

Transfer Pricing trends in Asia Pacific

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All views are personal

Agenda

- Megatrends
- Country specific compliance round-up
- Key updates in select countries
- Potential way forward

APAC megatrends

- Increasingly uncertain tax environment – TP becomes key focus area
- Stringent TP compliance and disclosure requirements across the board
- Strengthened transparency and sharing of information among tax authorities (CBCR, EOI, best practices sharing)
- Intensive TP audit activities – Elevated TP risks with potentially huge tax impact
- Growing cross-border TP disputes and rising incidence of double taxation
- Intensifying concern and need for TP dispute resolution and prevention
- APAs in APAC – tax administrations have varied experience – Australia, Japan and South Korea continue to remain the most mature APA jurisdictions. India and China fast tracking negotiations

Key MAP statistics in APAC

Reporting jurisdictions	2018 start inventory (A)	Cases started in 2018 (B)	Cases closed in 2018 (C)	End inventory (A) + (B) – (C)	No of TP cases in end inventory (D)	% of TP cases in end inventory (E = D/C)
Australia	41	18	28	31	19	61.29%
China	132	24	45	111	59	53.15%
Hong Kong	15	5	4	16	10	62.50%
India	778	148	85	841	710	84.42%
Indonesia	52	26	19	59	37	62.71%
Japan	117	33	57	93	84	90.32%
New Zealand	10	13	10	13	6	46.15%
Singapore	27	25	19	33	18	54.55%
South Korea	130	41	38	133	70	52.63%

Source: OECD, Mutual Agreement Procedure Statistics per country for 2018

No differentiation is made in the above statistics on cases started prior and/ or after to 01 January 2016. Such further breakdown is available in OECD website

<https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-2018-per-jurisdiction-all.htm>

Preventing disputes

- TP arrangements coherent with business model
- Dedicated team, good corporate governance, systems and processes to track, monitor and manage TP risks (including handling of EOI requests)
- Robust TP documentation outlining all the value driving functions
- Use of APAs to agree on TP arrangements where appropriate
 - Benefits: often a solution to complex or difficult TP issues, CA to CA discussion, help avoid TP controversy and provide certainty, lower compliance costs over time
 - Costs: time and resources required; not insignificant efforts and information sharing with tax authorities to support the APA process

Country specific compliance round-up

Australia

Countries	Documentation requirements	Deadline to prepare	Deadline to submit	Acceptable languages	TP specific penalties	Any other requirements
Australia	TP documentation	Contemporaneous (to be prepared but not filed at time of tax return filing) Failure to prepare contemporaneous documentation will result in the inability to have a Reasonably Arguable Position (RAP)	21-28 days following request from Australian Taxation Office (ATO)	English	Penalties of 25-50% of underpaid tax in absence of a RAP set out in s284-E Tax Administration Act (TAA53)	The ATO requires an International Dealings Schedule (IDS) to be filed with each tax return. In the IDS, the taxpayer has to disclose the quantum of its related party transactions, as well as the TP method applicable to their related party transactions, and whether TP documentation has been maintained. For income years ending on or after 30 June 2018, large MNEs are required to file the Reportable Tax Position (RTP) Schedule with their tax return.

Countries	Documentation requirements	Due date	Penalties	Threshold
Australia For fiscal year beginning on or after 1 January 2016	Master file (MF)	Submit within 12 months after the end of the reporting fiscal year	Failure to prepare the necessary reports could attract a penalty of up to AUD525,000	AUD1b (approx. EUR674m)
	Local file (LF)			
	CbCR			AUD1b (approx. EUR674m)

China

Countries	Documentation requirements	Due date	Penalties	Threshold
China For fiscal year beginning on or after 1 January 2016	MF	Upon request (within 30 days), but within 12 months after the close of the financial year	Up to RMB10,000 5% additional interest on underpaid tax in case of TP investigation	<ul style="list-style-type: none"> ▶ Cross-border, related party transactions, and the ultimate parent under which the entity is consolidated has prepared master file or ▶ Annual total of related party transactions more than RMB1b
	LF	Upon request (within 30 days), but should be prepared before 30 June of the year following entering into the related party transactions		<ul style="list-style-type: none"> ▶ Amount of tangible assets transferred (in case of toll processing activities, the amount shall be calculated on the basis of customs clearance price for annual import and export) more than RMB 200m or ▶ Amount of financial assets transferred more than RMB100m or ▶ Amount of intangible assets transferred more than RMB100m or ▶ Aggregated amount of other related party transactions more than RMB 40m
	CbCR	Filed with tax return, but possible to apply for extension	Up to RMB10,000	RMB5.5b (approx. EUR740m)

Hong Kong

Countries	Documentation requirements	Due date	Acceptable Language	Penalties	Threshold	Any other requirements
Hong Kong For fiscal year beginning on or after 1 April 2018	MF	Within nine months after the end of the enterprise's accounting period	English, Chinese	Up to HKD 100,000	<p>An enterprise will not be required to prepare master and local file if it can meet either one of the following exemptions:</p> <p>Exemption based on size of business: Taxpayers meeting any two of the three following conditions are not required to prepare the master file and local file:</p> <ul style="list-style-type: none"> ▶ Total annual revenue not more than HKD400m; ▶ Total assets not more than HKD300m; or ▶ No more than 100 employees. <p>Exemption based on related party transactions: If the amount of a category of related party transactions for the relevant accounting period is below the prescribed threshold, an enterprise will not be required to prepare a local file for that particular category of transactions:</p> <ul style="list-style-type: none"> ▶ Transfer of properties (other than financial assets and intangibles): HKD220m; ▶ Transaction in respect of financial assets: HKD110m; ▶ Transfer of intangibles: HKD110m; or ▶ Any other transaction (e.g., service income and royalty income): HKD44m <p>Exemption for domestic related party transactions</p>	<p>Hong Kong taxpayers are required to disclose the following related-party information and confirm their compliance with local TP documentation requirements in their profits tax return:</p> <ul style="list-style-type: none"> ▶ Indication of Hong Kong Standard Industrial Classification Code ▶ Confirmation of whether (i) there have been any transactions with nonresident associated persons during the taxable year; (ii) an APA has been concluded for this taxable year; and (iii) the taxpayer belongs to a multinational enterprise group that has CbCR filing obligation in Hong Kong or elsewhere during the taxable year. <p>If any of above conditions are affirmed by the taxpayer, additional information relating to the residence of its foreign related parties involved in cross-border transactions with the taxpayer, master and local file requirements, details of APA concluded and CbCR obligations are to be provided.</p>
	LF					

Indonesia

Countries	Documentation requirements	Due date	Penalties	Threshold
Indonesia For fiscal year beginning on or after 1 January 2016	MF	Must be available within four months of fiscal year end	▶ IDR1m	<ul style="list-style-type: none"> ▶ Related party transactions (in covered fiscal year) and gross income (in prior fiscal year) more than IDR50b; ▶ Value of related party transactions (in prior fiscal year) for tangible goods more than IDR20b; ▶ Value of other related party transactions (in prior fiscal year) more than IDR 5b; or ▶ If related parties are located in jurisdictions with income tax rates smaller than Indonesian corporate income tax (CIT) rate of 25%
	LF			
	CbCR	<p>Must be available within 12 months of year end but filed with CIT return for the following fiscal year.</p> <p>QCAA relationships for CbC exchange mechanism established with most jurisdictions including US.</p> <p>Notification requirements are there for all taxpayers irrespective of whether there is a requirement to file CbCR. Notification is undertaken by means of an annexure to the CIT Return</p>	<ul style="list-style-type: none"> ▶ IDR1m and unpaid tax of up to 200% ▶ Criminal sanctions 	<p>Indonesian UPE: IDR11t (approx. EUR727m)</p> <p>Foreign UPE: follow UPE's jurisdiction thresholds or EUR750 million</p>

Japan

Countries	Documentation requirements	Due date to submit	Penalties	Threshold
Japan	MF (for fiscal year beginning on or after 1 April 2016)	Within 12 months after the last day of reporting fiscal year	Up to JPY300,000	Revenues more than JPY100b
	LF (for fiscal year beginning on or after 1 April 2017)	A maximum of 45 days if contemporaneous threshold is met and 60 days if the contemporaneous threshold is not met	Tax authorities have the right to use deemed taxation and secret comparables to impose tax by estimation	<ul style="list-style-type: none"> ▶ Transactions with foreign related party more than JPY5b in the preceding year or ▶ Intangible transactions more than JPY300m
	CbCR (for fiscal year beginning on or after 1 April 2016)	Within 12 months after the last day of reporting fiscal year	Up to JPY300,000	JPY100b (approx. EUR688m)

Malaysia

Countries	Documentation requirements	Deadline to prepare	Deadline to submit	Acceptable languages	TP specific penalties	Any other requirements
Malaysia	<p>Full TP documentation is required if the following are satisfied:</p> <ul style="list-style-type: none"> ▶ Gross income exceeding RM25m and total amount of related party transactions exceeding RM15m. ▶ Where a person provides financial assistance, the guidance on financial assistance are only applicable if that financial assistance exceeds RM 50m. ▶ Any person who falls within the above threshold criteria may opt to fully apply all relevant guidance as well as fulfil all TP documentation requirements in the Inland Revenue Board's (IRB) guidelines, or alternatively, may opt to comply with maintaining the minimum TP documentation. 	<p>Contemporaneous (to be prepared but not filed at time of tax return filing)</p> <p>As long as the operational conditions remain unchanged, the comparable searches in databases supporting part of the TP documentation should be updated every three years rather than annually</p> <p>Financial data and suitability of the existing comparable should be reviewed and updated <u>every year</u> in order to apply the arm's length principle reliably</p>	<p>Within 30 days upon request by the Director General</p>	<p>English or Bahasa Malaysia</p>	<p>Penalties under ITA, Section 113(2)(b) would be levied in case of TP adjustments:</p> <ul style="list-style-type: none"> ▶ 35% penalty rate for not preparing contemporaneous TP documentation; ▶ 25% penalty rate for TP documentations not being prepared according to the requirements in the guidelines <p>Taxpayers who do not fall under the documentation requirements, and have not prepared a contemporaneous TP documentation, may be subjected to 25% penalty on adjustments due to transactions not conducted at arm's length.</p> <p>For repeated offenders, the penalty shall be increased by 20% as compared to the last penalty rate imposed for the previous offence but subject to the maximum penalty of 100% of the amount of tax undercharged</p>	<p>Selected taxpayers required to complete disclosure form MNE 1/2017 which includes details of intercompany transactions, industry classification, characterisation of taxpayer, information pertaining to research and development (R&D), availability of TP documentation, etc.</p> <p>Taxpayer required to declare a Yes or No answer in the income tax return form on whether TP documentation has been prepared</p>

Singapore

Countries	Documentation requirements	Deadline to prepare	Deadline to submit	Acceptable languages	TP specific penalties	Any other requirements
Singapore	TP documentation, for all material transactions exceeding thresholds provided (exempted where taxpayer transacts with a related party in Singapore and such local transactions (excluding related party loans) are subject to the same Singapore tax rates for both parties)	Contemporaneous (to be prepared but not filed at time of tax return filing)	Within 30 days from the date of request by the Inland Revenue Authority of Singapore (IRAS)	English	<ul style="list-style-type: none"> ▶ Five percent surcharge imposed on TP adjustments made for non-arm's length related party transactions ▶ Separate noncompliance penalty not exceeding S\$10,000 (approx. US\$7,600) 	Additional related party transaction form to be prepared and submitted with CIT return if the aggregated value of related party transactions exceeds S\$15m, starting from YA 2018

Key updates in select
countries

Singapore

- TP legislation in place – effective from FY 2018 (YA 2019) onwards – Introduces mandatory requirement for contemporaneous documentation, documentation related penalties and surcharge on TP adjustments made by IRAS
- Audit trends
 - The IRAS has raised TP protective assessments in the midst of TP queries or TP Audit process.
 - Settlements have been made between the taxpayer and the IRAS after protracted TP discussions.
 - Extensive queries on one related party transaction does not preclude the IRAS from issuing queries at a later stage on other related party transactions – for the same taxpayer and for the same year.

Singapore (contd..)

- The IRAS has also progressively strengthened legislative capacity to enforce arm's length behaviour and TP documentation requirements.
- The IRAS has built up TP expertise through the years – from structured training (including training by the OECD) and from TP consultation or audit cases.
- The IRAS has a clear need to vigorously defend and protect Singapore tax base, in response to evolving global tax environment. Compliance with arm's length requirement is highly relevant to:
 - Singapore as a substantive business hub - to ensure profits are taxed in the location where economic activities generating those profits are carried out – protection of Singapore tax base.
 - Singapore's reputation as a substantive business hub – profits are determined in accordance with sound international standards and profits aligned with economic value creation.

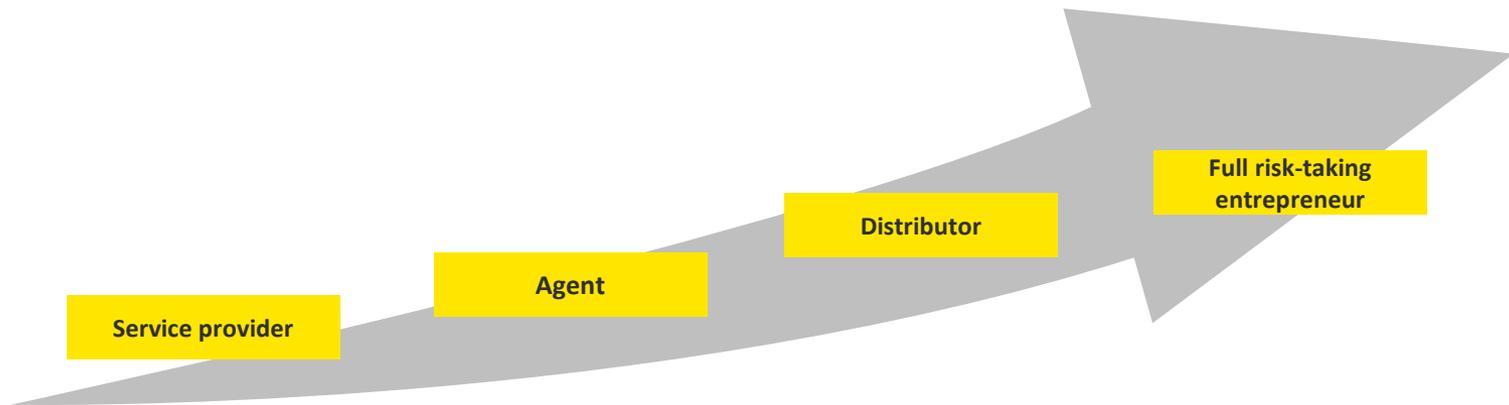
Singapore (contd..)

e-Tax Guide on commodity marketing and trading activities

- Provides guidance on analysing economic value of commodity marketing and trading activities in Singapore.
- e-Tax Guide outlines:
 - Benefits of conducting commodity marketing and trading activities in Singapore
 - Factors that may affect TP for commodity marketing and trading activities
 - Common roles of commodity marketing and trading companies (i.e., levels of participation)
 - Risks assumed by commodity marketing and trading companies and how to manage them
 - TP methods that may be applied.

Singapore (contd..)

- e-Tax Guide introduces four broad levels of participation that a commodity marketing/trading entity may undertake and provides examples, including:



ASEAN

Indonesia

- Audit trends
 - Challenging taxpayers' comparables set
 - Disputes regarding transfer pricing methodology
 - Intra group services and royalty payments – continue to remain soft targets – significant burden on taxpayers to produce evidentiary information
 - Disregarding economic adjustments
 - Disallowance of marketing expenses – brand marketing vs product marketing debate in audits. DGT expects a reimbursement of marketing expenses undertaken for brand owner
 - TP adjustment amount being treated as dividend in certain cases

ASEAN (contd..)

Thailand

- TP Act enacted – effective from accounting years beginning on or after 01 January 2019 – Practically expecting Thai Tax authorities to request documentation for prior “open” years under the new rules
- Related party under the TP Rules is defined to mean
 - One party directly or indirectly holds 50% or more of the capital of the other; The same shareholder directly or indirectly holds 50% or more of the capital of both parties;
 - The parties have a dependent relationship through participation in capital, management, or control of the other entity
- Majority of BAPAs have been with Japan. South Korea and Switzerland are emerging APA jurisdictions
- RPT form introduced – has potential interaction with customs declared values

ASEAN (contd..)

Vietnam

- Multiple interpretations and inconsistent approaches of the same tax officer or between provincial tax authorities or between provincial tax authority and GDT
- Royalties and service charges continue to remain in focus
- Loss making situations – Higher scrutiny – Commercial reasons to justify loss/low profitability remains a challenge
- Decree 20 and Circular 41 require the application of “Substance over form” principle
- In an audit – both substance and form are used to determine tax liability depending on which one supports the tax authority’s positions
- Inconsistency of TP method(s) declared in TP Forms and TPD – Challenged in tax audits

ASEAN (contd..)

Vietnam (contd..)

- Year-end TP adjustments under TP regulations:
- Per Decree 20, taxpayers shall make TP adjustments based on the selected TP method and arm's length prices/profit margins to determine their CIT in Vietnam on the basis that adjustment must not result in reduction of tax payable to the state budget. This suggests that for the profit of a Vietnamese entity:
 - Upward TP adjustment is accepted
 - Downward adjustment is not accepted

Australia

Practical Compliance Guideline (PCG) Documents

- ATO has continued trend of releasing its views on international transfer pricing matters through the medium of PCG documents
- PCGs outline a risk framework against which taxpayers can self-assess their risk rating (as viewed by the ATO)
- ATO looking to engage with taxpayers to transition to “green zone – low risk” ratings
- Intragroup financing (final):
 - ATO takes the view that global circumstances and profile of the group drive the pricing of intragroup debt to Australia
 - Mandate for the ATO to challenge intragroup financing where the pricing of debt exceeds the parent’s cost of debt
- Marketing hubs (final):
 - ATO targeting offshore hubs whereby the hub profit is greater than 100% mark-up of hub costs (including marketing, sales and distributions and other centralized operating models)

Australia (contd..)

Practical Compliance Guideline (PCG) Documents (contd..)

- Inbound distribution arrangements (final):
 - Taxpayers split into four types of inbound distributors (general, life science, information and communication technology and motor vehicles)
 - Taxpayers five-year weighted average EBIT margin analysis against ATO risk zone
 - General inbound distributor category: EBIT Margin below 2.1% = high risk , EBIT Margin between 2.1% to 5.3% = medium risk, above 5.3% = low risk

China

- Audit focus
 - DEMPE+P
 - Industries of high relevance in domestic market such as retail, auto and hotel
 - Outbound remittance
 - Share transfer
 - Financing transaction
- Chinese multinational corporations (MNC) profit monitoring and risk management system –
 - Comprehensive collection of information with potential tax impact
 - Analysis and assessment of tax risks
 - Evaluation of willingness and effectiveness of tax regulation compliance
 - Rating of risk level and selection of appropriate risk management tools
 - Implementation of risk management based on rated risk level

Potential way forward

Potential way forward

- Tax authority behaviour and taxpayers behaviour under COVID 19 situation
- Increase in TP audits?
- How prepared are the taxpayers to defend positions taken in an extraordinary situation
- Compliance approach
- OECD's pillar 1 and 2 proposals

Thank you