time for bilateral APAs is approximately two years after the application is filed. The perception among businesses is that the APA process takes too long because of case complexity and a lack of available resources. There are currently no initiatives in place to expedite the process.

**Mutual agreement procedures (MAPs)**
Between 50 and 70 transfer pricing MAP cases are received annually, and they generally take one to two years to resolve. There are very few cases that have been left unresolved. The majority of MAPs involve (in order of caseload) Germany, the Netherlands and the United States. It is possible to defer payment of taxes and interest while a MAP is under way.

**Yield/performance of transfer pricing reviews**
The Austrian tax authority does not separately measure the effectiveness of transfer pricing reviews.

**Transfer pricing disputes**
There are currently between 50 and 70 ongoing transfer pricing disputes involving MAPs. Information on cases that are pending is not available.

**Current influences on transfer pricing**
BEPS, OECD and EU initiatives, such as the EU Joint Transfer Pricing Forum, as well as the implementation of centralized business and tax models, have contributed to changes in transfer pricing policy and practice. Currently, the Austrian tax authority is focused on issues such as intangible property migration, entities with operating losses, business restructurings, and intercompany licensing and financing.
Resources the taxing authority is devoting to transfer pricing

The Audit Cell (TPAC), officially created in 2006 as a centralized unit consisting of trained transfer pricing experts, is responsible for transfer pricing audits for the Belgian tax authority. Since the beginning of 2013, the capacity of the TPAC has doubled and the number of transfer pricing audits has increased significantly.

The majority of the TPAC resources are part of the central unit, but there are an increasing number of regionally located members of the TPAC. Approximately 30% of the transfer pricing resources are based in the field. Two years ago, there were 12 full-time employees (FTEs) based in the central unit. Transfer pricing experts are also found in the Belgian Service for Advance Decisions, as well as in the Department for Foreign Affairs (e.g., those responsible for the application of mutual agreement procedures (MAPs) and the arbitration convention). The number of FTEs is expected to increase in the near future as a result of increased attention toward transfer pricing. In addition to the TPAC’s increased audit activity, field tax inspectors are also continuously increasing their focus on transfer pricing during general tax audits.

All the members of the TPAC are transfer pricing specialists. The resources involved in transfer pricing examinations, in order of the proportion of resources, are economists, lawyers and accountants. The background of resources currently involved in transfer pricing examinations has not changed in recent years and is not expected to change over the next two years.

The Belgian tax inspectors do not use consultants, industry specialists or expert witnesses during transfer pricing reviews. The transfer pricing inspectors receive the same training as general tax inspectors in order to ensure they remain up to date on general tax issues as well. In the past, members of the TPAC have been involved in providing training to foreign tax authorities. The recent BEPS intangibles initiatives are expected to lead to a further increase in transfer pricing resources.

Industry focus

There are no formal programs prioritizing the review of taxpayers in any particular industry. However, there is still limited focus on the banking industry, given the specialized nature of the industry. Factors such as whether the industry has significant activities in Belgium, the importance of intangible property to the industry and the industry’s profitability are taken into account when identifying industries for review. As a result, the industries most under scrutiny are the automotive, biotechnology, consumer products, oil and gas, pharmaceuticals and technology industries.

Data mining is increasingly used to target taxpayers for transfer pricing reviews. The TPAC screens websites of multinationals, performs internet searches, refers to FIN 48 disclosures and taxpayer files, and analyzes financial data from public databases such as Amadeus, Orbis and Belfirst (a comparison of average industry profitability with individual entity profitability) to identify companies and transactions for review.

Geographic focus

Geographic considerations, as such, do not drive the selection of taxpayers for transfer pricing reviews. However, transactions with tax havens are subject to particular focus. Transactions with major trading partners and low-tax jurisdictions are also typically reviewed in the scope of audits. The top counterparty jurisdictions for transfer pricing audits, in order, are the United States, France, the Netherlands, Germany, Japan and the United Kingdom.

The Royal Decree of 10 August 2009 requires Belgian companies to provide certain information linked to transfer pricing in the notes or annexes of their annual accounts. This reporting obligation applies from the 2010 tax year for payments made (directly or indirectly) from 1 January 2010 totaling more than EUR100,000 per taxable period to persons established in tax havens by resident or nonresident entities (i.e., Belgian permanent establishments) and states that these payments are liable to Belgian corporate income tax.

Types of transactions under scrutiny

The type of transaction does not always drive transfer pricing audits, but business restructurings are currently a major focus area for reviews. Nonetheless, all types of transactions can be subject to a transfer pricing audit.

The Belgian tax authority has identified the following transactions for transfer pricing reviews in Belgium, in order of proportion of existing caseload: tangible goods transactions, intangible property transactions, intragroup services, financial transactions, cost-sharing and cost-pooling arrangements, and head office-permanent establishment allocations.
Transfer pricing penalties
No specific transfer pricing penalty regime applies since transfer pricing adjustments are within the scope of the ordinary Belgian tax penalty framework. The TPAC has the authority to autonomously decide on the penalty rate, so there is consistency in the application of penalties within the scope of its reviews. Penalties may vary and range from 10% to 200% (in very exceptional cases) of the additional tax levied under the amended assessment. The rate applied in any particular case depends on the degree of intent to avoid tax or the degree of the taxpayer’s negligence. In addition, taxpayers also incur interest liability for the late payment of additional tax. Over the last two years, penalties have been applied in 25% to 50% of cases where transfer pricing adjustments were issued. In cases where a penalty was assessed, the average rate of penalty has been less than 25% of the additional tax. Generally, the Belgian tax authority imposes up to a 10% penalty on additional tax; the actual penalty determined is decided on a case-by-case basis. In the next two years, the assessment of penalties is expected to increase. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection
The TPAC typically selects its own cases for transfer pricing audits. In addition, local field tax inspectors have the power to independently decide whether to review transfer pricing issues during a tax audit. Data mining approaches are currently used and are being further developed for the purposes of case selection. The 2006 Administrative Guidelines contain a list of events that could trigger a high risk of transfer pricing scrutiny during an audit, as follows:

- Structural losses
- Business reorganizations
- Migration of businesses
- The use of tax havens or low-tax rate countries
- Back-to-back operations
- Circular structures
- Invoices for services issued at year-end (i.e., management services)

All of the items listed above are taken into account as part of the data mining approaches used. Changes in profit, equity, employment, etc., year on year are also relevant factors for initiating transfer pricing reviews.

The selection of the taxpayer and the scope of the audit are typically driven by various factors, such as (ranked in order of prevalence) evidence of business restructurings, the volume of the taxpayer’s related party transactions, taxpayer profitability, the outcome of a risk-based assessment by the tax authority and previous tax audits of the taxpayer.

Indirect and customs tax
Belgian transfer pricing enforcement resources are not yet integrated with indirect tax enforcement. There is also no requirement that the same transfer price be used for corporate direct tax and indirect tax purposes.

Comparable data
The use of regional pan-European comparables is widely accepted in Belgium and is specifically recognized in the Belgian administrative guidelines on transfer pricing. Moreover, Belgian transfer pricing documentation legislation also specifically mentions that the economic analysis should apply comparable data from the same continent as the taxpayer.

Since comparability is the key concern to the Belgian tax authority, the standard approach is the inclusion of countries of the European Union 15 plus Switzerland, Norway and Iceland. Increasingly, the wider European region, including Eastern European countries, is being used. However, as this may still give rise to certain comparability issues, the use of such countries should be assessed on a case-by-case basis.

In cases where local country and pan-European information is not available, the use of non-European information is considered acceptable, provided comparability is confirmed.

The use of global comparables can be justified, but their use requires very rigorous documentation. The Belgian transfer pricing regulations do not provide any details or specifications on how a comparable search should be performed; however, a best practice has been developed within the Belgian Ruling Commission with respect to comparable searches that will also be used during advance pricing agreement (APA) negotiations.

Typically, three years of financial data should be used, except in some specific cases (e.g., APAs) where other periods may be requested. The interquartile range is the preferred method of calculating the arm’s-length range. Although there are no specific requirements, a weighted average is preferred to a simple average.

Operating margin and markup on costs are the most commonly used profit level indicators. Pooling and averaging of financial data are accepted in Belgium, although there is a strong preference for averaging.

There is no formal or mandatory guidance provided for adjustments to comparable data. Such adjustments are accepted, if justifiable. For instance, in the case of limited risk structures, adjustments for inventory, accounts receivable and intangible assets are typically accepted.
Transfer pricing methods

Although taxpayers are, in principle, free to choose any OECD transfer pricing method as long as the method chosen results in arm's-length pricing for the transaction, transaction-based methods are typically preferred over profit-based methods. However, the main consideration is that the method selected is the most appropriate for the case and that this can be demonstrated. The Comparable Profit Method (CPM) is considered inappropriate.

If none of the OECD-approved transfer pricing methods can be applied appropriately to determine an arm's-length remuneration for the transaction under review, other transfer pricing methods can be considered. However, the selection and rejection of the OECD-approved transfer pricing methods should be documented.

The position outlined above is reflective of the administrative guidelines on transfer pricing.

Advance pricing agreements (APAs)

APAs are available under the Law of 21 June 2004 and, in the case of bilateral APAs, under the MAP of the applicable double tax treaty.

Belgium has a unilateral and bilateral APA program in place, accessible to all Belgian taxpayers since mid-1999 (and modified in 2002 and 2004). Taxpayers may also negotiate specific up-front transfer pricing rulings (e.g., advance decisions). Several hundred APA applications are received annually. About 90% of the current caseload of APAs represents unilateral APA requests, although the number of bilateral APA requests is increasing. The top three countries involved in bilateral APAs are the United States, Germany and the Netherlands.

The completion of an APA (including prefiling) depends on the complexity of the ruling and may take up to six months for unilateral APAs. A decision is made, in principle, within three months of application. For more complex files, the procedure might take six months to one year. Bilateral APAs take 12 to 18 months, on average. The reasons cited for delays in completing an APA are caseload and the complexity of the requests.

Initiatives undertaken to speed up the process include agreeing upon timing during the prefiling phase.

Mutual agreement procedures (MAPs)

Belgium received 151 MAP cases in 2012; however, it is not known how many are related to transfer pricing. The timing for resolution largely varies case by case depending on the responsiveness of the counterparty to the negotiation. In 2012, 21 cases were completed while 2 cases were withdrawn or closed with double taxation unresolved. The top three jurisdictions involved in MAPs are Germany, the Netherlands and the United States. While a case is pending for competent authority resolution, payment of taxes can be suspended, and interest is due at the outcome of the proceedings regardless of the outcome. No 2013 data is as yet available.

Yield/performance of transfer pricing reviews

The effectiveness of transfer pricing reviews is measured by increase in tax yields, the percentage of review cases where an adjustment is made to taxpayer income, the percentage of review cases where an adjustment is sustained on appeal and the percentage of taxpayers assessed as high risk.

Since the formation of the TPAC, the tax yield (excluding tax yield through field audits) that has been realized continues to increase. The Belgian tax authority occasionally publishes global statistics on yields.

Transfer pricing disputes

More often than not, transfer pricing audits that are carried out by the TPAC result in an adjustment to the taxpayer’s income. Most cases handled by the TPAC are settled during an audit, and only a few cases move into the administrative appeal phase. So far, none of these transfer pricing cases have progressed to a court case.

Current influences on transfer pricing

Belgium is responsive to initiatives at the OECD and EU levels such as the EU Joint Transfer Pricing Forum. Although there has not been a change in transfer pricing policy, the OECD report on business restructuring, intangibles and the financial crisis more generally have led to more scrutiny of transfer pricing in Belgium.

Overall, the transfer pricing regime in Belgium is becoming more aggressive over time.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing matters are dealt with centrally by the International Cooperation Unit (ICU) of the General Financial Directorate (i.e., the highest tax authority within the Czech tax administration).

A new specialized tax authority was formed on 1 January 2012 for taxpayers that had an annual turnover of more than CZK2 billion (approximately EUR72m), regardless of the region in which the taxpayer was established. The majority of transfer pricing audits are handled by this new authority. The specialized tax authority has more than 20 employees, including 6 full-time employees (FTEs), who specialize in transfer pricing.

The exact number of transfer pricing professionals is difficult to establish with accuracy. Tax audits and routine contact with taxpayers (including APAs) are handled by professionals from locally based tax authorities.

Each local tax authority has roughly 30 trained employees who deal with transfer pricing matters. However, these resources are not involved exclusively in transfer pricing issues.

The ICU currently has three FTEs, and its goal is to unify the transfer pricing practice within the Czech Republic, as well as align it with other international platforms (including the OECD and the EU Joint Transfer Pricing Forum (JTPF)). This team is also responsible for negotiations with foreign tax administrations (on matters including bilateral and multilateral APAs and MAPs).

Industry focus
The tax authority does not currently target specific industries for audit.

Geographic focus
Transactions with specific jurisdictions are not currently targeted for audit.

Types of transactions under scrutiny
The tax authority does not target specific types of transactions for audit at this time.

Transfer pricing penalties
There is currently no specific penalty regime for transfer pricing. General tax penalties are governed by the Czech Tax Code. Standard penalties amount to 20% of the additional tax assessment or 1% of the tax loss reduced resulting from an audit. In addition, interest for late tax payment applies (currently approximately 15% annually).

Audit case selection
Selection of taxpayers for tax audits are generally based on all the criteria listed below, or a combination thereof:

- Taxpayer profitability
- Evidence of business restructurings
- A risk-based assessment by the tax authority
- The nature of related-party transactions undertaken by the taxpayer
- The volume of related-party transactions undertaken by the taxpayer
- A standard audit cycle/program
- Previous tax audits of the taxpayer
- VAT, employment, customs or other indirect tax reviews

Indirect and customs tax
Findings from transfer pricing audits can be shared by the transfer pricing specialists with their VAT counterparts. Generally, prices for income tax and VAT purposes should be the same; however, the respective tax laws may provide for specific exceptions.

Comparable data
Regional comparables are preferred (e.g., from among new European Union member states). However, in the absence of regional comparables, the geographic criteria can be extended to include larger geographic areas. Financial data of comparables should be evaluated across multiple years (e.g., a three-year average). To eliminate market fluctuations, the weighted average is preferred to the simple average.

Transfer pricing methods
All of the methods stated in the OECD Transfer Pricing Guidelines (or a combination of these) are applied in practice and there is no preference of methods. According to domestic law, the use of methods stated in the OECD Transfer Pricing Guidelines is not mandatory; however, these methods are recommended by the nonbinding Decree D-332 issued by the Ministry of Finance, and are applied in practice.

Advance pricing agreements (APAs)
A unilateral APA program has been available since 2006. Bilateral or multilateral APAs are available based on the respective article of the relevant double tax treaty. In the period between January 2006 and July 2014, 156 APA applications were submitted, of which 87 were approved and 35 were rejected (the rest were pending or withdrawn). Access to APAs is not restricted to particular taxpayers. There are several bilateral APA applications that are currently in process. The average completion time for a unilateral APA is eight months.
Mutual agreement procedures (MAPs)
Since 2007, the Czech tax administration has dealt with 29 MAP applications on the basis of the Arbitration Convention or the respective double tax treaty. In 2013, 3 new MAP cases were initiated. There are 10 MAP cases that are currently in process.

Yield/performance of transfer pricing reviews
There has been an increasing emphasis on transfer pricing in the past years. Approximately 282 transfer pricing audits were carried out in 2013. Tax assessments in 2013 amounted to approximately CZK72 million, and tax loss reduction amounted to CZK131 million. A comparison of performance to prior years is difficult because of changes in the organizational structure of Financial Administration during 2012 and 2013.

Transfer pricing disputes
There is currently no information available with respect to transfer pricing disputes at the domestic appeal or litigation levels. There are, however, currently no MAPs being disputed and 10 transfer pricing disputes in arbitration.

Current influences on transfer pricing
There has not been a significant change in approach to the transfer pricing practice in the Czech Republic over the last two years. The Czech Republic generally adopts OECD as well as EU-JTPF initiatives.

Inspired in part by the increasing transfer pricing-related disclosure requirements in the Central European region and in part by the OECD BEPS initiative, the Czech tax administration announced that, starting in 2014, it would introduce mandatory reporting of related-party transactions as part of the annual tax return. The mandatory reporting will include data on related-party transaction types, volumes and transaction counterparties. The requirement will be mandatory for a large group of taxpayers as the minimum qualifying thresholds are relatively low (CZK40 million in assets, CZK80 million in turnover or 50 employees).
Resources the taxing authority is devoting to transfer pricing

The Danish tax authority, Central Customs and Tax Administration (SKAT), has a transfer pricing board whose membership consists of the heads of the six offices dealing with transfer pricing in Denmark. All of these offices sit within the Large Tax Payers unit. The transfer pricing board is leading efforts with regard to transfer pricing reviews in Denmark. Currently, 100 full-time employees (FTEs) are involved in transfer pricing reviews, and all of them are decentralized. Two years ago, there were approximately 80 transfer pricing resources. The number of FTEs involved in transfer pricing is expected to remain the same over the next two years. Of the total FTEs, 15% are economists, 15% are lawyers and 70% are accountants. The number of economists has increased in recent years, but no major changes to this balance of specialists are planned for the next two years.

SKAT consults the legal advisor to the Danish government, and does not rely on other tax administrations for training. The recent BEPS and OECD intangibles initiatives have not resulted in increased resource commitments.

Industry focus

The Danish tax authority scrutinizes particular transactions rather than particular industries. SKAT structures its work on a project basis, and focuses on different issues based on the anticipated transfer pricing risk of an issue.

Geographic focus

The tax authority specifically targets transactions in certain jurisdictions perceived to be low-tax jurisdictions as well as transactions with non-treaty partners. Countries that are considered to be tax havens are systematically selected for audits since they are considered to be high-risk jurisdictions for transfer pricing. Based on the current caseload of transfer pricing reviews, the top counterparty jurisdictions are, in order of number of cases, Norway and Sweden, Germany, the United Kingdom, the United States and Switzerland.

Types of transactions under scrutiny

The types of transactions targeted for transfer pricing reviews are, in order, tangible goods transactions (with a focus on loss-making companies), intangible property transactions including transfer of intangible property, intragroup services, financial transactions and business restructuring transactions.

Transfer pricing penalties

New transfer pricing penalty rules were adopted in 2012. The changes specify a penalty of DKK250,000 for insufficient transfer pricing documentation, and an additional 10% of the increased income after assessment.

Over the past two years, less than a quarter of proposed transfer pricing adjustments have resulted in an assessment of penalties. Where adjustments were made, the average penalty rate has been under 25% of the additional tax. Over the next two years, the assessment of penalties is expected to increase.

Processes are in place to ensure a consistent application of transfer pricing penalties in Denmark. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection

The transfer pricing board decides the cases that should be selected for audit. Taxpayer profitability (with a focus on loss-making companies) and business restructurings are the main factors in initiating transfer pricing reviews. Other factors taken into consideration are risk-based assessments undertaken by the tax authority, the nature and volume of the related-party transactions undertaken by the taxpayer, and previous tax audits of the taxpayers.

Indirect and customs tax

Transfer pricing enforcement resources are not required to routinely work in an integrated way with indirect tax resources; however, ad hoc cooperation may be required. There is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.
Comparable data
Pan-European comparables are acceptable and can be used at the discretion of the taxpayer; however, local or Nordic country comparables are preferred.
In preparing and presenting comparable data, there are no specific requirements in relation to the number of years of financial information analyzed, pooling or averaging of financial data, the method for calculating the allowable arm’s-length range or the method for determining the appropriate profit level indicator. However, the Executive Order on Transfer Pricing Documentation explicitly states a preference for the use of weighted average over simple average.
Financial adjustments to comparable data are optional, if justifiable. SKAT recommends making working capital adjustments where appropriate to achieve a more comparable set of data.

Advance pricing agreements (APAs)
Denmark has a unilateral and bilateral APA program, and taxpayers have a discretionary right to initiate the APA consultation process. Five to seven APAs are received annually. Currently, 13 applications are in process. Of the current caseload, 90% are bilateral APAs and 10% are unilateral APAs. For bilateral APAs, the top three countries involved are China, the United States and Sweden.
The average time required to complete an APA is 24 months. The main reasons for the lengthy process are an overload of cases and the complexity of the APAs. To speed up the process, the tax authority is looking to gather information by phone or videoconference rather than through physical meetings.

Mutual agreement procedures (MAPs)
Annually, approximately 20 transfer pricing competent authority cases are received and about 10 cases are resolved. Resolution typically takes around 24 months. Less than 5% of the cases remain unresolved. The top three jurisdictions involved in MAPs on an annual basis are Germany, the United Kingdom and Sweden. The payment of taxes and interest is suspended while a MAP is under way.

Transfer pricing methods
SKAT follows the most appropriate method principle of the OECD Transfer Pricing Guidelines, and allows for the use of alternate methods. In valuations, SKAT also allows the use of corporate finance methods, such as the discounted cash flow model and multiples. There is no hierarchy among the transfer pricing methods, provided that the most appropriate method for the transaction has been selected.

Yield/performance of transfer pricing reviews
SKAT measures the effectiveness of transfer pricing reviews by the number of adjustments (and amounts generated from these) made and the number of cases handled. SKAT publishes the number of transfer pricing adjustments made and the total amount of the adjustments. The number of TP inquiries has more than doubled from 2009 to 2013 (77 cases in 2013), with the total quantum of adjustments significantly higher in 2012 and 2013, as compared to 2010 and 2011, with the majority of adjustments being “mid-sized.”

Transfer pricing disputes
Of the ongoing transfer pricing disputes, 10% are undergoing domestic appeal where the tax administration has completed an assessment and communicated an order, while the remaining 90% of the cases are handled under MAPs. A similar pattern is observed among pending cases as well. Domestic appeal cases will typically be put on hold while the parties negotiate a MAP.

Current influences on transfer pricing
Current OECD or other general transfer pricing developments have not impacted the transfer pricing policies or practices in Denmark.
Resources the taxing authority is devoting to transfer pricing

A centralized team was established in 2013 as part of the Egypt Tax Authority (ETA) to focus on transfer pricing. The ETA has sought assistance from OECD and local Big Four firms to help train its staff to begin developing a dedicated transfer pricing team. In addition, the ETA also interacts with the African Tax Administration Forum (ATAF). The topic of BEPS is perceived as too advanced for the ETA; its current focus is on implementing a transfer pricing regime to deal with basic transactions.

Industry focus

There are no specific industries that currently receive particular transfer pricing scrutiny. The selection of a taxpayer for a transfer pricing audit is based on factors such as persistently loss-making entities and the presence of large service charges for headquarters.

Geographic focus

The ETA does not currently target transactions with specific jurisdictions or types of jurisdictions for transfer pricing reviews.

Types of transactions under scrutiny

Intragroup services and intangible property transfers are the most common types of transactions targeted for transfer pricing reviews.

Transfer pricing penalties

There is currently a specific transfer pricing penalty regime in place. Although there is a penalty regime in place, the ETA is not strictly enforcing it as it wants to offer a “friendlier” approach to transfer pricing in order to encourage taxpayers to review their transfer pricing practices. The application of transfer pricing penalties is therefore dealt with on a case-by-case basis. Where penalties have been imposed, the average penalty rate is less than 25%. In the next two years, the assessment of penalties is expected to increase.

Audit case selection

Case selection for transfer pricing audits is not governed by a central decision-making body. These reviews are usually initiated, based in order of importance, on the profitability, volume and nature of the related-party transactions undertaken and previous tax audits of the taxpayer.

Indirect and customs tax

Transfer pricing enforcement resources do not currently work in an integrated way with indirect tax specialists, and they do not actively share information.

Comparable data

Local country comparable companies are preferred; however, the ETA accepts comparables based in other regions, which include Gulf Cooperation Council (GCC) countries, Levant countries and North African countries. If sufficient comparables are still not available, then use of European or Asian comparables is permissible (in practice, European comparables are preferred over Asian comparables). Since the ETA is still at the stage of knowledge-gathering with respect to transfer pricing, there is currently no specific guidance relating to the presentation of comparable data.

Transfer pricing methods

The ETA prefers the comparable uncontrolled price (CUP), cost plus and resale price methods. In practice, the ETA accepts the use of the transactional net margin method (TNMM) and it is the most commonly used method.

No other methods have been specifically noted, but the ETA’s current transfer pricing guidance does allow the use of an alternative method should the other methods not be applicable (and can therefore can be seen as similar to the OECD Transfer Pricing Guidelines).

Advance pricing agreements (APAs)

A formal program for both unilateral and bilateral APAs is not available. Advanced rulings are available; however, one has not yet been finalized.

Mutual agreement procedures (MAPs)

In Egypt, MAPs are not applicable.

Yield/performance of transfer pricing reviews

There is currently no data on yield/performance of transfer pricing reviews.

Transfer pricing disputes

There are currently no domestic transfer pricing disputes.

Current influence on transfer pricing

Transfer pricing policies in Egypt would be influenced by the current economic environment.
Resources the taxing authority is devoting to transfer pricing

There is currently no formal centralized unit for transfer pricing. Specialists are located in Tallinn and Tartu; however, these specialists belong to one coordinated transfer pricing team. All tax auditors have knowledge of transfer pricing with respect to income tax, and they have the option to seek consultation internally with the transfer pricing specialists.

In total, the tax authority has 316 tax auditors. Although tax auditors are familiar with the transfer pricing requirements (an aspect of any tax audit), only six auditors specialize in transfer pricing. The number of transfer pricing specialists has not changed over the past two years and is expected to remain the same over the next two years. All six transfer pricing specialists have received specific transfer pricing training, and there are an equal number of economists and accountants. A number of advisors and lawyers within the tax authority are involved in audits.

While Estonia does not rely on external resources for transfer pricing matters, it does seek cooperation on training with other tax administrations. For example, German tax authorities have conducted training with respect to the use of different databases. The tax authority has a cautious approach to transfer pricing involving permanent establishments. It has not yet formed an official opinion on BEPS as BEPS is a relatively new subject.

Industry focus

The tax authority pays close attention to the asset management, automotive, banking and capital markets, consumer products, pharmaceuticals and real estate industries. Profitability of taxpayers and the extent of activity in the local economy are the relevant factors that drive industry focus. The list of industries that are selected for scrutiny is not widely communicated to taxpayers.

The Estonian tax authority also follows a company-focused approach, along with selecting specific industries for tax audits. Examples of indicators considered are a decrease in turnover and profit or increase in financial expenses or income and dividend payments.

Geographic focus

Mostly Scandinavian countries and the Netherlands and Cyprus are targeted for specific transfer pricing scrutiny. In addition, major trading partners, perceived low-tax jurisdictions, non-treaty partners and domestically headquartered companies also receive greater scrutiny.

Of the current caseload of transfer pricing reviews, the top counterparty jurisdictions are Finland, the Netherlands, Norway, Sweden and Cyprus.

Types of transactions under scrutiny

Intragroup services and financial transactions are the most targeted transactions, each accounting for 30% of the total transfer pricing caseload, followed by business restructurings (15% of the caseload), tangible goods transactions (15% of the caseload), intangible property transfers (5% of the caseload) and cost-sharing or cost-contribution arrangements (the remaining 5% of the caseload).

Transfer pricing penalties

Estonia does not currently have a specific transfer pricing penalty regime. Over the last two years, penalties have been applied in 75% to 100% of cases involving transfer pricing adjustments. Where penalties have been assessed, the average penalty rate has been more than half of the additional tax depending on the period of audit. The assessment of penalties is expected to remain the same over the next two years. There is no increased scrutiny resulting from BEPS and OECD intangibles initiatives.

Audit case selection

Transfer pricing reviews are usually initiated on the basis of, in order of importance, a risk-based assessment by the tax authority; taxpayer profitability; evidence of business restructurings; the nature and the volume of related-party transactions; previous tax audits; and VAT, employment, customs and other indirect tax reviews. Transfer pricing case selection is not part of the standard audit cycle or program.
Indirect and customs tax

There is a specialized team that handles customs tax. Should this team discover any transfer pricing risk, it will be recorded and subjected to a separate analysis by the tax authority. The same transfer price is not necessarily used for corporate (direct) and indirect tax.

Comparable data

In practice, local comparable data is preferred. The level of comparability and the reasoning behind the use of comparable data are considered the most important factors, and the use of regional comparables is at the discretion of the taxpayer.

When presenting comparable data, financial data for three years is usually required. The taxpayer should also provide respective arguments for its selection of the most suitable method. The use of a weighted or simple average is decided on a case-by-case basis, as is the method for determining the proper profit level indicator and the pooling or averaging of financial data. The tax authority should substantiate any requests pertaining to making financial adjustments to comparable company data (e.g., working capital, asset intensity and country risk adjustments).

Transfer pricing methods

No method is considered inappropriate, and no preference of methods is publicly stated.

Advance pricing agreements (APAs)

Estonia does not currently have an APA program, and no alternative advanced ruling options are available. Estonia may introduce an APA program in 2015.

Mutual agreement procedures (MAPs)

MAPs are not currently available in Estonia.

Yield/performance of transfer pricing reviews

The effectiveness of transfer pricing reviews is measured by the number of adjustments of tax returns made by taxpayers. Indirect impacts, such as dividend payments made by taxpayers or taxpayers waiving claims for loan repayments during an audit, are also measured. This information is not widely published.

Transfer pricing disputes

Litigation procedures are generally not initiated; instead, adjustments to tax declarations are made.

Current influence on transfer pricing

The current economic environment, OECD initiatives and EU initiatives such as the EU Joint Transfer Pricing Forum (JTPF) have influenced transfer pricing policy and practice in Estonia.
Resources the taxing authority is devoting to transfer pricing

Specialists in the Finnish tax authority, Verohallinto, carry out transfer pricing reviews on a centralized basis. The centralized unit now contains 43 specialists dedicated to transfer pricing, which is an increase of six from two years ago. The number of transfer pricing resources is expected to increase slightly in the future.

There is an equal representation of economists and lawyers involved in transfer pricing reviews. Approximately 40 FTEs are transfer pricing specialists with a strong technical background in transfer pricing issues. Verohallinto does not use consultants, industry specialists or expert witnesses in transfer pricing examinations. Verohallinto mainly relies on the EU and the OECD for its training needs.

The recent BEPS and OECD initiatives have not resulted in increased resources within transfer pricing.

Industry focus

Transfer pricing audits in Finland do not currently have a specific industry focus. Transfer pricing audits are based solely on risk assessments.

Geographic focus

Geographic considerations are not drivers for the selection of taxpayers for review. However, major trading partners such as the Nordic countries and Germany are naturally well represented in reviews.

Types of transactions under scrutiny

Transactions such as business restructurings (accounting for approximately 30% of the current caseload), intangible asset transactions (accounting for approximately 40% of the current caseload) and financial transactions (accounting for approximately 30% of the current caseload) are the main transfer pricing risk types reviewed by the Finnish tax authority.

Transfer pricing penalties

The general tax penalty regime applies to transfer pricing as well. Additionally, a separate penalty can be imposed for a lack of or incomplete transfer pricing documentation. No specific processes are in place for applying penalties, and penalties are based on general legislation and tax practice. Over the last two years, penalties were applied in 75% to 100% of cases where transfer pricing adjustments were issued. The average rate of penalties has been 5% of the added taxable income.

Audit case selection

Transfer pricing audits are initiated after a risk-based assessment by the tax authority.

Indirect and customs tax

Transfer pricing enforcement resources are not required to work in an integrated way with indirect tax specialists. There is also no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data

Verohallinto does not require local country comparables, and, for example, pan-European comparable searches are acceptable if comparability factors are met. In preparing and presenting comparable data, there are no specific requirements in relation to the number of years of financial information analyzed, the use of simple averages as opposed to weighted averages, pooling as opposed to the averaging of financial data, the method for calculating the allowable arm’s-length range and the method for determining the appropriate profit level indicator. However, in practice, multiple years (typically three years) of data is commonly used, along with simple averages and use of the interquartile range. Financial adjustments to comparable data are possible, if justifiable.

Transfer pricing methods

Finland follows the principles set out in the OECD Transfer Pricing Guidelines in selecting the most appropriate method of evaluating an arm’s-length remuneration for controlled transactions.

Advance pricing agreements (APAs)

Finland does not have a formal APA program. However, APAs through a MAP are possible. In addition, unilateral advance rulings are possible to obtain.

Mutual agreement procedures (MAPs)

Verohallinto receives approximately 20 to 30 transfer pricing cases annually for resolution via the competent authority process. Approximately 10 to 20 cases are resolved each year; resolution can take a few months to several years.

Even though a case may be pending for competent authority resolution, interest is payable on the additional tax arising as a result of the transfer pricing adjustment over the resolution period. Also, it is not possible to claim for a prohibition on execution based on a mutual agreement procedure.

Yield/performance of transfer pricing reviews

Verohallinto measures the effectiveness of its transfer pricing reviews through indicators such as the cases reviewed per year, percentage of review cases where an adjustment is made to taxpayer income, increased tax yield and percentage of review cases where an adjustment is sustained on appeal. Verohallinto publishes statistics on transfer pricing performance. Average transfer pricing adjustments and penalties vary on an annual basis.

Transfer pricing disputes

There are currently approximately 70 ongoing cases before the competent authority for resolution via a MAP.

Current influence on transfer pricing

The BEPS initiative may result in changes to Finland’s transfer pricing policies in the future.
Resources the taxing authority is devoting to transfer pricing

In France, there are local tax audit departments throughout the country that are managed by the Central Administration Department (CAD), which, inter alia, monitors technical and organizational matters, steers local departments’ activities and determines the national orientation of tax audits. The CAD includes a team dedicated to international affairs, in particular, the monitoring of transfer pricing.

In addition, at the Tax Legislation Directorate, there is a department dedicated to the development of international tax standards, including transfer pricing and the negotiation and interpretation of tax treaties. The Mission d’Expertise Juridique et Économique Internationales (MEJEI), established in 2013, acts as the competent authority in mutual agreement procedures (MAPs), arbitration and advance pricing agreements (APAs). The MEJEI directly reports to the Chief Counsel and currently consists of 10 transfer pricing experts (2 being economists). All of the teams are in regular contact with the network of audit departments, which include specialists in international taxation. The latter are used as a consultative reference by inspectors. Any inspector may look at transfer pricing when conducting an audit. Previously, only the Direction des Vérifications Nationales et Internationales (National and International Audit Department), which is in charge of the largest businesses, had a team of inspectors dedicated to transfer pricing issues; now certain regions also have dedicated experts.

The number of inspectors dedicated to transfer pricing belonging to the National and International Audit Department has remained stable. The central administration’s team dedicated to international affairs includes 10 transfer pricing specialists. It is estimated that, countrywide, there are 30 transfer pricing specialists in audit management divisions.

Transfer pricing has, for several years, been one of the priorities under general tax audits in France. The objective of the Direction Générale des Finances Publiques is to train inspectors, whether they are already specialists in transfer pricing or are general practitioners, but there are no plans for any increase in resources dedicated to transfer pricing.

Tax audit results for the last two years show that approximately 85% of tax reassessments concerning transfer pricing in France have been issued by inspectors who are specialists in the subject or who were supervised by such specialists.

For many years, the French Tax Administration (FTA) has concentrated its efforts on training its inspectors involved in international taxation issues on problems related to transfer pricing and permanent establishments. It is strengthening the expertise of its international teams in this field and is maintaining its objective of sharing knowledge and experience in international transactions between related parties through training, as well as the pooling of knowledge, notably by forming and coordinating a network of specialists in the tax audit management divisions.

Industry focus

There is no special attention to transfer pricing in any particular industry. Nevertheless, over the past two years, the FTA has been paying attention to US companies in the digital economy.

Geographic focus

Geographic or jurisdictional selection criteria are not currently used in scheduling tax audits. On the other hand, in view of the positions taken with respect to tax havens and the national recommendations given to tax audit management divisions, any transactions between companies belonging to the same group set up in a tax haven are monitored closely and examined in depth. There is no information currently available on caseload by counterparty jurisdiction.

Types of transactions under scrutiny

The FTA tends to focus, even more so than before, on transactions involving intangible assets and services. Considering the amounts at stake, intragroup loans also constitute a growing subject of tax audits. Audits on tangible transactions have remained stable over the years. The FTA has also started focusing on permanent establishments.
Transfer pricing penalties
French legislation does not currently include penalties specific to transfer pricing reassessments.

However, businesses have an obligation to document transfer pricing for the years open from 1 January 2010. This new obligation is embodied in Article L13AA of the French Procedural Tax Book. Should a taxpayer fail to provide required documentation or provide incomplete documentation within 30 days of the receipt of a formal notice, the taxpayer is liable to pay EUR10,000 or, depending on the seriousness of the breach, up to 5% of the profits transferred. This penalty is applicable for each year subject to the tax audit. Should no documentation be provided, or if documentation is found to be irrelevant, the maximum 5% penalty applies. In addition, a new requirement has been recently adopted, as a result of which taxpayers eligible to Article L13AA have to file with the tax administration transfer pricing related information within six months of filing their return.

Separate to this, in December 2013, the French Government adopted a new, additional transfer pricing documentation requirement under Article 223 of the French General Tax Code, obliging certain taxpayers to file “reduced” transfer pricing documentation within six months of the official deadline for the filing of their tax return. It appears that any omissions or inaccuracies in the form will incur a penalty of EUR15 per breach, up to a maximum of EUR10,000.

For the taxpayers that remain out of the scope of Article L13AA, a de facto documentation requirement still applies. In all cases, inspectors may ask the business being audited to provide them with certain specific information justifying the transfer pricing policy applied; failing any answer, the burden of proof for the justification of this policy will be, in practice, on the company and not on the inspector.

Audit case selection
The selection of transfer pricing cases for audit depends on a number of factors, particularly transaction type and, to a lesser extent, the industry of the taxpayer and geographic location of counterparties to the transaction.

Indirect and customs tax
The FTA does not currently distinguish between departments that are competent in direct taxes and those that are competent in indirect taxes. Therefore, inspectors are competent in all taxes and duties payable.

The audit procedures carried out by the FTA are independent of the procedures carried out by the Customs Administration. However, some information may be shared at the discretion of the inspectors or of either of the administrations.

The transfer prices fixed by the FTA inspectors are used in both direct and indirect taxes. However, to the extent that the methods of fixing transfer prices in tax matters and customs values are not identical, the adjustments made by the FTA are not necessarily used by the Customs Administration, and vice versa.

Comparable data
Pursuant to the principles set forth in the OECD Transfer Pricing Guidelines, the transfer pricing study presented by the business must be as precise as possible and must therefore take into account the market in which the business operates. Taxpayers are therefore expected to select comparables with characteristics similar to the tested party, including with respect to geographic market. The FTA expects the use of reliable comparables that require the least possible adjustment.

In practice, if the tested party is located in France, the FTA ideally expects the use of French comparables, using the Diane database.

Transfer pricing methods
All traditional methods are currently accepted, but the FTA prefers to use the method that is most appropriate to the activity of the taxpayer in question and its specificities. In other words, the taxpayer must be in a position to justify the reasons for choosing one method over others.

Advance pricing agreements (APAs)
Bilateral and, under certain circumstances, unilateral APAs are currently available.

There is a formal program for unilateral and bilateral APAs pursuant to which the FTA may not perform any tax adjustment when it has formally adopted a position within the framework of the agreement.

The FTA favors bilateral APAs. While unilateral APAs are available, there are three main conditions for their application: there is no APA program in the jurisdiction of the counterparty, the request is related to transactions with different countries that cannot be addressed via multiple bilateral APAs or the taxpayer is a small business.

On average, 15 to 20 applications are received annually (approximately 140 cases have been accepted and 70 have been agreed so far), with the last three years seeing a large increase in applications. There are currently between 35 and 40 applications in process. More than 80% of the cases handled involve bilateral APAs.

Agreements involving Germany, Switzerland, the United Kingdom and the United States form the majority of the bilateral APAs.
It is difficult to quantify the time required to complete an APA. The length of the process depends on many factors (e.g., the complexity and nature of the transactions and the degree of responsiveness of the various tax authorities). However, experience shows that, on average, a multilateral/bilateral APA is completed in 18 to 24 months. On the other hand, it is reasonable to expect a unilateral APA to be completed, on average, 12 to 14 months from the filing of the application.

There are four main reasons for the length of the APA process: taxpayer delays in providing answers to requests from the FTA, lack of cooperation or transparency in some submissions, time required by other competent authorities and difficulties in coming to an agreement with other competent authorities.

To expedite the process, APA requests should be transparent and accurate. With respect to relationships with other competent authorities, more working sessions to gain a common understanding of the situation and difficulties faced should help to speed up the process.

**Mutual agreement procedures (MAPs)**

There is an established MAP regime in existence in France. Currently, there are approximately 550 unresolved MAP cases. For cases currently under MAP (including on the basis of the European Arbitration Convention), the most frequently involved countries are Germany, Italy and Spain.

**Yield/performance of transfer pricing reviews**

The effectiveness of transfer pricing audits is measured by the number of businesses that have been the subject of transfer pricing reassessments, the number of reassessments notified, the departments that have performed these reassessments (territorial management and national management) and the significance of the positions sustained after MAP to eliminate double taxation.

**Transfer pricing disputes**

Information on ongoing and pending cases at the domestic appeal (preceding court action) and at the litigation stages is currently not available; however, there are currently approximately 550 unresolved MAP cases. There is no history of cases going to litigation.

**Current influences on transfer pricing**

In general, any changes in legislation and administrative practices may be the result of jurisprudential changes at the European Community (EC) or national level, modifications to the Transfer Pricing Guidelines or EC discussions. The practices of international groups may lead to a change in certain administrative practices or, at the very least, in the arguments used by the tax audit departments to justify their reassessments.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing reviews are performed by federal tax auditors within the Federal Central Tax Office who are divided into different industry groups. The federal tax auditors assist the local state tax authorities in audit proceedings, although certain states have dedicated transfer pricing specialist groups that assist in tax audits.

The transfer pricing reviews are performed by field tax auditors from the local tax offices who may be supported by regional tax offices. At present, there are approximately 13,270 full-time employee (FTE) resources, of whom 200 are federal tax auditors and are based in the central unit and 13,070 are field tax auditors and are decentralized. The number of resources was approximately the same two years ago and is expected to remain the same over the next two years. The majority of FTE resources are generalists with very few economists or transfer pricing only specialists.

In certain cases, the tax authority employs special auditors with comprehensive expertise on transfer pricing cases. The German tax authority does not rely on external resources or other tax administrations for training purposes.

Industry focus

There is no specific industry focus for transfer pricing reviews in Germany.

Geographic focus

Transactions with certain jurisdictions are targeted by the German tax authority for specific transfer pricing scrutiny.

Typically, transactions with Germany’s major trading partners and low-tax jurisdictions are reviewed. Transactions with other jurisdictions may be selected for transfer pricing audits due to legal requirements (such as official blacklisted countries) and specific government and ministry policies.

Based on the current caseload of transfer pricing reviews, the top five counterparty jurisdictions are Switzerland, Mainland China, Hong Kong, Singapore and Cyprus.

Types of transactions under scrutiny

Specific types of transactions targeted for transfer pricing reviews are as follows:
- Tangible goods transactions
- Intangible property transfers
- Intragroup services
- Financial transactions
- Cost-sharing or cost-contribution arrangements
- Business restructurings

Transfer pricing penalties

Germany has a specific transfer pricing penalty regime in place. However, processes are not in place to ensure consistent application of these transfer pricing penalties. In the last two years, the average penalty rate (as a percentage of additional tax) was less than 25%. It is expected that penalty assessments will remain the same over the next two years.

Audit case selection

Transfer pricing audit case selection is not governed by a central decision-making body. The relevant factors that drive the initiation of transfer pricing reviews are the profitability of the taxpayer, evidence of business restructurings, nature and volume of related-party transactions, standard audit cycle or program and previous tax audits of the taxpayer.

Indirect and customs tax

Transfer pricing enforcement resources are not required to integrate with the indirect tax team, and there is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data

There are currently no requirements for local country comparables. For regional comparable data, the preferred approach is to use the same continent as the taxpayer.

In preparing and presenting comparable data, there are requirements for benchmark studies (for example, information regarding the database used, an explanation of the structure of the profit and loss statement and calculation models, and any software used). Financial adjustments to comparable data are optional, if justifiable.

Transfer pricing methods

There is a publicly stated hierarchy of transfer pricing methods. Use of the comparable profit method (CPM) is considered inappropriate. The application of transfer pricing methods is also determined by the availability of comparable data. Guidance with respect to cost-sharing arrangements and the application of a hypothetical arm’s-length comparison (in the absence of comparable data) is available. The position outlined above is based on legislation.
Advance pricing agreements (APAs)

Germany has a formal APA process for bilateral APAs only. The right to access the APA program is at the discretion of the tax authority depending on the following considerations:

- Compliance of the content of the request with the German transfer pricing principles and the possibility of implementation of the APA in the counterparty jurisdiction
- Foreseeable difficulties or doubts with respect to the interpretation of the applicable Double Taxation Agreement (DTA)
- Seriousness of the business to be assessed, hypothetical transactions, any evidence that the tax authority’s position is being put to the test or where tax avoidance is an evident motive for the request
- A dispute in an ongoing tax audit that may indirectly be solved by reaching an APA

Factors that justify a denial of the APA request include the following: if the applicant restricts its request without giving objective reasons, if the applicant has no legitimate interest or is only interested in avoiding tax, if substantial delays occur for which the applicant is responsible, if the applicant refuses to give the tax authorities sufficient information or if the applicant insists on using a method that the tax authorities consider unsuitable.

The APA team receives approximately 30 bilateral APA requests annually from taxpayers, and more than 100 applications are currently in process. The average time required to complete an APA process is 36 months. Delays are due to lack of resources, usually on both sides of the transaction, though there are plans to expand the German competent authority. For bilateral APAs, the top countries involved are the United States, Japan, France, the United Kingdom, the Netherlands and Korea.

Mutual agreement procedures (MAPs)

The German tax authority receives approximately 501 transfer pricing competent authority cases annually, of which less than 5% of the cases remain unresolved. The average time required to resolve a MAP case is approximately 30 months. The top three jurisdictions involved in MAPs are the United States, Japan and France.

The obligation to pay the taxes is not deferred by virtue of filing a MAP. However, under certain circumstances, the tax payment may be suspended upon request of the taxpayer; interest continues to accrue during the suspension period.

Yield/performance of transfer pricing reviews

In 2012, in total 8,571,212 tax audits (which includes transfer pricing reviews as these are not separately reported) were conducted, of which 191,335 corresponded to large entities. Total additional tax including interest amounted to approximately EUR18 million.

Transfer pricing disputes

A total number of 3,600,000 ongoing tax disputes (including transfer pricing disputes) are under domestic appeal, 63,400 cases are under litigation and 787 cases are under MAP.

Current influence on transfer pricing

There has not been any significant change in the transfer pricing policy or practice in Germany due to current OECD or other developments.

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1. In the last five years, on average around 250 MAP cases are received annually. It has been estimated that around 20% of these cases are transfer pricing cases.
Resources the taxing authority is devoting to transfer pricing

A department focusing on transfer pricing issues was set up in 2010. This department includes a team dealing with advance pricing agreement (APA) requests and the mutual agreement process (MAP), as well as a separate team conducting transfer pricing audits. Currently, 16 resources are involved in transfer pricing examinations. Two years ago, seven resources were involved in such examinations. It is expected that two years from now, this number will increase to 25. All of the resources are transfer pricing specialists (i.e., have a strong technical background in transfer pricing issues); 4 of the resources are lawyers and 12 are economists.

External professionals such as consultants, industry specialists and expert witnesses are also relied upon in some audit cases on business restructurings and intangible property. As part of the FISCALIS program and IOTA events, specialists regularly take part in international transfer pricing conferences.

Industry focus

The industries under particular scrutiny for transfer pricing audits are asset management, automotive, media and entertainment, oil and gas, pharmaceuticals, real estate, and power and utilities. Significant activities in Hungary and industry profitability are factors that drive scrutiny of these industries. The list of industries under specific scrutiny is reviewed yearly, although this list is not widely communicated to taxpayers.

Geographic focus

The tax authority does not target companies in particular jurisdictions for transfer pricing reviews and focuses on all cross-border transactions. Out of the current caseload of transfer pricing reviews, the top five counterparty jurisdictions are Germany, Austria, Poland, Switzerland and the Netherlands.

Types of transactions under scrutiny

Transactions receiving the most transfer pricing scrutiny are intragroup services (representing 30% of the current caseload), financial transactions (representing 30% of the current caseload), tangible goods transactions (representing 20% of the current caseload), intangible property transfers (representing 10% of the current caseload), cost-sharing and cost-contribution arrangements (representing 5% of the current caseload), and business restructurings (representing 5% of the current caseload).

Transfer pricing penalties

Hungary has a specific transfer penalty regime. There is an administrative circular to guide inspectors on the application of transfer pricing penalties. Over the last two years, penalties have been levied for 25% to 50% of the proposed transfer pricing adjustment cases. In cases where penalties were assessed, the average penalty rate (as a percentage of the additional tax) was between 50% and 75%. In the next two years, transfer pricing documentation-related penalties are expected to remain the same whereas tax penalties for transfer pricing-related tax shortages are expected to increase. The recent developments of BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection

The scope of transfer pricing audits is not governed by a central decision-making body. Transfer pricing reviews are usually initiated after taking into consideration a variety of factors, including the following (in order of importance):

- A standard audit cycle or program
- The volume of related-party transactions undertaken by the taxpayer
- A risk-based assessment by the tax authority
- The nature of related-party transactions undertaken by the taxpayer
- Previous tax audits of the taxpayer

Indirect and customs tax

The transfer pricing enforcement resources are required to integrate with the indirect tax teams. As a matter of practice, the same transfer price should be used for corporate (direct) tax and indirect tax purposes, although there is no formal requirement.

Comparable data

Hungarian transfer pricing regulations require the application of local country comparables when determining an arm’s-length price. However, where there are few or no comparables in Hungary, the geographical coverage of the search is expanded (Central Europe, European Union, Europe and global (in that order)).

In preparing and presenting comparable data, multiple years of financial information are required. There are specific legal requirements for the method of determining the appropriate profit level indicator, although the operating margin is often the preferred profit level indicator in practice. The tax authority generally accepts simple-average, weighted-average and pooling-average methods.
Transfer pricing methods

There is no hierarchy of transfer pricing methods prescribed in legislative provisions in Hungary. However, the use of the comparable profit method (CPM) and comparable profit split method is considered inappropriate.

Advance pricing agreements (APAs)

Since 1 January 2007, companies have been allowed to submit an APA application to the tax authority, and since 1 January 2009, the applications have been assessed by the Directorate of Special Status Taxpayers. This program applies to unilateral, bilateral and multilateral APAs. In 2013, 23 applications were received. Taxpayers with a transfer pricing documentation obligation are permitted to submit an APA application. There are currently 16 APA applications in process, all of which are unilateral APAs. No bilateral APA applications have been filed with Hungarian tax authority to date. On average, APAs take 120 days to complete. The length of processing time is due to the provision of insufficient information and improper transfer pricing documentation provided by the taxpayer. The tax authority is planning to increase its capacity to speed up the APA process.

Mutual agreement procedures (MAPs)

The Hungarian tax authority on average receives three applications relating to MAPs annually. Of the applications received so far, agreement has been reached in one case, taking two years. The top jurisdictions involved are Germany and Austria.

Yield/performance of transfer pricing reviews

The Hungarian tax authority measures the effectiveness of transfer pricing reviews by taking into consideration the following:

- Increased tax yield
- Percentage of review cases where an adjustment is made to taxpayer income
- Percentage of review cases where an adjustment is sustained on appeal
- Percentage of taxpayers in compliance with documentation requirements

Transfer pricing disputes

There are approximately eight ongoing cases before the competent authority for resolution via MAPs.

Current influence on transfer pricing

BEPS, OECD initiatives and EU initiatives such as the EU Joint Transfer Pricing Forum (JTPF) have influenced the transfer pricing policy and practice in Hungary.
Resources the taxing authority is devoting to transfer pricing

A central transfer pricing unit conducts transfer pricing reviews on a national level. All six transfer pricing full-time employees (FTEs) are based in the central unit. Two years ago, there were four transfer pricing FTEs, and the number is expected to reach eight within the next two years. All of the transfer pricing resources are accountants. These specialists have a strong technical transfer pricing background and were experienced income tax inspectors prior to being moved to the transfer pricing division.

Industry focus

Transfer pricing audits currently focus on the banking and capital markets, biotechnology, oil and gas, pharmaceuticals and technology industries. The factor driving the selection of these industries is their significant level of activity in Israel.

Geographic focus

The Israeli tax authority specifically targets transactions that are perceived to be with low-tax jurisdictions.

Types of transactions under scrutiny

Transactions targeted for transfer pricing reviews are stock-based compensation and business restructurings.

Transfer pricing penalties

Israel does not have a specific transfer pricing penalty regime.

Audit case selection

Case selection in a transfer pricing audit is not governed by a central decision-making body. Various considerations are taken into account in determining which taxpayers to audit, including the following:

- Taxpayer profitability
- Evidence of business restructurings
- The nature of the taxpayer’s related-party transactions
- The volume of the taxpayer’s related-party transactions
- A standard audit cycle program
- Previous tax audits of the taxpayer

Indirect and customs tax

The transfer pricing resources are not required to integrate with the indirect tax team. There is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data

The Israeli tax authorities prefer local country comparables. However, given the limited information and databases available for Israeli companies and the fact Israel is a member of the OECD, the United States, the European Union and comparables located in countries that are members of the OECD are also acceptable. In preparing and presenting comparable data, three years of financial information is required. There are specific legal requirements for the method of determining the appropriate profit level indicator. No guidance is provided in relation to financial adjustments to the comparable data. Adjustments are optional if justifiable.

Transfer pricing methods

The comparable uncontrolled price (CUP) and comparable uncontrolled transactions (CUT) methods take priority over other methods. The preference of transfer pricing methods is based on legislative provisions and policy statements. Other methods not defined in the transfer pricing guidelines are not permitted at this time.

Advance pricing agreements (APAs)

Israel has both a unilateral and a bilateral APA program, although as there is very limited experience with bilateral APAs, there are no preferred countries.

Mutual agreement procedures (MAPs)

At present, there is no information available on the use of MAPs.

Yield/performance of transfer pricing reviews

At present, there is no information available on yield statistics on transfer pricing reviews.

Transfer pricing disputes

There is currently no information available on transfer pricing disputes.

Current influences on transfer pricing

BEPS and OECD initiatives have influenced the transfer pricing policies and practices in Israel.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing activities are carried out within the Large Business Division of the Central Directorate for tax assessment, and by Large Business Units at the regional level. These offices perform tax monitoring, risk assessment and audits for Large Business Taxpayers (LBTs) typically involved in international and intercompany transactions. The International Standard Ruling office has been working exclusively on transfer pricing activities for APA purposes since 2005.

At present, there are no dedicated full-time employee (FTE) resources for transfer pricing reviews, with transfer pricing reviews part of the responsibility of the member of the Large Business Division. Approximately half of the FTEs who may be involved in undertaking transfer pricing reviews are based at the central level and the remaining resources are based at the regional level. The number of resources who are engaged in transfer pricing activities has increased in the recent years due to the new structured tax monitoring system on LBTs and the introduction of the optional transfer pricing documentation regime.

Over the next two years, the transfer pricing resources are expected to increase due to increased focus on transfer pricing audits, the regime on penalty protection linked to transfer pricing documentation and the request for international procedures (such as APAs and MAPs).

The resources in the International Standard Ruling office have a strong technical background in transfer pricing issues whereas the resources in the LBTs division are generalists. Of the total resources currently involved in transfer pricing examinations, 60% are economists and accountants and 40% are lawyers.

The Agenzia delle Entrate relies on the High School of Economics and Finance, EU Fiscalis programs, OECD workshops and IOTA seminars for its training needs. External consultants and transfer pricing specialists have been involved in transfer pricing matters.

The transfer pricing resources are actively involved in international working groups at the OECD and EU level and also participate in working papers for sharing experiences and best practices.

Industry focus

Italy has had a significant increase in the number of transfer pricing audits, covering almost all industries, but especially in the automotive, banking and capital markets, pharmaceuticals, and power and utilities industries. Profitability and the magnitude of cross-border transactions, together with publicly available information, play a significant role in the risk analysis evaluation applied to select taxpayers (and thus sectors) to be audited.

Geographic focus

Transactions with blacklisted countries and all cross-border intragroup transactions generally come under the focus of the tax authority in its risk assessment strategy. Transactions with major trading partners, non-treaty partners, countries with favorable or special tax regimes and treaty partners (with particular reference to international cooperation and exchange of information for tax assessment purposes) drive the selection of geographic focus. Based on the current caseload of transfer pricing reviews, the top counterparty jurisdictions (in order) are Germany, France, the Netherlands, the United States and Switzerland. Certain transactions are systematically selected for transfer audit because of legal requirements (e.g., blacklisted countries).

Types of transactions under scrutiny

Transactions receiving the most transfer pricing scrutiny are tangible goods transactions (50% of the current caseload), intragroup services (20% of the current caseload), intangible property transactions (10% of the current caseload) and business restructurings (15% of the current caseload), with other transactions making up the remaining 5% of the current caseload.

Transfer pricing penalties

Italy does not have a specific transfer pricing penalty regime. The general tax penalty regime is applied, which varies between 100% and 200% of an adjustment. However, taxpayers have taken advantage of the new optional transfer pricing documentation regime, under which penalties are inapplicable if the taxpayer has flagged a specific option on its tax return communicating the possession of specific transfer pricing documentation, and the auditors deem such documentation to be compliant with the regulations.

Over the last two years, penalties were assessed in 50% to 75% of cases where transfer pricing adjustments were issued. Where penalties were imposed, the average penalty rate was approximately 130% of the transfer pricing adjustment. The percentage of cases where penalties have been assessed is expected to decrease given the positive impact of the optional transfer pricing documentation regime and application of the penalty protection. In the next two years, the level of penalties when applied is expected to remain roughly the same.
There has been increased focus on transfer pricing audits due to BEPS initiatives. However, penalty imposition has not been affected by BEPS initiatives given that penalty rates are already high in Italy. Increasing requests for transparency of the taxpayer’s value chain and the disclosure of financial and tax positions are expected. A wider adoption of the abuse of law principle is applied by tax auditors as European case law.

**Audit case selection**

Transfer pricing audits are part of the tax monitoring activities for LBTs. A transfer pricing audit is initiated after taking into consideration a variety of factors, including the following (in order of importance):

- Risk-based assessment by the tax authority
- The volume of related-party transactions undertaken by the taxpayer
- Evaluations of taxpayer profitability
- The standard audit cycle or program
- Evidence of business restructurings
- The nature of related-party transactions undertaken by the taxpayers

**Indirect and customs tax**

Transfer pricing enforcement resources are not required to integrate with indirect tax specialists. There is also no formal requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes.

**Comparable data**

There is no specific requirement to use local country comparables under the optional transfer pricing documentation regime. However, the Italian tax authority prefers local comparables; pan-European sets are accepted only if they are robust enough to reflect the local market peculiarities. Financial adjustments to comparable data are optional, if justifiable.

**Transfer pricing methods**

There is no hierarchy of transfer pricing methods, and no particular method is considered inappropriate. Italy follows the OECD Transfer Pricing Guidelines in selecting the transfer pricing method. However, based on the working practice and recent case law, the taxpayer should always be able to explain the reasons the comparable uncontrolled price (CUP) method was not chosen or applicable.

There is guidance in some of the old Ministerial Instructions, dating back to 1980, that permits the use of other methods such as safe harbors for royalties. This guidance can be found in two Ministerial Circular Letters that were issued in 1980 and 1981, after the 1979 OECD Transfer Pricing Guidelines were published. No other instructions dealing specifically with transfer pricing have been issued since, although references have always been made to the OECD Transfer Pricing Guidelines. An explicit reference to the 2010 OECD Transfer Pricing Guidelines is made in the new optional transfer pricing documentation regime.

Although a list of preferred transfer pricing methods does not exist, the working practice of the Ruling Office engaged with APAs published the following breakdown of cases by method employed in the International Standard Ruling Report issued on 20 March 2013:

- Transaction net margin method (56% of the caseload)
- Profit split method (23% of the caseload)
- Comparable uncontrolled price method (9% of the caseload)
- Comparable profits method (7% of the caseload)
- Resale price method (5% of the caseload).

**Advance pricing agreements (APAs)**

Italy has a formal program for both unilateral and bilateral (or multilateral) APAs. The unilateral APA program is as per internal law, pursuant to Article 8 of Decree-Law no. 269/2003, as converted into Law no. 326 of 24 November 2003. Bilateral (or multilateral) APAs have been available under the MAP Article of the relevant tax treaty since 2010.

According to the International Standard Ruling Report issued by the Italian APA Office, 38 APA applications were received in 2012. During the period 2010-2012, a total of 83 applications (of which 21 are bilateral or multilateral applications) were submitted; of these, 54 are ongoing cases (of which 19 are bilateral or multilateral cases). No 2013 data is as yet available.

The International Standard Ruling is applicable to “enterprises with international activity,” and intends to agree in advance with the Italian tax administration:

- The correct transfer pricing methodology applicable to the transactions carried out with related parties
- The tax treatment provided for by the law, including tax treaties, in respect of dividends, interest, royalties, or other income paid to or received from non-resident persons in specific cases
- The application of the provisions of the law, including tax treaties, to specific cases related with the attribution of profits or losses to Italian permanent establishments of foreign entities as well as to foreign permanent establishments of resident enterprises

Applications by the eligible enterprises must be accompanied by details and documents giving evidence that they are in possession of the subjective requirements. The discipline provides for a period of 30 days (from the receipt of the application) in which the International Ruling Office (Office) evaluates the existence of the eligibility requirements.
In the affirmative, the Office schedules a meeting with the taxpayer in order to define the terms and developments of the procedure. If required, the Office can request additional information from the taxpayer. If any of the essential requirements are lacking, the Office declares the inadmissibility of the application.

The top three countries involved in the bilateral APAs are the United States, Switzerland and Germany. The average time taken to complete a unilateral APA is 16 months.

Delays in presenting the documentation by the taxpayer, difficulties in organizing meetings between the foreign tax directors of MNEs and the foreign headquarters, and lack of available resources are some of the reasons for the lengthiness of the APA process.

On 23 December 2013, the Italian Government issued Law Decree no. 145/2013 (Destinazione Italia or Destination Italy Decree). The Destination Italy Decree extends the scope of the International Standard Ruling procedure to preliminary assessments of Italian permanent establishments of foreign entities, and provides that the validity of agreements reached through the International Standard Ruling (e.g., including APAs) would be increased from the previous three-year term to five years.

**Mutual agreement procedures (MAPs)**

In Italy, there has been an increase in the number of MAP cases received. On 5 June 2012, the Italian tax authorities issued Circular Letter 21/E (the Circular) pertaining to the settlement of international tax disputes and, more specifically, clarifying some of the procedures involved in using the MAP process. The Circular also covers the application of the European Arbitration Convention (EAC) for the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The main issues ruled upon were as follows:

- Who can present a case to the competent authority
- How to submit the case, including information to be provided
- Connections between MAP or EAC and internal judicial proceedings
- Suspension of tax collection

According to data published by the EU Joint Transfer Pricing Forum (EU JTPF), Italy had 74 MAP cases under Arbitration Convention (MAP-AC) pending at the end of 2011.

The MAP-AC procedure can take three to five years to resolve, and all the cases should be able to be resolved. The top jurisdictions involved in MAP-AC are France (24 cases), Germany (18 cases), the United Kingdom (7 cases) and the Netherlands (5 cases).

There are no dedicated procedures aimed at the suspension of tax collection for pending MAPs activated on the basis of a double taxation convention (DTC). However, a taxpayer can avail an administrative suspension or the suspension granted by a tax court during the domestic litigation procedure.

Based upon Article 3, Paragraph 2, of Law No. 99 of 1993 that ratified the AC, pending both the agreement procedure and the potential arbitration phase, the Revenue Agency may authorize the suspension either of the tax collection or of any other enforcing act regarding the amount of greater taxes assessed on the basis of Article 110, Paragraph 7 of the Income Tax Code and related interest and penalties. The administrative suspension procedure is strictly intertwined with the acceptance of the MAP opening request submitted by the taxpayer under the AC. This type of suspension is not automatic and is potentially subject to a taxpayer guarantee.

**Yield/performance of transfer pricing reviews**

The tax administration has an internal IT tool, called Business Intelligence Platform, for monitoring the performance of the tax audits. In general, overall data on tax yield is published by the Italian tax authority.

**Transfer pricing disputes**

Currently, more transfer pricing disputes are channeled through EAC and DTC-MAP.

**Current influence on transfer pricing**

BEPS, OECD initiatives and EU initiatives such as EU JTPF have influenced the transfer pricing policy or practice in Italy.

Following the local optional regime on transfer pricing documentation (based on the EU Code of Conduct and the OECD Transfer Pricing Guidelines), the tax administration has launched a pilot project, called the Cooperative Compliance Program, for LBTs in Italy.

The project aims to identify together with the taxpayers, the main features of a new form of relationship between LBTs and the Italian Tax Administration, to make the current risk management monitoring activity (Section 27, Paragraphs 9 to 12, of Decree-Law No. 185/2008, as converted by Section 1 of Law 2/2009) a more advanced program consistent with the recent recommendations by the OECD (Enhanced Relationship).

The new regime will imply a commitment for taxpayers to adopt compliant behaviors based on transparency and disclosure in dealing with the tax administration. In exchange for a higher level of transparency, the Agency should be prepared to meet taxpayers’ needs and to resolve relevant issues in a timely and effective manner. In brief, the underlying purpose of this new approach is to implement ex-ante rather than traditional ex-post approaches, with related benefits in terms of taxpayers’ compliance and of providing certainty and predictability in advance.

For the initial stage of this pilot project, the Italian Revenue Agency has reserved the right to select the applications based on mandatory and optional requirements (LBTs involved in cross-border operations that have entered into initiatives falling within the concept of cooperative compliance in Italy, such as the International Tax Ruling, or having adopted the transfer pricing documentation regime).
Resources the taxing authority is devoting to transfer pricing
Transfer pricing issues are assessed by a separate central unit within the administration of large taxpayers of the Tax Committee of the Ministry of Finance (TCMF). There are no dedicated transfer pricing experts within the local tax authorities outside of the central unit; however, there are resources who are partially involved in transfer pricing issues.

At present, there are seven full-time employees (FTEs) based in the central unit who are involved in transfer pricing reviews. This number has not changed in the past two years, but is expected to reach 20 within the next two years. All of the transfer pricing resources are economists. There have been no significant changes in the background of the transfer pricing professionals in recent years, and no change is expected in the near future.

The TCMF relies on external resources, including consultants and expert witnesses. The transfer pricing resources share their expertise with the tax authorities of countries such as the United States, Canada and the Russian Federation. The recent BEPS and OECD intangibles initiatives have not resulted in increased resource commitments.

Industry focus
The banking and capital markets, mining and metals, oil and gas, and agricultural industries receive particular transfer pricing scrutiny. The factors driving the selection of these industries are a significant level of activity in Kazakhstan and industry profitability. The list of industries selected for scrutiny is not widely communicated to taxpayers.

Geographic focus
The TCMF specifically targets transactions with major trading partners and perceived low-tax jurisdictions for transfer pricing reviews. Transactions are systematically selected for transfer pricing audits due to legal requirements (e.g., official blacklisted countries) and stated policy of the government or relevant ministry (e.g., non-legally binding blacklisted countries). In case of any violations of the law with respect to a transaction involving a particular country, examinations of other transactions with counterparties registered in that country are initiated.

Based on the current caseload of transfer pricing reviews, the top five counterparty jurisdictions (in order) are the British Virgin Islands, the Cayman Islands, Switzerland, China and countries of the Customs Union (i.e., Russia and Belarus).

Types of transactions under scrutiny
Tangible goods transactions (95% of the current caseload) and financial transactions (5% of the current caseload) are specifically targeted for transfer pricing reviews.

Transfer pricing penalties
There are separate administrative penalties for the failure to comply with documentation requirements. The order of application of penalties is unified across the country and is set out in the legislation.

More than three-quarters of transfer pricing adjustments in the last two years have resulted in an assessment of penalties. Where penalties have been assessed, the average penalty rate has been between 50% and 75% of the additional tax. The assessment of penalties is expected to remain roughly the same over the next two years. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection
Transfer pricing audit case selection is governed by a central decision-making body. The relevant factors that drive the initiation of transfer pricing reviews (in order) are risk-based assessments by the tax authority, standard audit cycle or program, previous tax audits of the taxpayer, taxpayer profitability, information received from law enforcement agencies, and the nature and volume of related-party transactions.

Indirect and customs tax
Transfer pricing enforcement resources do not work in an integrated manner with indirect tax specialists. There is a requirement to use the same transfer price for corporate income tax and VAT purposes.

Comparable data
The TCMF does not have a preference for local country comparables. Comparables from other continents may be considered in situations where local or regional comparables are not available. There are specific requirements in relation to the method for calculating the allowable arm’s-length range or the method of determining the proper profit level indicator, with the full range used except for transactions with specified tax haven countries, where the average of the range is used. There are no mandatory requirements in relation to the number of years of financial data to be used, or with respect to pooling or averaging of financial data. The weighted average is preferred to the simple average. Financial adjustments to comparable data are not allowed.
Transfer pricing methods
There is a publicly stated hierarchy of transfer pricing methods, and the use of the comparable profit method (CPM) or the residual profit split method is considered inappropriate. There is currently no guidance with respect to other nontraditional methods such as cost-contribution or cost-sharing arrangements. The position on transfer pricing methodology outlined above is based on legislation.

Advance pricing agreements (APAs)
A formal unilateral APA program exists and is available to all taxpayers. Two to three applications are received annually, and currently one APA application is in process. The average time required to complete an APA process is 60 days. Communication with the state authorities of Kazakhstan and other countries, where necessary, requires a great deal of time, which can delay the APA process. There are currently initiatives in relation to internal procedures to speed up the communication process.

Mutual agreement procedures (MAPs)
There are currently no MAPs available in Kazakhstan.

Yield/performance of transfer pricing reviews
The effectiveness of transfer pricing reviews is measured by the amount of received adjusted income and taxes in the budget, percentage of review cases where an adjustment is sustained on appeal, percentage of taxpayers assessed as high risk, percentage of taxpayers in compliance with documentation requirements and the amount of substantive transfer pricing adjustments undertaken by the taxpayers. The TCMF does not publish statistics on yield.

Transfer pricing disputes
At present, there are seven ongoing cases in litigation.

Current influences on transfer pricing
The current economic environment, OECD initiatives and other supra-national initiatives (e.g., PATA, ATAF and UN initiatives) have impacted the transfer pricing policy and practice in Kazakhstan. However, there have been no changes in local transfer pricing rules due to BEPS initiatives.
Resources the taxing authority is devoting to transfer pricing

There are four tax control divisions under the State Revenue Service Tax Control Department with approximately 60 auditors who handle transfer pricing issues. There is also one advisory division that provides support to the control divisions. Transfer pricing is often only one part of an audit, and is not usually the only subject for an audit. There are currently 15 full-time employees (FTEs) involved in transfer pricing examinations. Two years ago, the International Transactions Control Division (ITCD) had 5 FTEs, and there were 5 to 10 FTEs in other divisions. The size of the unit is expected to remain the same over the next two years. There are approximately six tax inspectors in the State Revenue Service who specialize in transfer pricing audits and have deep technical knowledge and professional backgrounds. The vast majority of the resources are economists. The background of the resources currently involved in transfer pricing examinations has not changed in recent years.

External tax professionals are consulted informally. External specialists are consulted during court proceedings in the event of a transfer pricing dispute. State Revenue Service authorities participate in international workshops and working visits to exchange experiences (e.g., organized by the Intra-European Organisation of Tax Administrations (IOTA) and Fiscalis); however, these workshops mainly target particular working cases.

The OECD’s BEPS initiatives in Latvia are under the capability of the Ministry of Finance, and the State Revenue Service has not been involved so far.

Industry focus
The tax authorities do not currently select specific industries for transfer pricing focus.

Geographic focus
The tax authorities can focus on any cross-border transaction during the course of a transfer pricing audit.

Types of transactions under scrutiny
Transactions targeted for transfer pricing reviews are tangible goods transactions, intangible property transactions, intragroup services and financial transactions (e.g., loans and other debt instruments).

Transfer pricing penalties
There is currently no specific transfer pricing penalty regime. Over the past two years, less than a quarter of proposed transfer pricing adjustments have resulted in the assessment of penalties. Of these, the average penalty rate has been under 50% of the additional tax. The assessment of penalties is expected to remain the same over the next two years.

Audit case selection
Profitability, a risk-based assessment by the tax authority, and the nature and volume of related-party transactions are relevant factors for initiating transfer pricing reviews.

Indirect and customs tax
Tax audits are usually complex and cover a broad scope, and tax authorities are required to have expertise in both direct and indirect taxes. There is no statutory requirement to use the same transfer price for corporate direct and indirect tax purposes. In cases where a tax audit results in a transaction value adjustment, a VAT return is usually not adjusted for.

Comparable data
The legislation does not formally require local country comparables. According to the established practice, comparables from the Baltics, Scandinavia and EU regions are more preferable, depending on the location of the tested party and related party. However, local comparable data is usually considered more reliable. For regional comparable data, the preferred approach is to use the same continent as the taxpayer.

When presenting comparable data, the method of determining the appropriate profit level indicator is governed by statutory rules, depending on the chosen method. For the number of years of financial data to be considered, a case-by-case approach may be applied as per established practice. There are no requirements in relation to the use of weighted average versus simple average and pooling versus averaging of financial data. Financial adjustments to comparable data (e.g., working capital, asset intensity and country risk adjustments) are optional, if justifiable.
Transfer pricing methods
The hierarchy of transfer pricing methods is based on the prior version of the OECD Transfer Pricing Guidelines, before the update issued in July 2010. However, the approach set out in the 2010 version of the guidelines may also be applied. All typical methods apart from the comparable profit method (CPM) are considered appropriate, and the comparable uncontrolled price (CUP) method is the preferred method. No guidance currently exists permitting the use of any other methods. The position outlined above with respect to transfer pricing methods is based on statutory provisions.

Advance pricing agreements (APAs)
Latvia has a formal APA program for both unilateral and bilateral APAs, but corresponding procedures have not yet been established. So far, one unilateral APA has been signed. There are no formal discretion requirements, and all taxpayers have the right to access APAs. The average length of time required to complete a unilateral APA process is targeted to be 12 months, and this may vary in the case of a bilateral APA. The amount of information to be processed and official communication procedures delay the APA process. The APA program was only introduced recently (in 2013), and there is a lack of cases for trends to be evaluated.

Mutual agreement procedures (MAPs)
Currently, there are no MAPs available in Latvia.

Yield/performance of transfer pricing reviews
There is no specific indicator to measure the effectiveness of transfer pricing review activities. The State Revenue Service employs complex audits and auditor assessment procedures. Information on yields is not currently published.

Transfer pricing disputes
There are no ongoing or pending MAP or arbitration cases. Information with respect to domestic appeals and litigation is available, but it is not statistically processed due to a lack of resources.

Current influences on transfer pricing
The OECD and EU initiatives such as the EU Joint Transfer Pricing Forum (JTPF) are taken into account with respect to practices and changes in tax laws. Transfer pricing documentation requirements and the APA program have been introduced in the Latvian tax regulatory provisions as a result of OECD initiatives. In practice, the JTPF approach is accepted if it is aligned with the OECD Transfer Pricing Guidelines.
Resources the taxing authority is devoting to transfer pricing

The International Transactions Control Division, which is part of the Large Taxpayers Supervision and Consultancy Department at the head office of the State Tax Inspectorate (STI), is responsible for transfer pricing.

Of the 15 full-time employees (FTEs) involved in transfer pricing reviews, 3 are based in the central unit, while the other 12 are regional resources. The total number of FTEs has been reduced by 25% in the last couple of years. In the next two years, the number of transfer pricing FTEs in the central unit is expected to increase by 20%.

Currently, the STI has seven FTE transfer pricing specialists who have a strong technical background in transfer pricing issues. Of the 15 FTEs, 14 are economists and 1 is a lawyer.

The recent BEPS and OECD initiatives have not resulted in increased transfer pricing resources.

Industry focus

Banking and capital markets and mining and metals are the industries that experience heightened transfer pricing scrutiny. This list of industries is reviewed every two to three years. A factor that drives the selection of an industry for particular scrutiny is the profitability of the industry. The list of industries subject to specific scrutiny is not widely communicated to taxpayers.

Geographic focus

The Lithuanian tax authority does not specifically target transactions based on jurisdiction.

Types of transactions under scrutiny

Specific types of transactions that are targeted for transfer pricing reviews are financial transactions (50% of current caseload); tangible goods transactions (15% of current caseload); intragroup services (15% of current caseload); real estate transactions, securities transactions and derivative financial instrument transactions (15% of current caseload); and intangible property transactions (5% of current caseload).

Transfer pricing penalties

There is no specific transfer pricing penalty regime in Lithuania, and standard tax penalties range from 10% to 50%. The penalty and its amount are discretionary and approved at the end of the tax audit depending on the cooperation of the taxpayer and other factors. The percentage of proposed transfer pricing adjustments in the last two years where penalties have been assessed is less than 25%. Where penalties have been assessed, the average penalty rate, as a percentage of the additional tax, is also less than 25%. In the next two years, penalty assessments are expected to remain the same.

Audit case selection

Case selection for a transfer pricing audit is governed by a central decision-making body. In Lithuania, a risk-based assessment by the tax authority generally initiates transfer pricing reviews.

Indirect and customs tax

The transfer pricing enforcement resources in Lithuania work in an integrated way with the indirect tax team on a need basis. However, there is no formal requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes.

Comparable data

The STI does not require local country comparables, and regional comparable data is permissible at the discretion of the taxpayer. Financial adjustments to comparable data are optional, if justifiable. There are no formal requirements for comparable data presentation, but further substantiation may be requested by the STI.

Transfer pricing methods

There is a hierarchy of transfer pricing methods in Lithuania based on legislative provisions. The order of preference of transfer pricing methods is publicly stated. The comparable profit method (CPM) is considered inappropriate in the computation of the arm’s-length price, and there is no guidance on the use of unspecified methods.

Advance pricing agreements (APAs)

Lithuania has a formal APA program for both unilateral and multilateral APAs. As the program was only introduced in 2012, it is still considered too early to comment on the APA process. Generally, the Lithuanian tax authority must determine its decision on APAs in 60 calendar days; however, the deadline may be prolonged for an additional 60 calendar days.

Mutual agreement procedures (MAPs)

The Lithuanian tax authority has received one transfer pricing competent authority case under MAP. It is expected that it will take 60 days to resolve the case.

Yield/performance of transfer pricing reviews

The STI measures the effectiveness of transfer pricing reviews by the increased tax yield and percentage of review cases where an adjustment is made to taxpayer income. The Lithuanian tax authority does not publish statistics on the yields of transfer pricing adjustments.

Transfer pricing disputes

Currently, there is one ongoing case under MAP.

Current influences on transfer pricing

The STI has recently initiated changes to the national transfer pricing rules based on the current economic environment, recent EU initiatives such as the EU Joint Transfer Pricing Forum (JTPF) and OECD developments. These changes have been submitted for approval to the Ministry of Finance.
Resources the taxing authority is devoting to transfer pricing

Within the Dutch Tax Authority (DTA), or Belastingdienst, a centralized Coordination Group on Transfer Pricing (CGTP) is responsible for coordinating the administration of transfer pricing and for the enforcement of transfer pricing policies, along with members of both the broader DTA and the Ministry of Finance. Currently, there are 45 FTEs in the CGTP. As of 1 January 2014, the CGTP added 4 senior executives and 15 junior executives who are expected to spend 75% of their time on transfer pricing. Approximately 30 resources (excluding the dedicated members of the APA team) are tax inspectors and accountants who spend, on an average, 50% of their time on transfer pricing. In addition, there are 28 point-of-contact inspectors who spend limited time on transfer pricing. Two years ago, the CGTP had around 30 members, of whom 18 were full-time employees (FTEs), who spent approximately 50% of their time on transfer pricing. Given the recent expansion of the team, transfer pricing resources are not expected to increase over the next two years. The CGTP is currently organized into four regions. Each region has its own regional chairman, called a “linking pin.” These linking pins, together with the chairman, the secretary, a delegate from the APA team and delegates from the Ministry of Finance – International Fiscal Affairs, form the centralized part of the CGTP. All other resources are decentralized. All the resources of the CGTP are transfer pricing specialists. Of the current FTE resources, a majority of them are lawyers, followed by accountants, fiscal economists and individuals with other backgrounds. None of the recently added members are registered accountants, and so this implies a shift in background toward more fiscal economists and lawyers. The DTA does not use external consultants, industry specialists or expert witnesses in addressing transfer pricing examinations. It also does not rely on other tax administrations for its training needs.

The expansion of resources is due to a wider recognition of transfer pricing and is not a direct result of BEPS initiatives.

Industry focus

Transfer pricing audits do not have a specific industry focus.

Geographic focus

Although the DTA does not specifically target certain jurisdictions, low-tax jurisdictions are considered by the DTA when performing a risk analysis. Based on the current caseload of transfer pricing reviews, the counterparty jurisdictions are Germany, France, the United States, Switzerland and low-tax countries.

Types of transactions under scrutiny

Specific attention is paid to transactions involving the shifting of intangible property abroad, including business restructurings, transactions with captive insurance companies and remuneration of domestically headquartered companies. The transactions the DTA targets for review are intangible property transactions (15% of the current caseload), intragroup services (15% of the current caseload), financial transactions (15% of the current caseload), business restructurings (15% of the current caseload), tangible goods (10% of the current caseload), cost-sharing or cost-contribution arrangements (10% of the current caseload), intercompany reinsurance (10% of the current caseload), stock-based compensation (5% of the current caseload) and central purchasing functions (5% of the current caseload).

Transfer pricing penalties

There is no specific transfer pricing penalty regime in the Netherlands and no specific processes to ensure consistent application of transfer pricing penalties. In recent years, penalties have been applied in less than 25% of instances where transfer pricing adjustments were issued. Transfer pricing penalties are only applied in case of willful misconduct. There has been no increase in imposition of penalties due to recent BEPS and OECD initiatives.

Audit case selection

In the Netherlands, a transfer pricing audit is initiated by the CGTP, and cases are mainly selected based on a risk analysis. Individual taxpayers are reviewed to see whether a specific audit is required. For certain types of transactions (for example, transfer of intangible property and transactions with captive insurance companies), a more centralized approach has been taken. The considerations that the DTA takes into account in determining which taxpayers to audit include the following (ranked in order of prevalence):

- A risk-based assessment
- Evidence of business restructurings
- Taxpayer profitability
- The nature of related-party transactions undertaken by the taxpayer
- The volume of related-party transactions undertaken by the taxpayer
Indirect and customs tax
Transfer pricing enforcement resources work in an integrated way with indirect tax specialists, and they regularly cooperate with the central customs valuation team. There is no formal requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes. However, alignment between the two is expected.

Comparable data
The Netherlands does not require the use of local comparables, and there are no specific requirements for the use of comparables. In general, comparables in the same continent or economic area (such as EU 15 plus 2) are accepted.
In preparing and presenting comparable data, there are no specific requirements in relation to the number of years of financial information analyzed, the use of simple versus weighted averages or the method for calculating an arm’s-length range. There is no formal guidance provided on adjustments to comparable data, and in general, the tax authority prefers that adjustments not be performed.

Transfer pricing methods
In general, the DTA follows the OECD Transfer Pricing Guidelines in allowing the most appropriate method in evaluating an arm’s-length remuneration for controlled transactions. There is also specific guidance on the use of a cost contribution arrangement. A cost contribution analysis can only be used if the contribution by the parties is balanced. In general, a pure cash contribution by one of the parties is not acceptable. The position with respect to transfer pricing methods is included in the 2013 policy statement1.

Advance pricing agreements (APAs)
There is a formal APA program for unilateral, bilateral and multilateral APAs, which is well established and accessible to all taxpayers. The DTA receives approximately 250 applications from taxpayers annually, and there were approximately 250 applications in process as of December 2013. Of the current APA caseload, most are unilateral APAs. The top three countries involved in bilateral APAs are the United States, Belgium and Italy.
The average duration of the unilateral APA process is 55 days. Bilateral or multilateral APAs may take more time to complete. Since 2004, there has been a consistent focus on measures to ensure an efficient and quick process.

Mutual agreement procedures (MAPs)
The DTA receives approximately 50 transfer pricing competent authority cases annually for resolution. The only information made public on competent authority cases is the information posted on the OECD website. In 2012, the average time taken to resolve both transfer pricing and interpretation cases was approximately 16.6 months for cases with other OECD countries and 27.0 months for cases with non-OECD countries. Generally, a very limited number of cases remain unresolved. Though a case may be pending for competent authority resolution, payment of taxes can be suspended during the MAP, and interest will be due at the outcome of the proceedings regardless of the outcome.

Yield/performance of transfer pricing reviews
The DTA neither formally measures the effectiveness of transfer pricing reviews nor publishes yield statistics.

Transfer pricing disputes
There are approximately 50 ongoing cases before the competent authority for resolution via MAP and arbitration, and 5 cases undergoing domestic appeals (preceding court action) and litigation.

Current influences on transfer pricing
International developments from a variety of sources are being carefully monitored and will be incorporated where relevant in Dutch policies. Dutch transfer pricing policy has been updated through a new decree in 2013 as a result of recent developments.

1. Decree 14 November 2013, No. IFZ 2013/184M
Resources the taxing authority is devoting to transfer pricing

The transfer pricing team at the Directorate of Taxes in Norway is responsible for transfer pricing reviews. Currently, audits are performed at a local or decentralized level. The organization is in the process of being centralized from a management and policy perspective. Currently, there are 87 full-time employees (FTEs) involved in transfer pricing reviews, of whom 13 are based centrally while the others are based in the field. Two years ago, the number of FTEs engaged in transfer pricing reviews was 62. The trend toward increased resources is expected to continue. Approximately 50% of the FTE resources involved in transfer pricing examinations are transfer pricing specialists. The Norwegian tax authority cooperates and coordinates with the other Nordic tax administrations to arrange workshops and seminars to meet its training needs. External resources such as consultants, industry specialists and expert witnesses are relied upon only for valuation purposes.

The recent BEPS and OECD intangibles initiatives are likely to influence the Ministry and push resources toward transfer pricing audits.

Industry focus

Transfer pricing audits focus mainly on the banking and capital markets and oil and gas industries. Although significant activity in Norway drives the selection of industries for focus, the tax authority has more of an issue-based approach rather than an industry focus. However, as the oil and gas industry is a very important industry in Norway, it is always under close scrutiny.

Geographic focus

The Norwegian tax authority does not specifically target transactions with certain jurisdictions. Of the current caseload of transfer pricing reviews, the top counterparty jurisdictions are Denmark, Germany, the Netherlands, Ireland and Sweden.

Types of transactions under scrutiny

Specific types of transactions targeted for transfer pricing reviews are intangible property transactions, financial transactions and bareboat transactions.

Transfer pricing penalties

Norway does not have a specific transfer pricing penalty regime as such, but applies the ordinary penalty regime for transfer pricing adjustments. If penalty is levied, the normal penalty tax is 30% of the adjusted tax, but may range from 15% to 60%.

Audit case selection

A transfer pricing audit is initiated after a risk-based assessment by the tax authority.

Indirect and customs tax

Transfer pricing enforcement resources are not required to integrate with the indirect tax team, and there is no formal requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes.

Comparable data

The tax authority prefers, but does not require, local country comparables. For regional comparable data, the tax authority prefers, ranked in order of preference, comparables from the same continent as the taxpayer, Scandinavian countries, Nordic countries and countries in North Europe. In preparing and presenting comparable data, there are no specific requirements in relation to the number of years of financial information, the use of simple versus weighted averages, pooling versus averaging of financial data, the method of calculating an appropriate arm’s-length range or the method for determining the appropriate profit level indicator. However, the Norwegian tax authority follows the principles set forth in the OECD Transfer Pricing Guidelines and uses the Amadeus database for benchmarking studies. Financial adjustments to comparable data are optional, if justifiable.

Transfer pricing methods

Norway follows the best method rule in determining the hierarchy of transfer pricing methods; no method is considered inappropriate. The order of preference of transfer pricing methods is not publicly stated.

Advance pricing agreements (APAs)

Norway does not have an APA program. It is currently in the process of establishing a separate APA/MAP office and will be introducing APAs in 2015.

Mutual agreement procedures (MAPs)

Approximately 15 to 20 transfer pricing competent authority cases are received annually, and most of the cases have been resolved. However, due to a lack of resources, it requires a great deal of time and effort to negotiate cases with different authorities. The top three jurisdictions involved in transfer pricing MAPs are the Netherlands, Denmark and Sweden.

Yield/performance of transfer pricing reviews

The effectiveness of transfer pricing reviews is measured by increased tax yield.

Transfer pricing disputes

There are approximately 871 ongoing cases under domestic appeal and 23 cases under MAP.

Current influences on transfer pricing

BEPS, the current economic environment, implementation of centralized business and tax models, and OECD initiatives have contributed to changes in transfer pricing policy and practice in Norway.

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1. The Norwegian authorities do not provide statistics over court cases alone; the numbers show the number of cases in process, i.e., cases that are under appeal either administratively or in the court system.
Resources the taxing authority is devoting to transfer pricing

In Poland, two different tax bodies are involved in transfer pricing audits: Tax Offices or Bureaus (TO) and Tax Inspection Offices or Bureaus (TIO). In general, the Tax Administration Department at the Polish Ministry of Finance (PMF) coordinates and supervises the work of the local TOs, whereas the Tax Inspection Department at the PMF coordinates and supervises the work of the local TIOs.

Tax inspectors employed in both the TOs and TIOs have been delegated to inspect the intercompany transactions for local taxpayers, but they are not assigned exclusively to transfer pricing audits. The tax inspectors perform a significant amount of their work during tax controls in TOs and TIOs. However, auditors may also conduct the audit at the taxpayer’s location.

Approximately 90 FTEs from the TIOs were involved in transfer pricing reviews in 2012, of which 9 were based in the central unit. Of the total resources, 40 are transfer pricing specialists and 50 are generalists. The majority of the transfer pricing specialists are economists, followed by lawyers.

In 2012, the TOs employed approximately 4,245 full-time employees (FTEs) (including transfer pricing FTEs). Data regarding the FTEs involved in transfer pricing audits is unavailable.

The tax authority believes that the number of FTEs carrying out transfer pricing reviews is expected to remain the same or increase slightly over the next two years.

Training for the FTEs with regard to transfer pricing has increased over the years, and most of the training is conducted in the form of workshops. The FTEs are also involved in OECD projects relating to transfer pricing.

The tax authorities rely on external resources as skilled witnesses in tax or court proceedings only. They are generally engaged to provide opinions on transfer pricing methods.

Industry focus

Transfer pricing audits in Poland focus on the asset management, automotive, banking and capital markets, consumer products, pharmaceuticals, oil and gas, power and utilities, technology and real estate industries. This list of industries is not widely communicated to taxpayers. Factors driving the selection of industries for particular scrutiny are significant activity in Poland and industry profitability.

Geographic focus

The Polish tax authority places special focus on transactions with Cyprus, the Netherlands, Switzerland, Luxembourg, Germany, Italy, Austria, the Czech Republic, Slovakia, Norway, Singapore and tax havens.

The selection of countries is driven by the official list of tax havens issued by the PMF and the reputation of a given tax jurisdiction for low tax rates.

Types of transactions under scrutiny

Particular types of transactions targeted for transfer pricing reviews (in order) are tangible goods, intragroup services, business restructurings, financial transactions and intangible property transactions (e.g., royalties and licensing).

Transfer pricing penalties

The official transfer pricing penalty indicated in Polish tax regulations is a 50% penalty tax rate in case of an income assessment where the taxpayer has no transfer pricing documentation and is not able to provide the documentation within seven days of a request, or where the transfer pricing documentation does not meet the formal requirements. Additional tax penalties include penalties for delayed payment of tax (in case of income tax assessmens) and penalties envisaged in the penal fiscal code (applicable where tax controls state tax irregularities).

In 2012, the TOs conducted 3,108 transfer pricing audits, of which 58.75% resulted in tax reassessments, while the TIOs conducted 185 transfer pricing audits, of which 15.13% resulted in tax reassessments.

In 2012, the approximate penalty imposed by the TOs and the TIOs was EUR4,000 and EUR1,423,722, respectively.

Audit case selection

The selection for transfer pricing audit is not governed by a central decision-making body. However, the Director of a Fiscal Inspection Office prepares annual plans for audits.

The Ministry of Finance does not directly decide which taxpayers should be subject to transfer pricing reviews. It may, however, provide the TIOs with certain guidelines as to the sectors of the economy and types of transactions that should be subject to tax risk analyses. These are in the form of an official, publicly available, “Annual plan/aims for tax auditors.” There is also an internal plan of tasks for tax inspectors issued by the General Inspector of Tax that outlines tasks in more detail.

Transfer pricing reviews are conducted through ongoing risk analyses of taxpayers. Tax authorities select taxpayers for audit based on their profitability, value of intercompany transactions, type of transactions or results of past controls.
Indirect and customs tax
Transfer pricing enforcement resources in Poland work in an integrated way with the indirect tax specialists. In general, there is no formal requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes. However, in practice, it is recommended to use the same transfer price where possible.

Comparable data
Local benchmarking studies are highly recommended because they best meet comparability criteria (e.g., location savings, regulatory risks, business environment). If the benchmarking study does not cover Polish entities, the local tax auditors may suggest expanding the search or suggest additional local entities from their own sources. The most important factor for the local tax auditors is that the set of comparables includes entities that best match the taxpayer’s business.

There are no formal requirements that address the presentation of comparable data. Financial adjustments to comparable data are optional and recommended, if justifiable.

Transfer pricing methods
Traditional methods (i.e., comparable uncontrolled price (CUP), resale price method (RPM) and cost plus method) prevail over the transactional methods (i.e., transactional net margin method (TNMM) and profit split method) in Poland. The CUP method is no longer preferred over other methods. The comparable profit method (CPM) is not directly indicated in the Polish tax regulations and is thus considered an “other” method. The Polish guidelines state that, depending on the case, if it is more appropriate or justified to use unspecified methods, it is allowable to do so. The order of preference of transfer pricing methods is publicly stated.

Advance pricing agreements (APAs)
Poland has a formal APA program that came into effect in 2006. Since the introduction of the APA program, the PMF has received 37 applications. Of the 37 applications received, 28 cases were accepted, three of them were redeemed, 1 application (APA decision renewal) was rejected, 4 cases were left without consideration and 1 case has lapsed due to its superfluous nature. As of December 2013, the PMF had five unilateral and seven bilateral ongoing applications.

The average time taken to complete a unilateral APA is 10 months, whereas a bilateral APA takes approximately 20.5 months.

The statistics indicate that taxpayers are interested in transfer pricing risk management tools (e.g., APAs) due to the positive decisions awarded by the PMF.

Mutual agreement procedures (MAPs)
In Poland, MAP procedures are initiated based on arbitrary convention (MAP AC) or double tax treaties (MAP DTT).

At the end of 2012, 29 MAP DTT and 10 MAP AC cases were open, with only 3 MAP DTT cases and 4 MAP AC cases resolved. In 2013, 18 new MAP DTT and 26 new MAP AC requests were filed. Annually, the top jurisdictions involved in transfer pricing MAPs AC are Germany, France, the United Kingdom, Sweden, Italy, Denmark, Belgium, the Netherlands, Finland and Hungary while the top jurisdictions involved in MAPs DTT are Austria, Lithuania, Germany, Italy, Slovakia, Canada, Belgium, Finland, France, Sweden, the Netherlands, Norway, Denmark, Greece, Belarus and the United Kingdom.

Yield/performance of transfer pricing reviews
The tax authority uses several indicators to measure the effectiveness of transfer pricing audits. These indicators include additional revenue generated, number of proceedings where transfer pricing was reviewed, the number of cases in which additional income was assessed and the number of cases in which the penalty tax rate of 50% was applied. There is no publicly available data regarding yields.

Transfer pricing disputes
There is no available information on domestic transfer pricing disputes; however, almost all of the MAPs initiated in 2012 are still in process.

Current influences on transfer pricing
The OECD and EU Joint Transfer Pricing Forum (JTPF) initiatives have had an impact on the transfer pricing system in Poland. On 18 July 2013, amended transfer pricing regulations were introduced in Poland to include regulations on business restructurings in line with the OECD Transfer Pricing Guidelines and regulations on low value-adding services in line with the work of the EU JTPF.
Portugal

Resources the taxing authority is devoting to transfer pricing

The Portuguese Tax and Customs Authority (Autoridade Tributária e Aduaneira or AT) administers taxes and duties and controls the external border of the European Union and the national customs territory for tax and economic purposes. The AT was formed as a result of the merger of three units – namely, the Directorate-General for Taxation, the Directorate-General for Customs and Excise, and the Directorate-General for Technology and Support to Tax and Customs Services. Unidade dos Grandes Contribuintes (UGC) is responsible for monitoring the compliance of taxpayers. Additionally, (UGC) is responsible for monitoring the Unidade dos Grandes Contribuintes (UGC) for Technology and Support to Tax and Excise, and the Directorate-General for Customs and tax authority. This unit includes specific teams for monitoring compliance and aims at promoting, among other aspects, assistance in voluntary compliance with respective tax obligations and reducing the number of tax disputes. Moreover, the UGC seeks to promote an early decision with respect to the legal classification of a tax transaction with a tax contingency. The Transfer Pricing Unit (TPU) is under the responsibility of the UGC.

There has been a significant increase in the number of full-time employees (FTEs) involved in transfer pricing reviews, from fewer than 10 FTEs to approximately 50 FTEs over the last three years. However, of these resources, only 10 can be considered transfer pricing specialists. Most of the transfer pricing FTEs are economists. According to an upcoming new tax policy, transfer pricing resources allocated for inspections are expected to increase by 30% of the total resources. The transfer pricing team may in the future be recruited from more varied backgrounds, such as lawyers and management graduates.

Industry focus

The automotive, banking and capital markets, consumer products, oil and gas, pharmaceuticals, and power and utilities industries receive particular scrutiny. Factors taken into account in identifying specific industries for scrutiny are significant activity in Portugal, business restructurings (decentralization or movement of functions to other countries), royalty rates for the licensing of trademarks, fluctuations in profitability and persistent losses. The list of industries under specific transfer pricing focus is widely communicated to taxpayers and is reviewed annually.

Geographic focus

Transactions with certain jurisdictions are targeted by the AT for specific transfer pricing scrutiny. In particular, perceived low-tax jurisdictions are reviewed in the scope of an audit. In addition, domestically headquartered companies are also included in the regular audit cycle. Transactions are also systematically selected for transfer pricing audits because of legal requirements (e.g., blacklisted countries). Of the current caseload of transfer pricing reviews, the top three counterparties involved are Switzerland, the Netherlands and Germany.

Types of transactions under scrutiny

In order of caseload, business restructurings, intangible property transfers, intragroup services, financial transactions, tangible goods transactions, and cost-sharing and cost-contribution arrangements are currently targeted for transfer pricing reviews.

Transfer pricing penalties

Transfer pricing adjustments are subject to the general tax penalty regime. The penalty for noncompliance with mandatory contemporaneous documentation rules is up to EUR150,000 annually per company. A late payment interest penalty is also applicable for transfer pricing adjustments at the rate of 4% per year. Failure to comply with documentation requirements may result in a possible shift of the burden of proof and the application of secret comparables by the tax authority.

In 2012, transfer pricing rules were extended by the publication of specific legislation on penalties for noncompliance with documentation obligations. The General Regime on Tax Infractions (RGIT) addresses the following penalties:

- The taxpayer has indicated in the Annual Tax and Accounting Return (IES) that transfer pricing documentation has been prepared and, despite the request of the tax authority to submit documentation, the taxpayer was late in submitting the documentation. The penalty for late submission is up to EUR20,000 annually per company.
- The taxpayer has not indicated on the IES that transfer pricing documentation has been prepared, but the tax authority requested the taxpayer to submit such documentation. The penalty for omission or lack of evidence in the IES is up to EUR45,000 annually per company.
- The taxpayer has indicated in the IES that transfer pricing documentation has been prepared, but it failed to prepare the documentation and the tax authority requested the taxpayer to submit it. The penalty for improper fulfilment is up to EUR75,000 annually per company.
• The taxpayer has indicated in the IES that transfer pricing documentation has been prepared but refused to submit it to the tax authority (when duly requested). The penalty applicable in this case is up to EUR150,000 annually per company.

Over the past two years, less than a quarter of proposed transfer pricing adjustments have resulted in the assessment of penalties. Of these, the average penalty rate has been under 25% of the additional tax. Over the next two years, the assessment of penalties is expected to increase.

**Audit case selection**

Case selection for transfer pricing audit is managed by the UGC. Factors relevant to the initiation of a review are, in order of importance, business restructurings, VAT, employment, customs or other indirect tax reviews, the nature and the volume of related-party transactions, taxpayer profitability, the standard audit cycle or program and previous audits of the taxpayer.

**Indirect and customs tax**

Transfer pricing enforcement resources work in an integrated way with indirect tax specialists. Transfer pricing issues often arise from tax inspections carried out by other tax specialists, namely under a VAT or customs analysis.

According to the Budget Law, it is a legislative requirement to use the same transfer price for corporate direct and indirect tax purposes from January 2012.

**Comparable data**

Portuguese transfer pricing legislation has established a preference for Portuguese comparables. Iberian data is considered the next best alternative by UGT when Portuguese comparable information is not available. If both types of comparable data are not available, pan-European data can be considered, as a last resort, provided that the unavailability of local or Iberian data is clearly highlighted in the documentation.

Financial adjustments to comparable data (e.g., working capital, asset intensity and country risk adjustments) are optional, if justifiable.

**Transfer pricing methods**

There is currently no formal hierarchy of transfer pricing methods. Nevertheless, preference is given to traditional transactional-based methods rather than profitability-based methods (which should only be used when the traditional methods are not applicable or their application would lead to inaccurate results).

Ministerial order 1446-C/2001 provides for a “most appropriate or best method approach.” This means that the most appropriate method is the one that can provide the most reliable set of comparables with the most available data and requires the smallest number of adjustments.

**Advance pricing agreements (APAs)**

An APA program, for both unilateral and bilateral APAs, was included in the Portuguese Corporate Income Tax Code in 2008 (Article 138). Portaria n.º 620-A/2008, as of July 16, also foresees the APA regime in Portugal.

All taxpayers can apply and submit for an APA program. After evaluating the taxpayer’s preliminary APA request, it is at the discretion of the AT to move ahead into the negotiation phase.

The procedure to request an APA comprises three phases: a pre-filing phase, which entails a preliminary evaluation of the initial taxpayer proposal and may involve joint meetings with the tax authorities; submission, analysis and negotiation of the APA proposal (the proposal should be presented at least 180 days before the beginning of the applicable tax year); and conclusion of the APA process.

The guidelines provide that unilateral agreements should be concluded within 180 days while bilateral APAs should be concluded within 360 days. Delays to the APA process occur when the analysis performed by the AT is time consuming.

**Mutual agreement procedures (MAPs)**

According to the 2012 MAP statistics released by the OECD, Portugal had a total of 17 new MAP cases initiated in 2012 (13 with OECD countries and 4 with partner economies (non-OECD countries)).

**Yield/performance of transfer pricing reviews**

There is currently no information on the performance of transfer reviews in Portugal.

**Transfer pricing disputes**

There is currently no information on domestic transfer pricing disputes; however, there are currently MAP cases in process.

**Current influences on transfer pricing**

No specific factors have been identified as influencing the transfer pricing policy or practice in Portugal.
Resources the taxing authority is devoting to transfer pricing

The National Agency of Fiscal Administration (NAFA) administers taxes in Romania. Transfer pricing examinations are performed by in-field general tax audit inspectors. However, a central transfer pricing unit consisting of three to four dedicated transfer pricing resources has been set up within the NAFA to work in cooperation with the field-level inspectors. Two years ago, there were approximately 10 full-time employees (FTEs). The number of transfer pricing resources is expected to increase over the next two years. Only a few of the resources involved in transfer pricing examinations are transfer pricing specialists. Most of the in-field examiners are generalists, and those in the central unit are also primarily generalists, with some transfer pricing knowledge. Most of the resources involved in transfer pricing reviews are either economists or accountants. The tax authority does not rely on external resources, including consultants, industry specialists and expert witnesses.

Industry focus

Transfer pricing audits in Romania do not have a specific industry focus. All industries are equally exposed to scrutiny. However, recently the tax authorities have informally expressed an interest in the oil and gas and banking industries. The selection of industries is not widely communicated to taxpayers.

Geographic focus

Geographic considerations do not drive the selection of taxpayers for review.

Types of transactions under scrutiny

Intragroup services and tangible goods transactions receive particular transfer pricing scrutiny.

Transfer pricing penalties

Failure to present transfer pricing documentation or the presentation of incomplete documentation within the specified time may trigger a fine of up to EUR3,000, and a replacement of transfer prices determined by the taxpayer with transfer prices estimated by the tax authority. The adjustments trigger a profit tax liability of 16% on any additional income, in addition to late payment interest and penalties (as of 1 March 2014, the late payment interest is 0.03% per day of delay, and the late payment penalty is 0.02% per day of delay). Romania has legislative provisions to ensure consistent application of the transfer pricing penalties. Transfer pricing penalty assessments are expected to increase over the next two years.

Audit case selection

Transfer pricing audits are normally initiated by the central transfer pricing unit but may also be initiated locally. The selection of taxpayers for further review and the scope of the audit are driven by various considerations, such as the following (ranked in order of importance):

- The profitability of the taxpayer
- The volume of related-party transactions undertaken by the taxpayer
- A risk-based assessment by the tax authority
- VAT, employment, customs or other indirect tax reviews

Indirect and customs tax

The work of transfer pricing enforcement resources is integrated with that of indirect tax specialists, insofar as the instigation of transfer pricing audits. For instance, VAT reimbursement requests often trigger transfer pricing audits. However, there is no requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes. There is also no information exchange obligation between the transfer pricing and indirect tax enforcement agencies.

Comparable data

Typically, local comparables are preferred. The Romanian transfer pricing documentation legislation specifically requires that the comparability analysis consider territorial criteria in the following sequence: national, European Union and other international territories. The transfer pricing documentation should detail the criteria under which potential Romanian comparables, if any, were rejected. In preparing and presenting comparable data, the interquartile range is preferred for calculating the allowable arm’s-length range. There are no specific requirements in relation to the number of years of financial information, the use of simple versus weighted averages, the method for determining an appropriate profit level indicator, or the pooling or averaging of financial data. There is no formal or mandatory guidance with respect to adjustments to comparable data. Such adjustments are likely to be supported by the Romanian tax authority, as long as they are in line with the OECD Transfer Pricing Guidelines.

Transfer pricing methods

Romanian transfer pricing legislation requires that the most appropriate of the following methods be used: the comparable uncontrolled price (CUP) method, the cost plus method, the resale price method (RPM), and any other method recognized by the OECD Transfer Pricing Guidelines, such as the profit split method or transactional net margin method (TNMM). The most appropriate method should be determined considering specific facts and circumstances. Traditional methods (CUP method, cost plus method and RPM) are generally preferred to the transactional profit methods (TNMM and profit split method), and more specifically, where possible, the CUP method is the preferred traditional method for assessing the market value of related-party transactions. No method is considered inappropriate, as long as the method is justified for the case at hand. The order of preference of transfer pricing methods is publicly stated.
Advance pricing agreements (APAs)

Romania has a formal APA program, which is accessible to all taxpayers upon payment of a prescribed fee. The program offers both unilateral and bilateral APAs. Currently, only a handful of APA requests are received annually. The average time required for completing the APA process typically exceeds the timeline prescribed under the regulations (12 months for unilateral APAs and 18 months for bilateral or multilateral APAs). Romania has set up certain initiatives to speed up the APA processing time.

Mutual agreement Procedures (MAPs)

There is currently no public information on formal MAP in Romania.

Yield/performance of transfer pricing reviews

There is currently no public information on the performance of transfer pricing reviews in Romania.

Transfer pricing disputes

There is currently no public information available on transfer pricing disputes. We are aware of several transfer pricing litigation cases that have reached the Romanian courts.

Current influence on transfer pricing

The transfer pricing environment in Romania is responsive to the BEPS initiatives, global economic environment, and initiatives at the OECD and the European Union levels, such as the EU Joint Transfer Forum (JTPF). It is expected that these factors will result in an increase in the number of transfer pricing audits in the future. Transfer pricing has become one of the key issues in the tax audits of multinational enterprises in Romania.
Resources the taxing authority is devoting to transfer pricing

There is a special transfer pricing unit within the Federal Tax Service (FTS) that leads transfer pricing audits and advanced pricing agreement negotiations. It is also responsible for the enforcement of transfer pricing legislation in Russia. The Russian Ministry of Finance is responsible for developing methodological guidance for taxation matters, including transfer pricing.

The transfer pricing unit has approximately 40 professionals in charge of transfer pricing audits. In addition, there is a special interregional transfer pricing inspectorate (based in Moscow) that undertakes analytical work related to transfer pricing audits, such as industry and economic analysis, benchmarking searches and transfer pricing risk assessments.

The transfer pricing unit of the FTS was formed in 2011, and this team has grown from a few professionals to a considerably large team of approximately 40 full-time employees (FTEs).

Most of the resources within the transfer pricing unit have either a legal or economics background.

Generally, the FTS supports the OECD initiatives in relation to BEPS and intangibles.

Industry focus

The automotive, consumer products, mining and metals, oil and gas, pharmaceutical and chemical industries receive particular scrutiny. Significant industry activities in Russia, importance of intellectual property, industry profitability and export-oriented industries have been relevant factors in driving industry focus. The FTS has been applying the transfer pricing risk assessment approach in line with the OECD recommendations in the transfer pricing risk analysis.

Formal transfer pricing audits based on new transfer pricing rules have commenced for the year 2012, although the outcome of these audits is not yet known. In addition to formal transfer pricing audits, many taxpayers receive inquiries from the FTS about their intercompany transactions with the request to explain the transfer pricing methodology applied in these transactions.

Geographic focus

The FTS targets taxpayers engaged in transactions with so-called blacklisted countries (low-tax jurisdictions and non-treaty partners, as defined by the list of the Ministry of Finance).

Types of transactions under scrutiny

Transactions involving intangible property, intragroup services, financial transactions and cost-sharing or cost-contribution arrangements are specifically targeted for transfer pricing inquiries.

Transfer pricing penalties

Russia has a transfer pricing penalty regime in place that is regulated by the law. Due to the fact that transfer pricing cases are initiated by the FTS, the tax authority with the greatest seniority, any disagreements are to be resolved in the court.

For the period 2012-2013, no penalties were levied as it was a transition period for the new regime. For the years 2014-2016, the applicable penalty rate is 20% of underpaid tax, and from 2017, the penalty will be increased to 40% of underpaid tax. The existence of transfer pricing documentation compliant with the Russian legislative requirements and supporting the taxpayers’ transfer prices provides penalty protection under Russian law.

Audit case selection

Case selection for transfer pricing audits is governed by the transfer pricing unit within the FTS. Taxpayer profitability, business restructurings, a risk-based assessment by the tax authority and volume of related-party transactions undertaken by the taxpayer are all relevant factors in initiating reviews.

Indirect and customs tax

Tax and customs matters are regulated by different authorities. There is no requirement to use the same transfer price for corporate direct and customs purposes.

Comparable data

There are requirements for the use of local country comparables, but regional comparables are accepted if there is a lack of local comparables. However, there is no guidance available on how to determine the permissible region if local comparables are not available.

When presenting comparable data, financial data for three calendar years preceding the year of the transaction has to be considered, and current interpretation of the law is that pooled results have to be used rather than averages. The law has specific guidance for the approach of calculating the allowable arm’s-length range (in terms of independence criteria, net asset test, losses, etc.) and for the selection of the profit level indicator. Financial adjustments to comparable data (e.g., working capital, asset intensity and country risk adjustments) are optional and are not specific.

Transfer pricing methods

Russian law prioritizes the use of the resale minus method in the case of a distributor and the comparable uncontrolled price (CUP) method in all other cases. The following five methods are prescribed in Russian law: CUP, resale minus, cost plus, comparable profitability method and profit split method. Valuation reports by independent appraisers may be used if it is not possible to apply any of the methods prescribed by the law.
Advance pricing agreements (APAs)
There is no formal APA program in Russia. Although both unilateral and bilateral APAs are allowed by the law, an APA procedure only exists for unilateral APAs. Large taxpayers that are Russian legal entities can apply for an APA. The FTS would generally indicate during a preliminary APA discussion whether, in its view, it is recommended to engage in an APA process for a particular case. The FTS has received approximately 50 APA applications over the last two years. Approximately 20 applications are currently in process. All APAs currently in progress are unilateral and those that have been concluded are for domestic transactions, except for three APAs signed in respect of export transactions.

Mutual agreement procedures (MAPs)
Although MAPs are allowed by most of the tax treaties concluded by Russia, there is no information about MAPs concluded for the transfer pricing cases.

Yield/performance of transfer pricing reviews
There is currently no information on the performance of transfer reviews in Russia, as there is no established track record of transfer pricing audits and reviews.

Transfer pricing disputes
Although the outcome of the first transfer pricing audits is yet to be seen, there are a number of transfer pricing disputes under formal rules, covering year 2011 and earlier periods. These disputes concern such transactions as distribution (e.g., automotive industry), royalty and management fees. Substance of transactions, and not only their form, is analyzed with more scrutiny and courts are seen as reliant more on expert witnesses in transfer pricing cases. Some transfer pricing-related cases were lost by taxpayers in courts.

Current influences on transfer pricing
Transfer pricing developments in Russia are influenced by BEPS and OECD initiatives. The FTS reinforced that it would follow the BEPS action plan. Some initiatives around “de-offshorization” (including controlled foreign corporations (CFCs), tax residency and beneficial ownership) are already being discussed as part of the draft law (to be implemented from 2015). Most of the OECD initiatives related to transfer pricing (intangibles, BEPS, country-by-country reporting) are expected to be implemented in Russia, although with no specific commitment in terms of timing.
Resources the taxing authority is devoting to transfer pricing

The Financial Directorate – Tax authority for selected taxpayers administers taxes in the Slovak Republic. The transfer pricing review is not carried out as a separate audit but as a part of the corporate income tax review. Transfer pricing may be examined by any tax auditor who comes across a transfer pricing issue. If necessary, the tax auditor is provided with methodical guidance by a respective person from the Financial Directorate.

There is a specialized department responsible for performing audits of international taxation at the tax office for selected taxpayers, which focuses mainly on transfer pricing examinations. If necessary, the employees of this department may be engaged as part of tax audit teams of other tax authorities. Transfer pricing examinations may be executed by any tax auditor dealing with corporate income tax. There are 52 resources (44 field auditors and 8 methodical support people) specializing in transfer pricing examinations in Slovakia. All 52 resources are economists. Two years ago, there were nine resources specialized in transfer pricing examinations. The number of transfer pricing specialists is expected to increase over the next two years.

The tax authority cooperates with other authorities within the state administration (e.g., Slovak Ministry of Economy, Slovak Ministry of Finance). The tax authority also uses information obtained from third parties (e.g., Business Chambers, National Bank of the Slovak Republic, Industrial Property Office of the Slovak Republic). The tax administration relies on the OECD and other tax administrations for training. The recent BEPS and OECD intangibles initiatives are expected to result in increased resource commitments in the future.

Industry focus

Transfer pricing audits currently focus on the automotive, consumer products, telecommunication and pharmaceuticals industries. The list of industries is reviewed occasionally, in case of significant changes in conditions. Factors driving the selection of these industries are significant level of activity in the Slovak Republic and profitability. The selection of industries currently under specific transfer pricing focus is not widely communicated to taxpayers.

Geographic focus

The tax authority specifically targets transactions with major trading partners, perceived low-tax jurisdictions and countries that provide scope for aggressive tax planning. There is no legislative direction or any stated policy of the government or relevant ministry requiring that the tax authority select certain jurisdictions for audits.

Based on the current caseload of transfer pricing reviews, the top counterparty jurisdictions are Germany, Austria, the Czech Republic and the Netherlands.

Types of transactions under scrutiny

The tax authority targets intragroup services (40% of the current caseload), tangible goods (30% of the current caseload), intangible property transfers (e.g., royalties, licensing) (10% of the current caseload), financial transactions (10% of the current caseload) and business restructurings (10% of the current caseload).

Transfer pricing penalties

The Slovak Republic does not have a specific transfer pricing penalty regime. At present, the penalty is 10% of the additional tax under the general penalty regime. The recent BEPS and OECD intangible initiatives have not impacted penalties.

Audit case selection

A transfer pricing audit is instigated based on the initiative from the Financial Directorate; however, the majority of selections are made at the discretion of the tax auditor. Various considerations are taken into account in determining which taxpayers to audit, including the following:

› Taxpayer profitability
› Evidence of business restructurings
› A risk-based assessment by the tax authority
› The nature of related-party transactions undertaken by the taxpayer
› The volume of related-party transactions undertaken by the taxpayer
› A standard audit cycle or program

Indirect and customs tax

Transfer pricing enforcement resources are not required to integrate with the indirect tax team, and there is no formal requirement that the same transfer price be used for corporate (direct) tax and indirect tax purposes.

Comparable data

The tax authority does prefer local country comparables; however, this is not a strict mandate. Comparable data from other central European countries (Czech Republic, Hungary, Poland and Austria) is also accepted. The emphasis is on the quality of data rather than the number of comparables. It is essential to verify the factual comparability of the data (e.g., via internet research).

In preparing and presenting comparable data, there is a requirement in relation to the number of years of financial information, which is usually three to five years. The number of years depends on the specifics of the respective transaction. The method for calculating the allowable arm’s-length range, the use of weighted versus simple average, methods of determining the proper
profit level indicator and pooling or averaging of financial data depend on the circumstances of the transaction. Financial adjustments to comparable data are recommended.

**Transfer pricing methods**
The Slovak Republic does not follow a hierarchy of transfer pricing methods; the formal hierarchy of the pricing methods was abandoned as of 2014. The comparable profit method (CPM) is considered to be an inappropriate method by the tax authority; however, it permits the use of other methods if they are in accordance with the arm’s-length principle.

**Advance pricing agreements (APAs)**
The Slovak Republic has an APA program in place for all types of APAs. According to Section 18(4) of the Slovak Income Tax Act, in cases of cross-border related-party transactions, the taxpayer may request the tax authority to approve the selected transfer pricing method. If approved, the method should be applied for a maximum of five tax periods. The Income Tax Act does not explicitly stipulate that the tax authorities approve the particular price or margin percentage used. Nevertheless, the Slovak tax authority may approve the practical application of the transfer pricing method (e.g., process of identifying comparable transactions or entities).

The filing of an APA request is only possible no later than 60 days before the beginning of the respective tax period. As of 1 September 2014, APAs will be subject to a fee between EUR4,000 and EUR30,000 depending on the volume of the analyzed transaction. Approximately 10 APA applications are received annually. Currently, two APA applications are in process. The right of access to the APA program is not limited by law; however, the Slovak tax authority rejects applications that do not meet the required content and in cases where the taxpayer does not cooperate or respond to the tax authority’s requests. The average time required to process a unilateral APA is approximately one year. The length of processing time is due to the provision of insufficient information, improper transfer pricing documentation, insufficient comparables, non-responsiveness to the tax authority’s requests and lack of communication on the taxpayer’s side. To speed up the APA process, the tax authority has made efforts to use more informal and accessible methods of communication with taxpayers (e.g., emails, meetings and telephone conversations).

Historically, unilateral APAs represent 100% of all APAs. Currently, two bilateral APA applications are expected to be received.

**Mutual agreement procedures (MAPs)**
The Slovakian tax authority receives on average one application relating to MAPs annually. It takes approximately three to four years to resolve a MAP. Only one case has been resolved, and two cases remain unresolved. The top jurisdiction involved is Italy; none of the cases with Italy have been resolved. Tax and penalty is payable in Slovakia upon rejection of the domestic administrative appeal, and is not refunded until the MAP is resolved. In the case of corresponding adjustments, tax is refunded upon the Slovak tax authorities’ consent (after review and/or completion of the MAP).

**Yield/performance of transfer pricing reviews**
The tax authority measures the effectiveness of transfer pricing reviews by the percentage of review cases where an adjustment is made to taxpayer income and the percentage of review cases where an adjustment is sustained on appeal. The tax authority does not publish statistics on tax yield.

**Transfer pricing disputes**
No statistics are available with respect to transfer pricing disputes, except that currently there are two ongoing MAP cases.

**Current influences on transfer pricing**
The current economic environment, OECD initiatives and EU initiatives such as the EU Joint Transfer Pricing Forum (JTPF) have influenced the transfer pricing policy and practice in Slovakia. As of 1 January 2014, the deadline for submission of the transfer pricing documentation has been reduced to 15 days (from 60 days) following a request from the tax authority. In addition, the tax authority is entitled to request transfer pricing documentation without opening a tax audit.
Resources the taxing authority is devoting to transfer pricing

Transfer pricing audit teams in Spain work in a decentralized manner. However, given the approach of the Spanish Tax Administration (STA) to tax risk and the scoring of taxpayers under audit, decisions are taken at a central level. Guidelines for audit processes, training, database selection and approaches to special transactions (business restructurings) are also communicated centrally. There is no veto power for review of reassessments from the central coordination team. All tax auditors at the STA can work on transfer pricing audits.

In April 2013, the Spanish Government established the National Office for International Taxation (Oficina Nacional de Fiscalidad Internacional – ONFI), which is a part of the Spanish Tax Audit Department. The ONFI focuses on the control and coordination of international tax issues, including transfer pricing issues, mutual agreement procedures (MAP), advanced pricing agreements (APAs) and the coordination of tax audits of cross-border structures. The purpose of the ONFI is to enhance the functionality of the STA with more specialized resources and increased powers to audit taxpayers in regard to international taxation and to promote the APA program.

A part of the international tax team belonging to the Large Taxpayers Unit (Delegación Central de Grandes Contribuyentes – a separate department engaged in tax administration and audit of large-size taxpayers and/or those with nationwide operations, and complex tax fraud structures) has been transferred to the ONFI.

At present, there are approximately 50 transfer pricing specialists, of whom 25 resources are based in the ONFI (central unit) and the remaining resources are based in the field. Two years ago, there were 15 transfer pricing resources. As transfer pricing audits are decentralized, the number of full-time employees (FTEs) devoted to transfer pricing will depend on specialization and training efforts. The ONFI is expected to increase to 40 resources over the next two years. The majority of FTEs currently involved in transfer pricing examinations are economists (60% of FTEs), followed by lawyers. The STA relies on external consultants, valuation experts and OECD specialists for training purposes. Approximately 100 professionals participate annually in transfer pricing and valuation techniques training.

The STA has not yet produced a public statement on how changes derived from the BEPS report and OECD intangibles initiatives will be addressed at a local level.

Industry focus

The automotive, biotechnology, consumer products, media and entertainment, oil and gas, pharmaceuticals, real estate, technology and telecommunication industries receive particular transfer pricing scrutiny. Factors such as significant industry activity in Spain, the importance of intangible property to the industry, industry profitability (loss-making entities) and sophisticated operating models based on low-risk selling or manufacturing structures are taken into account in identifying specific industries for scrutiny.

Every year, the STA approves a tax audit program, of which only the general guidelines are published. The priority areas in the International Tax Control for 2013 include taxation of multinational companies, review of transfer pricing policies (with respect to transfer of intangibles) and taxation of nonresidents, with or without a permanent establishment in Spain (with a special focus on possible permanent establishment assertions).

Geographic focus

Transactions with certain jurisdictions are specifically targeted for transfer pricing reviews. Perceived low-tax jurisdictions and major trading partners drive the selection of countries. Transactions are systematically selected for transfer pricing review based on legal requirements.

The top counterparty jurisdictions for transfer pricing reviews are the United States, Germany, Switzerland, the United Kingdom and France.

Types of transactions under scrutiny

Tangible goods transactions and intragroup services (both 30% of the total caseload) and intangible property transactions and business restructurings (both 20% of the total caseload) are currently targeted for transfer pricing reviews.

Transfer pricing penalties

There is a specific transfer pricing penalty regime. The majority of penalties are imposed for failure to comply with documentation requirements established in the new regulations. Transfer pricing penalties are also imposed if the arm’s-length principle (i.e., market value) is not applied.

In cases where a tax assessment does not produce a tax adjustment, the penalty will be EUR1,500 per fact, or EUR15,000 per group of omitted, inaccurate or false facts. If the tax authority adjusts the pricing of a transaction, the penalty may be up to 15% of the gross adjustment. There will be no penalties in cases where documentation requirements are complied with, even if the tax authorities reassess the value of transactions.

In Spain, the reassessment is a two-stage procedure. First, field auditors finalize its audit activity with an audit report. It is a mere recommendation for both
reassessment and penalties, with no legal effect per se in case the taxpayer is not in agreement. Second, an audit report is submitted to a technical office that can either approve or amend the report.

Over the past two years, less than one-quarter of proposed transfer pricing adjustments have resulted in the assessment of penalties. Of these, the average penalty rate has been between 25% and 50% of the additional tax. Over the next two years, the assessment of penalties is expected to remain the same.

**Audit case selection**

Transfer pricing audit case selection is governed by the STA at a central level. Risk-based assessment by the STA, standard audit cycle or program, taxpayer profitability and business restructurings (in that order) are relevant factors that initiate transfer pricing reviews.

In general, the likelihood of an annual tax audit varies from one industry to the other, and depends on the size of the taxpayer. The risk of audit for very large companies (companies with annual revenues in excess of EUR60 million) is high as they are typically audited on a yearly basis.

The risk of general audit for large companies is medium. However, as the Spanish tax authority establishes its annual audit plans based on taxpayer risk assessments, companies to which these risk factors apply may be exposed to an increased risk.

The likelihood that transfer pricing will be reviewed as part of a general audit is high if the taxpayer regularly enters into cross-border related-party transactions. For all other cases, the risk of a transfer pricing review during a general audit is medium.

Where the transfer pricing policy is under review, the risk of a challenge to the transfer pricing methodology is high. In particular, the tax authority is increasingly aggressively challenging the comparability analysis and looks to apply the most recent OECD Guidance on the nine-step process along with the interquartile range application.

**Indirect and customs tax**

The transfer pricing enforcement resources work in an integrated way with indirect tax specialists. Field auditors within the Large Taxpayers Unit work closely with both customs and indirect tax experts. In practice, joint teams are formed to work together during the audit process.

There is no legal requirement for the same transfer price to be used for both corporate direct tax and indirect tax purposes.

**Comparable data**

There is no specific requirement for local country comparables. Regional comparable data is permissible if the comparables are from the same continent as the taxpayer. However, comparable companies from Western European or European Union (15) countries are not typically challenged, whereas comparable companies from Eastern Europe are more likely to be subject to scrutiny.

Comparables from outside of the taxpayer’s continent may be selected for transactions involving global industries, such as the oil and gas and banking industries, and are not acceptable for transactions involving the pharmaceutical and consumer products industries.

There are specific requirements for the presentation of comparable data; three years of financial data is accepted as a standard. The required method for calculating the allowable arm’s-length range is the interquartile range, and the weighted average should be used over the simple average. Pooling and averaging of data are both accepted.

Financial adjustments to comparable data (e.g., working capital adjustments) are permissible, if justifiable. There is currently no specific guidance available with respect to adjustments, but administrative practice provides informal guidance.

**Transfer pricing methods**

The STA prefers the comparable uncontrolled price method (CUP), cost plus method or resale price method (RPM) to determine the arm’s-length price or market value.

In cases where limited information is available with respect to the transactions, the transactional net margin method (TNMM) or profit split method can be used. In practice, the TNMM is commonly applied both in case of audits and APAs. The STA does not consider any method inappropriate.

The STA follows the OECD Transfer Pricing Guidelines with respect to the use of cost-sharing or cost-contribution arrangements. The order of preference of transfer pricing methods is mentioned in Article 16.4 of the Corporate Income Tax Law. The position outlined above is based on the legislative provisions.

**Advance pricing agreements (APAs)**

A formal program for both unilateral and bilateral APAs is available. The APA process has been further developed with amendments to the Corporate Income Tax Law (Ley 36/2006) and to the Corporate Income Tax Regulations (RD 1793/2008). The tax authority recognizes 40 to 50 unilateral APAs and 10 to 15 bilateral APAs annually. All taxpayers can access the APA program. The STA cannot reject APA filings, but it can reject a proposed transfer pricing policy.

At present, there are 60 applications in process. Of the current caseload, the majority (85%) are unilateral APAs. The top countries involved in bilateral APAs are France, Germany and the United States. The average completion time for a unilateral APA is between 6 and 9 months, while a bilateral APA may take between 18 and 24 months.

With the creation of the ONFI, it is expected that the APA program will run more efficiently going forward and be accessed more frequently.
Mutual agreement procedures (MAPs)
Information on the number of competent authority cases received annually is difficult to determine. Transfer pricing audits are increasing, and MAP cases seem to be increasing each year. The time required for a MAP resolution depends on the counterparty country. For those countries that have a significant track record of cases and a working relationship with Spain, the success rate is higher and the time needed for resolution is less. Agreements that involve France, Germany and the United States form the majority of MAP cases.
While the MAP process is under way, interest is accrued and guarantees to suspend collection of tax debt are needed. Court processes can run parallel to this, but if the court processes are resolved first, the MAP will be closed with no resolution. At the end of a MAP, if a tax quota is refunded to the taxpayer, delayed interest is also accrued in favor of the taxpayer. No statute of limitation currently applies.

Yield/performance of transfer pricing reviews
The effectiveness of transfer pricing reviews is measured by the increased tax yield and the percentage of review cases where an adjustment has been made to taxpayer income. Statistics on tax yield are published; however, no specific breakdown has been provided for transfer pricing cases.

Transfer pricing disputes
There is currently no data relating to domestic transfer pricing disputes; however, there are ongoing MAP cases.

Current influence on transfer pricing
BEPS initiatives, the current economic environment and other OECD initiatives have influenced the current transfer pricing policy and practice in Spain. The creation of the ONFI indicates that the STA will increase the focus on cross-border payments and transfer pricing. It provides the STA a highly specialized team for coordinating and concentrating its efforts to control the aforementioned focus areas. The ONFI also provides multinational companies and other taxpayers the opportunity to interact with specialized tax officials.
Resources the taxing authority is devoting to transfer pricing

The Skatteverket (or the Swedish Tax Agency (STA)) administers transfer pricing in Sweden. All of the 35 to 45 full-time employees (FTEs) are centralized resources and are located in Stockholm, Gothenburg and Malmö. The number of resources was approximately the same two years ago, and the planning of the resources for the next three years is under review.

Approximately 30 to 35 FTE resources involved in transfer pricing reviews are specialists. The transfer pricing FTEs comprise economists (80% of the resources) and lawyers (the remaining 20%). In certain cases, the STA consults external resources, including consultants, industry specialists and expert witnesses. Transfer pricing resources have been involved as trainers and participants in the joint network of tax administrations among the Nordic countries and Europe but also globally.

The STA transfer pricing practice is actively involved in BEPS activities as well as the work around WP6 intangibles.

Industry focus

Presently, the STA does not focus on particular industries for transfer pricing scrutiny. However, transfer pricing is 1 of 15 general risk areas that STA has identified.

Geographic focus

Presently, the STA does not specifically target transactions with certain jurisdictions for transfer pricing reviews; however, as mentioned, transfer pricing is 1 of 15 risk areas that STA has identified.

Types of transactions under scrutiny

Transactions such as transfers of intangible property, business restructurings, financial transactions and tangible goods transactions (in that order) are targeted by the STA for transfer pricing reviews. All transactions with non-OECD countries are also scrutinized.

Transfer pricing penalties

Sweden does not have a specific transfer pricing penalty regime. Rather, the general tax penalty regime is applied to transfer pricing adjustments. Over the past two years, approximately 25% to 50% proposed transfer pricing adjustments have resulted in the assessment of penalties. The average penalty rate paid where an assessment has been made has been 25% to 40% of the additional tax. This trend in assessment of penalties is expected to decrease over the next two years. The recent BEPS and OECD intangibles initiatives have not impacted penalties.

Audit case selection

Audit case selection for transfer pricing is governed by a central decision-making body. Transfer pricing reviews are usually initiated based on evidence of business restructurings, taxpayer profitability, a risk-based assessment by the tax authority, the nature and volume of related-party transactions undertaken by the taxpayers, and previous tax audits of the taxpayer.

Indirect and customs tax

Transfer pricing enforcement resources are not required to integrate with indirect tax specialists, but on a case-by-case basis, there is integration. There is no formal requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes.

Comparable data

The STA has no preference for local country comparables. Regional comparable data is permissible at the discretion of the taxpayer. However, comparables from the same continent (i.e., pan-European) are most preferred. In certain cases, comparables are decided on a case-by-case basis, taking into consideration the company’s circumstances.

The STA follows the OECD Transfer Pricing Guidelines in relation to the number of years of financial information, the use of simple versus weighted averages, the method for determining an appropriate profit level indicator and the pooling or averaging of financial data. There is no local guidance with respect to financial adjustments made to comparable data.

Transfer pricing methods

Sweden follows the principles laid down by the OECD Transfer Pricing Guidelines in selecting the method of evaluating arm’s-length remuneration for controlled transactions. The use of cost contribution arrangements is allowed if it is in compliance with the OECD Transfer Pricing Guidelines.
Advance pricing agreements (APAs)

Sweden has a bilateral and multilateral APA program. The STA receives 10 to 15 APA applications annually. All taxpayers have the right to initiate the APA process. Approximately 40 APAs are currently in process, and the average time taken to complete an APA is 36 months. To date, the STA has only dealt with bilateral APAs. The APA process can be lengthy due to a lack of resources. There are initiatives in place to speed up the process.

Mutual agreement procedures (MAPs)

Approximately 20 transfer pricing competent authority cases are received annually by the STA. It takes one to three years to resolve MAP cases, and all cases are generally resolved. The Nordic countries and Germany are the top jurisdictions involved in MAP cases. While the MAP is under way, a stay of demand is granted if the tax is paid in other states.

Yield/performance of transfer pricing reviews

The STA measures the effectiveness of transfer pricing reviews based on the increased tax yield, percentage of cases where an adjustment is made to taxpayer income and percentage of cases where an adjustment is sustained on appeal. Yield statistics are not published by the STA.

Transfer pricing disputes

With respect to ongoing transfer pricing disputes, there are approximately 100 cases under MAP.

Current influence on transfer pricing

BEPS initiatives, the current economic environment, the implementation of centralized business and tax models, OECD initiatives and EU initiatives such as EU Joint Transfer Pricing Forum (JTPF) have influenced the transfer pricing policy and practice in Sweden.
Resources the taxing authority is devoting to transfer pricing

There are two centralized groups within the Swiss Federal Department of Finance involved in transfer pricing. One deals exclusively with bilateral and multilateral APAs and MAPs (the State Secretariat for International Financial Matters (SIF)), while the other is the Transfer Pricing Center of Excellence (TP CoE) created by the Swiss Federal Tax Administration (SFTA) in 2010. The TP CoE includes representatives from different SFTA divisions, such as the SIF APA/MAP Group; the supervisory board for the cantonal tax administrations; and one representative from a cantonal tax administration. The TP CoE is led by the withholding tax audit division and is organized as a matrix; that is, different tax divisions within the government are linked and exchange information with respect to transfer pricing. Additional resources have not been hired for the establishment of the TP CoE.

Currently, there are no dedicated transfer pricing resources in the cantonal tax administrations. However, the cantonal tax administrations have the authority to assess federal and cantonal direct taxes and are therefore the main bodies undertaking tax and transfer pricing audits and reviews. The TP CoE is available to assist the cantonal tax administrations in transfer pricing audits and reviews. Therefore, the main objective of the TP CoE is to link different tax divisions of the administration and to increase the competency of transfer pricing audits and reviews on a cantonal and a federal level.

The four employees in the SIF deal exclusively with transfer pricing issues and therefore have a strong technical background in the subject. Three of them are economists and one is a lawyer. The TP CoE is a group of generalists with strong transfer pricing knowledge. Out of the 12 full-time employees (FTEs) in the TP CoE, 4 are economists, 2 are lawyers and 6 are accountants. Nine of the FTEs are Certified Swiss Tax Experts and therefore have a strong knowledge of domestic and Swiss international tax law. The number of resources is not expected to increase, but the SFTA is planning to establish a dedicated transfer pricing team in the future.

The TP CoE’s approach is not to build up dedicated transfer pricing resources, but to create an internal network to increase knowledge, exchange information across tax divisions, raise awareness of transfer pricing questions, and improve the audit and review quality in transfer pricing cases.

Industry focus

The SFTA does not select specific industries for transfer pricing review, although asset management, banking and capital markets, and mining and metals industries all receive greater scrutiny in practice. When considering the types of industries of which companies engaging in Swiss APA’s are part, there is no obvious trend observable. Basically, any company from any industry can apply for an APA. However, the industries with the highest number of APA/MAP requests are biotechnology, consumer products, oil and gas, pharmaceutical and insurance. Factors driving the selection of these industries are the significance of their activity in Switzerland, the importance of intangible property to the industry and industry profitability. The list of industries under scrutiny is not widely communicated to taxpayers. The SFTA has reviewed many principal structures in recent years.

Geographic focus

Officially, the SFTA does not specifically target transactions with certain jurisdictions. However, the tax authority may target transactions in certain jurisdictions perceived to be low-tax jurisdictions. These include not only offshore locations, but also onshore locations such as the Netherlands, Luxembourg, the United Kingdom and non-treaty partners, particularly those that are audited by the withholding tax division in transactions with non-treaty countries. The top five countries for APAs and MAPs in order of prevalence are the United States, Japan, Germany, France and Canada. The SIF has also been receiving APAs and MAPs from Mexico, Australia, New Zealand, South Korea, China, India, Thailand, Poland, Belgium, the Netherlands, Denmark, Sweden, Norway, Italy, Spain, Austria and the UK.

Types of transactions under scrutiny

The SFTA does not target specific transactions. The top five transactions covered by APAs and MAPs are tangible goods transactions, business restructurings, intangible property transfers, cost sharing/cost contribution arrangements and intragroup services. The tax authority is also seen to be claiming the presence of local intangibles in certain transactions (e.g., it is often argued that a distributor developed local marketing intangibles such as customer lists and brands).

Transfer pricing penalties

There are no specific transfer pricing penalties in Switzerland. In general, penalties are only levied in the event of abuse and tax fraud, which is rarely the case in transfer pricing cases given the subjective nature of transfer pricing issues.
Audit case selection
Case selection for transfer pricing audit is not governed by a central decision-making body, it is the decision of the cantonal tax administration. Various considerations are taken into account in determining which taxpayers to audit, including the following:

- Taxpayer profitability (profitability ratios are important in transfer pricing review selection)
- Evidence of business restructurings
- A risk-based assessment by the tax authority
- The nature of related-party transactions undertaken by the taxpayers (e.g., intangible property and financial transactions)
- The volume of related-party transactions undertaken by the taxpayer (because of the potential for significant revenue gain)
- VAT, employment, customs or other indirect tax reviews (VAT notifications can initiate transfer pricing reviews in rare cases)
- Previous tax audits of the taxpayer (in rare cases)

Indirect and customs tax
Transfer pricing enforcement resources are not required to integrate with the indirect tax team; however, ad hoc cooperation is possible. The SFTA has tried to link transfer pricing and VAT and customs more formally, but the indirect tax division was not responsive to this initiative.

There is no statutory requirement for the same transfer price to be used for both corporate (direct) tax and indirect tax purposes; however, one should be cautious not to use hidden or secret comparables to demonstrate the arm’s-length nature of a transaction for one purpose. The TP CoE has discussed plans to access VAT databases for purposes of direct tax audits, and there are cases in which VAT returns of companies have been used in the assessment process of direct taxes (i.e., to adjust transfer prices).

Comparable data
From an APA/MAP perspective, there is no requirement for local country comparables. In APA/MAP cases, the SIF has accepted pan-European and even global benchmark studies if the relevance of the data can be supported.

The TP CoE also generally accepts benchmarking studies where the relevance and reliability of the studies in terms of market conditions, industry and company comparability can be demonstrated.

In presenting comparable data, there are no specific requirements for the number of years of data to be considered. However, in order to calculate a reasonable arm’s-length range, at least three years of data should be used.

Both weighted and simple averages are accepted, but in the majority of cases, the administration applies weighted averages. Pooling of data is sometimes used if a limited number of observations are available.

Transfer pricing methods
The SIF/SFTA follows the OECD Transfer Pricing Guidelines, and generally the method selected by the taxpayer is accepted as the most appropriate method. The TNMM is by far the most common method in Switzerland.

No method is considered inappropriate as long as the arm’s-length principle is satisfied. If the most appropriate and reliable method is not easily identified, the SFTA expects taxpayers to justify the economic reasonableness of the overall result based on a secondary method, such as a value chain or functional contribution analysis (e.g., the identification of the value drivers and intangible property).

Advance pricing agreements (APAs)
Switzerland has not implemented a formal APA program. The legal basis for entering into an APA is the relevant rules for MAPs found in all existing Swiss double tax treaties. Therefore, APA procedures are settled by the authorities under the applicable regulations for MAPs. The top three countries involved in bilateral APAs are the United States, Japan and Germany. Switzerland has a long tradition in granting unilateral APAs and is well known to maintain a pragmatic approach toward finding reasonable solutions on such APAs, with the exception of situations where there is aggressive tax planning. The widespread unilateral ruling practice in Switzerland is not based on a formal program or law. Taxpayers can easily request unilateral and bilateral APAs in Switzerland. This somehow reflects and demonstrates the mutual trust between taxpayers and tax authorities.

On average, 15 APA applications are received annually. There is no formal procedure through which taxpayers can request an APA. There are generally two reasons for which the SFTA refuses to handle an APA case: there is insufficient substance in Switzerland, and the facts and circumstances of the case clearly point to abusive tax structures.

Currently, 57 bilateral APAs are pending in Switzerland. The average time to complete a bilateral APA is two to three years. The time to complete a unilateral APA varies by canton and depends on the complexity of the case. At the federal level, the time to complete a unilateral APA is, on average, one to three months.
Mutual agreement procedures (MAPs)

On average, 13 MAP transfer pricing competent authority cases are received annually. The top three jurisdictions involved in MAPs are Germany, Japan and the United States. The average time to complete a MAP is two to three years. However, smaller cases can often be resolved in about one year. So far, all MAPs that have entered into the competent authority process have been resolved.

The domestic tax law states that tax overpayments will carry interest, and underpayments trigger interest charges, for the period while the MAP is in process.

Transfer pricing disputes

There are 49 pending MAP cases and 57 pending APA cases, i.e., a total of 106 pending cases.

Current influence on transfer pricing

Increased transfer pricing audits in foreign countries have not only resulted in more MAP cases but more APA cases as well, as companies perceive this as a way to mitigate audit risk.

Yield/performance of transfer pricing reviews

The performance of the SFTA transfer pricing function is measured by the competency and efficiency time to completion of transfer pricing reviews and unilateral ruling requests. As an example, the requirement is to provide a first response within six working days to any transfer pricing ruling filed with the tax authority. The tax authority does not publish statistics on yields.
Resources the taxing authority is devoting to transfer pricing

There is a centralized body within the Turkish Revenue Administration (Gelir İdaresi Başkanlığı (GIB)) that is responsible for corporate income tax and transfer pricing issues. This team is not involved in transfer pricing audits or reviews. It operates as an executive body in charge of interpreting transfer pricing regulations, issuing rulings and APAs.

Under the previous structure, the transfer pricing team consisted of approximately 10 people within the GIB, none of whom were solely involved in transfer pricing. Currently, apart from the transfer pricing team organized under the GIB, there is a new team structure that includes personnel specialized in transfer pricing in Istanbul, Ankara and Izmir, the three largest cities in Turkey. It is unclear at present how many personnel are part of this new structure, although it is expected that the largest number are in Istanbul.

In addition, there is another group working under the Board of Tax Auditors (Vergi Denetim Kurulu Başkanlığı), which is solely responsible for thin capitalization, transfer pricing and income earned abroad.

There was previously a decentralized structure for tax audits in Turkey, with the following four main groups of tax officers involved in tax audits:

- Inspectors of the Ministry of Finance (Maliye Müfettişleri)
- Tax inspectors (Hesap Uzmanları)
- Revenue controllers (Gelirler Kontrolörleri)
- Tax reviewers (Vergi Denetmenleri)

Revenue controllers and tax reviewers operated under the GIB, whereas inspectors of the Ministry of Finance and tax inspectors operated under the Ministry of Finance (i.e., these two groups did not have a reporting connection).

At the end of 2011, the four groups above were merged under the Board of Tax Auditors and have been restructured under the Ministry of Finance in order to establish a more centralized organizational structure. Following the merger, the new group under the Board of Tax Auditors was formed.

Currently, all the tax auditors under the Board of Tax Auditors are based in the field and have the authority to conduct tax audits. The number of transfer pricing audits has increased and is expected to increase even further in the future, and consequently, both the GIB and the Board of Tax Inspectors are in need of more resources who specialize in transfer pricing.

Although there is a new group established under the Board of Tax Auditors that is responsible for transfer pricing audits, it would be fair to assume that few of the group members have strong technical transfer pricing knowledge and that they are generalists with some transfer pricing knowledge. Therefore, the teams have recently been focusing on internal training activities. Meanwhile, they have been assessing different profitability ratios of taxpayers by reviewing their tax returns in order to form a set of metrics to determine industry trends, company performance and which sectors and industries should be the focus for audits. They also frequently request transfer pricing documentation reports from companies in order to better understand companies, sectors and industries.

Most tax auditors have undergraduate degrees in the fields of economics, finance and business administration. Compared to past years, the tax authority now has a stronger focus on and awareness of transfer pricing. Accordingly, there has been an increase in the number of tax audits. With the establishment of the new group, it is expected that there will be significant technical improvement in resources. The GIB does not tend to rely on external resources, nor does it rely on other tax administrations for training purposes.

Industry focus

Starting in 2002, nearly all Turkish pharmaceutical companies have undergone transfer pricing audits with a strong focus on active pharmaceutical ingredient (API) purchases from their related parties. In addition, sectors subject to excise taxes, including, but not limited to, alcoholic beverages and tobacco, have been audited with respect to transactions between related production and distribution companies.

In the future, the pharmaceutical, automotive, banking and insurance, oil and gas, and telecommunication sectors are expected to be targeted for transfer pricing audits.

The main factors driving particular focus on the pharmaceutical industry are profitability and the volume and nature of related-party transactions.

Taxpayers are not officially informed about the level of the tax audits specific to their industry; however, from past experience, some industries (e.g., pharmaceuticals) are aware of their high transfer pricing audit risk.

Each year, audit teams plan their audits and determine the specific sectors under the scope of their audit. These plans are sometimes, but not necessarily, shared with the public.

Geographic focus

The GIB does not target specific jurisdictions in transfer pricing reviews.

Type of transaction under focus

Intangible property transactions in the form of royalty payments and licensing arrangements, intragroup services in the form of management fees and cost allocations, and tangible goods transactions have been targeted over other types of transactions.

No statistics are currently available with respect to caseload type; however, considering the ongoing tax audits in the pharmaceutical sector, tangible goods (i.e., API) may have the highest prevalence, followed by intragroup services and royalties.
Transfer pricing penalties
There is no specific transfer pricing penalty regime. Transfer pricing assessments are subject to general penalty rules under the Tax Procedures Code. There are processes in place to ensure consistent application of transfer pricing penalties.
The tax loss penalty is equal to the tax itself. In addition, late payment interest is applied to the tax at an interest rate of 30% per year. Over the next two years, the assessment of penalties is expected to increase.

Audit case selection
Case selection is governed by the Board of Tax Auditors. Any of the factors listed below may trigger a tax audit:
- Profitability review
- Evidence of business restructurings
- A risk-based assessment by the tax authority
- The nature of the related-party transactions undertaken by the taxpayer
- The volume of the related-party transactions undertaken by the taxpayer
- A standard audit cycle or program
- Previous tax audits of the taxpayer
- VAT, employment, customs or other indirect tax reviews

Indirect and customs tax
As mentioned above, tax auditors are generalists, and a transfer pricing audit may also result in an indirect tax assessment. Recently, there have been tax inspection reports that have denied the deductibility of VAT by using transfer prices for indirect tax purposes.

Comparable data
While local comparable data is preferred, Turkey does not have any publicly available databases for comparable searches and verification. Currently, there is no clause in the regulations clarifying whether the use of regional databases is permissible, and although European countries are preferred, the GIB has at times also criticized the use of pan-European sets.
There is no specific clause in the regulations on how comparable data should be analyzed, nor is there clear guidance with respect to the use of financial adjustments to comparable data.

Transfer pricing methods
While traditional methods are publicly stated to have priority, the GIB does not consider any method to be inappropriate. Based on legislative provision, any other method determined by the taxpayer can be used as long as there is a reasonable explanation why the methods endorsed in the transfer pricing regulations are not suitable for the transactions.

Advanced pricing agreements (APAs)
A formal advanced pricing agreement (APA) program is available that enables all corporate income taxpayers to apply for unilateral, bilateral or multilateral APAs for their cross-border transactions. As of 31 December 2013, only three unilateral APAs have been concluded and it is estimated that 15 to 20 applications have been filed since the introduction of the APA program in 2007. The GIB prioritizes these applications in the order they were received, and depending on the complexity of transactions, the GIB aims at concluding as many APAs as possible in the upcoming years. While there are only a few applications in place for bilateral APAs, none have been concluded yet. It is estimated that it takes at least one year to complete an APA.

Mutual agreement procedures (MAPs)
MAPs are not commonly used in Turkey, and there is no publicly available data as to their use; however, it is understood that applications lodged have typically ultimately been withdrawn.

Yield/performance of transfer pricing reviews
There is no publicly available data available regarding the performance of or yield from transfer pricing reviews.

Transfer pricing disputes
There is no publicly available data available regarding the outcomes from transfer pricing disputes; however, most cases are typically settled prior to going to court, with court proceedings typically a lengthy process.

Current influences on transfer pricing
There are no specific factors in particular that influence transfer pricing arrangements within Turkey.
Resources the taxing authority is devoting to transfer pricing

There are currently 80 full-time employees (FTEs) involved in transfer pricing, an increase from approximately 60 FTEs two years ago. The resourcing levels are likely to continue to grow. While there are 80 transfer pricing FTEs either in the transfer pricing section of Business International (BI) or in the wider Transfer Pricing Group (TPG), which has clusters around the country either in the Large Business Service (LBS) group or elsewhere, this is not the full count of the staff involved in transfer pricing examinations. Although the governance procedures around all transfer pricing examinations require, among other things, a transfer pricing specialist to be involved, typically the existing case worker assists in the working of the case.

HMRC relies on internal and external economists, lawyers and accountants on an as-needed basis. In addition, HMRC calls upon sector specialists who assist in the understanding of a particular industry and the context in which the pricing was an issue. HMRC also regularly uses valuation expertise (shares and assets valuation) where valuations are necessary in determining pricing.

HMRC is actively involved in providing training on transfer pricing to tax authorities in developing countries and participates in the “Tax Inspectors without Borders” initiative of the OECD. The recent BEPS and OECD intangibles initiatives have not resulted in increased resource commitments.

Industry focus

HMRC operates a risk assessment program under which all aspects of the taxpayer’s business will be considered. This may have relevance to the industry in which the taxpayer operates, but only as part of a holistic review as to whether there is sufficient risk warranting an inquiry. In addition, the governance procedures set up around transfer pricing also require a business case to be presented with the risk assessment to one of the two transfer pricing panels set up for this purpose.

Geographic focus

There is no geographical focus other than as an element within an overall risk assessment.

Types of transactions under scrutiny

The type of transaction is an element of the risk assessment and one of the many factors taken into account. There is no data on the types of transactions under scrutiny. However, cases involving share-based compensation and costs to be reflected within transfer pricing methods such as cost plus and TNMM have been receiving particular scrutiny over the last few years.

Transfer pricing penalties

HMRC does not publish data on penalties. The Transfer Pricing Panel Governance procedures ensure consistent application of penalties. HMRC provides guidance on the application of the statutory penalty to transfer pricing adjustments, including cases where losses are adjusted.

Audit case selection

As noted previously, audit selection is undertaken through a risk assessment and the preparation of a business case. Profitability; business restructurings; the nature and volume of transactions undertaken by taxpayers; previous tax audits of the taxpayer; and VAT, employment, customs or other indirect tax reviews are relevant factors in initiating a transfer pricing review.

An inquiry is commenced with the panel’s sign-off. While the risk assessment is shared with the taxpayer, the business case write-up is not shared. The risk assessment considers all aspects of the intragroup pricing, including the following:

- The nature of the transactions (intangible property)
- The tax profile of the parties to the transactions
- Comparison of margins between the UK company and the group as a whole
- The territories involved in the transactions, including their applicable tax rates and any known tax shelters
- The profitability of the parties, including whether the UK entity is a persistent loss maker
- Other known red flags, such as business restructurings and intangible property cost shares

HMRC gathers information from various sources, including published accounts, press releases and analysts’ reports. Additional information may also be requested from the taxpayer, including transfer pricing documentation. It is at this point that a risk assessment is undertaken and a decision made as to whether an inquiry may be commenced with the approval of the transfer pricing panel.

Indirect and customs tax

Transfer pricing enforcement resources and indirect tax specialists work in an integrated way in the United Kingdom. There is no legal requirement to use the same transfer price for both corporate direct tax and indirect tax purposes in the United Kingdom.
Comparable data
There is no requirement to use local country comparable sets, but this depends on the circumstances and the robustness of the analysis. Pan-European comparable sets are accepted depending on the persuasiveness of the analysis. A risk-based approach to documentation may also mean that in low-risk situations, a more relaxed position on the required geography of the comparable set may be appropriate.

There is no specific preference in relation to the number of years of comparable date to be analyzed or the use of weighted versus simple average. Financial adjustments to comparable data will only be required if justifiable.

Transfer pricing methods
The United Kingdom follows the OECD Transfer Pricing Guidelines, which are effectively imported into the tax code through the requirement that UK law is to be interpreted in a way as best consistent with the OECD Guidance. Aligned with the OECD position, the rules require that each “provision” (broadly, a group of similar transactions with the same counterparty) be separately tested using an OECD Method. Guidance is available with respect to cost contribution arrangements, which is based on Chapter 8 of the OECD Transfer Pricing Guidelines. HMRC also follows the EU Joint Transfer Pricing Forum’s (EU JTPF's) guidance on cost sharing for services that do not involve the creation of intangible property.

Advance pricing agreements (APAs)
Since 1998, the United Kingdom has had a formal APA program for both unilateral and bilateral APAs. In 2012–2013, 45 APA applications were received, 4 applications were withdrawn and 27 APAs were agreed.

There is no automatic access to the APA program. Admission to the program depends on the complexity of the pricing structure and the level of difficulty in establishing an arm’s-length price. At present, there is no information available with respect to the current caseload. However, there has recently been an increase in unilateral APAs.

In addition to the APA program, it is possible to obtain a degree of comfort regarding a taxpayer’s transfer pricing arrangements under HMRC's real-time working initiative. The average time taken to complete an APA is approximately 26 months. Lack of resources in counterparty jurisdictions and delays in providing the required information by some taxpayers are seen as the reasons for the average length of the APA process.

In cases involving sufficient complexity to warrant an APA, HMRC welcomes an “expression of interest” dialogue with the taxpayer at a very preliminary stage, before detailed modeling and drafting have been undertaken, to discuss whether this criterion is met.

Mutual agreement procedures (MAPs)
HMRC follows the Manual on Effective Mutual Agreement Procedures (MEMAP) and the relevant code of conduct in relation to EU Arbitration Convention. In 2012–2013, 47 MAP cases were resolved and 40 cases were admitted. On average, it took 21 months to resolve the MAP cases settled in that year (50% of the cases were, however, resolved within 13 months).

Yield/performance of transfer pricing reviews
While HMRC does not currently publish specific adjustment-per-settled-case data, the published statistics for 2012–2013 show a total yield from transfer pricing inquiries of GBP504 million, of which GBP251 million related to cases handled by the LBS and GBP253 million by Local Compliance.

Transfer pricing disputes
There are currently no transfer pricing cases under litigation. Litigation is seen as a last resort with very few considered in the last 50 years.

Current influence on transfer pricing
There has not been any change in transfer pricing policy or practice due to recent developments. However, the United Kingdom follows OECD Transfer Pricing Guidelines and EU initiatives such as the EU JTPF.
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