

WG 1 - Transfer Pricing



Overview



Two objectives:

1. Share information on recent developments in SGATAR region and at OECD, especially as to new and emerging issues
2. Using the draft OECD handbook as a framework and experiences of SGATAR Members, strengthen capacity and share best practices on risk assessment

The Working Group proceeded in four distinct parts:

- Recent Developments
- Keynote speaker – Pascal Saint-Amans (OECD)
- Special Training Session – Risk Assessment
- Consideration of possible future Special Training Topics

Chairperson/Rapporteur: **Mr John Nash – New Zealand**

Recent Developments



- Wide-ranging updates from 17 jurisdictions covering new law/regulations, major areas of compliance focus, targeted projects under action, APA programmes, issues under current litigation, implementation issues arising from country-by-country (CbC) reporting and the exchange of transfer pricing rulings/APAs
- Transfer pricing law and practices are ever-changing, thus information-sharing of this nature is central to keeping up-to-date with developments in standards and strengthening co-operation across the SGATAR region

Main Patterns/Trends Emerging (1)



- Progressive modernisation of domestic transfer pricing rules/guidance to counter base erosion and profit shifting (BEPS)
- Other relevant laws (e.g. thin capitalisation rules) also being updated
- Primary focus on meeting OECD minimum standards, especially implementation of CbC reporting
- Clear benefits of active APA programmes in tackling difficult issues early
- Increasing tax administration resources to address transfer pricing risks and general up-skilling

Main Patterns/Trends Emerging (2)



- General move towards greater centralisation of transfer pricing resources
- Challenges of effectively and fairly taxing the digital economy
- Need for specialists and continued growth in capability, recognising greater complexity in the issues arising
- Practical challenges in identifying comparables remain, even in larger jurisdictions
- Ever-changing multinational business models due to impact of disruptive technologies

Keynote Speaker: Pascal Saint-Amans



- Reports completed on BEPS Action Plan covering intangibles, risks and capital, documentation and CbC reporting
- Work-in-progress: attribution of profits to permanent establishments, profit split method, and financial transactions
- Progressing the new BEPS Inclusive Framework
- Future outlook for transfer pricing generally

Training/Best Practice: Risk Assessment



- Effective risk identification and assessment are fundamental to the best possible use of scarce tax administration resources in addressing transfer pricing
- We used the draft OECD handbook to frame the training and elicit best practices
- This was supplemented by detailed tax administration reports setting out various practices across the SGATAR region

Best Practice in SGATAR Region



- No single correct way to assess risk – ultimately each jurisdiction needs to develop its own approach
- Considerable commonality apparent in general approaches
- Variations exist to take into account each jurisdiction's tax system and unique economic circumstances
- Increasing use of technology and related analytical tools (databases, computer-assisted risk assessment, etc.)

Recommendations



- That transfer pricing remain a study topic in future SGATAR annual meetings.
- That SGATAR continue to identify best practice.
- Consideration to be given to discussing possible future topics:
 - Running a successful APA programme
 - Simplifying transfer pricing for low risk transactions
 - Transfer pricing audits addressing risks in the natural resources sector
 - Application of the profit split method
 - Location specific advantages
 - Earlier resolution of transfer pricing issues using MAP
 - Treatment of intangibles.



Thank You

Working Group 1 Report

Report on Working Group 1: Transfer Pricing

Chairperson & Rapporteur: Mr John Nash

Introduction

Over two-thirds of world trade involves multinational enterprises (MNEs) and well over 50% of world trade comprises related party transactions. The wider regional community expects MNEs to contribute their fair share via the various tax systems in place in SGATAR jurisdictions.

There is large potential for revenue losses through non-arm's length transfer pricing between related parties. Undoubtedly, transfer pricing remains the most important international issue faced by both MNEs and tax administrations. Transfer pricing has been a major part of the OECD's recent base erosion and profit shifting (BEPS) Action Plan and continues to be an important focus in its on-going programme of work.

This working group had two objectives:

1. Information-sharing - exchange views, knowledge and experiences of SGATAR member jurisdictions on recent developments in law and practice, especially as to new and emerging issues; and
2. Advance training on a topic that is fundamental to the effective and efficient administration of transfer pricing rules, thereby strengthening regional capacity and identifying best practices.

The format of this working group was designed to build on the best aspects employed in running previous working level meetings (the 17th and final such meeting having been hosted successfully by Mongolia in June 2015, with a central focus on comparability analysis). In addition, one of the recommendations of Working Group 3 at the 45th SGATAR Meeting in Singapore was to build capability within tax authorities on internal transfer pricing risk analysis, focusing on the use of country-by-country (CbC) reporting. It was therefore considered that the wider topic of risk assessment generally would be a very useful next step.

Recent Developments

The agenda for the working group was a very full one, commencing with 17 updates on recent developments in transfer pricing law and practice in each SGATAR member jurisdiction. The presentations were wide-ranging and covered:

- New law/regulations
- Targeted projects under action
- Major areas of compliance focus
- Advanced Pricing Agreement (APA) programmes
- Issues under current litigation
- Implementing country-by-country (CbC) reporting
- Exchanging transfer pricing rulings/APAs.

SGATAR tax administrations are generally increasing their resources to address transfer pricing risks and are endeavouring to up-skill their people. There is a trend towards greater centralisation of transfer pricing resources. With greater complexity in the issues arising, it is also recognised that specialists are needed as well as the need to continue growing capability in the assessment of transfer pricing risk.

The main patterns and trends emerging are as follows:

- Member jurisdictions are progressively modernising domestic transfer pricing rules and related guidance to counter BEPS
- Other relevant laws are also being updated, such as thin capitalisation rules and general anti-avoidance rules
- The primary focus is on meeting OECD minimum standards, especially the implementation of CbC reporting and the issues identified with implementation
- Clear benefits are being derived from active APA programmes in tackling the difficult issues early
- Challenges of effectively and fairly taxing the digital economy
- Practical challenges in identifying comparables remain, even in larger member jurisdictions where more data is available
- MNE business models are more dynamic than ever, responding to the impact of disruptive technologies.

Transfer pricing law and practices are ever-changing. Information-sharing of this nature is central to keeping up-to-date with developments in standards, building better understanding of particular viewpoints on key issues, and strengthening co-operation across the SGATAR region.

Keynote Speaker – Pascal Saint-Amans

We were extremely fortunate to have the opportunity to hear from Mr Saint-Amans, head of the OECD's Centre for Tax Policy and Administration. He presented a thorough update on the recently completed work at OECD on BEPS, notably reports completed on intangibles, risks and capital, documentation and CbC reporting.

In addition, Mr Saint-Amans covered the current programme of work (attribution of profits to permanent establishments, the profit split method, and financial transactions) as well as the new BEPS Inclusive Framework. Finally, he shared his very thought-provoking vision for the future of transfer pricing law and practice.

Special Topic - Risk Assessment

Effective risk identification and assessment are fundamental to the best possible use of scarce tax administration resources in addressing transfer pricing. In framing this special session, extensive reference was made to the draft handbook prepared by the OECD. This was supplemented by detailed reports from tax administrations setting out various practices across the SGATAR region.

It is well accepted that there is no single correct way to assess risk. Ultimately, each jurisdiction needs to develop its own approach but it was apparent that there is considerable commonality in the general approaches being applied. Variations do exist across SGATAR member jurisdictions, and rightly so, taking into account each members' unique tax systems and economic circumstances.

There is a clear trend towards greater use of technology and related analytical tools to improve the effectiveness of risk assessment and achieve efficiencies in the allocation of resources. A number of SGATAR member jurisdictions are making significant advances in data collection and computer-assisted risk assessment.

Possible Future Topics

Finally, the working group discussed possible future special topics on the assumption that the subject of transfer pricing continues to be a feature at future SGATAR meetings. Topics considered of particular importance for member jurisdictions to discuss include:

- Running a successful APA programme
- Simplifying transfer pricing for low risk transactions
- Transfer pricing audits addressing risks in the natural resources sector
- Application of the profit split method
- Location specific advantages
- Earlier resolution of transfer pricing issues using the Mutual Agreement Procedure (MAP)
- Treatment of intangibles

Recommendations

Based on the working group discussions throughout this 46th SGATAR annual meeting, the following recommendations have been derived:

1. That transfer pricing remain a study topic in future SGATAR annual meetings.
2. That SGATAR continue to identify best practice.
3. That consideration be given to discussing three of the seven possible future topics identified above for inclusion at the next SGATAR annual meeting.