

Transfer Pricing

50th SGATAR Annual Meeting

CHEN-TE WU

Chinese Taipei

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Agenda

- Comparability Analysis
- Loss and Allocation of COVID-19 Specific Costs
- Advance Pricing Arrangements
- Others



Comparability Analysis

- ❑ Sources of Contemporaneous Information (reference to OECD COVID-19 TP Guidance)
 - Sales volumes analysis
 - Government interventions information
 - Macroeconomic information (e.g., GDP)
 - Comparison of internal budgeted data to actual results



Comparability Analysis

- ❑ In practice, a company incurring losses for 3 consecutive years is usually excluded
- ❑ Loss-making comparables could be included if:
 - Under accurate delineation of the transaction
 - During the COVID-19 impacted period
 - Assumed similar levels of risk of the tested party
 - Similarly impacted by COVID-19

Loss and the Allocation of COVID-19 Specific Costs

- ❑ Limited-risk entities could incur losses
- ❑ Conditions:
 - Temporarily due to the impact of the pandemic
 - In line with risks assumed
 - Comparable to the one assuming similar risks
- ❑ Risks assumed changed before and after COVID-19 would require elaboration of the commercial rationale

Loss and the Allocation of COVID-19 Specific Costs

- Allocation of COVID-19 specific costs
 - E.g., PPE, IT infrastructure of teleworking, etc.
 - Accurate delineation of the controlled transaction including risk assumption is key
 - Align with risk assumption and treatments by independent parties
 - Operational costs:
 - Permanent changes
 - Means of daily operation
 - Included in comparability analysis



Loss and the Allocation of COVID-19 Specific Costs

- Exceptional costs in comparability analysis
 - Exceptional costs included in a cost basis or not
 - Principle: excluded
 - Exception: included when the relevance is accurately delineated and aligns with typical third-party arrangements
 - Exceptional costs included:
 - Pass-through costs
 - Profit-attributed costs
 - Adjustments for accounting consistency only if expected to increase the reliability of the results



Advance Pricing Arrangements

- ❑ Treatment of Existing APAs in Light of the Changes in Economic Conditions
 - Principle: respected, maintained, and upheld
 - Exception: a condition leading to the cancellation or revision of the APA has occurred (e.g., breach of critical assumptions)
 - Case-by-case basis



Advance Pricing Arrangements

- ❑ The response of tax administrations to the failure to meet critical assumptions:
 - Revision
 - Cancellation
 - Revocation

Advance Pricing Arrangements

- ❑ The response of tax administrations to non-compliance with an existing APA
 - Tax administrations are entitled to conduct a transfer pricing investigation disregarding an existing APA



Others

- ❑ Relatively modest Impact of COVID-19
- ❑ Provide more flexibility: “One-Time Transfer Pricing Adjustment”
 - General rules
 - Applied from 2020
 - For entities unable to reflect transfer prices in time due to market fluctuations or other factors
 - Timing: before the year-end



Others

- ❑ Provide more flexibility: “One-Time Transfer Pricing Adjustment”
 - Requirements:
 - Transaction terms and all price-relevant factors concluded in a prior bilateral agreement
 - Adjusted accounts (A/R and A/P) recorded for financial accounting purposes
 - Counterparty in the controlled transactions makes corresponding adjustments at the same time
 - All taxes associated with the one-time adjustment are paid



Thank You

