

Transfer pricing in 2019



Deloitte Touche Tohmatsu's global transfer pricing practice, in partnership with International Tax Review, is pleased to present the 2019 edition of the Transfer Pricing Controversy Guide, a discussion and overview of the leading issues, challenges and opportunities around transfer pricing (TP) controversy.

The OECD's final reports on the BEPS project were issued more than two years ago, but the ripple effects of the recommendations and their implementation into the domestic tax laws of participating countries are still being felt.

One such ripple effect is the increase of TP controversy cases in number and complexity. So, what are taxpayers to do when faced with the growing likelihood of being enmeshed in transfer pricing controversies?

Shaun Austin (Deloitte UK), Darcy Alamuddin (Deloitte Tax LLP), and Jamie Bedford (Deloitte UK) provide some insights on dealing with these new challenges. The authors discuss the need for a strategic approach to TP controversy and conclude that while there may not be a 'magic bullet' that can mitigate the risks arising from TP controversy, there are significant steps a taxpayer can take that can make the inevitable challenges of TP controversy more manageable. Global tax authorities and taxpayers have reacted to the changes brought by the BEPS project in a variety of ways. We include two articles discussing the new environment from a tax authorities' perspective.

First, Tony Anderson and Alex Evans (Deloitte Canada), Mariusz Kazuch and Rafal Sadowski (Deloitte Poland), and Lian Tang He (Deloitte China) discuss the key trends in tax audits in their respective countries (which are also being seen globally), and find that tax authorities are increasingly focusing on TP matters due to a combination of public and political pressure, and the transparency afforded by country-by-country reporting (CbCR).

In North America, the Canada Revenue Agency recently implemented a risk-based, integrated approach to international and large business audits, creating multidisciplinary teams of specialists to address complex and emerging tax issues. In Poland, an increase in TP risk has been accompanied by the imposition of severe personal penalties on management personnel, broadening compliance obligations. Meanwhile, in Asia, China's State Administration of Taxation (SAT) now encourages local tax authorities to assist taxpayers to improve their TP compliance level in advance, rather than focusing on conducting investigations.

In the next article, David Varley (Deloitte Tax LLP) and Manfred Naumann (Deloitte Germany) focus on the role of joint audits and risk assessments, exploring how additional information reporting requirements for multinational enterprises (MNEs) introduced by BEPS Action 13, and the mechanisms for exchanging the reported information between tax authorities, has resulted in greater transparency of taxpayer information

and cooperation among tax authorities. On the other side of the divide, taxpayers have responded to an increase in TP controversy by resorting to traditional tools: the mutual agreement procedure (MAP) found in tax treaties, and advance pricing agreements (APAs). Kerwin Chung (Deloitte Tax LLP), Aldo Castoldi (Deloitte Italy) and Luke Tanner (Deloitte Japan) provide an overview of the status of APA programmes in their respective countries, noting that taxpayer interest in APAs as a means to manage their TP risk predates the BEPS initiative, and that this trend will likely accelerate over the next few years.

In his article on the MAP process, Eddie Morris (Deloitte UK) makes the case that the number of TP controversies is on the rise, but argues that the actual volume of controversy is much higher than the number of MAP cases. Morris also discusses the BEPS initiative recommendations regarding improvements to the dispute resolution process, and delves into the general consensus that the MAP system works when available, but does not always work quickly enough.

The growth in the volume of TP controversy is validated by another metric: a rise in the number of TP court cases recorded around the world since the inception of the BEPS project. As John Henshall (Deloitte UK) and Stan Hales (Deloitte Australia) discuss in their article covering recent TP decisions, that growing body of case law influences OECD members, and ultimately country-specific

tax law. The authors make the point that while TP cases are obviously important in the jurisdiction involved, some cases may have greater potential geographic scope, and therefore may be more valuable to the TP and tax professionals' community.

The consequences of a rise in TP controversies can be examined from several angles and, in this guide, we include two articles, one that provides a country perspective, and the other which provides an industry perspective.

In an article by Eric Lesprit (Deloitte France), Sanjay Kumar (Deloitte India), and Joseph Tobin (Deloitte Tax LLP), the authors focus on recent developments in France, India, and the US, exploring how recent changes in their approach to TP controversy and the underlying tax regimes have given rise to those controversies.

From an industry perspective, Ralf Heussner (Deloitte Luxembourg), Aydin Hayri (Deloitte Tax LLP) and Juan Ignacio de Molina (Deloitte Spain) focus on the financial services, life sciences and automotive industries. All three sectors have been affected by the interpretation of BEPS rules by the tax authorities, as well as by new requirements for more transparency and information. In the financial sector, the reconciliation of tax and regulatory rules is an additional factor, while the life sciences industry has had to contend with the effect of 'marketing intangibles'. Meanwhile, the automotive industry has had to analyse how much life is left in the use of traditional TP methods in the face of increasing business integration and global operations.

The common ground for all industries? Tax controversy management must begin well before the start of any tax audit.

This article was written by Shaun Austin of Deloitte UK and Paul Riley of Deloitte Australia. © 2018. For information, contact Deloitte Touche Tohmatsu Limited. This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.



PAUL RILEY

Senior Partner
Deloitte
Tel: +61 3 9671 7850
pbriley@deloitte.com.au

Paul is the leader of Deloitte's global transfer pricing practice and a senior transfer pricing partner in Deloitte Australia's Tax and Legal practice. He has over 33 years of experience, including 10 years with the Australian Taxation Office (ATO) and 23 years serving clients throughout Australia, the Asia-Pacific region, and the US. Paul spent two years with Deloitte's global TP team in its Los Angeles office, working with US multinationals on a variety of TP assignments.

Paul has held many senior positions during his 20-year career at Deloitte, including managing partner of Deloitte Australia Tax and Legal (2012-2015), Victoria tax and legal leader (2011), and Deloitte Asia-Pacific transfer pricing leader (2009-2012). Paul was appointed leader of the global transfer pricing practice effective January 2017. In his global role, Paul is responsible for overseeing Deloitte's global TP strategy.

Paul has extensive experience in dealing with various revenue authorities (particularly the ATO), has settled many TP disputes, and has assisted clients achieve certainty through bilateral advance pricing arrangements (BAPA). Paul is also involved in regular discussions with revenue authorities, instructing them on global trends that impact TP and providing prevention mechanisms to help mitigate the time and cost of disputes for global organisations.



SHAUN AUSTIN

Partner
Deloitte UK
Tel: +44 (0) 207 007 3079
Mobile: +44 (0) 7775 807510
saustin@deloitte.co.uk

Shaun Austin is the transfer pricing leader for Deloitte's North West Europe practice, and has been responsible for Deloitte's European transfer pricing practice since 2013. He has over 15 years of experience as a partner, and more than 20 years of experience in transfer pricing. Shaun has extensive experience in advising a broad range of clients in all areas of transfer pricing, including planning, documentation, audit defence, MAP and debt pricing.

Shaun was listed in the most recent guide to the world's leading transfer pricing advisers.

Shaun studied at Cambridge University and is a member of the Institute of Chartered Accountants in England & Wales (ACA).

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

This communication is for internal distribution and use only among personnel of Deloitte Touche Tohmatsu Limited, its member firms, and their related entities (collectively, the "Deloitte Network"). None of the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.