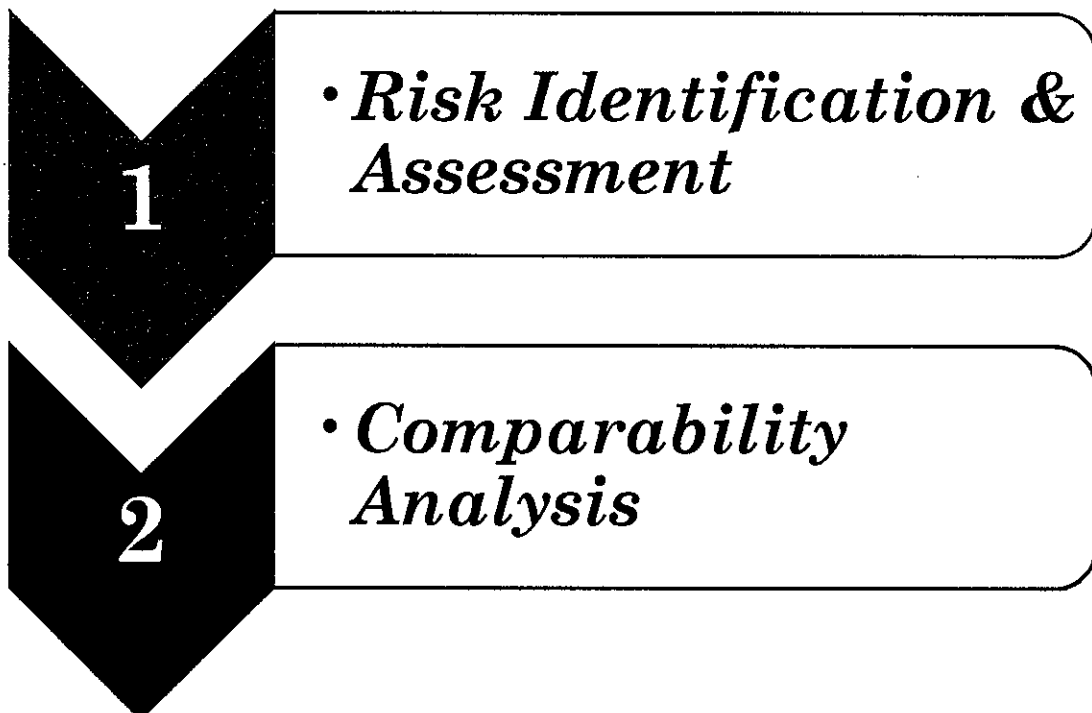


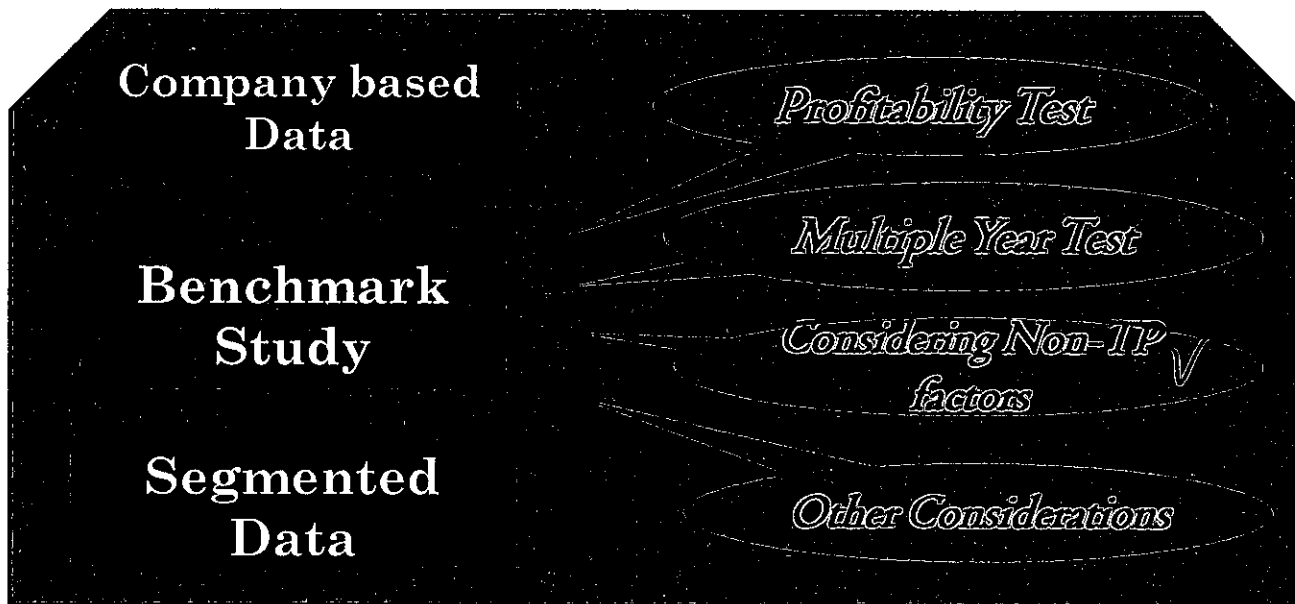
COMPARABILITY ANALYSIS IN JAPAN - SUMMARY -

June 2015
National Tax Agency

IMPORTANT STEPS



RISK IDENTIFICATION & ASSESSMENT THROUGH TOUGH FILTER



TWMM

3

ONLY IF BENCHMARK IDENTIFIED
>>>SHOULD MOVE TO NEXT STEP



Benchmark: a tip which indicates income might be transferred

Case identified

4

WHY SO IMPORTANT?

o *Lack of Benchmark brings many risks on:*

- *Legal procedures*
- *Compliance (Losing Trust)*
- *Time & Money on future administration*

- *Regional Tax Bureau for Reinvestigation*
- *Tax Tribunal for Reconsideration*
- *Courts for Legal Procedures*
- *Mutual Agreement Procedures*

有境外关系者须填

SCHEDULE 17-4

Detail Information Concerning Foreign Affiliated Corporations

| | | | | |
|---|--|---------------|---------------------|---|
| Profile about foreign affiliated corporation | Name | | | |
| | Location of the head/principal office | | | |
| | Main business | | | |
| | Number of employees | | | |
| | Capital/investment amount | | | |
| | Category of specific relation | | Category number | |
| | Share holding ratio | | Holding | % |
| | | | Held | % |
| | | | Held by same entity | % |
| | Operating revenue for the latest fiscal year | Fiscal year | | |
| Operating Revenue or Sales | | million yen | | |
| Operating Cost | | Cost of sales | million yen | |
| | | SG&A | million yen | |
| Operating profit | | million yen | | |
| Pre-tax profit for the current year | | million yen | | |
| Earned Surplus | | million yen | | |
| Transactions with foreign affiliated corporation | Inventory asset | Received | million yen | |
| | | Paid | | |
| | | TPM | | |
| | Service | Received | million yen | |
| | | Paid | | |
| | | TPM | | |
| | Rental fee (Tangible fixed asset) | Received | million yen | |
| | | Paid | | |
| | | TPM | | |
| | Royalty | Received | million yen | |
| Paid | | | | |
| TPM | | | | |
| Interest on loan | Received | million yen | | |
| | Paid | | | |
| | TPM | | | |
| APA Application | | Yes/None | | |

BEFORE PRACTICE

Comparability Analysis for What?

❑ To get an Arm's Length Price based on Arm's Length Principle:

- on Article 9-1, OECD Model Tax Convention &
- on UN Model Tax Convention
- on Bilateral Tax Treaties

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BEFORE PRACTICE

Domestic Legislation:

- ❑ To get an Arm's Length Price based on Arm's Length Principle:
- ✓ § 66-4, Act on Special Measures concerning Taxation ("ASMT")
 - ✓ § 39-12, the Cabinet Order for Enforcement of ASMT
 - ✓ § 22-10, the Ministerial Order for Enforcement of ASMT
 - ✓ Commissioner's Directive for interpretation for § 66-4 of ASMT and the Cabinet Order ("Interpretation Directive")
 - ✓ Commissioner's Directive on the Operation of Transfer Pricing ("Administrative Guidelines")
 - ✓ The Reference Case Studies on Application of Transfer Pricing Taxation as Administrative Guidelines ("Case Studies")

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Comparability analysis:

- o This is to **examine the contents and terms** of controlled transaction based on the factors which may affect the transaction terms between unrelated parties and,
- o based on the result, to **analyze the level of similarity** (“Comparability”) between the controlled transaction and uncontrolled transaction.

(Reference Case Studies, NTA)

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PROCESS

Step 1: Determination of **years** to be covered.

Step 2: Broad-based analysis of the **taxpayer’s circumstances**.

Step 3: Understanding the **controlled transaction(s)** ..., based ... on a **functional analysis**, ... to **choose the tested party** ..., **the most appropriate** transfer pricing method ..., the **financial indicator** that will be tested (in ... transactional profit method), and to **identify ... comparability factors**....

Step 4: Review of existing **internal comparables**, if any.

Step 5: Determination of available **sources of information on external comparables** ...

Step 6: Selection of **the most appropriate** transfer pricing **method** and .., determination of the ... **financial indicator** ...

Step 7: Identification of **potential comparables** ...

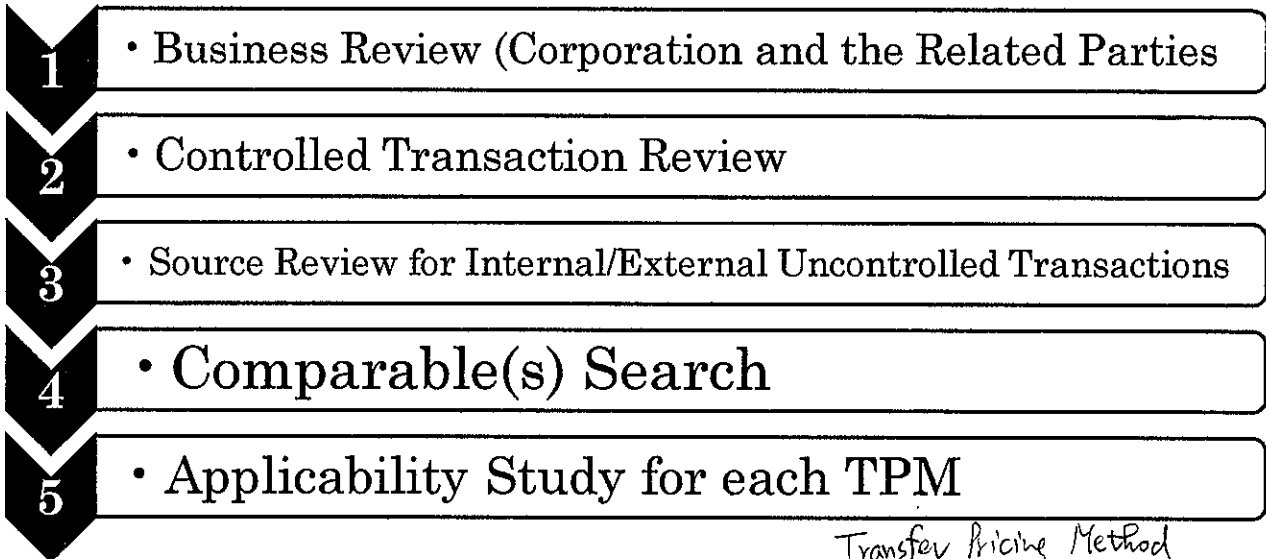
Step 8: ...making **comparability adjustments** ...

Step 9: ...determination of the **arm’s length remuneration**...

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PROCESS

[e.g.] Selection Flow for method to compute
Arm's Length Price (Comparability Analysis)



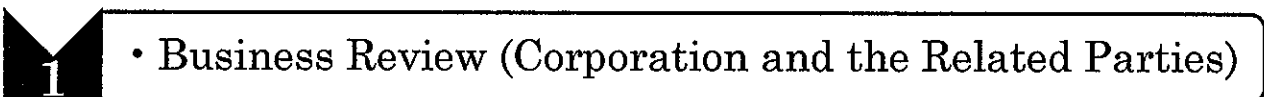
Transfer Pricing Method

TPM *The Most Appropriate Method*

11

PROCESS

[e.g.] Selection Flow for method to compute
Arm's Length Price (Comparability Analysis)



- ✓ Documents that describe the capital relationship and details of business including the history, any changes in the shares, financial status, the major product lines, the price, the markets and the market scale of each product, the results and characteristics of each business, the special circumstances of each taxable year;
- ✓ Documents containing the details of controlled transactions;
- ✓ Documents used for the calculation of arm's length prices; and Others

[2-4, Administrative Guidelines]

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[e.g.] Selection Flow for method to compute
Arm's Length Price (Comparability Analysis)

2

• Controlled Transaction Review

【Points】

- ✓ Type of assets, contents of services, etc.
- ✓ Functions performed
- ✓ Contract Terms
- ✓ Market Situation
- ✓ Business strategies

[3-1, Administrative Guidelines, § 66-4, Interpretation Directive]

COMPARABILITY FACTORS

1. Type of assets, contents of Services, etc.,
2. Functions performed by seller or buyer considering Risks assumed and Intangibles used by the seller or buyer,
3. Contract terms,
4. Market situation considering transaction stage, volume and period, influence of the government policies
5. Business Strategies of seller or buyer
6. Other special situation

(§ 66-4(3)-3 Interpretation Directive)

COMPARABILITY FACTORS

1. *Characteristics of the property or services transferred*
 2. *Functions performed by the parties (taking into account Assets used and Risks assumed)*
 3. *Contractual terms*
 4. *Economic circumstances of the parties*
 5. *Business strategies pursued by the parties*
- (1.36, OECD Guidelines)

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PROCESS

[e.g.] Selection Flow for method to compute Arm's Length Price (Comparability Analysis)

3

• Source Review for Internal/External Uncontrolled Transactions

【Points】

Information source which exists outside *shall be examined on:*

- ✓the type and contents, and
- ✓the accuracy

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[e.g.] Selection Flow for method to compute
Arm's Length Price (Comparability Analysis)

4

• Comparable(s) Search

- ✓ No internal transactions with unrelated parties:
Examine based on the information source concerning an external transaction between unrelated parties;
- ✓ Information source concerning the internal transaction and the available external transaction : Examine both;
- ✓ Determine tested party and examine RP method, CP method and TNMM >>Simpler is better!

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[e.g.] Selection Flow for method to compute
Arm's Length Price (Comparability Analysis)

4

• Comparable(s) Search

【Points】

- Advantage and disadvantage of each method
- Adequateness of each method to the contents of controlled transaction
- Availability of information necessary for the comparable(s) search
- Degree of similarity (comparability) between related parties

(Determine in consideration of the different factors listed in 66-4(3)-3, Interpretation Directive.)

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[e.g.] Selection Flow for method to compute
Arm's Length Price (Comparability Analysis)

5

• Applicability Study for each TPM

【Points】

- ✓ Comparability for CUP, RP, CP, TNMM
- ✓ Availability of information necessary for application of the PS method
- ✓ Comparability concerning the application of Comparable PS method and the routine transaction of RPSM

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COMPARABILITY FACTORS

Check Points for each factors

1. Type of Assets, contents of Services, etc.,
 - Whether the physical characteristics of inventory assets or characters of services concerning the controlled transaction is same or similar.

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COMPARABILITY FACTORS

Check Points for each factors

2. Functions performed by seller or buyer considering Risks assumed and Intangibles used by the seller or buyer,
 - Whether there is a difference in the functions of research and development, marketing, after-sales services, etc. performed by the seller or the buyer
 - (The risk to be assumed by the seller or the buyer, and the contents of intangible assets used in the transaction shall be noted.)

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COMPARABILITY FACTORS

Check Points for each factors

3. Contract terms
 - Whether there is a difference in:
 - the trading terms,
 - the settlement terms,
 - the return terms,
 - the contract modification terms, etc.

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COMPARABILITY FACTORS

Check Points for each factors

4. Market Situation

- Whether the markets in which transactions are conducted similar
- Also consider which stage of the transaction
- Whether there is a difference of transaction scale or transaction period,
- Whether there are policies of the government (Regulations on prices, etc.) that affect prices, operating margin, etc.

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COMPARABILITY FACTORS

Check Points for each factors

5. Business Strategies

- Whether any difference in the business strategies for:
- the market development,
 - the penetration policy, or
 - the market entry timing of the seller and the buyer.

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Check Points for each factors

6. Other special situation

- o Whether any special situation (status under bankruptcy, etc.) to make it non-approvable to be reasonably recognized as comparable.

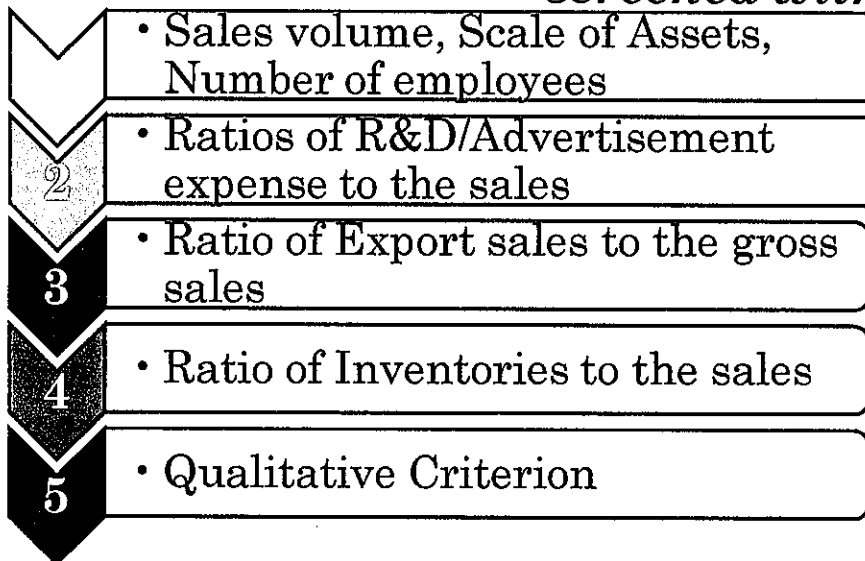
25

COMPARABLE(S) SEARCH

[e.g.]

Potential Comparable(s)

screened with



Comparable(s) selected

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COMPARABLE(S) SEARCH

[Points]

Potential Comparable(s)

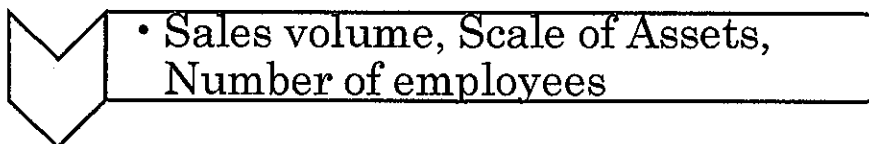
Obtained the financial information

- based on the **industry category code** of company information database,
- extract companies which possibly handle the **same or similar** type of **inventories** as the tested party, and which possibly have the **similar functions** as the tested party.

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COMPARABLE(S) SEARCH

[Points]



- To exclude the effects of difference of transaction scale, business scale, etc.

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COMPARABLE(S) SEARCH

[Points]

2 • Ratios of R&D/Advertisement expense to the sales

- To exclude the effects of difference of functions and the possession of valuable intangible assets

29

COMPARABLE(S) SEARCH

[Points]

3 • Ratio of Export sales to the gross sales

- To exclude the effects of difference of sales market

30

COMPARABLE(S) SEARCH

[Points]



- Ratio of Inventories to the sales

- To exclude the effects of difference of the status of possession of inventories

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COMPARABLE(S) SEARCH

[Points]



- Qualitative Criterion

If it does not suit for the quantitative analysis, establish the following criteria, for example,

- Whether there is a difference in business strategies.
- Whether there is a difference of products it is dealing.
- Whether there is a difference of function to execute the business.

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[e.g.]

**Comparables
Range**

- Inter-quartile ✓
- Tukey test ✓

**Comparability
Adjustment**

- working capital adjustment
- LIFO/FIFO adjustment

**Multiple Year
Review**

- Business cycle
- Eliminating non-TP factors such
as Startup Loss

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Thanks!

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Comparability Analysis

June 2015

National Tax Service of Korea

C o n t e n t s

I. History

: Transfer Pricing in Korea

II. APA Operation

III. Comparability Analysis

I. History

: Transfer Pricing in Korea

I. Transfer Price in Korea

History

- ◆ 1996: Transfer pricing rules effective
 - Law for the Coordination of International Tax Affairs(LCITA)
- ◆ 2011: The Act was revised to reflect the *OECD TP Guidelines*

Characteristics of LCITA

- ◆ Based on Arm's length standard
- ◆ Generally consistent with the OECD Guidelines
- ◆ The most reasonable method
 - Acceptable methods : CUP, RP, CP, TNMM etc.

I. Transfer Price in Korea

Methodologies

◆ Prescribed methods

- comparable uncontrolled price method
- resale price method
- cost-plus method
- profit split method
- transactional net margin method
- any other reasonable method

◆ The most reasonable method

- the selection of criteria for choosing an arm's length price as the "Most reasonable method"

I. Transfer Price in Korea

Selection of criteria

◆ Comparability

- Types and features of goods or services
- Function performed, Risk taken, Asset employed
- Contractual terms
- Economic situations
- business strategies

◆ Availability and accessibility

◆ Economic circumstances

◆ Sensitivity to error ✓

II. APA Operation

物 2年

II. APA Operation

History

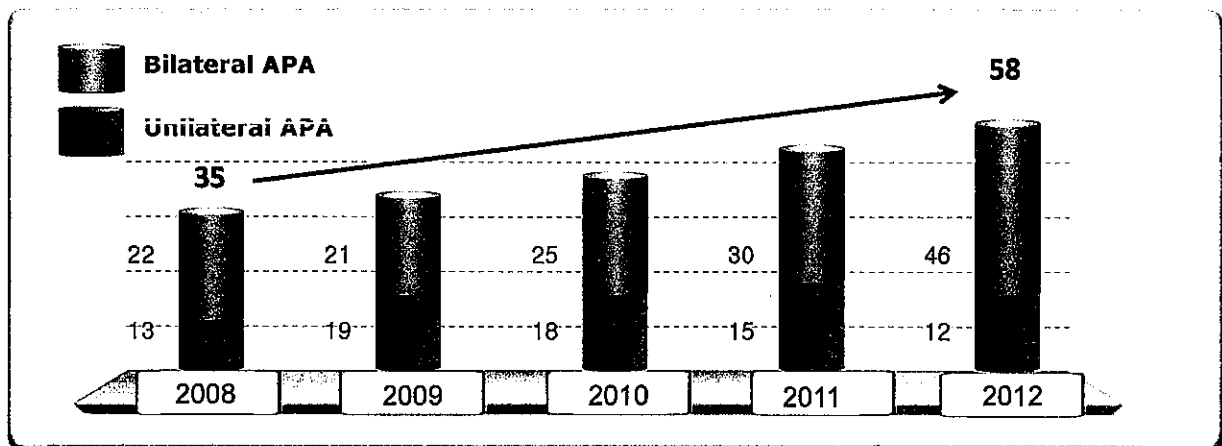
- ◆ **1996: Introduced APA (LCITA)**
- ◆ **1997: Signed the first APA with IRS (U.S.)**

Taxpayer benefits from APA

- ◆ **Providing Certainty of TP treatment**
- ◆ **Saving Resources required for TP Audit**
- ◆ **Precluding Double Taxation**
- ◆ **Making more rational decision**

II. APA Operation

No. of applications



II. APA Operation

Facilitating APAs

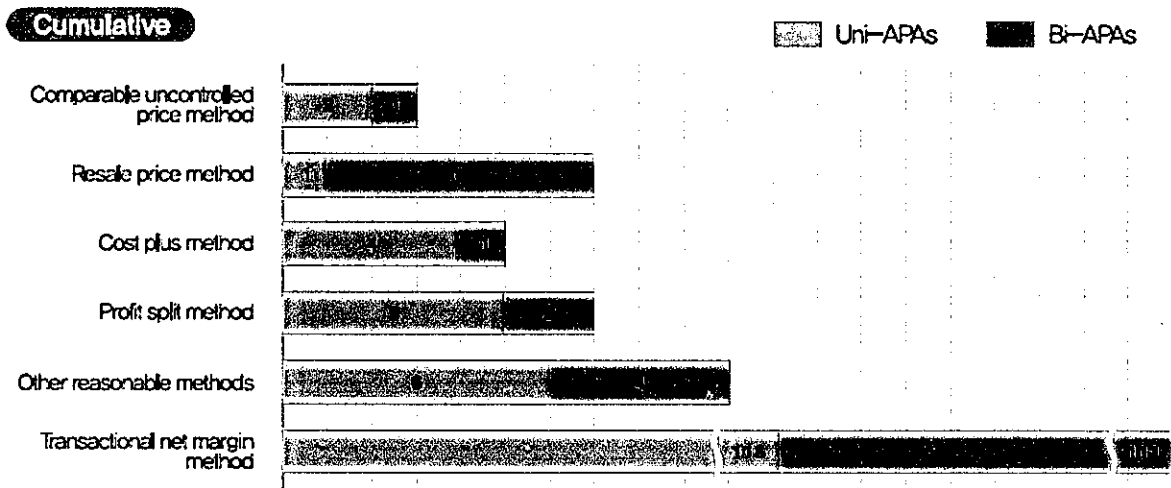
- ◆ **Effort to reduce the average time to conclude**
- ◆ **Disclosure of APA information**
 - Publication of APA Annual Report, since 2008
- ◆ **Increased frequency of face to face meetings with partner CA's**

II. APA Operation

Relation between APA & Tax Audit

- ◆ **TP audit is suspended during an APA review, when certain conditions are met**
- ◆ **Request for an APA does not of itself suspend an audit**
 - An APA application must be properly filed prior to receiving notification of a tax audit

II. APA Operation



- ◆ **For APAs concluded by 2013, TNMM was applied most as the TPM**
 - Of the total 261 APAs concluded, 229 cases (88%), applied TNMM

III. Comparability Analysis

III. Comparability Analysis

Process of Comparability Analysis

1. Determination of years to be covered
2. Analysis of the taxpayer's circumstances
3. Analysis of the controlled transactions
4. Review and determination of available sources of Information on existing internal comparables
5. Review and determination of available sources of Information on external comparables
6. Selection of the most reasonable method
7. Identification of potential comparables
8. Determination of and making comparability adjustment
9. Interpretation and use of data collected, determination of the arm's length range

III. Comparability Analysis

Practice in Comparability Analysis

◆ **Potential Comparables** : KSIC Code 40000 (Wholesale of Sth)

◆ **Tested Period** : FY 2011 ~ FY2013

| Screening Criteria (FY 2011-2013) | | Company |
|-----------------------------------|--|------------|
| | KSIC Code 46441 | 448 |
| | ⑨ Unqualified Audit Opinion | (203) |
| | Accumulated Operating Loss | (28) |
| Quantitative | Significant level of Related Party Transaction (20%) | (99) |
| | R&D activities (1%) | (5) |
| | √ Significant manufacturing activities (20%) | (95) |
| Qualitative | Different Business & Products, Level of Market, etc. | (13) |
| | Selected Comparables | 5 |

III. Comparability Analysis

◆ **Comparables selected**

| Comparable Distributors | | OM(2011-13) |
|-------------------------|-----------------|-------------|
| 1 | AAA Industrial. | 6.04% |
| 2 | BBB Co., Ltd. | 6.67% |
| 3 | CCC Korea | 2.21% |
| 4 | DDD Co., Ltd. | 4.59% |
| 5 | EEE Co., Ltd. | 11.96% |
| | Upper Quartile | 6.67% |
| | Median | 6.04% |
| | Lower Quartile | 4.59% |

◆ **Arm's length range** : 4.59~6.67%(Median 6.04%)

The 17th SGATAR Working Level Meeting

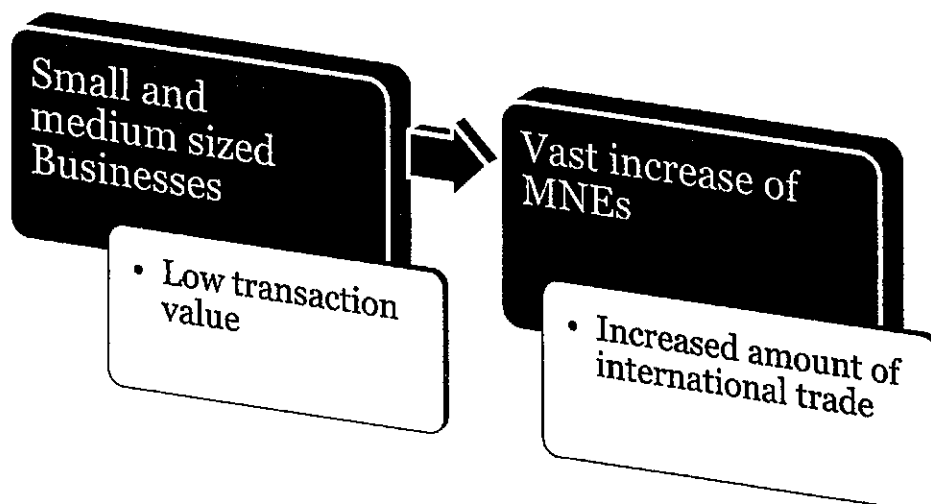
Transfer Pricing : Comparability Analysis

Prepared by

- Financial Services Bureau (DSF)
Macao Special Administrative
Region
of the People's Republic of China

Current Situation of MSAR

- - Simple and relatively low tax rate
 - Liberalization of gaming license



Roles of DSF in Tax Administration

Ensuring overall compliance

Implementation and evaluation of tax policies

○ Conducting tax inspection and investigation

Participating in international tax treaties negotiations

○

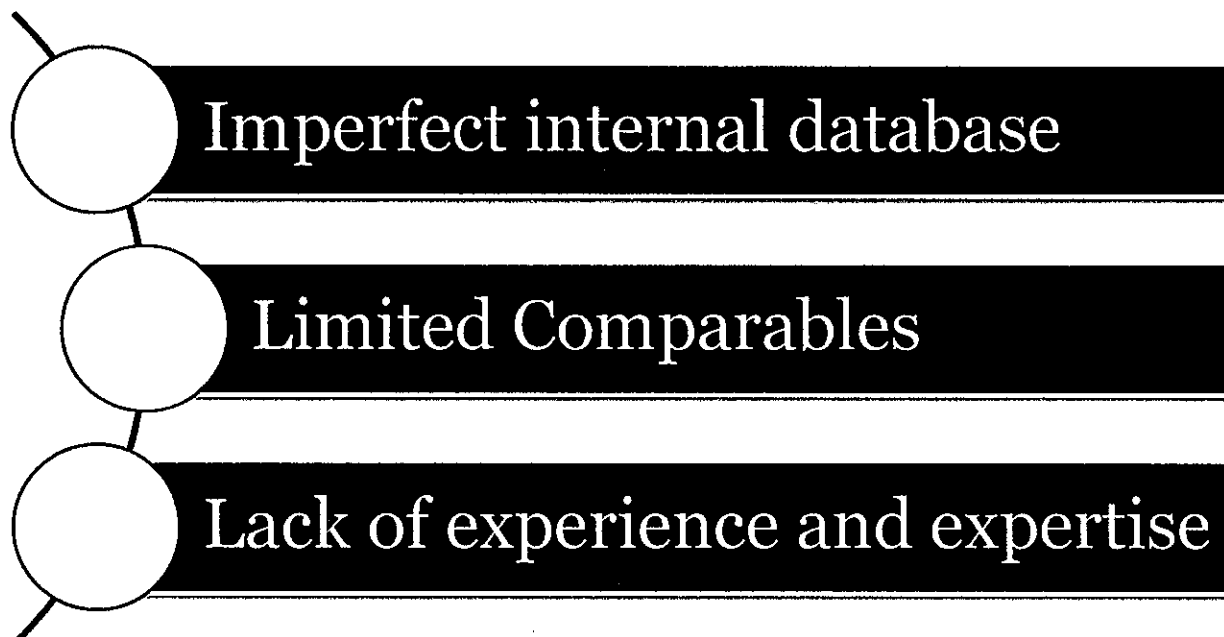
Transfer Pricing in MSAR

No special legislation in Macau

Legal Framework

- Law no.21/78/M: Art. 21
 - “any cost or expenses incurred during operating activities and which are attributable to the creation of income are deemed tax-deductible expenses.”
- Lack of specific TP legislation

○ Practical Issues arising in TP



Imperfect database

- No e-filing for Profits Tax
- Manual data input
- Encompass critical data only

Lack of Comparables

- Around 54,000 registered Profits Tax taxpayers

Group A

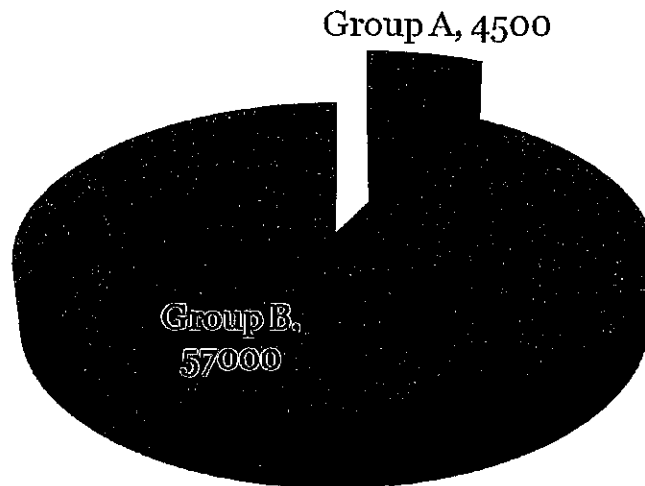
- Complete and proper accounting records;
- Mandatory keeping of accounting records and related documents for minimum 5 years;
- Tax returns verified and co-signed by a registered auditor.

Group B

- Minimum requirement: sales and purchase books.

Local Comparables

No. of Profits Tax Taxpayers



Foreign Comparables

- “Same and similar market” principle
 - Demographic terms
 - Economic system
 - Size of Economy
 - Stage of economic development

Lack of experience and expertise

- TP is not an exact science
- Involves judgment and experience
- Learn from neighboring countries' experience

TP Audits

The form is titled "Imposto Complementar de Rendimentos - Grupo "A"" and includes sections for:

- 1) IDENTIFICAÇÃO: Nome, endereço, atividade, and registration details.
- 2) REGISTRO CONTABILÍSTICO EM: Options for Chinese, Portuguese, or English.
- 3) INFORMAÇÕES: Exame, inspeção sumária, or other procedures.
- 4) MOTIVOS: Reasons for the audit, such as random selection or specific information.
- 5) DATOS COMPARATIVOS: A table for comparing data across different periods.
- 6) ANÁLISE: Analysis section.
- 7) REVISÃO: Review section.
- 8) RESULTADO: Classification of the audit.
- 9) OBS: Observations.
- 10) REGISTRO EM COMPUTADOR: Computer registration.

- M/37 Form:
 - A form which tax assessors employ to draw attention upon taxpayers which may warrant further investigation.
- Sending out tax queries.

Risk Indicators for Filling in M/37 Form

○ Significant deviations in performance from industry average

○ Recurring losses or low profit level for consecutive years

○ Intra-group service transactions

○ Exchange of Information

DTAs

- Mainland China
- Portugal
- Mozambique
- Belgium
- Cape Verde

TIEAs

- 7 NORDIC countries
 - Denmark
 - The Faroe Islands
 - Finland
 - Greenland
 - Iceland
 - Norway
 - Sweden
- Australia
- India
- Jamaica
- Malta
- Japan
- Guernsey
- United Kingdom
- Argentina




Looking Ahead

- A Bill of Tax Code has been proposed
 - Includes clauses related to arm's length issues
- Tax audits for enforcement of compliance
- Expanding our tax treaty network and developing effective mechanism for EoI and MAP
- Staff training program



Thank you!

For more information, please visit:
www.dsf.gov.mo





Transfer Pricing : Comparability Analysis

Presentation by Malaysia

**17th SGATAR Working Level
Meeting 2015
22 - 24 June 2015**



CONTENT :

- Introduction
- Comparability Analysis Issues and Challenges in
Malaysia
- Conclusion

INTRODUCTION



Malaysia Transfer Pricing Rules & Regulations

Section 140A of Income Tax Act 1967

Income Tax (Transfer Pricing) Rules
2012 (TP Rules)

- TP Methodology priority \Rightarrow *hierarchy rule.*

Transfer Pricing Guidelines 2012 (TP
Guidelines)

- Local tested party

Comparability Analysis Issues and Challenges in Malaysia



Selection of Tested
Party

- Local or foreign tested party?

Availability of
Comparables

- Challenges:
 - Small and Medium Enterprises are not acutely comparable to tested party *insufficient information*
 - Exemption to Exempt Private Company
- Solutions:
 - Foreign comparables?
 - Specific adjustments?

Comparability Analysis Issues and Challenges in Malaysia (cont.)



Quality of Comparables

- Issues:
 - Repetitive set of comparables
 - Information provided not up to date
 - Insufficient information in database

Comparability Adjustment

- Challenges:
 - Adjustment on comparables/ tested party?
 - Comparability adjustment method/ formula

CONCLUSION

Moving Forward

- Obtaining reliable and sufficient information
- Deriving model/ formula for comparability adjustment
- Defending the comparables
- Profit split method
- Publicly commodity prices

Oriana.
⇒ APA ?
reliable?



Thank You

IRBM Website : www.hasil.gov.my