

Regional Transfer Pricing Risk Management

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Agenda



01

Regional Transfer Pricing (TP) developments

02

Regional FSTP heatmaps

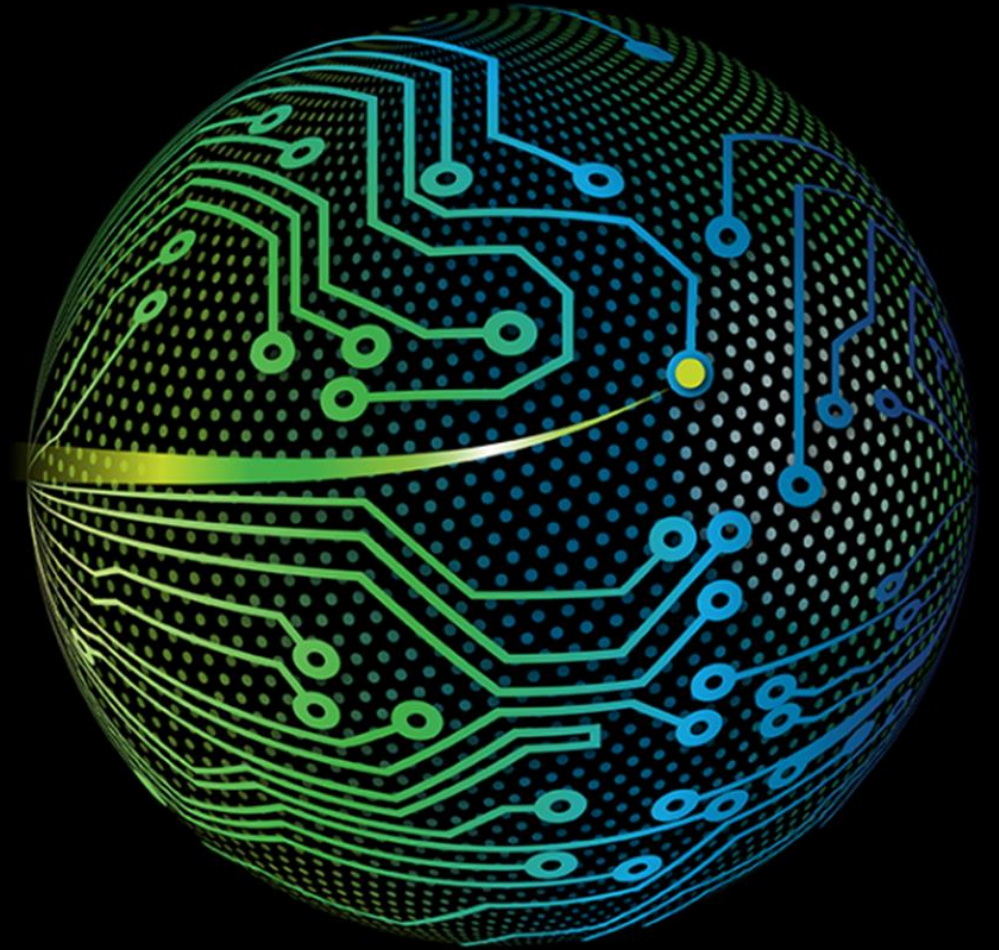
03

Regional TP risk management

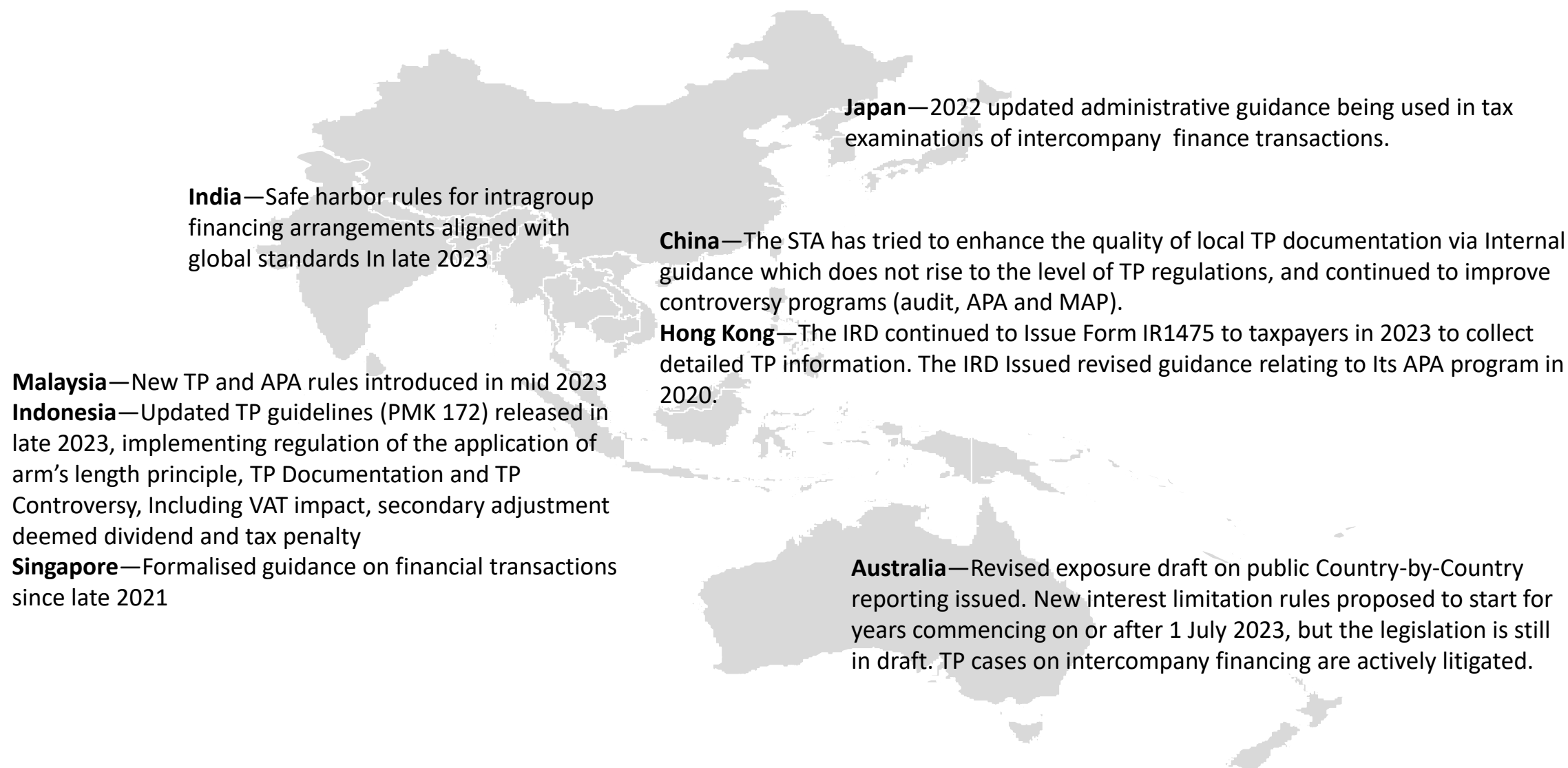
04

Appendix: Country TP updates

Regional TP Developments



TP regulatory developments across the APAC region



Common TP topics across APAC countries

01

Revenue side TP vs. cost side TP

Sophistication of auditors driving more revenue side TP queries
Tipping points with respect to development of technology

02

Two sided approaches to TP

The use of PS method as a primary or corroborative method
Examiners scrutiny of entity's operating profit level return

03

Price setting vs. price testing

Ability to defend ex-ante pricing in line with well executed intercompany agreement
Resetting or mark ups and margins given recent 3-year average trends

04

Tax administrations use of CBCR

Public CBCR in the region (Australia)
Risk assessing taxpayers
Explicitly seen/questioned in tax examinations

05

Cross-border developments in focus

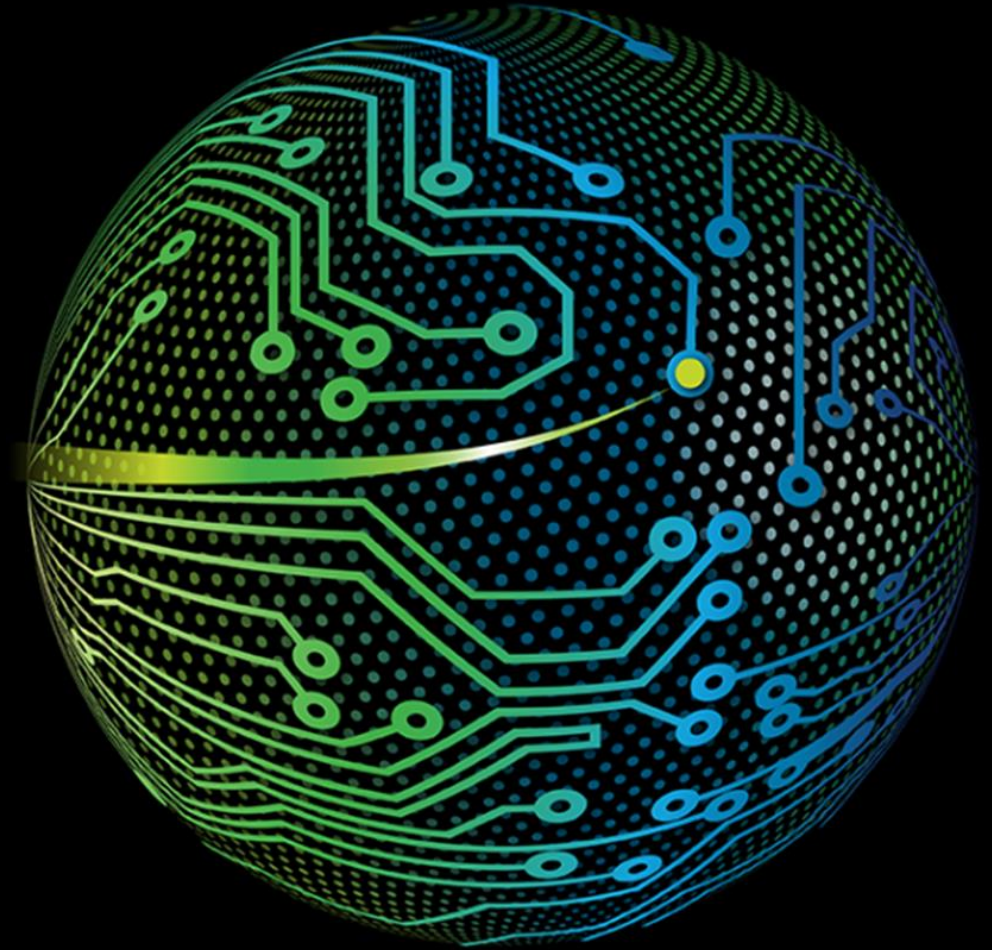
Remote workers
IT development beyond routine IT
Intercompany finance

06

Common client TP agenda items

The roles and responsibility of in-house TP function
TP operations and data
Document & defend strategies
Proactive use of APAs

Regional FSTP Heatmaps



FSTP controversy heatmap—Indicative views on common FS Intercompany transactions

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FSTP controversy heatmap—Indicative views on domestic dispute resolution/MAP dispute resolution

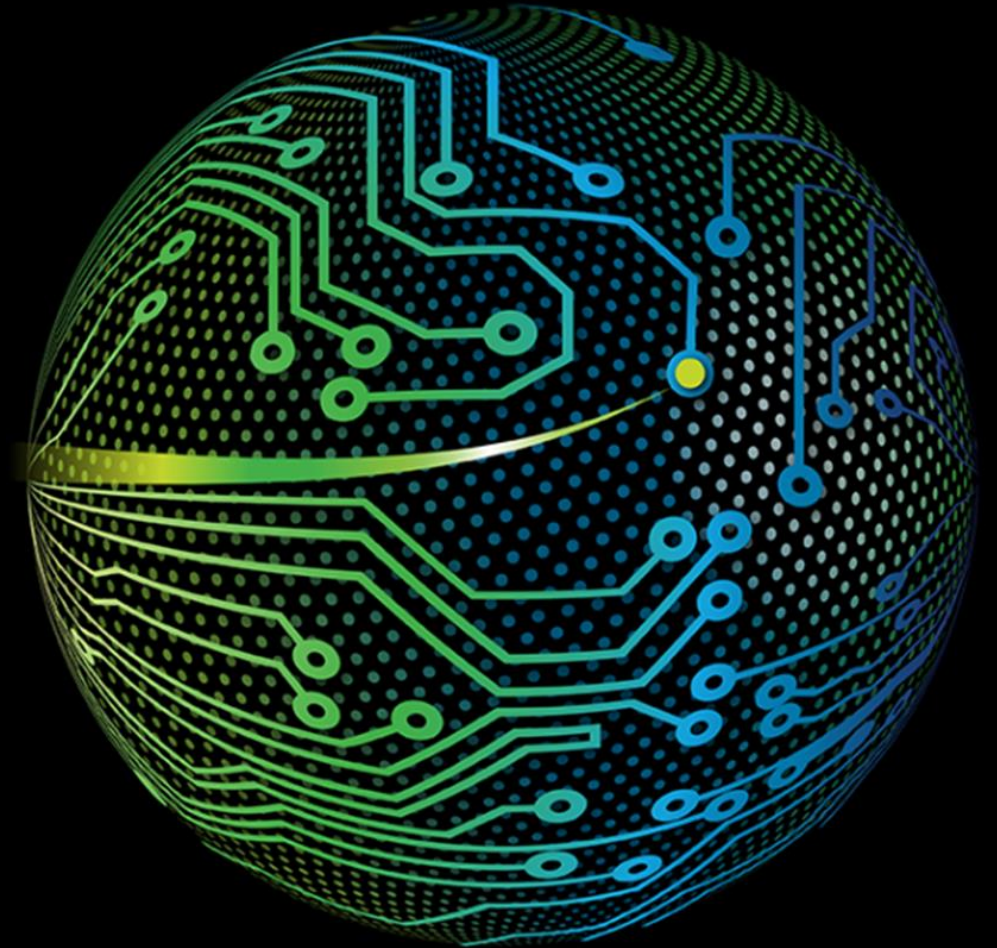
Use of domestic dispute resolution	Hong Kong	China	Taiwan	Japan	S. Korea	Singapore	Malaysia	Indonesia	Thailand	Vietnam	India	Australia
Across all types of FS I/C transactions												
Use of MAP	Hong Kong	China	Taiwan	Japan	S. Korea	Singapore	Malaysia	Indonesia	Thailand	Vietnam	India	Australia
IT/software development services												
HQ/shared support services												
IM advisory services												
Deal or AUM origination												
Trade execution/risk management												
Offshore booking												
Loans, guarantees, cash pooling												
Reinsurance/retrocession												

Not observed/ NA

Uncommon

Common

Regional TP Risk Management

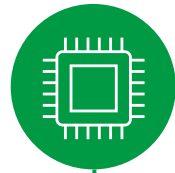


Risk management grounded in good operational TP



Data

- Identification of correct and reliable data sources
- Efficient extraction of data
- Maintaining data Integrity and consistency
- Data Security
- Compatibility with existing IT Infrastructure



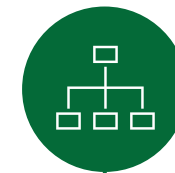
Process

- Consistent calculation methodologies
- Minimal redundant processes
- Clear and timely monitoring and adjustment processes.
- Strong audit trail
- Structured collaboration across different teams



People

- Clear responsibilities across functions including ownership of data
- Proper training of potential end users
- Continuing post-Implementation support
- Buy-in, support, and alignment from stakeholders



Technology

- Clear assessment of technology to meet goals and objectives
- Extent of initial implementation
- Future expansion including Implementation in different business segments or entities
- Adaptability and flexibility of the solution

Risk management grounded in good operational TP

Source data extraction

Information on related-party transactions from varying source data systems are **mapped and centralised** in one platform which ensures efficient data management and enhances data integrity.

TP Policy planning, streamlining, and monitoring

Application of **consistent procedures** to ensure correct execution of transfer pricing policies from data input and processing to data analysis and reporting. Planning and monitoring in collaboration with multiple parties—finance, operations, IT, and management **results to reduced risk, improved controls, and process improvement.**

Audit readiness

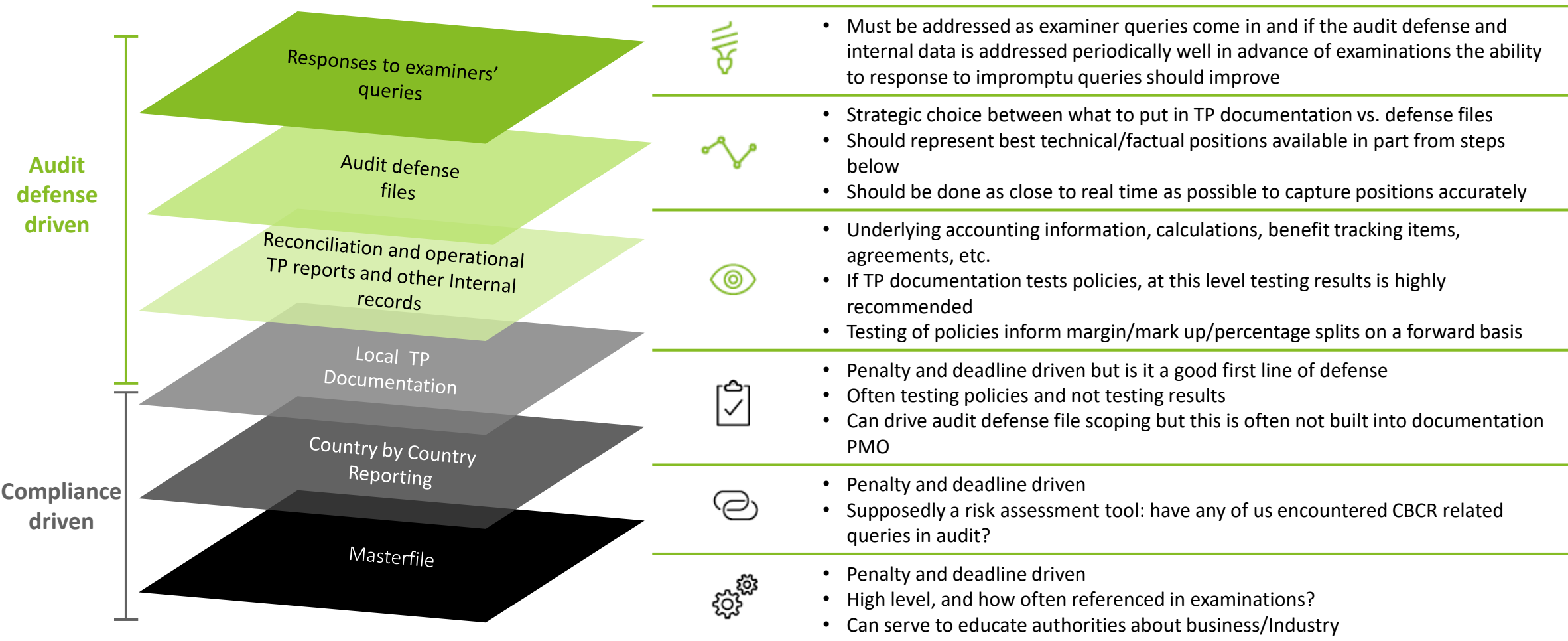
Customised outputs for multiple use – internal reporting, compliance, and audit defense. Corporations will be able **to achieve transparency and maintain a clear audit trail** ensuring accountability of users and mitigation of tax/TP audit issues.

TP and Tax Governance

Establishment of a framework that will guide the classification of cost items and internal protocols on periodic adjustments for TP deviations from the Group's policies. This would result to **business efficiencies and standardized TP applications to ensure reconcilable application** of Group's policies.



Documentation process that go beyond meeting deadlines and penalty protection



Proactive APA strategies—Indicative APA intelligence common FS Intercompany transactions

	Hong Kong	China	Taiwan	Japan	S. Korea	Singapore	Malaysia	Indonesia	Thailand	Vietnam	India	Australia
IT/software development services												
HQ/shared support services												
IM advisory services												
Deal or AUM origination												
Trade execution/risk management												
Offshore booking												
Loans, guarantees, cash pooling												
Reinsurance/retrocession												

Not observed/ NA Unilateral APA observed in the country Bilateral APA observed in the country Both unilateral and bilateral observed In the country

Proactive Bilateral APA strategies



Should taxpayers proceed with caution with respect to Unilateral APAs in a country-by-country reporting and Pillar 2 work? Why or why not?

Cost-Benefit Analysis—Value of avoidance of audit of the Subject Transaction, Maximum coverage period, APA vs. documentation & controversy cost, opportunity cost with respect to Internal FTE

Other—Ability to address other issues through the BAPA, precedential value for Group, need for and/or ease of APA renewals

Subject Transaction—Size, complexity, counterparties' overall profiles, stability, attention

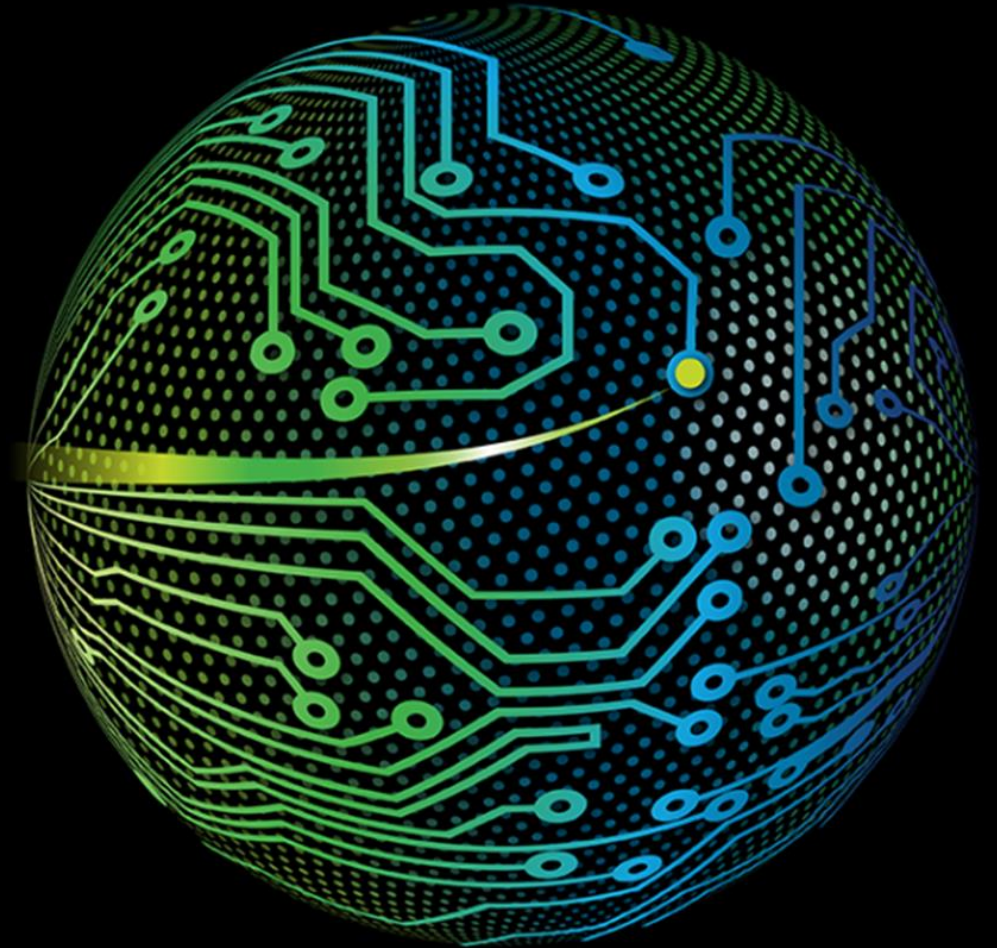
Tax Authorities—Willingness to negotiate, resources, expertise, relationships with counterparty's competent authorities



In your experience what plays the biggest role in client's decisions to pursue BAPAs proactively?

How satisfied are they with the outcomes of proactive BAPAs?

Appendix: Country TP updates



Form IR1475—TP Documentation—Master File and Local File



You are required to extract the relevant information from the master file and local file, where applicable, and complete this form electronically ([Note 1](#)). After completion, print the filled form for signature and submit all pages of the filled form.



File No.: /

Year of Assessment:

SECTION 1 MASTER FILE AND LOCAL FILE	
1.1	Name of the Hong Kong Entity: <div></div>
1.2	Accounting period (Note 2) of the Hong Kong Entity : From <div></div> To <div></div> (day/month/year) (day/month/year)
1.3	Name of the group's ultimate parent entity (Notes 3 and 4) <div></div>
1.4	Jurisdiction of tax residence of the group's ultimate parent entity <div>-- PLEASE SELECT --</div>
1.5	Thresholds for preparation or retention of Master File and Local File (Notes 5 and 6)
1.5.1	Total amount of revenue for the accounting period (Note 7) HK\$ <div></div>
1.5.2	Total value of assets at the end of the accounting period (Note 8) HK\$ <div></div>
1.5.3	Average number of employees during the accounting period (Note 9) <div></div>
1.6	Specified controlled transactions (Note 10) [excluding specified domestic transactions (Note 11)] with its associated entities (Note 12) for the accounting period
1.6.1	Transfers of properties (Note 13) HK\$ <div></div>
1.6.2	Transactions in respect of financial assets HK\$ <div></div>
1.6.3	Transfers of intangibles HK\$ <div></div>
1.6.4	Other transactions HK\$ <div></div>

- IRD started conducting another round of compliance reviews on taxpayers' transfer pricing documentation in late 2023.
- Taxpayers who receive notice of a compliance review are required to complete the Form IR1475 and submit within one month from the date of request.
- The Form IR1475 requires:
 - Details of controlled transactions which are considered to be capital expenditures/receipts in nature;
 - Whether certain controlled transactions are subject to offshore claim on income/profits under Hong Kong Profits tax;
 - Details of controlled transactions which were not subject to tax, or were subject to tax at a statutory tax rate lower than that of Hong Kong
- Taxpayers should ensure that the master file and local file are prepared timely as we are seeing the IRD request copied of both documents from taxpayers who have submitted the IR1475 Form;
- Any related party transactions with associated entities resident in tax jurisdictions with headline tax rates lower than that of Hong Kong, or claiming offshore status for Hong Kong profits tax purpose, are in the spotlight.

Hong Kong TP Developments

Simplified Advance Pricing Arrangement (APA) Regime



Types of APA

- DIPN 48 Revised provides that unilateral, bilateral and multilateral APAs are available to Hong Kong taxpayers.
- **Unilateral:** entered into between a taxpayer and its domestic tax authority
- **Bilateral:** taxpayer requests that its domestic tax authority enters into an agreement with a foreign tax authority under the MAP article of the relevant DTA. The taxpayer agrees to be bound by the terms.
- **Multilateral:** taxpayer requests that its domestic tax authority enters into an agreement with 2 or more foreign tax authorities under the MAP article of the relevant DTAs. The taxpayer agrees to be bound by the terms.

Transaction Thresholds

- The related party transactions of a taxpayer must meet the relevant threshold stated for the category of transaction, for each year being covered by the APA, in order to be eligible for an APA.
- The thresholds for an APA application are as follows:
 - **HK\$80** million per annum for sale or purchase of goods;
 - **HK\$40** million per annum for provision of services;
 - **HK\$20** million per annum for use of Intangible properties;
 - business profits of **HK\$20** million per annum if the APA application relates to the attribution of profit to a permanent establishment in Hong Kong; or
 - **HK\$20** million per annum for any other transactions not falling within the above

Three Stage Application Procedure

- One of the most significant changes presented in DIPN 48 Revised, is the streamlining of the APA application process. The process has been changed from a more arduous five-stage process to an efficient three-stage process, making the APA program more accessible and attractive for taxpayers.
- It should also be noted that taxpayers are required to prepare and submit an Annual Compliance Report for each year covered by the APA. Additionally, if they fall within the scope of Transfer Pricing documentation under Part 9A of the Inland Revenue Master File and Local File on the transactions covered under the APA. Hence taxpayers should be mindful of the increased annual documentation compliance requirements.

Hong Kong TP Developments

Simplified APA Regime



Rollback

DIPN 48 Revised provides that requests for rollback under bilateral/multilateral APAs will be considered by the Hong Kong Inland Revenue Department (“IRD”).

Subject to the facts and circumstances of a particular case, the Commissioner when considering rollback:

- Will not seek rollback where the transfer pricing issues for prior years are rated as low risk;
- Will be more likely to seek rollback for a lesser number of years in the case of a voluntary APA request than it would be for a case resulting from the Commissioner’s audit; and
- Is likely to seek rollback for issues rated as high risk.

As a rule of practice, the Commissioner will not consider requests for rollback in the case of unilateral APAs.

Collateral Issues

During the initial stage of the APA process, the IRD may identify collateral issues pertaining to an APA application (e.g. potential permanent establishment, anti-avoidance concerns, tax losses carried forward, other tax administrative or legal issues, etc.) that have to be resolved with the taxpayer, in order to be in a position to conclude an APA. DIPN 48 Revised provides that in the case of transfer pricing collateral issues, where the principles developed in concluding an APA provide a reasonable basis, one approach for dealing with transfer pricing collateral issues may be to apply the methodology used in the APA to the prior years. However, this is subject to the discretion of the IRD.

In the case of collateral issues that are not directly related to transfer pricing matters covered by the APA, it may be necessary to submit an advance ruling request to the IRD before the IRD will proceed with the APA application.

Audits

DIPN 48 Revised provides that the IRD will not undertake an audit in relation to the related party transactions which are the subject of an APA, unless it has reason to believe that the person has omitted to provide information or provided incorrect information. In addition, DIPN 48 Revised provides that an audit may be deferred or discontinued where all parties agree that the APA will assist in resolving these issues.

China TP Developments



General trends & outlook

China State Taxation Administration (“STA”) has completed the restructuring of anti-avoidance resources:

- 3-division structure at central level
- Expert panel organised by central STA for reviewing ‘significant’ special tax (TP) adjustment cases initiated by local levels
- Delegation of unilateral APA management to local level authorities

China STA continued to improve quality requirements on TP compliance, as well as risk-based approach for audit targeting enabled by enhanced tax data collection.

APAs and MAPs are utilised more widely, as a result of improved program management, resource structure as well as STA’s commitment to the OECD’s BEPS Inclusive framework.

TP compliance

China STA has issued TA-internal guidance to improve quality and granularity of disclosure in China TP local file and Chinese Masterfile, effective from FY2023 as estimated.

Many local TAs continued to ‘score’ China TP local file with reference to regulations and local practice (including the above STA’s guidance), which may be used in rating taxpayer’s TP risk.

Electronic copy of TP documentation is required more widely, enabling targeted review, risk alert and data-based analysis (Golden Taxation system), supported by technologies (e.g. OCR and big data / one-household functions).

TP controversy

China STA focuses on long-term profit level monitoring and reviews formal TP audit in a more systematic manner, despite the cease of publishing official TP audit statistics.

Formal and informal (e.g. self-adjustment) audit approach are evaluated and adopted on a case-by-case basis.

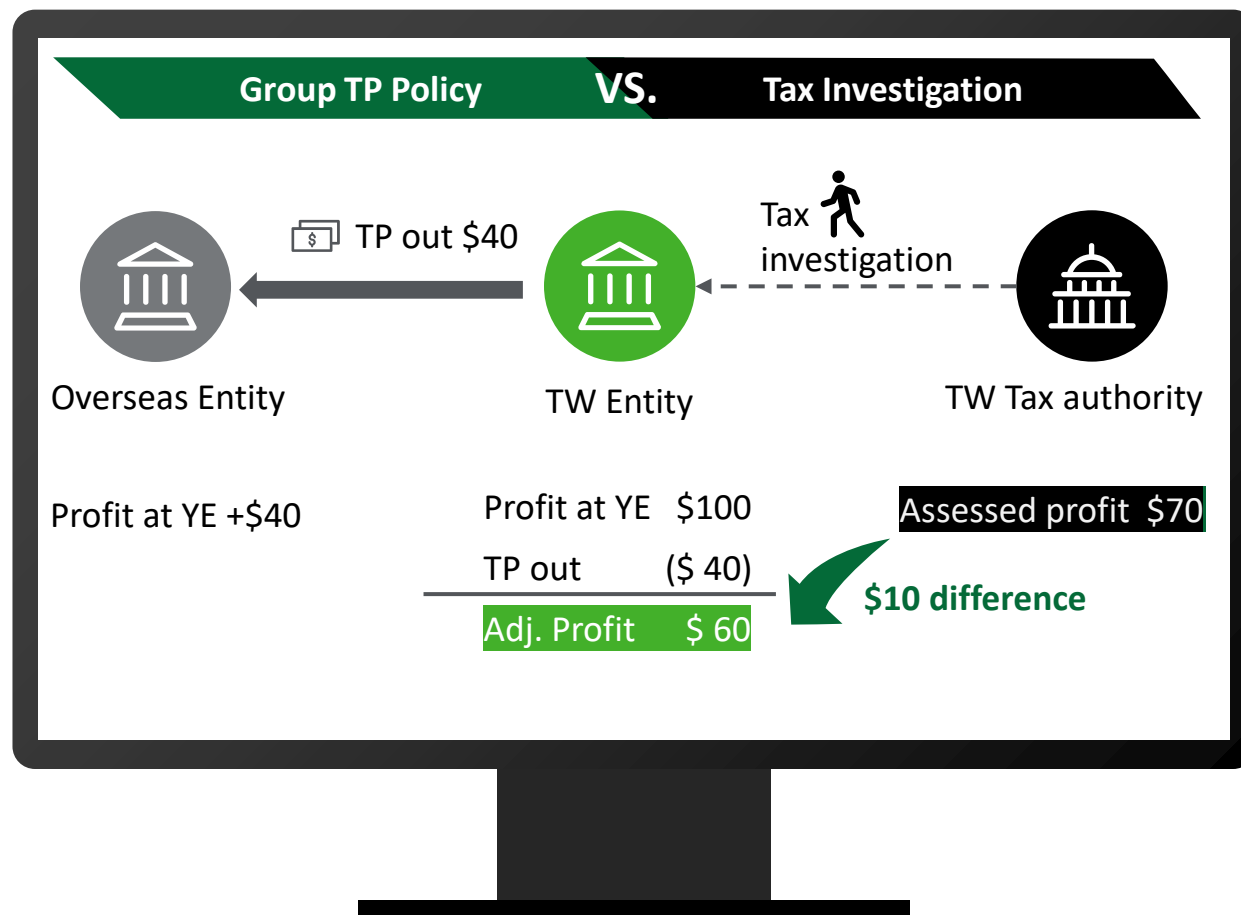
Unilateral and bilateral APA program are equally valued and improved, for instance by the simplified UAPA procedures rolled out nationally. MAP cases are often prioritised for the timeline requirements.

Certain specific areas such as Intangibles and intragroup services continued to be of STA’s interest, nonetheless wider coverage (e.g. financial transactions, equity transfer, business restructuring) is also on STA’s radar.

New controversy programs, such as advance tax ruling, specialised tax court, collaboration between TP and customs valuation, are piloting in limited local jurisdictions (e.g. Shanghai, Shenzhen).

Taiwan TP Developments

Profit split downward adjustments



Tax issues

- The downward adjustment itself from transfer pricing perspective will not trigger income tax issue. However, if the tax authority has different opinion on the adjusted amount, then the difference between the actual downward adjustment amount and the Taiwan tax authority's final assessment would be deemed as the Taiwan sourced income and subject to a 20% withholding tax (WHT). Please refer to the example for illustration purpose.
- Though the MOF issued a ruling on one-time adjustment for both Income tax and VAT or business tax (BT) purpose, it does not provide clear guideline on downward adjustment and whether it will be subject to reverse charge scheme. In addition, the accounting treatment may also impact the BT implication.

Risk mitigation approach

- Considering the tax uncertainty, applying a private ruling to the tax authority before proceeding any adjustment would be suggested.



Amended guidance for financial transactions TP

- The 2022 changes to the Japanese TP Operational Guidelines reflect the areas of financing (i.e., loans, guarantees, and cash pooling) which the National Tax Agency (NTA) currently deems most relevant to MNCs operating in Japan. The intention is to align with the OECD guidance. The TP Operational Guidelines provide the most detailed understanding of the NTA's and the regional tax bureau's (RTB's) perspectives on TP and what taxpayers can expect under examinations, these include:
 - Increase focus on financial transaction transfer pricing in examinations;
 - Disputes with respect to intercompany credit risk/rating;
 - The focus on CUP method in loan pricing may lead to drawn out discussions;
 - Challenges to rolling over of short-term loans/cash management balance; and
 - Convergence of change in rules, change from LIBOR, and increasing base interest rates leading to challenges for treasury and tax departments operationally.

ESG and increasing focus on tax governance by NTA/TRB

- The NTA has developed a Tax Corporate Governance program for large MNEs (about 500 corporations nationwide). The purpose of the program is to benefit companies and the NTA by enhancing corporate governance in tax matters.
- For the companies, enhanced tax corporate governance would reduce the risk of inappropriate accounting at the front line of organizations such as business departments, branches, and factories that would result in tax risk mitigation. In addition, tax authorities would be able to reduce the burden of handling tax audits as the companies with good tax corporate governance have a relatively low need for investigation.
- During the tax audit, the tax authority will ask the taxpayer to fill in the Confirmation of Tax Corporate Governance sheet, which includes questions regarding the company's tax corporate governance.

South Korea TP Developments



General outlook

- The number of tax investigations in 2023 was reduced to the lowest ever, but the amount of tax levied increased. The target number of investigations in 2024 is expected to be similar to that of 2023, but the intensity of tax investigations is expected to increase as the National Tax Service (“NTS”) creates three additional investigation teams within the organisation.
- As tax authorities conduct more in-depth scrutiny than before on various transactions performed by financial companies, Korean financial companies are preparing to establish transfer pricing policy.

Audit trends

- Most MNCs will have their Korean subsidiary/branch audited once every 4-5 years (especially if located in Seoul). The audits of financial service companies are similar to normal audits although the Korean NTS tends to target companies in the same industry at around the same time so that they can leverage the issues that arise from one company to another.
- Recently, the NTS has been intensively reviewing offshore tax evasion and plans to increase the number of auditors to a temporary quota that will last until February 26, 2027, in order to collect and analyze information related to offshore tax evasion at local tax offices.



Audit trends (con't)

- FSS disposed its intercompany transaction guideline for local taxpayer having overseas financial service parent company (or HQ) in 2018, however, FSS still conducts in-depth investigations if the local taxpayer conducts service transactions with its overseas affiliates:
 - Types of service fees paid to overseas HQ: trademark royalty, advisory service fees, consignment/gains and IT service fees
 - FSS' guideline was to minimize the base erosion and profit shifting by thoroughly examining expenses paid to taxpayer's overseas affiliates
 - Controversial debate over 'service transactions' as a means of profit shifting: payment of service fees to overseas affiliates is only subject to 10% VAT whereas payment of dividends is subject to 24.2% corporate tax as well as 15.4% dividend tax
 - Excessive service fees payment negatively affects local performance indicators, resulting in a large number of branch closures and downsizing/restructuring in Korea
- Current tax audit cases of financial service companies indicate that the tax authority is still focused on loans, guarantees, and service transactions (e.g., HQ/shared support services) with increased attention to:
 - Cash pooling : adaptation of 2022 OECD TP Guidelines in local TP regulation during Feb 2022 stipulates arm's length method for cash pooling
 - IT/software development services : tax authority questions whether financial service companies receive fees from foreign related subsidiaries
- Revenue TP vs Cost TP (TNMM vs CPM)
 - For non-routine functions such as deal origination, management, and distribution, a profit split method is applied depending on the contribution of the transaction parties, and a CUP is also applied.
 - TNMM is mainly applied to transactions such as investment advisory services, support services, and routine sales (low touch).

Singapore TP Developments

TP audit trends



Increased number of TP cases for scrutiny

- Inland Revenue Authority of Singapore (“IRAS”) has a data analytics platform to process taxpayer returns and select cases for scrutiny.
- From 2018 to 2023, there has been a **>400% increase in the number of cases** picked up by IRAS for TP audit scrutiny.
- Typical targets include loss-makers, sudden high-profit makers, companies with variable margins, commodity trading entities (subject to tax Incentives), etc.
- In January 2023 alone, we received around 20+ tax audit query letters from IRAS spanning multiple years of assessment.

No extension to provide TP documentation (“TPD”)

- As a policy, **IRAS is not providing any extension on TPD** to be submitted by taxpayers.
- When an extension of timeline is requested after the initial query letter has been raised by IRAS asking taxpayer to submit the TPD along with other details/information, IRAS is only willing to grant extension for provision of all other Information/details **except for the TPD report**.
- Previously, extensions of 30-45 days were common. But now, a direct penalty of SGD 10,000 is being levied if TPD is not submitted within the timeframe.

Contents of TPD

- IRAS has been extremely **‘rigid’ about the contents of TPD**.
- In one case, maintaining ‘benchmarking studies’ alone was ‘rejected’ and deemed as ‘Improper TP compliance’ and a penalty of SGD 10,000 was levied.

Singapore TP Developments

TP audit trends



Penalties on per offence basis (i.e., cumulative basis)

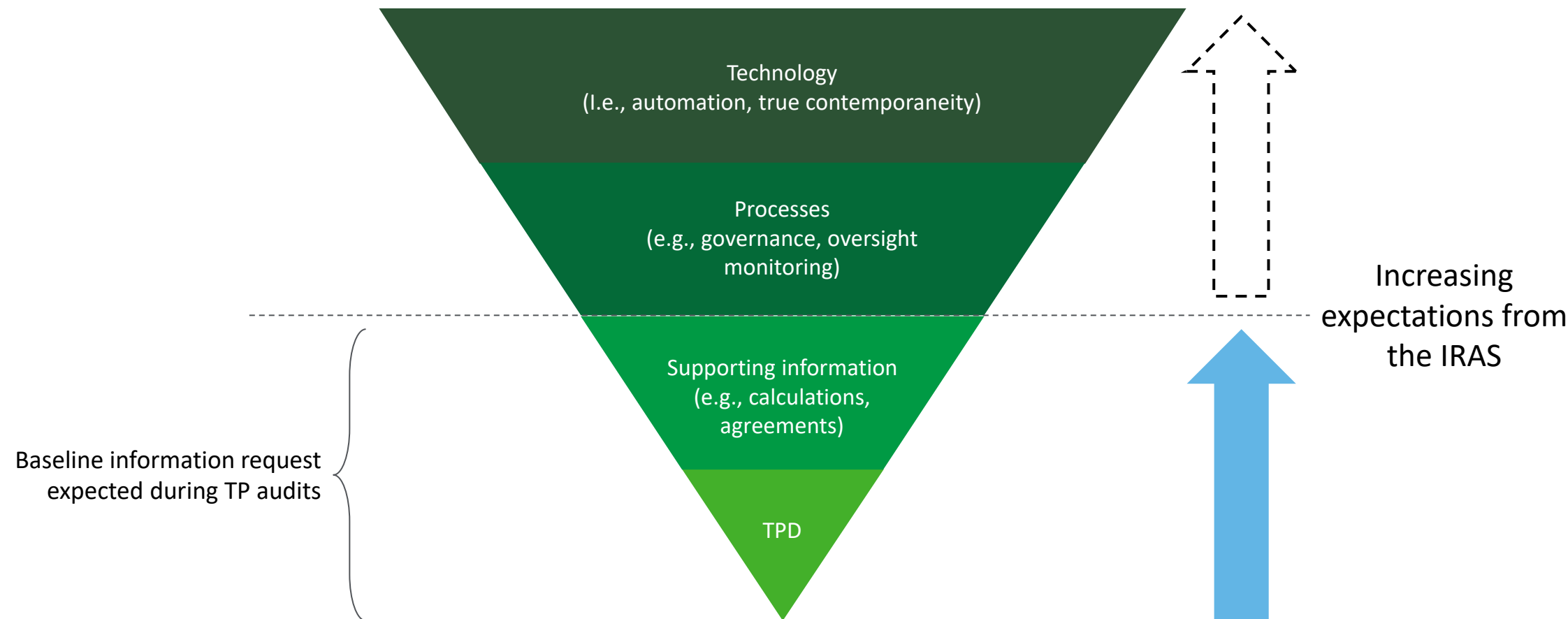
- We have observed multiple cases where **penalties are levied on per-offence basis**, i.e., SGD 10,000 per offence.
- For instance, where only benchmarking analysis was maintained by a taxpayer, penalties of SGD 30,000 per year were imposed by IRAS for non-maintenance of complete TPD, non-maintenance by due date, and submission of Incorrect particulars to IRAS.
- In addition, a **5% surcharge** is also levied on any **TP adjustments** made by IRAS, In addition to the corporate tax effect of 17% on such Items.

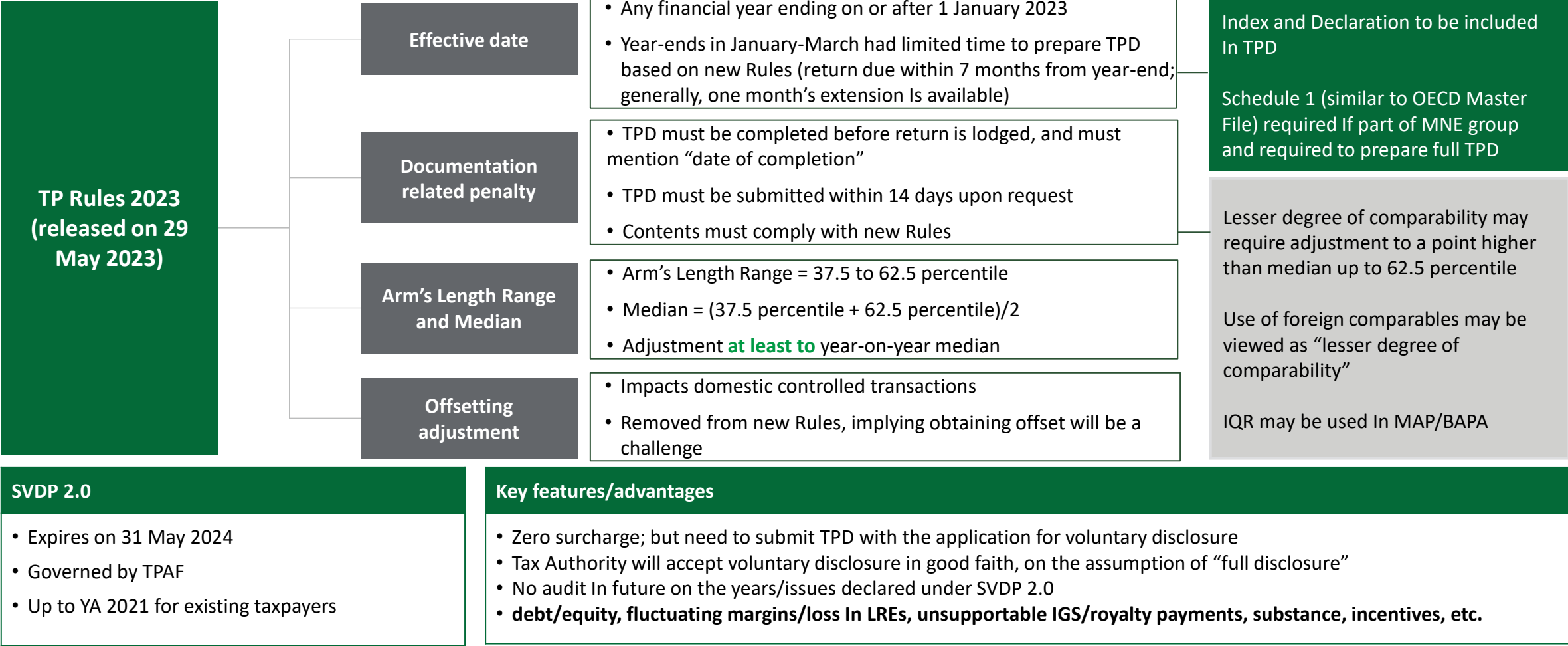
Field audits and global precedents

- While IRAS still prefers the traditional audit approach (i.e., communication over emails), in some cases (e.g., where the Singapore entity is recharacterized or is part of a global profit split), we have seen **IRAS undertake a field visit to the client's premises to understand their business model** and on-ground substance.
- IRAS is however open to considering any global precedents or APAs in other locations to support the taxpayer's position in Singapore (persuasive value).

Typical areas / transactions under IRAS scrutiny

- Extraction of residual profits by foreign entity, absence of year-end TP adjustments and special factor analysis to justify lower than arm's length returns, intercompany service transactions (and their recharacterization), R&D activities, Intra-group loans and financial guarantees, royalties, volatile profits (especially by RHQs and commodity traders), loss making entities, limited risk entities and treatment of COVID-19 government grants.





Malaysia TP Developments

Enforcement developments



Contemporaneous, quality & comprehensive Documentation

- Precise Functions, Assets and Risk (FAR) analysis
- Contracts are aligned to actual conduct / TP doc

High-risk Transactions

- Transactions where profit / revenue split being applied
- Royalty payments
- Intra-group services
- Intra-group financing

High-risk Companies

- Significant related party transactions
- Consecutive losses, low/fluctuating margin
- Transactions with low-tax jurisdiction/ Incentive enjoying companies
- Business restructuring

New TP Issues over and above comparable disputes

- Re-characterisation of the transaction
- Consistent margins expected from limited risk entities
- Intensive marketing activities performed by distributors
- Control over risk - transfer of loss-making production lines
- Interest-free and back-to-back financial arrangement



Transfer Pricing Documentation



Additional information requirement for Local File

Information required on industry analysis, pricing details, and preliminary stage analysis.



Submission timeline and consequence

TPD should be submitted **within one month upon request from the Directorate General of Taxes (“DGT”)**. Failure to comply will result in the TPD being not considered.



Reinforcement of ex-ante principle

TPD must be prepared based on data and information **available at the time of the related party transactions take place**.



Changes to the CbC compliance

- Primary Filing threshold: IDR 11 trillion consolidated gross turnover in **previous tax year**
- Notification: Consolidated turnover converted to Euros using exchange rates as of **January 1, 2023**
- Gross turnover calculation includes all income, deducting sales returns, deductions, and cash discounts from both business/non-business activities.

Arm’s Length Principle



Special relationships

Need to be careful about disclosures in websites and other commercial documents such as marketing brochures



Preliminary stage analysis

Onus on the taxpayers to support the transactions in their documentation with preliminary stage analysis—Substance is the key!



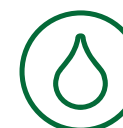
Ex-ante principle

Continues to be DGT’s preferred approach and this reinforcement of ex-ante principle requires careful consideration of alignment between transfer pricing policies and the testing method in the documentation



Deemed RPTs

More authority to DGT to scrutinise the global arrangements even though they are transactions with third party vendors or suppliers



TP methods and comparability analysis

Provides clarity and specificity while also tightening the rules. Specific requirements around preference for local benchmarks and use of single year approach could attract additional challenges

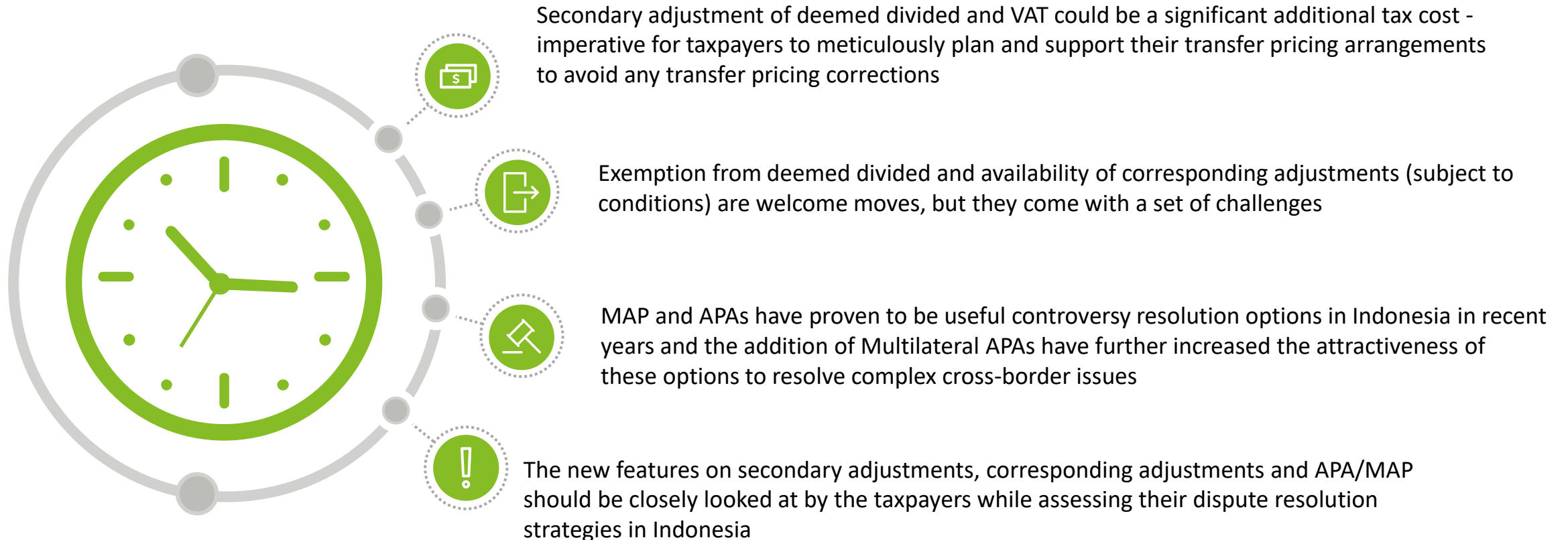


Permanent Establishments

Clarifies the position on this grey area—likely to streamline the discussions around profit attribution

Indonesia TP Developments

Tax/TP Controversy



Thailand TP Developments



TP Disclosure Form

- If the Company meets the revenue threshold of THB 200M., the company would be subject to filing the disclosure form.
- The due date is 150 days after the end of their accounting period (e.g. the same timeline as CIT return filing)

TP Documentation

- The same threshold as TP disclosure form applies.
- There is however no submission deadline. The company is required to submit upon request.
 - For the first time request, the company has 180 days to submit.
 - For subsequent request, the general deadline is 60 days.
- From accounting period starting on and after 1 Jan 2021, the TP documentation will have to be prepared according to the DGN 407, including materiality concept and requirement to prepare and submit in Thai language.
- Despite no specific law, the local benchmarking study using the local database is strongly preferred in practice by the Revenue Department if TNMM analysis is considered and the tested party is the Thai entity.

CBCR Notification

- If the Group meets the consolidated revenue threshold of THB 28,000M., the company is required to lodge the CBCR notification via the TRD's online platform.
- There is no specific deadline for this, but it should be no later than the Group's CBCR submission deadline. Practically, however, the Thai Revenue Department has Indicated that filing within 12 months after the end of the UPE's accounting period is acceptable and it is expected that the manual will be updated.
- Thailand's CBC MCAA has been activated for taxable period starting on or after January 2023.

Audit trends

Some of the TP audit triggers include:

- Consecutive loss-making
- Negative gross profit
- Decline profitability
- High fluctuation in profitability across the years
- Significant related party transactions
- Significant intercompany service fee / royalty expenses
- Uncommon TP policy
- Year-end adjustments
- Claim for tax refund, i.e. WHT or VAT refund
- Business restructuring/organizational changes
- Transfer of intangibles

Philippines TP Developments

TP audit and BIR updates



Based on our recent experiences with the Bureau of Internal Revenue (“BIR”), the authorities are picking up the audit cases based on the following:

- Taxpayers which are Large Taxpayers, especially those which are in the Top 1,000 taxpayers
- Low-hanging transactions such as payment of royalty, management and consultancy fees
- Significant related party transactions
- Negative/low profitability

It is recommended to ensure that requisite TP compliances are undertaken, and appropriate supporting documentation maintained In advance.

BIR is considering the **establishment of an International Tax Division** which will focus on TP matters of taxpayers in the Philippines. We have also observed that BIR has been increasing its efforts in Improving TP capability:

- Japan International Cooperation Agency and Asian Development Bank has conducted workshops on APA and TP assessment to BIR personnel
- Consultations and TP Audit workshops



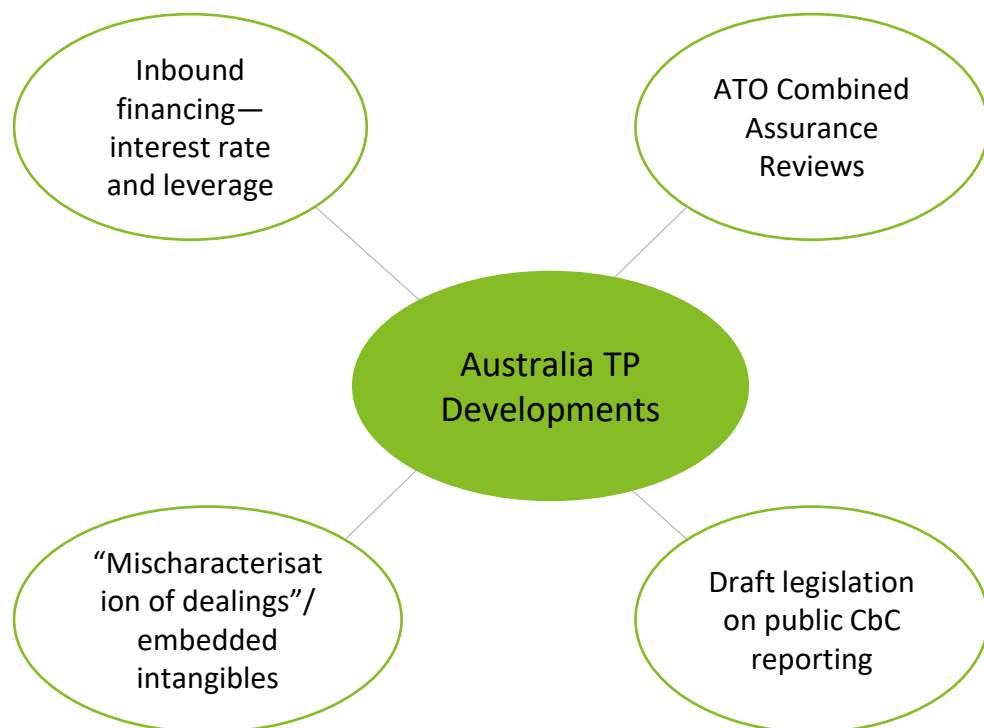
General outlook

- Indian tax landscape has undergone several changes in the recent past marked by introduction of digital service tax, abolishment of dividend distribution tax regime, introduction of faceless tax audits, changes in the bilateral tax treaties on account of BEPS action plans and gaining significance of companies setting up their operations in GIFT City due to various tax holiday benefits. These have been the major turning points in India's tax landscape

Audit trends

- Number of new taxpayer's case referred for TP audits has significantly increased in the last year compared to preceding 2-3 years
- Tax authorities are focusing on non-routine / high-risk transactions such as carried interest, IP restructuring, etc.
- Some of the trending issues in audit in the FS sector is as below:
 - Investment Advisory**
 - **Carried Interest**—Tax authorities are evaluating if the employees of the Indian investment advisory entity have received carried interest. If yes, the characterisation of the Indian investment advisory entity is being questioned
 - **Cost Plus Mark-up**—Challenge to find appropriate comparables. Tax authorities challenge the cost-plus mark-up and in fact, in certain cases, even Profit Split is being explored
 - Banking & Capital Markets**
 - Higher attribution to local origination activities undertaken by the Indian branches of the foreign banks
 - Equity Brokerage—Use of TNMM vs. CUP
 - FS Global Cost Center (GCC)**
 - Use of higher mark-up by tax authorities for routine cost-plus activities
 - Insurance**
 - Applicability of TP to insurance company is being questioned
 - New-age FS**
 - Fintech—Tax authorities are analysing the DEMPE to delineate the legal vs. economic owner of the IPs, thereby determining the arm's length compensation in the supply chain

Australia TP Developments



Key TP developments

- ATO has commenced Combined Assurance Reviews (CARs) for FS taxpayers
 - Focus on income tax, TP and GST
 - Detailed questions on intercompany arrangements; reviews could take > 24 months
 - Localised TP defence documentation to reduce protracted reviews
- Reportable Tax Position (RTP) Schedule – disclosure of areas perceived to be “high risk” by the ATO; undergoing a revamp at present and will impact all groups with > A\$250mil revenue in Australia
- Continued focus on intangibles:
 - *PepsiCo, Inc v Commissioner of Taxation* [2023] FCA 1490 – withholding tax on “implied royalty”, with the royalty rate determined through CUP benchmarking, and Diverted Profits Tax
 - ATO Practical Compliance Guideline 2024/1 – disclosure of “risk rating” related to Australian Development, Exploitation, Maintenance, Protection and Exploitation (DEMPE) activities or cross-border migration of intangible assets (see [Deloitte Alert - Intangibles PCG](#))
- Developments in intra-group financing:
 - New interest limitation rules (30% of Tax EBITDA) effective 1 July 2023, but still in draft and scheduled for Senate debate week of 18 Mar 2024
 - TP analysis now required to support arm’s length nature of interest rate and debt quantum (see [Deloitte Alert - TP impact of new debt rules](#))
 - On 8 March 2024, Singtel lost its appeal against the ATO in the Full Federal Court, on the application of the TP rules to the intercompany financing for the Optus acquisition
- Public CbC reporting – draft legislation released 12 Feb 2024 (see [Deloitte Alert - Public CbC reporting](#))



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