June 2017
1.2017

WTS Transfer Pricing Newsletter

Editorial

Dear Reader,

It is our pleasure to present to you the WTS Transfer Pricing Newsletter for June 2017.

This issue focuses on international developments in the area of transfer pricing, especially those resulting from the BEPS project.

With the presentation of the final reports by the OECD in October 2015, the recommendation phase of the BEPS project has ended and the implementation phase is now well under way. Most countries worldwide are participating in the project and these countries are now considering which recommendations to implement and how to incorporate them into national legislation.

Also, various countries have already implemented the new transparency measures, especially with regard to transfer pricing documentation and Country-by-Country Reporting (CbCR).

In addition, there are various ongoing initiatives at the EU level and also at the UN level focusing on the issue of international transfer pricing.

Therefore, in order to keep you up-to date in this rapidly changing legal environment, our WTS Transfer Pricing Newsletter provides you with an update and overview on current developments in ten selected countries.

We hope you find it useful and welcome your feedback and suggestions.

If you have any questions regarding any aspects of this Newsletter, please do not hesitate to contact us.

Yours sincerely
WTS Global Transfer Pricing Team

Contents

Please find the complete list of all contacts at the end of the newsletter.

Austria

Transfer Pricing Documentation implementation provision (VPDG-DV) announced

In the global WTS Transfer Pricing Newsletter #2.2016, we told you about VPDG, which was announced as part of EU-AbgÄG on 1 August 2016. On 21 December 2016 Austria announced the implementation provision (VPDG-DV) which details the content of the Master File and the Local File and corresponds to a large extent with Annexes I and II of chapter V of the OECD guidelines. It is applicable from 1 January 2016, which is when the law comes into force.

Martin Hummer
martin.hummer@icon.at

The implementation provision can be downloaded via the following Link:
https://www.bmf.gv.at/steuern/BGBLA_2016_II_419.pdf?5te3ip

Brazil

Country-by-Country Reporting in Brazil

Brazilian companies must file the Country-by-Country (CbC) report for the first time, alongside their corporate income tax return (ECF)for the year to 31 July 2017.

The CbC guidelines set out in Action Plan 13 (Transfer Pricing Documentation and CbC) of the BEPS project, developed by OECD together with G-20, were introduced in Brazil by Normative Instruction of the Brazilian Federal Revenue Service 1681/16 (IN 1681). The master and local file obligations of Action 13 have yet to be implemented in Brazil, although local transfer pricing information required by ECF is already very detailed.

In accordance with IN 1681, ultimate parent entities of multinational groups (MNE groups) resident for tax purposes in Brazil and legal entities resident for tax purposes in Brazil, which are not the ultimate parent entities of MNE groups, but fall into one of the categories below are required to file the CbC report in Brazil:

(i) The ultimate parent entity of the MNE group is not required to submit the CbC in its jurisdiction of residence for tax purposes;

(ii) The ultimate parent entity's jurisdiction of residence for tax purposes does not have an agreement in force requiring the automatic exchange of the CbC (Competent Authority Agreement) by the deadline to submit the CbC in Brazil, even if there is an agreement with Brazil in place regulating the exchange of tax information; or

(iii) A failure to exchange information on the jurisdiction of residence of the ultimate parent entity has been notified by the Brazilian Federal Revenue Service to the Brazilian legal entity. This failure occurs when said jurisdiction has a Competent Authority Agreement with Brazil, but suspends the automatic exchange of information or fails persistently to automatically provide the CbC of MNE groups with entities in Brazil.

Brazilian legal entities belonging to MNE groups with total consolidated group revenues of less than BRL 2.26 billion (approximately EUR 665 million) (if the tax jurisdiction of the ultimate parent entity is Brazil) or EUR 750 million during the fiscal year preceding the filing of the CbC are not obliged to submit the CbC.

In accordance with IN 1681 and the ECF Guidelines, the legal entity obliged to submit the CbC shall provide the following information as a minimum:

(i) Identification of the MNE group, the ultimate parent entity, the entity responsible for the filing of the CbC (or indication of the exemption of filing it), period and currency of the CbC;

(ii) Information (aggregated by jurisdiction within which the MNE group operates) on total revenue, revenue accrued in transactions with related and non-related parties, profit or loss before corporate income tax, corporate income tax due and paid, corporate capital, accumulated profits, number of employees and tangible assets (other than cash and equivalents of cash); and

(iii) Identification of each member of the MNE group, including information about the main activities performed.

Erika Tukiama
etukiama@machadoassociados.com.br

Stephanie Makin
smakin@machadoassociados.com.br

A Brazilian legal entity submitting the CbC (i) after the deadline shall be subject to a fine of up to BRL 1,500 (approximately EUR 440) per month (which may be reduced by half if the CbC is filed before any procedure by the tax administration); or (ii) with omissions or with inaccurate or incomplete information shall be subject to a fine of 3% of the omitted, inaccurate or incomplete amount (without limit).

China

Challenging times come after Base Erosion and Profit Shifting actions

With the latest development in the international landscape on the implementation of the BEPS recommendations, China has been closely following and localizing the BEPS action plans by incorporating them in its tax legislative provisions. Within the space of one year, China's State Administration of Tax (SAT) has issued a series of transfer pricing (TP) and anti-avoidance regulations. With specific scope of application, each of the following regulations revises and further elaborates the general TP administration and special tax adjustment guideline set out in a circular issued in 2009 (Guo Shui Fa [2009] No.2 (Circular 2)).

- On 29 June 2016, SAT Announcement [2016] No. 42 (Circular 42) was issued, focusing on related-party transaction reporting and TP documentation;
- On 11 October 2016, SAT Announcement [2016] No. 64 (Circular 64) was issued for the administration of advanced pricing arrangements (APA);
- On 17 March 2017, SAT Announcement [2017] No.6 (Circular 6) was issued detailing the special tax investigation and adjustment, and mutual agreement procedure.

In general, through these regulations, it can be seen that the battle against cross-border tax avoidance has been intensified. Higher and more stringent requirements on TP compliance are made evident by the expanded scope of information disclosure. For example, the increased reporting of related-party transactions from 9 forms to 22 forms including country-by-country (CbC) report forms, and a three-tier structure of TP documentations comprising master file, local file and special file.

The focus of TP compliance administration has also evolved from the emphasis on investigation to proactive risk management. Aside from the requirement to submit TP documentation, enterprises are also encouraged to voluntarily evaluate the TP risks and make their own adjustments. Meanwhile, dynamic monitoring of multi-national corporations' (MNCs) profit levels has also become a focus. Companies that are identified as high-risk of compliance failure may attract TP investigation, and companies whose TP has been adjusted may also be subject to active follow-up management.

In addition, the inclusion of value chain analysis under a group-wide perspective for local enterprises, the consideration of location specific factors' influence of profit contribution, the DEMPEP (development, enhancement, maintenance, protection, exploitation and promotion) evaluation methodology on intangible assets, are also introduced.

The flurry of the TP regulations issued over a ten-month period demonstrates China's strong adherence to the BEPS action plans. While TP compliance requirements are now more specific and clear, they also pose greater challenges on MNCs' overseas and local entities. Companies are advised to comprehensively consider the international and local regulatory requirements to better plan the TP policy beforehand; the extent of information disclosure should also be carefully assessed for reasonable and accurate presentation to avoid disadvantageous treatments.

Martin Ng
martin.ng@wts.cn

Maggie Han
maggie.han@wts.cn

Czech Republic

Ministry of Finance's discussion paper on the implementation of the ATAD

The Council Directive (EU) 2016/1164 setting out rules against tax avoidance practices that directly affect the functioning of the internal market (Anti-Tax Avoidance Directive, ATAD) was adopted in July 2016. The Directive should be implemented by 31 December 2018, with the exception of the exit tax, where the deadline is one year later.

The Czech Ministry of Finance has recently published papers for public consultation on this matter. The reason for this is that certain provisions of the Directive offer several implementation options.

Deductibility of interest and similar costs

The interest limitation rule is the most important provision of the ATAD. At the same time, this provision involves the most options.

Interest and similar costs, whether from related or unrelated parties, will be tax deductible only up to the limit of 30% of EBITDA (earnings before interest, taxes, depreciation and amortization). According to the Directive, the above rule need not be applied to interest up to EUR 3 million. The Ministry suggests reducing this limit to EUR 1 million.

Furthermore, the Ministry suggests that interest expense unrecognized in one tax period can be carried forward to following periods.

On the other hand, the Ministry does not plan to adopt retrospective transfer of interest expense and unused EBITDA capacity proposed by the Directive, arguing that retrospective transfer of tax losses is not possible.

Furthermore, the Ministry plans that limitations on the deductibility of interest shall not apply to financial institutions and entities outside the group.

With regard to transitional provisions, the Ministry does not plan to introduce an exception for loan agreements concluded before 17 June 2016, as permitted under the Directive.

Additional measures

Apart from the limitation on the deductibility of interest, the ATAD focuses on four additional areas.

First, an exit tax should be introduced. The difference between the market and tax value of transferred assets shall serve as the tax base for this tax.

Another measure is the taxation of controlled foreign companies, "CFC rules". The taxpayer will be obliged to include in its tax base passive income or income from artificial transactions of a controlled foreign company if its tax burden is lower than half of the tax the company would pay if it were resident in the Member State of the taxpayer.

The ATAD also introduces hybrid mismatch arrangements. Individual tax systems contain different rules applying to legal qualification of entities or financial instruments. Various hybrid structures employ such mismatches between tax systems in order to obtain tax advantages. Examples include a different view of whether an entity is not fiscally transparent and is thus the taxpayer or whether it is fiscally transparent and the shareholders are the taxpayers.

Last but not least, the Directive contains a general anti-abuse rule. The Ministry of Finance does not anticipate that this general anti-abuse rule will be expressly incorporated into the Income Tax Act or any other legislation, since the Czech legal code already implicitly contains this rule, for example as part of the case-law on abuse of rights.

Roman Pechacek
roman.pechacek@alferypartner.com

The other rules, i.e. the exit tax, CFC rules and hybrid mismatch arrangements, should be implemented as proposed in the Directive.

Germany

German Ministry of Finance publishes circular regarding the use of the company name

In April 2017, the German Federal Ministry of Finance published a circular regarding the use of the company name and trademark licensing. This circular is in response to a decision of the German Federal Tax Court on 21 January 2016 and provides guidance on the application of the arm's length principle under §1 of the German Foreign Tax Act with regard to the license of a trademark which is identical to the group name. In particular, the German Federal Tax Court has decided that the mere use of a company name (not a product related trademark) does not qualify as a business transaction under §1(4) of the German Foreign Tax Act.

Basic principle

According to the new circular, a distinction has to be drawn between the use of a company symbol or company name and the use of a product specific trademark. Accordingly, the sole use of a company symbol or company name without the license of a (product related)

trademark does not, in principle, qualify as an intercompany transaction that needs to be remunerated under the arm's length principle. However, the use of a company symbol or company name should be remunerated where economic benefits (e.g. sales promotion) result from the use of this company symbol or name. In this case, the possibility of excluding a third party from the use of the respective company symbol or name constitutes a substantial criterion for receiving economic benefits. Irrespective of the requirement to charge royalties, the license of a trademark should be assessed as an extraordinary business transaction under §3 (2) of the German Regulations Regarding the Documentation of Profit Allocations in connection with §90 (3) of the German General Fiscal Law. Therefore, proper transfer pricing documentation should be prepared in any case.

Determination of the royalty rate

The new circular also provides guidance on determining the royalty rate. In particular, the use of the company symbol or company name should be remunerated if the benefitting entity could reasonably expect an economic advantage from the use of the company symbol or company name. Generally, if the company symbol or company name is solely used within the sales activities of the group and, in this context, only products of the multinational group are sold, no independent benefit is attributed to the use of the company symbol or company name. In this case, the purchasing price of the intercompany sales entity already includes remuneration for the use of the intangible and, therefore, no additional royalty needs to be paid. However, this would change if the group entity produced goods and provided services on the open market and, for this purpose, the use of the company symbol or company name is of great relevance.

Finally and with respect to the application of arm's length terms, the Finance Ministry states that the royalty rate should be determined on the basis of the so called hypothetical arm's length principle in accordance with §1 (3) sentences 5 ff. of the German Foreign Tax Act. This means, that the transfer price should be the price that is most likely to accord with the arm's length principle based on a true estimation considering the perspective of both parties. In this case, the amount of the claim for damages would not be in accordance with the arm's length principle. However, royalty rates may be unreasonable insofar as the applied royalty rates result in a lasting or permanent loss to the licensee.

Simon Deistler
simon.deistler@wts.de

Maik Heggmair
maik.heggmair@wts.de

The administrative guidelines issued by the Finance Ministry apply to all comparable cross-border cases, irrespective of whether the licensee or licensor are domestic or foreign companies.

India

Recent TP updates in India

The Finance Act 2017 has proposed two important amendments to the Indian transfer pricing (TP) regulations, summarized as follows:

Introduction of Thin Capitalization Rules

In line with the recommendations of OECD BEPS Action Plan 4, the government has introduced a new section in the Income-tax Act, 1961 (Act) for Limiting the interest deduction in respect of interest paid with regard to debts issued by a non-resident being an Associated Enterprises (AE). This measure has been introduced to counter cross-border shifting of profit through excessive interest payments, and thus aims to protect India's tax base. The key provisions are as follows:

- Deduction for payment of interest or of similar nature exceeding INR 10 million by an Indian company or a permanent establishment (PE) of a foreign company in India to its AEs for particular year, shall be restricted to the lower of (a) 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) and (b) interest paid or payable to AEs.
  - However, these provisions shall not apply to an Indian company or a PE of a foreign company engaged in the banking or insurance business.
- This provision is also applicable where an AE provides an implicit or explicit guarantee in favor of the taxpayer: even third-party debt shall be deemed to have been issued by an AE.
- Fixed Ratio Rule (FRR) has been adopted with higher band of 30% of EBITDA (out of the band of 10% to 30% FRR proposed in Action Plan 4).
- Taxpayer can carry forward disallowed interest expense up to 8 assessment years (AY) immediately succeeding the AY for which the disallowance was first made.

Introduction of Secondary adjustment

The second important amendment relates to 'secondary adjustments'. In order to align the TP provisions with OECD TP guidelines and international best practice, the government has inserted a new section in the Act to deal with secondary adjustments.

Under the new section, the taxpayer shall be required to carry out secondary adjustment where the primary adjustment to transfer price:

- has been made on its own initiative by the taxpayer in its income return; or
- made by the revenue has been accepted by the taxpayer; or
- is determined by an advance pricing agreement entered into by the taxpayer; or
- is made as per the Safe Harbour Rules framed under the Act; or
- arises as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered.

The new section also mentions that, as a result of the primary transfer pricing adjustment, the excess money which is available with AEs should be repatriated to India within the prescribed time limit, failing which it shall be deemed to be an advance made by the taxpayer to its AEs and interest on such advance shall be computed. However, currently the Act has not prescribed any time limit.

This section shall not be applicable where primary adjustment to the transfer price does not exceed INR 10 million in the previous year.

Sudhir Nayak
sudhir.nayak@
dhruvaadvisors.com

In the past, there have been instances where the revenue has resorted to the use of secondary adjustments, which have been negated by the appellate authorities due to absence of any specific provision in the law.

Luxembourg

Transfer pricing developments in Luxembourg

The Circular

On 27 December 2016, the Luxembourg Tax Authorities ("LTA") issued new guidelines by means of the issuance of Circular L.I.R. no. 56/1 – 56bis/1 ("the Circular") dealing with the Luxembourg tax treatment applicable to Luxembourg companies engaged in intra-group financing transactions.

According to the Circular, an intra-group financing company ("GFC") means any entity that carries out intra-group financing transactions, which comprises any activity consisting of the granting of interest-bearing loans or advances to related companies which are in turn financed by means of any financial instrument originated from within or outside the group.

The Circular stipulates that GFCs need to substantiate their remuneration on the basis of the OECD Guidelines whereby the company is required to substantiate the level of such remuneration by means of a transfer pricing analysis documented in a transfer pricing report. Such analysis should be based on the outcome of a functional analysis which takes into account the functions it performs, the risks it assumes and the assets it employs in respect of the carrying out of the intra-group financing transactions. The transfer pricing analysis should also contain an economic analysis of market data extracted from comparable transactions.

In this respect the Circular clarifies the following points (amongst others):

- On a case by case basis, the appropriate amount of equity at risk should be determined. The former '1%/EUR 2 million' equity requirement no longer applies.
- Contractual arrangements or provisions (e.g. limited recourse provision) purely aimed at minimizing such risks are to be ignored for the purpose of determining the arm's length remuneration.
- A GFC should have the decision-making capacity to enter into a commercial relationship that gives rises to financing risks and should have the capacity to take the decision to negotiate the related risks and should effectively exercise such decision-making functions.
- The GFC must have qualified personnel in order to be able to control the transactions.

The Circular provides for two safe harbour rules, one applicable to purely intermediary companies and one for companies having a similar profile to those of a regulated financial undertaking. These safe harbour rules, simply put, suggest a minimum remuneration. A taxpayer may however choose to not apply these safe harbours based on appropriate (transfer pricing) justification.

Advanced Pricing Agreements ("APAs")

APAs concluded under the former regime for GFCs no longer bind the LTA as from 1 January 2017 for tax years commencing after 2016.

Under the Circular it remains possible to obtain APAs, as long as the conditions and requirements as set in the Circular are met.

Take away

The main take away from all this is that GFCs have to review, reassess and, where needed, revise their current equity position, their equity at risk position, the level of their substance in Luxembourg in order to put these in line with the requirements imposed by the Circular, or to structure their intragroup financing transactions differently.

The tax and transfer pricing specialist of T/A economics can assist in reviewing existing intra-group financing arrangement(s) and the need for these to be revised in accordance with the Circular. We can also assist in the preparation of requests for advance pricing agreements to be submitted to the Luxembourg tax authorities.

Frank Schwarte
Andy Neuteleers
info@taeconomics.com

The Netherlands

Incorrect transfer pricing and Dutch penalties

When the arm's length principle was codified as per 1-1-2002, the State Secretary stated that, in principle, no penalties would be imposed when the transfer pricing turned out to be incorrect, unless it concerned a case of wilful intent. Now, more than 15 years later, the environment regarding taxation, transfer pricing and penalties has changed.

In line with the OECD BEPS Project, new standardised transfer pricing documentation obligations apply in the Netherlands as from 1 January 2016. This includes the obligations to file a 'country-by-country report', a 'master file', and a 'local file'. Not complying with the new legislation regarding the country-by-country reporting may trigger administrative penalties of up to EUR 20,500. In more severe cases, criminal penalties of up to EUR 82,000 (or even 820,000 in extreme cases) may be imposed and/or imprisonment of a maximum of 6 years. A recent request in the Dutch Parliament is currently aiming to increase these penalties.

Also filing a Dutch corporate income tax return reporting a taxable amount that is too low due to incorrect transfer pricing may lead to penalties. Penalties may be imposed if a position is taken in the tax return that is not defensible based on Dutch rules, given the status of the law and jurisprudence at the time of the filing of the return. Taking a non-defensible position in the tax return may be regarded as intentionally filing an incorrect tax return, which qualifies as a criminal offence. Imprisonment of up to 6 years is possible or penalties of up to EUR 82,000, or 100% of the tax due if that would be higher.

To avoid penalties, the positions taken in the tax return need to be defensible based on Dutch rules. This includes the transfer prices applied. Therefore, it is not only wise to have the legally required appropriate transfer pricing documentation in place, but also to substantiate in that documentation the arm's length character of the remuneration of the Dutch company in a plausible and defensible manner.

The question is when transfer prices can be regarded as defensible. Is that only when they are within the (interquartile) range of prices used between third parties, as found in a benchmark study? Or are there acceptable arguments that justify transfer prices outside that range? Can for instance a loss be reported when a cost plus remuneration is the appropriate remuneration method? The answer may not always be straightforward and practice teaches us that there are often arguments available that may substantiate a different position. Therefore, documentation is essential, as during a later audit such arguments may no longer be known or understood by the relevant personnel in the company.

Moreover, when a transfer pricing position taken in a corporate income tax return cannot be defended, a tax advisor may be regarded as a co-perpetrator of a criminal offence, if he drafts and files such corporate income tax return, while he understands or should understand that incorrect transfer pricing leads to a taxable amount that is too low. This could lead to criminal prosecution of that tax advisor, leading to penalties, community service or even imprisonment.

Penalties and uncertainties can be avoided by obtaining upfront certainty from the tax inspector. This could be formalized in a settlement with the tax inspector or in an advance pricing agreement with the Dutch tax authorities.

Jan Boekel
jan.boekel@wtsnl.com

Russian Federation

Specifics of Transfer Pricing control in Russia

The transfer pricing control for taxation purposes in Russian Federation should be carried out directly by the Federal Tax Service of Russia (FTS) in accordance with Section V.1 of Russian Tax Code (RTC) and generally should not be a subject of a tax audit conducted by subordinate local tax inspections. It is important to note that such separation of competences of tax bodies was also confirmed by the Presidium of the Supreme Court of Russian Federation in February 2017.

The specific procedures for controlling TP are set out, specifying the time periods, restrictions on the number of such audits, the possibility of concluding pricing agreements and the right to symmetrical adjustments. The burden of proof that the transaction price is not at the market level also placed on the FTS.

However, the Supreme court confirmed that local tax authorities may apply the methods provided for transfer pricing control during tax audits of certain taxpayer transactions, where these are non-controlled TP transactions.

It should be noted that the local tax authorities also have the ability to check the prices in transactions between related parties, where these are not subject to TP control, by using the concept of "unjustified tax benefit". The term "unjustified tax benefit" was defined by the Decree of the Supreme Arbitration Court in 2006 and is still not included in the Russian Tax Code. This concept is actively used by local tax authorities during audits and in tax litigation, as it circumvents the prohibition on transfer pricing control by local tax bodies.

Nevertheless, the Supreme Court pointed out that deviation from the market price is not a direct evidence of "unjustified tax benefit". However, multiple deviations of transaction prices from the market level may be considered as one of the signs of "unjustified tax benefit" in conjunction with other circumstances and terms of the transaction.

Currently, the number of tax cases employing the concept of "unjustified tax benefit" exceeds the number of cases related to transfer pricing issues. This is because the new transfer pricing legislation in Russia only came into force in 2012. The first big court decision on a tax case in the framework of the new TP law was delivered only in January 2017. In the near future, we expect a significant increase in the number of transfer pricing cases, in particular due to the doubling of penalties since 1 January 2017.

Conclusion

Companies should take into account the peculiarities of Russian tax legislation when planning the terms of transactions between related parties. In particular, it needs to be noted that the prices in transactions may be checked using legal bases other than those covered by Russian TP legislation.

Maria Vershinina
mvershinina@althausgroup.ru

Ukraine

Update of Ukrainian TP rules in 2017

The Ukrainian Parliament has adopted important amendments to Ukrainian TP rules (Article 39 of the Tax Code of Ukraine) effective from 1 January 2017.

New financial threshold for controlled transactions

From now on, transactions are deemed controlled for TP purposes if a taxpayer's income exceeds the threshold of UAH 150 million (approximately EUR 5.2 million), with the value of the transactions with a particular counterparty exceeding UAH 10 million (EUR 345,222). In previous years, these thresholds were UAH 50 million (EUR 1.7 million) and UAH 5 million (EUR 172,611) respectively.

Transactions with "fiscally transparent" entities trigger TP control

In addition to the controlled transactions with legal entities registered at "low-tax" jurisdictions (according to the list, adopted by the Cabinet of Ministers), from 2017 TP control will cover transactions with special legal forms of entities that do not pay corporate income tax at their tax residence. The Cabinet of Ministers of Ukraine shall adopt the list of such legal forms of entities. This change is aimed at combating schemes for avoiding TP control using fiscally transparent entities as intermediaries.

Deadline for TP Report

The new wording of the Tax Code has shifted the deadline for submission of TP Report from the 1st of May to the 1st of October of the year following the year when controlled transactions occurred.

TP Documentation

Alongside TP report, Ukrainian taxpayers, engaged in controlled transactions, are required to prepare TP documentation with comprehensive TP analysis.

The list of information to be provided in TP documentation has been supplemented with new requirements. Now, among other things, taxpayer shall also provide:

- information on persons to whom taxpayer submits local management reports;
- the description of the taxpayer's management structure;
- economic conditions of activity;
- information on business restructurings or the transfer of intangible assets.

The taxpayer shall also provide copies of agreements covering the controlled transactions.

New rules of self-adjustment

In case of TP self-adjustment, the taxpayer is now entitled to adjust the financial results of controlled transactions not to the median of the range of prices or profitability (as was required by a previous wording of the Tax Code), but to the limits of the range. This provides an additional incentive for taxpayers to correct their prices (profitability) themselves and not to wait for a TP audit. Thus, if the fiscal authority during TP audit establishes that the prices are not at arm's length, they will calculate a new amount of tax liabilities of the taxpayer using the median of the range.

Changes regarding the sources of information

The list of sources of information on "external" comparable transactions has been extended and clarified. From now on the taxpayer and fiscal authorities may use:

- any sources of information containing public information and providing information on comparable transactions and persons;
- other sources of information regarding comparable transactions and persons, provided that the information has been acquired by the taxpayer in conformity with legal requirements and that such information has been transmitted to fiscal authorities;
- information obtained by fiscal authorities under international agreements of Ukraine.

Ivan Shynkarenko
i.shynkarenko@wts.ua

About WTS

WTS International is a global network of selected consulting firms represented in about 100 countries worldwide. The WTS network includes experienced transfer pricing specialists and international tax professionals in various countries and provides our multinational clients with global resources and transfer pricing expertise. The WTS Global Transfer Pricing Team has extensive experience in structuring and documenting intercompany transactions on a global level. Our highest aim is to provide best possible transfer pricing solutions which are line with your company's global tax strategy and operational model so that you can focus on your core business objectives.

Publisher

WTS Alliance
P.O. Box 19201 | 3001 BE Rotterdam | Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com/de | info@wts.de

Contact/Editors

Austria

Martin Hummer
martin.hummer@icon.at
T +43 (0) 732 69412 9894

ICON Wirtschaftstreuhand GmbH
Stahlstraße 14
A-4020 Linz
Austria
www.icon.at

Brazil

Erika Tukiama
etukiama@machadoassociados.com.br
Stephanie Makin
smakin@machadoassociados.com.br
T +55 11 3819 4855

Machado Associados
Av. Brigadeiro Faria Lima, 1656, 11th floor
01451-918, São Paulo
Brazil
www.machadoassociados.com.br

China

Martin Ng
martin.ng@wts.cn
T +86 21 5047 8665-202
Maggie Han
maggie.han@wts.cn
T +86 21 5047 8665-206

WTS China Co., Ltd.
Unit 031,29F, Hang Seng Bank Tower
No.1000 Lujiazui Ring Road,
Pudong New Area
Shanghai, 200120
People's Republic of China
www.wts.cn

Czech Republic

Roman Pechacek
roman.pechacek@alferypartner.com
+420-221 111 777

WTS Alfery s.r.o.
110 00, Prague 1
Czech Republic
www.alferypartner.com

Contact/Editors

Germany
Simon Deistler
simon.deistler@wts.de
Maik Heggmair
maik.heggmair@wts.de
T +49 89 28646-212

WTS Steuerberatungsgesellschaft mbH
Thomas-Wimmer-Ring 1 – 3
80539 Munich
Germany
www.wts.com/de

India
Sudhir Nayak
sudhir.nayak@dhruvaadvisors.com
T + 91 22 6108 1000/1099

Dhruva Advisors LLP
1101, One Indiabulls Centre, 11th Floor,
Tower 2B, 841, Senapati Bapat Marg
Elphinstone Road (West)
Mumbai – 400 013
India
www.dhruvaadvisors.com

Luxembourg
Frank Schwarte
Andy Neuteleers
info@taeconomics.com
T +352 27 47 51 11

T/A Economics
2 rue Albert Borschette
LU-1246 Luxembourg
Luxembourg
www.TAeconomics.com

The Netherlands
Jan Boekel
jan.boekel@wtsnl.com
T +31 10 217 9172

WTS World Tax Service BV
Conradstraat 18
E6.178
P.O. Box 19201
3001 BE ROTTERDAM
The Netherlands
www.wtsnl.com

Russian Federation
Maria Vershinina
mvershinina@althausgroup.ru
T +79193068571

ALTHAUS GROUP
7/2, Samotechnaya str.
127473 Moscow
Russian Federation
http://althausgroup.ru

Ukraine
Ivan Shynkarenko
i.shynkarenko@wts.ua
T +38 067 659 4372

WTS Tax Legal Consulting
admin@kmp.ua
5, Pankivska St.
01033, Kyiv
Ukraine
http://wts.ua/en