



Highlights of global transfer pricing developments 2014-2015

Executive summary

As multinational corporations grapple with the effects of the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) project, as well as further legislative changes, transfer pricing is becoming increasingly challenging.

To foster awareness and provide insight into current transfer pricing hot topics in various jurisdictions around the world, this Alert summarizes the highlights of the past year as well as the expected or anticipated changes coming in 2015.

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Albania

2014 TP developments

New transfer pricing rules were enacted in Albania, providing a more comprehensive regulatory framework aligned with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of 2010. The changes introduced documentation requirements, allowing the use of the two-tier approach with "Master file" and "Country file." The documentation must be submitted within 30 days from the tax authorities' request. Failure to prepare transfer pricing documentation is not sanctioned with penalties, but fulfilling such requirement protects the taxpayer from penalties in case of transfer pricing audit adjustments. Moreover, taxpayers are required to report all controlled transactions, annually, if their aggregate value exceeds €357,000.

2015 anticipated TP developments

The new transfer pricing legislation provides for the possibility of Advance Pricing Agreements (APAs). The Ministry of Finance is currently developing an instruction on APA procedures that is expected to be issued in the coming months.

Argentina

2014 TP developments

During 2014, taxpayers faced intense scrutiny of the Argentine tax authorities regarding transfer pricing, especially concerning foreign trade transactions through intermediaries. In October the Argentine tax authorities announced that several cases of overpricing of imports and underpricing of exports were under investigation. During the same time, the Argentine tax authorities penalized a large multinational, suspending the company's tax ID and its license for imports and exports.

2015 anticipated TP developments

In 2015, a tough tax and transfer pricing environment is expected for multinational enterprises doing business in Argentina. Foreign trade transactions through intermediaries will continue to be scrutinized. It is also expected that any developments due to BEPS

initiatives at the OECD level may cause the Argentine tax authorities to further exchange information with the tax and customs authorities of other countries. By the end of 2015, a change of government is expected that may likely result in a more business-friendly environment.

Australia

2014 TP developments

This is the first financial year in which taxpayers will be required to self-assess if the actual conditions of their international arrangements align with arm's length conditions under Australia's new transfer pricing rules. The new law confers broad powers onto the tax revenue authority to replace actual conditions with deemed arm's length conditions. The linking of contemporaneous transfer pricing documentation to whether a taxpayer can have a reasonably arguable position also brings significant changes to reporting obligations.

2015 anticipated TP developments

The Australian tax revenue authority has released a set of rulings and guidance on the practical application of the new law covering aspects pertaining to reconstruction, documentation requirements and penalties. Recent experiences have indicated that the administration of the new law by the Australian tax revenue authority is likely to correlate with the OECD's global initiative on BEPS, reflecting a compliance environment where there will be a significant increase in the level of scrutiny of businesses with international arrangements.

Austria

2014 TP developments

According to the Austrian 2014 Tax Amendment Act, interest and royalty payments to foreign low-taxed affiliated companies (effective tax rate below 10%) are no longer tax-deductible. Given this change in law, transfer pricing planning in Austria will potentially be influenced in the areas of intercompany financing and intercompany licensing.

2015 anticipated TP developments

Tax audits, in particular, focus on cases where there is significant integration involving parties to transactions within a value chain and therefore doubt the reliability of one-sided methods in “highly integrated operations” and stress the transactional profit split method.

On BEPS, a potential legal implementation of regulations regarding transfer pricing documentation (including country-by-country reporting) remains to be seen. There is political commitment to set up a team of experts as a “linking tool” between tax audit and large business services and the competent authority to strengthen the Austrian position in MAP and APA-cases.

Brazil

2014 TP developments

Recently, new conflicting Administrative Court Decisions regarding differences between Law 9.430/96 vs. IN SRF 243/02 have demonstrated opposing interpretations of the understanding of Resale Minus with 60% markup (PRL60) calculation procedures. The IN SRF 243/02 rules were provided by tax authorities and usually result in higher transfer pricing adjustments when compared to Law 9.430/96 calculation procedures. However, the discussion is around the fact that Normative Instruction (IN) should not be followed by taxpayers due to a divergence of interpretation of these rules. There are still a lot of pending decisions regarding this discussion in courts. However, considering the amendments of Law 12.715/12 and the recent Administrative Court Decisions, the taxpayer may come up with new arguments to defend its position.

The General Coordination of Taxation (COSIT) issued an administrative ruling (binding only for the taxpayer requesting the ruling) advising taxpayers and tax auditors on the corporate income tax and PIS and COFINS rules applicable to shared services costs and expense apportionment. The Brazilian tax authorities now recognize that reimbursements paid in accordance with objective criteria should not be considered as taxable revenues for PIS and COFINS purposes at the shared service center level, provided that no markup is included in the portion paid by each company.

Brazilian tax authorities have amended the transfer pricing rules for commodities through IN 1.498/14, adding new products to the commodities list described in Appendix I of IN 1.395/2013. All items listed on Appendix I must be submitted for PCI or PECEX transfer pricing, exclusively.

2015 anticipated TP developments

The corporate income tax return (DIPJ) will be replaced by an electronic income tax return (ECF) from 2015 onward. It contains specific forms that require taxpayers to disclose detailed information regarding their main intercompany import and export transactions by disclosing the total transaction values for the most traded products, services or rights; the names and locations of the related trading partners; the methodology used to test each transaction; the calculated benchmark price; the average annual transfer price; and the amount of any resulting adjustment.

Chile

2014 TP developments

This is the third year with extensive transfer pricing regulations for Chile. The Chilean IRS authority has become more active since 2012, and several cases of transfer pricing audits have already reached court. In this context, taxpayers have received massive information requirements from tax authorities regarding information transactions and compliance with transfer pricing regulations. Additionally, the concept of the reorganization has been extended for transfer pricing purposes.

2015 anticipated TP developments

New substance over form rules were enacted that give the Chilean IRS the right to determine whether an abuse or simulation has taken place. The Chilean IRS followed this practice through 2014 and is expected to continue doing so in 2015. Examples of this have been inquiries regarding substance of management services or functional or risk profile conversions. Finally, new thin cap rules have been established, with specific requirements affecting transactions with related parties.

China

2014 TP developments

China is actively participating in the BEPS discussion. Domestically, a number of important State Administration of Taxation (SAT) Circulars were issued during 2014 that reveal the increasing focus of the SAT on cross-border service transactions and royalty arrangements, share transfer and general anti-tax avoidance. Large-amount transfer pricing adjustment audit cases around these areas were concluded during 2014 and reported by the media, attracting greater public attention.

2015 anticipated TP developments

China's active involvement in the BEPS discussion and development will continue. It is anticipated that the draft revision of SAT Circular 2, China's major transfer pricing rules provision, may be released for discussion in 2015. Based on the observation of January 2015 activities, the trend of enhanced transfer pricing review and audits across the nation is very likely to continue. The anti-avoidance division of SAT, which looks after China transfer pricing audits and APAs, is adding new resources. There is a good chance that the Bilateral APA program, which was effectively suspended in 2014, will resume in 2015.

Colombia

2014 TP developments

Transactions carried out with entities located in tax haven jurisdictions (related or third parties) must comply with transfer pricing obligations. A functional analysis must be included in the transfer pricing documentation for transactions that result in payments in favor of such entities, describing functions, assets, risks, and detail of costs and expenses of the entity located in a tax haven jurisdiction. The functional analysis only applies to related parties; third parties must demonstrate they are not part of the same multinational enterprise group.

2015 anticipated TP developments

The tax reform creates a new wealth tax for income taxpayers, provided that their tax net equity as of 1 January 2015 is greater than US\$425,000 (approximately). For branches and permanent

establishments, the tax base will correspond to the attributed equity, following the OECD Attribution of Profits to Permanent Establishments report. An attribution study shall be conducted in accordance with the arm's length principle, with description of functions performed, assets used, personnel involved and risks assumed being considered.

Czech Republic

2014 TP developments

The Czech tax administration introduced mandatory reporting of related party transactions as part of the annual tax return starting from 2014. The new mandatory reporting requirement mainly aims at improving the quality of information that the Czech tax administration receives from taxpayers on related party transactions in order to be able to analyze various transfer pricing trends as well as to better target tax audits in the future by spotting high-risk transactions or inconsistencies. The requirement is partly inspired by the increasing transfer pricing-related disclosure requirements in the Central European Region and partly by the OECD's BEPS initiative.

2015 anticipated TP developments

Following up on the introduction of the mandatory transaction reporting requirement, the tax administration has started deploying series of detailed questionnaires to selected taxpayers on transfer pricing matters such as related party transactions details, functional and risk profile of parties involved, benefits and substance of intercompany charges received, etc. Increased scrutiny of transfer pricing matters during tax audits has been observed.

Ecuador

2014 TP developments

Transfer pricing assessments on commodities based on the Argentinean-originated sixth method and controversies on royalty rates became commonplace in 2014. The Ecuadorian tax administration started audit procedures during which the collaboration of taxpayers helped the authorities gain further understanding of global business models; as a result, certain flexibility on the sixth method has been made possible. As a

consequence of previous inflexible assessments, a National Court cassation on the sixth method has been issued against the taxpayer.

2015 anticipated TP developments

Modifications on deductibility rules that impose a threshold for intra-group services are part of a larger change in tax law. A detailed procedure to apply for rulings on pricing was issued during the last weeks of 2014. This is linked to procedures required to expand the deductibility threshold imposed on services. As limits are deemed insufficient for most typical operations, queuing of the ruling requests is expected. During this year, industry-focused transfer pricing audits are expected on pharmaceutical companies.

Fiji

2014 TP developments

There have been no major developments or changes in 2014. The tax office has not made any changes to the legislation in Fiji.

2015 anticipated TP developments

The tax office plans to review the transfer pricing regulations and guidelines in 2015.

Finland

2014 TP developments

The transfer pricing project begun by the Finnish Tax Administration in 2012 continued to the end of 2014. As a result of this initiative, there were a substantial amount of transfer pricing specific tax audits in 2014 (as well as in 2012 and 2013). These time-consuming tax audits have resulted in decisions that in many cases have caused significant increases to taxable income for multinational corporations. In addition, the Finnish Supreme Administrative Court has issued rulings that have not been favorable to the Finnish Tax Administration's decisions. The significance of proper transfer pricing documentation has increased in favor of the taxpayer, resulting in substantially lower tax increases.

2015 anticipated TP developments

The Finnish Ministry of Finance has issued a draft of transfer pricing legislation relating to recharacterization of intra-group transactions.

However, it is unlikely that the proposed draft will come in effect fully in its current form. The Finnish Tax Administration is deploying the BEPS actions for 2015 as well as for prior years. In addition, the Finnish Tax Administration is encouraging corporations for open informal discussions relating to transfer pricing issues resulting in a certain level of conformity for the participants. It is possible that the amount of tax audits will decrease due to the large amount of cases currently in process or pending for decision.

France

2014 TP developments

Following the introduction of a new law, Article 223 quinquies B of the French General Tax Code, 2014 saw the implementation of a new transfer pricing-related tax return declaration form. This contemporaneous transfer pricing documentation requirement applies to taxpayers that meet the 400 ME revenue/assets threshold of article L13 AA, and it comes in addition to existing transfer pricing requirements. This new tax return form requires taxpayers to disclose information on, among others, quantum of intra-group transactions, methods applied, and intangibles owned or used, as well as inform the French tax authorities of any changes in business operations or transfer pricing methods.

2015 anticipated TP developments

The ongoing work at the OECD relating to the BEPS initiative will continue to have an impact on the fiscal landscape in France. Transfer pricing documentation penalties have increased from 2015 onward and financial transactions are systematically scrutinized in case of tax audit. The use of exchange of information procedures by the French tax authorities will increase further, and 2015 very likely will be the first year to which country-by-country reporting applies (to be filed in 2016). FY15 is in the tax audit era, and transfer pricing analyses and documentation are not an option.

Germany

2014 TP developments

Germany adopted new regulations for profit attribution to permanent establishments that go even beyond the implementation of the OECD 2010 Report on the

Attribution of Profits to Permanent Establishments principles (Authorized OECD Approach or AOA, two-step approach). Further, the German transfer pricing audit environment has become tougher as the tax authorities are gaining technical expertise even in sophisticated areas such as business restructurings, financing and intangibles. As a result, transfer pricing audits increasingly focus on, for example, exit taxation, cash pool synergy profits and umbrella brand names licensing.

2015 anticipated TP developments

The German Government has already announced the presentation of initial BEPS-related measures resulting from the recent OECD work within the first half of 2015. Multinationals are highly advised to analyze their BEPS readiness by scrutinizing the expected impact of the BEPS initiatives on their own operating models. Companies will have to develop actions in a timely manner to manage the anticipated effects on their core intangibles, risks and capital allocation, profit split application, unintended permanent establishment constitution, country-by-country reporting consistent transfer pricing documentation, and the efficient setup of the digital supply chain, among others.

Georgia

2014 TP developments

Starting from 2014, the Georgian taxpayers should maintain and submit transfer pricing documentation to the Revenue Service of Georgia, if requested. Transfer pricing compliance requirements in Georgia include preparing documentation consisting of, among other things, information on the company's profile, functional analysis, transaction details and economic analysis. In case of failure to submit or submission of incomplete transfer pricing documentation, the Georgian enterprise will be subject to penalties for underreporting tax if the Revenue Service reassesses the amount of taxable profit of the Georgian enterprise.

2015 anticipated TP developments

Tax authorities will continue to have a heightened interest in the tax effects of intercompany transactions. They will be more focused on a taxpayer's business

activities, supply chain operations and transfer pricing strategies than ever before. Even though the Instruction, On Pricing International Controlled Transactions, came into force on 18 December 2013, it is expected that the Georgian tax authorities may still challenge the transfer prices of a Georgian enterprise even for previous years and ask for supportive documents prepared in accordance to transfer pricing policies.

Greece

2014 TP developments

Since 2014, Greece applies a more comprehensive set of transfer pricing rules. The rules aim to allocate income in accordance with substance and value contribution of affiliated entities and in line with recent BEPS developments. Transfers of business functions affecting the profitability are henceforth required to be documented. A general anti-avoidance rule (GAAR) provision was also introduced extending to any arrangement lacking commercial sense. New documentation rules seek to capture the big picture including supply chain analysis and changes in the ownership of intangibles, as well as in financial transactions and business restructurings.

2015 anticipated TP developments

There are no indications of significant legislative amendments in terms of documentation rules, but the conclusion of the BEPS action plan in 2015 may ignite domestic transfer pricing developments as early as this year. Current global trends and the drive for greater transparency are more closely followed by the Greek legislature, and remains to be seen how the Greek tax administration will assess the increased information in the course of tax audits.

Hong Kong

2014 TP developments

In 2014 the Hong Kong Inland Revenue (HKIRD) concluded its very first bilateral APA since the introduction of the program in 2012. The bilateral APA was concluded with the Netherlands, with EY advising the taxpayer in both jurisdictions.

2015 anticipated TP developments

In 2015 the HKIRD is anticipated to continually monitor the global developments with respect to the OECD's BEPS project, with a view to reviewing its current transfer pricing framework. For instance, it will consider whether to introduce a formal transfer pricing rule and transfer pricing documentation requirements.

Iceland

2014 TP developments

On 1 January 2014, the Icelandic Parliament introduced new transfer pricing rules. The rules are now regulated by Article 57 of Act No. 90/2003 on Income Tax. According to the law, tax authorities may assess and adjust pricing between related parties. The pricing methods are based on the OECD Guidelines. The provision does not specify any one method or prioritize the methods in any way. Legal entities that have turnover or total assets exceeding ISK1 billion (approximately US\$8.6 million) in the previous year are required to document the nature and extent of transactions with related parties, including the rationale for transaction prices and other terms. This requirement exists as of the beginning of 1 January 2015.

2015 anticipated TP developments

On 16 December 2014, Regulation No. 1180/2014 on transfer pricing documentation was published. The regulation covers both domestic and foreign intercompany transactions, and it includes guidelines on the subject of documentation and pricing. Icelandic tax authorities have not yet ruled on the basis of these new transfer pricing rules.

Indonesia

2014 TP developments

There were two new regulations released in 2014 that are relevant to transfer pricing. PMK-60/2014 pertains to procedures for the request for exchange of information (EOI). This regulation deals with the procedures for requests from the Directorate General of Taxation (DGT) to tax authorities outside Indonesia for information and vice versa. In this regard, the said request could be initiated at any stage of the

controversy process, following up on the result, or in more regular circumstances (i.e., not in the case of a dispute).

PMK-240/2014 pertains to guidance on the implementation of the Mutual Agreement Procedure (MAP) and is applicable to the applications for relief from double taxation through MAP article in Indonesia Double Taxation Agreements (DTAs) as of 22 December 2014. This regulation is important for Indonesian taxpayers as it will allow the DGT to implement MAP-related agreements for the first time. Both PMK-60/2014 and PMK-240/2014 appointed DGT II as the competent authority for the EOI and MAP process.

2015 anticipated TP developments

On 12 January 2015, a new regulation regarding the procedures and implementation of the APA was released. PMK-7/2015 will allow the DGT to implement APA-related agreements for the first time in Indonesia.

Ireland

2014 TP developments

In October 2014, the Irish Minister of Finance announced increased resources for the Irish Revenue Commissioners' competent authority function in order to bolster their capability and capacity in the transfer pricing arena. With transfer pricing rules only being introduced to Ireland as recently as 2010, the Irish Revenue has increased its focus on transfer pricing and continues to monitor compliance through the use of transfer pricing compliance reviews. Throughout the year, the Irish Revenue has been actively engaging with the OECD in the BEPS discussions.

2015 anticipated TP developments

The Irish Revenue continues to strengthen its transfer pricing capability, a trend that is expected to continue in 2015.

Israel

2014 TP developments

There is great attention to intellectual property (IP) migration in context of post-acquisition integration. Furthermore, increasing litigation in this area is observed. Tax authorities have started hiring external

appraisals to assist them in this area. The main points of attention are reclassification of license of IP as sale and challenging valuation of IP.

2015 anticipated TP developments

For 2015, no special changes are expected in Israel.

Italy

2014 TP developments

There were no major transfer pricing changes in Italy in 2014.

2015 anticipated TP developments

The budget law for 2015 introduced an elective regime, called Patent Box, which is expected to grant a partial exemption from corporate income tax (IRES) and local tax (IRAP) on income and capital gains derived from qualifying intangible assets, such as patents, know-how and brands. The Italian Government is working on a specific decree, and the regime may be eligible for taxpayers who perform research and development (R&D) activities, including those conducted by other group companies, and may be characterized by a five-year lock-in period.

An advanced ruling is expected to be required in the case of intra-group IP licensing (i.e., income from a third party should not require an advanced ruling) and when the IP transfer occurs in favor of related parties. A similar procedure should be set up to determine the relevant income attributable to the qualifying IP when it is directly exploited by the taxpayers.

Japan

2014 TP developments

In 2014, Japan announced the adoption of the Authorized OECD Approach to the taxation of permanent establishments. Effective from April 2016, the arm's length principle will be applied to the taxation of intra-company transactions between a permanent establishment and its headquarters.

Additionally, Japanese APA and MAP activity has continued to increase, with the National Tax Agency reporting in October 2014 a record-high number of MAP applications and bilateral APAs filed.

2015 anticipated TP developments

No significant legislative or regulatory changes are expected in 2015. However, the Japanese Government strongly supports the OECD BEPS project and is expected to develop guidance consistent with OECD recommendations regarding such matters as documentation (including country-by-country reporting) and intangibles, although new guidance may not be released until 2016.

Latvia

2014 TP developments

In 2014, the first APA in Latvia was finalized and concluded with EY assistance after the relevant regulation was introduced in 2013. Tax authorities have put even more focus on transfer pricing issues during tax audits, and several transfer pricing disputes were brought to the court where landmark decisions were ruled. As of now there is no certainty on when local tax authorities might implement the recent OECD BEPS initiatives.

2015 anticipated TP developments

No significant amendments to transfer pricing laws are expected in 2015; however, it is expected that the tax authorities will continue to focus on transfer pricing issues during tax audits, and clarifications regarding OECD BEPS initiatives might be provided as Latvia is continuing its accession process to join the OECD in 2016. With respect to the transfer pricing audits of financial transactions, the tax authorities may start to rely on comparable data from international money markets instead of local data published by the Bank of Latvia, thus changing what has been the applied practice until now.

Luxembourg

2014 TP developments

Given the globalization of transactions and consequently, the increasing focus on transfer pricing matters, the Luxembourg Government decided to forge a more solid framework for the arm's length principle to be applied between associated enterprises. This was achieved through the Law of 19 December 2014,

which replaces the wording of the existing transfer pricing rule by a provision largely inspired by the arm's length principle as per article 9, paragraph 1 of the 2010 OECD Model Tax Convention.

2015 anticipated TP developments

On 1 January 2015, the new transfer pricing rule came into force. As a general rule, all intercompany transactions (domestic and cross-border) have to be carried out at arm's length and contemporaneous documentation should exist. The APA practice is now extended to all categories of intra-group transactions. Tax rulings and APAs may be subject to exchange of information, especially with EU Member tax authorities.

Macedonia

2014 TP developments

There were no developments in 2014.

2015 anticipated TP developments

Effective 1 January 2015, the scope of the related party definition for transfer pricing is extended. This implies that starting from 2015, any foreign legal entity from a country with a "preferential tax system" is automatically considered as a related party to a domestic taxpayer regardless of whether there exists a control, management or capital ownership relationship between the foreign and domestic entity. It is expected that the tax authorities will define the term "preferential tax system" or produce a list of countries having such tax system within this year.

Malaysia

2014 TP developments

With effect from year of assessment (YA) 2014, the Malaysian Inland Revenue Board (IRB) formally introduced an additional question in the Income Tax Return Form (Form C) asking taxpayers to indicate if they have prepared transfer pricing documentation for YA14 by way of a "Yes/No." With this additional disclosure, taxpayers in Malaysia would be required to prepare and maintain contemporaneous transfer pricing documentation as an annual tax compliance requirement prior to filing the annual income tax return.

The additional question is being viewed as a mechanism for the IRB to ensure taxpayers are in compliance with the contemporaneous documentation requirements provided for in the Malaysian transfer pricing legislation introduced in 2012. Hence, a negative answer is very likely to trigger a transfer pricing audit by the IRB based on the risk profile disclosed in Part N (transaction between related companies).

2015 anticipated TP developments

The time bar for IRB to raise an assessment on a taxpayer that has entered into a transaction with its associated enterprise or to levy an additional assessment in respect of transfer pricing adjustments for a transaction between associated enterprises not at arm's length is extended to seven years from the year of assessment.

Given this, all cases for FY09 that were earlier time barred in FY14 (i.e., five years) are now open for assessment or additional assessment until FY16 (i.e., seven years). With this change, it is expected that the number of transfer pricing audits initiated by the IRB would possibly increase in the coming financial years.

Mexico

2014 TP developments

The self-assessment option for maquiladora transfer pricing compliance is no longer available. Mexican taxpayers under the maquila (IMMEX) program must determine taxable profits by applying either a safe harbor (the greater of 6.5% on costs and expenses or 6.9% on total assets used in the maquila operation – both on Mexican books or consignment) or the profits determined under an APA.

A recent Supreme Court ruling has become relevant for TP purposes, as starting in 2014 prorated expenses could be considered deductible for income tax purposes, as long as compliance with transfer pricing and other tax-related requirements are met based on a recently issued Tax Temporary Ruling.

2015 anticipated TP developments

Starting in 2015, new disclosure requirements (Form 76) are in force related to relevant transactions, including financial transactions, transfer pricing adjustments and intercompany transactions where compensation was determined considering residual profit values. Filing is quarterly with information provided based on monthly accruals.

Mexico's energy reform includes new transfer pricing compliance rules, as all transactions carried out by private entities with Pemex (Mexico's state-owned petroleum company) must meet arm's length compensation, regardless of whether they are foreign or domestic entities.

Regulations were published related to the deductibility of prorated expenses following the 2014 Supreme Court ruling. Transfer pricing is an essential part of the requirements, which demand a comprehensive benefit test (considering all parties participating in the allocation) and proper recording and documentation of the activities or expenses charged, among others. TP audit activity is expected to remain high. The focus is on key issues and transactions with a particular emphasis on BEPS considerations, cost contribution arrangements (CCAs), intangibles, financing transactions and restructuring business, among others. The automotive, pharmaceutical, maquiladora and consumer goods industries are expected to be under scrutiny for transfer pricing-related examinations.

Mongolia

2014 TP developments

While transfer pricing concepts and rules have been adopted by Mongolia since 2007, they remain at a developmental stage. As part of the new tax reform process, currently in progress, regulators focused last year on enhancement of current transfer pricing rules by proposing significant changes in domestic legislations to bring the rules more in line with international principles, i.e., the OECD arm's length standards. The key transfer pricing challenge of the tax authorities remains the lack of transfer pricing resources, which is the main focus of Mongolian Tax Authority (MTA).

2015 anticipated TP developments

It is expected that proposed revisions to transfer pricing rules will take effect as part of the new tax reform in 2015. Anticipated changes include a broadening of the definition for related party relationships as well as comprehensive implementation guidelines. The tax authorities are likely to continue to seek appropriate transfer pricing resources by establishing new transfer pricing specialist groups within the MTA with an aim to exclusively deal with transfer pricing compliance.

Morocco

2014 TP developments

There were no specific developments in 2014.

2015 anticipated TP developments

The Finance Bill for 2015 introduced in the Moroccan tax law an advanced transfer pricing agreement procedure. Consequently, Moroccan companies that are directly or indirectly related to companies located outside Morocco would be able to request from the tax administration to conclude an advanced transfer pricing agreement regarding the pricing determination method for intercompany transactions for a period not exceeding four years. The modalities of conclusion of such advanced agreements will be defined by decree.

The Netherlands

2014 TP developments

The State Secretary for Finance issued five new decrees that update and replace the existing 2004 Advance Pricing Agreement and Advance Tax Ruling Decrees. The State Secretary for Finance published the first Innovation Box Decree, which provides practical guidance on the application of the Innovation Box, a tax regime for benefits derived from innovation. The decree refers to transfer pricing principles for profit allocation.

A government publication shows that the Coordination Group Transfer Pricing of the Dutch tax authorities was involved in various transfer pricing matters, including excessive financing with debt by Dutch taxpayers, sheltering of (in)angible fixed assets in countries with a low tax rate, the decrease of profits

of Dutch taxpayers through business restructuring, the (too limited) allocation of service costs by Dutch headquarters to foreign group companies, and transfer pricing issues involving procurement offices. One of the Dutch courts ruled on a captive reinsurance case and found that the taxpayer had shifted profits outside the Netherlands not in line with the arm's length principle, and it performed transfer pricing adjustments and imposed penalties.

2015 anticipated TP developments

The Dutch Coordination Group Transfer Pricing has significantly expanded as of 2013. This will most certainly trigger more transfer pricing audits, for which taxpayers should be prepared.

It is expected that the Dutch tax authorities will focus even more strongly on the transfer pricing matters included in the updated Transfer Pricing Decree published in 2013.

Paraguay

2014 TP developments

Paraguay does not have a specific transfer pricing law; however, for the first time in the local tax system, in October 2013 a new law created an adjustment-price procedure in order to calculate eventual modifications of prices related to soybeans and their derivatives through an ordinary industrialization process, exclusively. The application of the adjustment price on soybeans and their derivatives went into effect 1 July 2014 for the closing period 31 December 2014.

2015 anticipated TP developments

No new developments are expected in 2015.

Philippines

2014 TP developments

For 2014, the Philippine Bureau of Internal Revenue (BIR) prepared draft APA Guidelines that were released to tax and transfer pricing practitioners for comments. A roundtable discussion on the draft was also held between the BIR Transfer Pricing Committee, which prepared the draft guidelines, and the tax and transfer pricing practitioners.

2015 anticipated TP developments

For 2015, the BIR aims to finalize and issue the APA Guidelines. In addition, one of the priority programs of the BIR is to consider subscribing to an electronic database for comparable search and benchmarking.

Qatar

2014 TP developments

The State of Qatar introduced transfer pricing rules for the first time in 2010, but until 2014 there was limited practical experience with transfer pricing controversy. However, in 2014 there was a notable increase in the number and type of transfer pricing-related queries that have been raised by the tax authority as part of the annual income tax assessments. This matter has been compounded by the tight timelines that are now being rigorously imposed by the tax authority, which requires a taxpayer to reply to all queries raised by the tax authority within two weeks.

2015 anticipated TP developments

The tax authority announced in September 2014 that it will be introducing an electronic tax administration system such that with effect from 2015 all tax filings should be submitted electronically. The tax administration system will be empowered with standard risk-based auditing technology, which will be used by the tax authority to support its existing manual tax auditing practices.

Romania

2014 TP developments

Though no changes have occurred in the Romanian transfer pricing legislation, an increase of the transfer pricing-related resources at the level of the central tax authorities as well as an increase of transfer pricing-related audits conducted by the Romanian tax authorities, have been observed. These have also increased the number of transfer pricing controversy cases.

2015 anticipated TP developments

There are ongoing discussions for amendment of the Romanian transfer pricing regulations. Proposed changes include certain materiality thresholds for

transfer pricing documentation of related party transactions, as well as the introduction of a contemporaneous documentation requirement. These changes are expected to be enacted in 2015. EY Romania is involved in the consultation process for the amendment of this legislation. Also, it is expected that the transfer pricing climate will continue to be litigious.

Russia

2014 TP developments

The “transfer pricing transition period” in Russia came to an end in 2014: financial thresholds on cross-border transactions for transfer pricing control, as well as for preparation of documentation, have been abolished; thresholds on domestic transactions have been reduced to RUB1 billion; and a penalty of 20% has been enforced. The first transfer pricing audits under the new rules were initiated by the tax authorities. Legislative changes were minor and focused on specific activities (e.g., certain transfer pricing benefits were enforced for operators of oilfields on the Russian continental shelf).

2015 anticipated TP developments

The results of the first transfer pricing audits are expected to be seen in 2015 with the first controversy cases, including court cases. In terms of technical developments, certain legislative changes are being discussed, such as correlative adjustments for two counterparties located in Russia. Current legislation allows correlative adjustments only upon a transfer pricing audit; under proposed legislation, they might also be allowed upon taxpayer initiative.

Singapore

2014 TP developments

On 1 September 2014, the Inland Revenue Authority of Singapore (IRAS) released a proposed update to Section 4 of its transfer pricing guidelines. The update contained further guidance on the IRAS’s expectations of taxpayers with respect to documentation. The update was released as a consultation paper, inviting comments from the public by 24 September 2014. The IRAS subsequently incorporated the update as part of overall revised transfer pricing guidelines issued on 6 January 2015.

2015 anticipated TP developments

The IRAS published its revised Singapore transfer pricing guidelines on 6 January 2015, which consolidated all transfer pricing circulars issued to date and included further guidance on the IRAS’s position on specific transfer pricing matters. In particular, the revised guidelines require taxpayers to prepare contemporaneous documentation in support of their transfer prices. There are dollar-value thresholds for related party transactions, whereby transfer pricing documentation would not be required if they fall below these thresholds. The IRAS also provided detailed guidance in the revised guidelines with respect to making transfer pricing adjustments, including self-initiated retrospective transfer pricing adjustments.

Slovakia

2014 TP developments

Tax authorities’ attention to transfer pricing continued to increase in 2014, following the appointment of transfer pricing specialist staff at each tax authority in Slovakia. Legislation changes as of 2014 brought a shorter deadline for submission of transfer pricing documentation in the event of an inquiry (the deadline is now 15 days) and a possibility for the tax authority to request transfer pricing documentation without opening a tax audit as per the newly defined transfer pricing documentation requirements.

2015 anticipated TP developments

As of 1 January 2015, transactions between domestic related parties became subject to transfer pricing rules. As a result, an increased number of transfer pricing audits are expected. Further clarification of the newly defined transfer pricing documentation requirements is expected during 2015. The potential for disputes is increasing, given that access to APAs has been somewhat restricted by an administrative fee (€30,000 for transaction volumes over €3 million).

Slovenia

2014 TP developments

During 2014, the Slovene tax authorities increased the number of TP audits. Their main focus was on intercompany financing transactions (e.g., interest on loans, thin capitalization) and companies with

losses over a number of years. There was a significant increase of thin capitalization audits of leasing companies, which generally have a debt-to-equity ratio significantly above the level allowed for tax purposes. For loans, the main concern for taxpayers is the fact that the administratively prescribed tax haven interest rate remained significantly below the market rate. It makes it difficult to argue with the tax authorities if there are no third-party financial dealings that can be used as proof of arm's length level of contractual interest rate.

2015 anticipated TP developments

Due to recent changes of thin capitalization rules applicable for 2014, it is expected that tax audits in this area will continue to increase in 2015. It is also expected that there will be an increase of transfer pricing audits in general due to the recent expansion of transfer pricing department within the tax authorities. In 2015, APAs are expected to be finally introduced in Slovenia. No other significant changes of transfer pricing legislation are currently foreseen for 2015.

South Africa

2014 TP developments

The South African Revenue Services (SARS) introduced an updated income tax return (ITR14) in 2013 to account for the change in the transfer pricing legislation in South Africa. Most taxpayers only encountered this ITR14 in 2014 because the ITR14 is lodged within one year after a company's financial year-end. The ITR14 requires additional disclosures for transfer pricing transactions including disclosures of transaction amounts, certain ratios (regarding thin cap) and other specific information.

In 2013 the Davis Tax Committee (DTC) was established to evaluate the South African tax system. It was given a specific mandate to evaluate and address concerns in relation to BEPS. The DTC provided its first interim report in late 2014, including comments in relation to transfer pricing documentation. The interim report mentions that South Africa should adopt rules requiring large multinational enterprises to disclose their transfer pricing in a master file, local file and country-by-country report, as recommended by the

OECD. The report said this measure should apply to businesses with more than R1 billion of group turnover (approximately US\$87.7 million).

In November 2014, the SARS indicated to Parliament that, during the past three years there had been over R20 billion (approximately US\$1.754 billion) in transfer pricing adjustments from 30 cases. Currently, the SARS transfer pricing team is evaluating a similar number of cases, and others are being risk-assessed.

2015 anticipated TP developments

Comments in relation to DTC's first interim reports are due 31 March 2015. It is expected that SARS will align its transfer pricing practices to the DTC's recommendations (once finalized) which are in line with the transfer pricing BEPS reports issued. Furthermore, SARS has been strengthening its team throughout the last few years, and this is expected to continue in 2015. The increase in capabilities and capacity, together with increased disclosures in the ITR14, is likely to result in additional scrutiny from a South African transfer pricing perspective. Finally, SARS is considering introducing an APA program in the next few years.

Spain

2014 TP developments

Last year, the Spanish tax authorities continued the approach of paying significant attention to cross-border transactions and restructurings. In particular, from an administrative practice perspective, it should be noted that a business rationale outline is frequently part of the transfer pricing inquiries in cases of restructuring, as is decrease of profits at the Spanish taxpayer level. In situations where the related party is presumably in a low-tax jurisdiction, the authorities are becoming more demanding with documentation requirements and business purpose.

2015 anticipated TP developments

Amendments have been introduced into the transfer pricing provisions, effective 1 January 2015. As a result, hierarchy of methods has been replaced by the best method rule, APA rollback has been expanded with no limit and a disregard provision has been introduced.

Finally, the implementation at a domestic level of country-by-country reporting requirements, to be applicable for 2015 or, more likely, for 2016 has been announced. To date, no further information is available with regard to scope and applicable thresholds.

Sweden

2014 TP developments

In a joint statement issued in September 2013, Sweden, Denmark, Finland, Iceland, Norway and the United States stated that the fight against tax avoidance and evasion should be a top priority in all relevant international discussions. The six countries acknowledged the importance of the engagement of the G20 and expressed support for the work of the OECD on BEPS and automatic exchange of information as the new global standard. The countries agreed to make a concerted and collective effort to improve the transparency of companies and legal arrangements.

2015 anticipated TP developments

The Swedish Ministry of Finance has dedicated resources to BEPS. Sweden is likely to embrace the initiatives on country-by-country reporting and documentation master files, but it is unclear how the updated guidance on intangibles, once finalized, will be received. The Tax Agency is actively involved in numerous working groups within the BEPS project, and in 2014 the Tax Agency created an internal working group to coordinate this activity. The working group is expected to operate with increased intensity in 2015.

Taiwan

2014 TP developments

The tax authority has been very aggressive in recent years with transfer pricing audits and requests for detailed supporting documents for review. Multinational enterprises should thoroughly review their pricing policies and ensure that related party transactions are in line with the arm's length principle on a transactional basis. No or low profit in Taiwan is generally subject to challenge by the tax authority.

Withholding tax can be reduced for service outpayments if the approval is obtained based on the contribution analysis of a transfer pricing report.

2015 anticipated TP developments

Transfer pricing remains the hottest tax issue in Taiwan. The tax authority has selected many FY13 transfer pricing reports for review. To promote APAs, the tax authority will amend transfer pricing regulations to reduce the threshold for application. In addition, taxpayers will be entitled to pre-meetings with the tax authority for preliminary discussions. To follow the OECD BEPS action plans, the tax authority will amend the Income Tax Act, transfer pricing regulations and the Model Tax Convention in the near future.

Tanzania

2014 TP developments

In February 2014, a transfer pricing regulation and guidelines were introduced in Tanzania. The documentation requirements set out in the regulation are onerous and require the taxpayer to have the documentation in place prior to the due date for filing the income tax return for the year. In June 2014, the Tanzania Revenue Authority (TRA) Large Taxpayers Department conducted a stakeholders meeting on the new regulation. In this meeting, TRA stipulated that they do not foresee any special audits in the near future. Nevertheless, transfer pricing will be part of general tax audits as a respective transfer pricing specialist will be involved in tax audits going forward.

2015 anticipated TP developments

Since the introduction of Tanzania's transfer pricing regulation in February 2014, a number of tax audits have been observed where the TRA asks transfer pricing-related questions and requests for documentation. In some instances, TRA requests documentation for financial years ending before 2014 (e.g., 2012 and 2013) when the regulation was not in place.

Tunisia

2014 TP developments

Different measures were adopted in 2014 to fight against abnormal transfer of benefits: imprisonment to up to three years and a fine up to TND50,000 for any person who issues or uses invoices with exaggerated amounts between dependent companies (article

38 of the Financial Law); 25% withholding tax on remunerations served to residents of tax havens that are listed by a decree (article 44 of the Financial Law); 5% fine, up to TND50,000, in case of a settlement in relation to criminal tax offenses resulting from the use of invoices with exaggerated amounts.

2015 anticipated TP developments

Nothing major is expected, apart from enforcement of the regulation by the fiscal authorities.

Turkey

2014 TP developments

During 2014, the Turkish Revenue Administration (TRA) increased its number of transfer pricing audits following the establishment of dedicated task forces within the TRA in three major Turkish cities: Istanbul, Ankara and Izmir. The fourth APA was signed toward the end of the year. There were no changes in the transfer pricing legislation or the regulations.

2015 anticipated TP developments

The transfer pricing audits are expected to increase in number during 2015. The TRA is determined to increase the number of APAs by the end of the year as well and therefore seems committed to handle the applications faster. Intercompany licensing arrangements as well as management services are likely to stay in the focus of tax inspectors.

Ukraine

2014 TP developments

On 13 May 2014, the Law of Ukraine №1260-VII, On Amendments to the Tax Code of Ukraine relating to Improvement of Transfer Pricing, was adopted. The main aspects of this law are described below:

- ▶ Controlled transactions – transactions where the total volume with a specific counterparty exceeds UAH50 million (approximately US\$2.5 million).
- ▶ The deadline for filing controlled transaction reports is 1 May 2015, and the deadline for submitting transfer pricing documentation is one month from receipt of the request.
- ▶ Five transfer pricing methods similar to those specified by the OECD Guidelines.

▶ Penalties:

- Failure to file a transfer pricing report – 100 minimum wages (approximately US\$6,000)
- Non-disclosure of any controlled transaction in the TP report – 5% of the amount of the undisclosed controlled transactions
- Failure to submit transfer pricing documentation – 3% of the amount of the affected controlled transactions but no more than 200 minimum wages (approximately US\$12,000)

2015 anticipated TP developments

The main features of the Law of Ukraine №72-VIII of 28 December 2014 are provided below:

▶ Transactions are controlled if:

- The transactions are with nonresident related parties.
- Total taxable income of a taxpayer/related party from all business activities exceeds UAH20 million (approximately US\$1 million) per year.
- Total volume of transactions with a specific counterparty exceeds UAH1 million (approximately US\$50,000) or 3% of the taxpayer's taxable income for the year under review.

▶ A look-through approach has been introduced.

Transfer pricing methods, deadlines for submitting documents, and penalties are the same as for 2014.

United States

2014 TP developments

In 2014, the transfer pricing community was focused on the BEPS initiatives, particularly the documents released that addressed country-by-country reporting and revisions to Chapter 6 of the OECD Transfer Pricing Guidelines dealing with intangibles. The end of the year saw another rather controversial BEPS release addressing risk, recharacterization and "special measures." On a purely domestic front, 2014 saw several pivotal transfer pricing litigation matters progress, either toward trial, settlement or a decision, including Medtronic, Amazon, Eaton, Guidant, Nortel and Microsoft.

2015 anticipated TP developments

This year has begun with the news that relations between the US and Indian competent authorities are finally warming, with a commitment between the two nations to resolve a backlog of over 250 pending mutual agreement cases, initially focusing on those involving information technology-enabled services and software development. Moreover, the governments' acknowledgment that, once the backlog of MAP cases is resolved, bilateral APAs will be available is welcome news to taxpayers. In other controversy news, revised Revenue Procedures governing APA and MAP requests are expected in the first half of the year. Finally, more countries are expected to enact BEPS-related legislation, which will directly affect US multinationals operating in these jurisdictions.

Vietnam

2014 TP developments

In terms of regulatory developments, APA regulations (Circular 201) were introduced and became effective from February 2014. The regulations are largely in line with the OECD Guidelines and APA regime in

other taxing jurisdictions. In addition, the new annual transfer pricing disclosure form (Form 03) effective from FY14 onward also was issued; it emphasizes the responsibility of taxpayers to be in full compliance with the contemporaneous transfer pricing documentation requirements.

In terms of audits, both the General Department of Taxation and local tax authorities have conducted transfer pricing-specific audits in addition to general tax audits covering transfer pricing queries. In cases of non-compliance, transfer pricing adjustments and tax penalties (based on the tax authority's secret comparables) were made and imposed.

2015 anticipated TP developments

It is expected that the number of specific transfer pricing audits for companies operating in various industries will continue to increase and adjustments would be made by tax auditors in cases of non-compliance (transfer pricing disclosure and documentation obligations) based on the tax authority's secret comparables.

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