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SEAsia TP Intelligence

A bold brew of insights

Foreword

Dear Readers,

A great cup of coffee is never about a single ingredient. It's about balance, blend, and timing. The same can be said about transfer pricing in Southeast Asia (SEA). The environment is diverse and dynamic, shaped by multiple jurisdictions, cultures, and regulatory approaches. When mixed together, these elements create a complex but distinctive landscape - one that businesses must navigate with care and foresight.

Over the past few years, we have seen transfer pricing disputes rise sharply across the region. Tax authorities are converging on certain high-risk areas, particularly intragroup services and intangible transactions, while also demanding more rigorous documentation and evidence of substance. At the same time, global changes such as Pillar Two are layering on new challenges. The result is an environment that is both more demanding and more unpredictable for multinational enterprises.

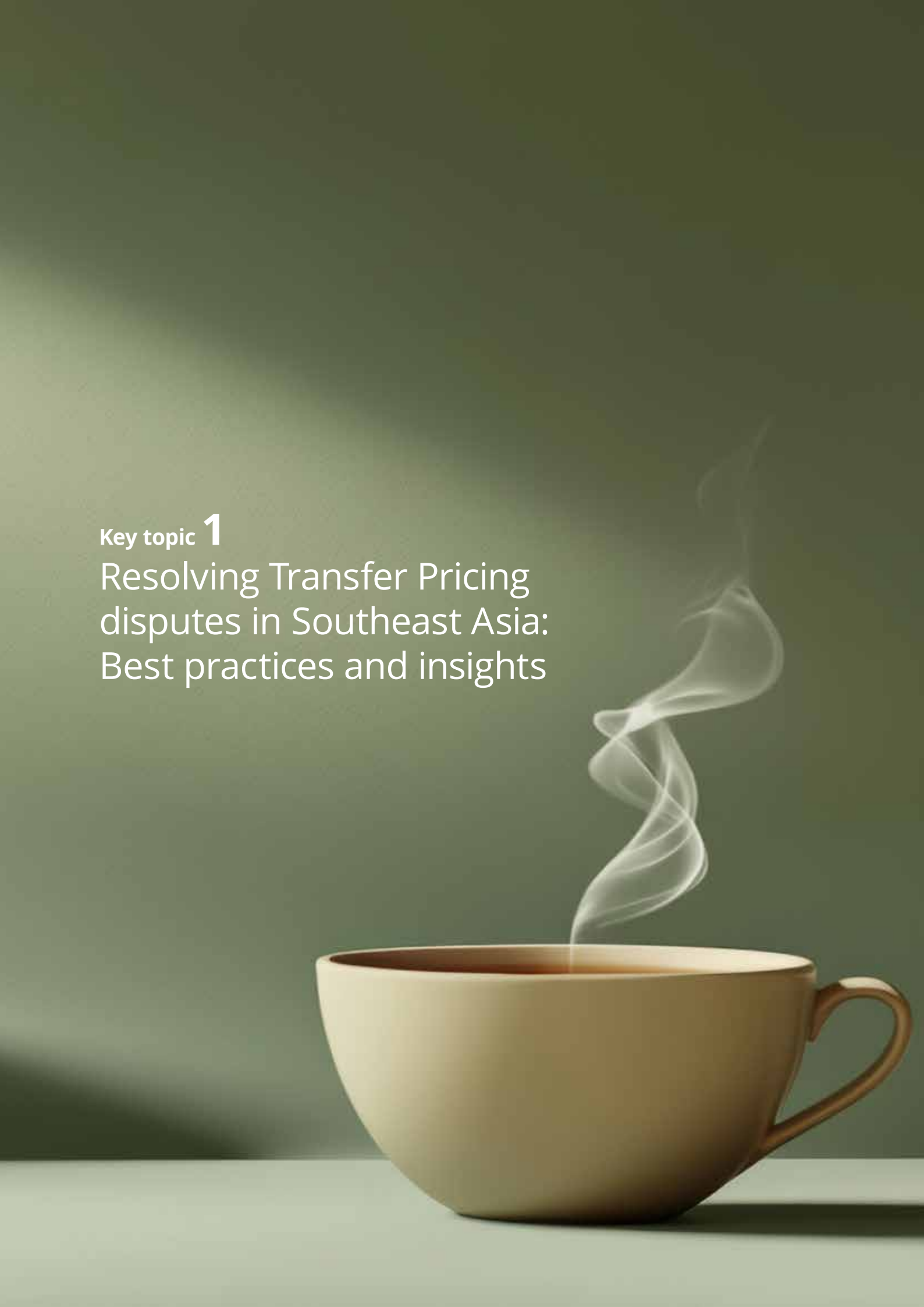
It is in this context that I am proud to introduce our inaugural edition of SEAsia TP Intelligence: A bold brew of insights. This is the first time our Southeast Asian network has come together to share a truly regional perspective on transfer pricing. The articles in this edition not only map the challenges but also explore practical approaches, from proactive dispute management, to digital solutions, to building constructive relationships with tax authorities.

Much like the process of brewing, success in transfer pricing depends on preparation, balance, and the willingness to innovate. Our hope is that this publication provides you with both clarity and inspiration to navigate the complexity with confidence.

This is our first cup, and I invite you to enjoy it with us.

Warm regards,
Carlo Navarro
SEA Transfer Pricing Leader

Contents



Key topic 1

Resolving Transfer Pricing disputes in Southeast Asia: Best practices and insights

Resolving Transfer Pricing disputes in Southeast Asia: Best practices and insights

Contributed by Deloitte SEA firms

Transfer pricing disputes are no longer an occasional outcome of tax audits in Southeast Asia. They are fast becoming a regular feature of the tax landscape, shaped by more assertive tax authorities, expanding access to data, and a sharper focus on value creation. As disputes grow in both volume and complexity, taxpayers are under increasing pressure to respond with clarity, consistency, and foresight.

This article identifies three high-risk areas commonly driving transfer pricing disputes across Southeast Asia and shares three practical, experience-based strategies to help taxpayers navigate and resolve them, informed by recent on-the-ground experience in the region.

Certain transactions continue to sit at the centre of dispute activity. Intragroup services, including management fees and shared service arrangements, are facing growing skepticism as tax authorities question whether benefits are real, measurable, and appropriately priced. Intangible transactions, such as royalties, IP transfers, and licensing arrangements, are also under sustained scrutiny, particularly where valuation, economic substance, and alignment with business operations are not clearly articulated.

SHARED HIGH-RISK AREAS IN THE REGION

Intragroup services (IGS)

Management fees, shared service arrangements, and other intercompany service charges are facing increased skepticism from tax authorities.

Intangible transactions

Royalties, IP transfers, and licensing arrangements are under heightened scrutiny for proper valuation and economic substance.

SHARED HIGH-RISK AREAS IN THE REGION

Justification for benefit

Tax authorities are no longer satisfied with mere assertions. They demand clear, quantifiable evidence that IGS and intangible transfers deliver **real, measurable value to the recipient entity**. This shift underscores the need for businesses to demonstrate **tangible benefits**, not just theoretical ones.

Economic substance

The days of paper transactions are fading. Authorities are laser-focused on ensuring that these arrangements are backed by **genuine economic activity and value creation.** Transactions must reflect real business operations, not just cost-shifting strategies.

Documentation

The difficulty is in the details. **Comprehensive, accurate documentation,** ranging from service agreements and cost analyses to valuation reports, is now non-negotiable. These records must robustly substantiate the arm's length nature of transactions, leaving no room for ambiguity.

STRATEGIC SOLUTIONS

Focus on documentation

Maintain **detailed service documentation** that substantiates the commercial rationale, benefits, and pricing of all intercompany transactions by leveraging advanced digital tools and analytics. This approach ensures on-time monitoring, enhances accuracy, and supports robust audit readiness.

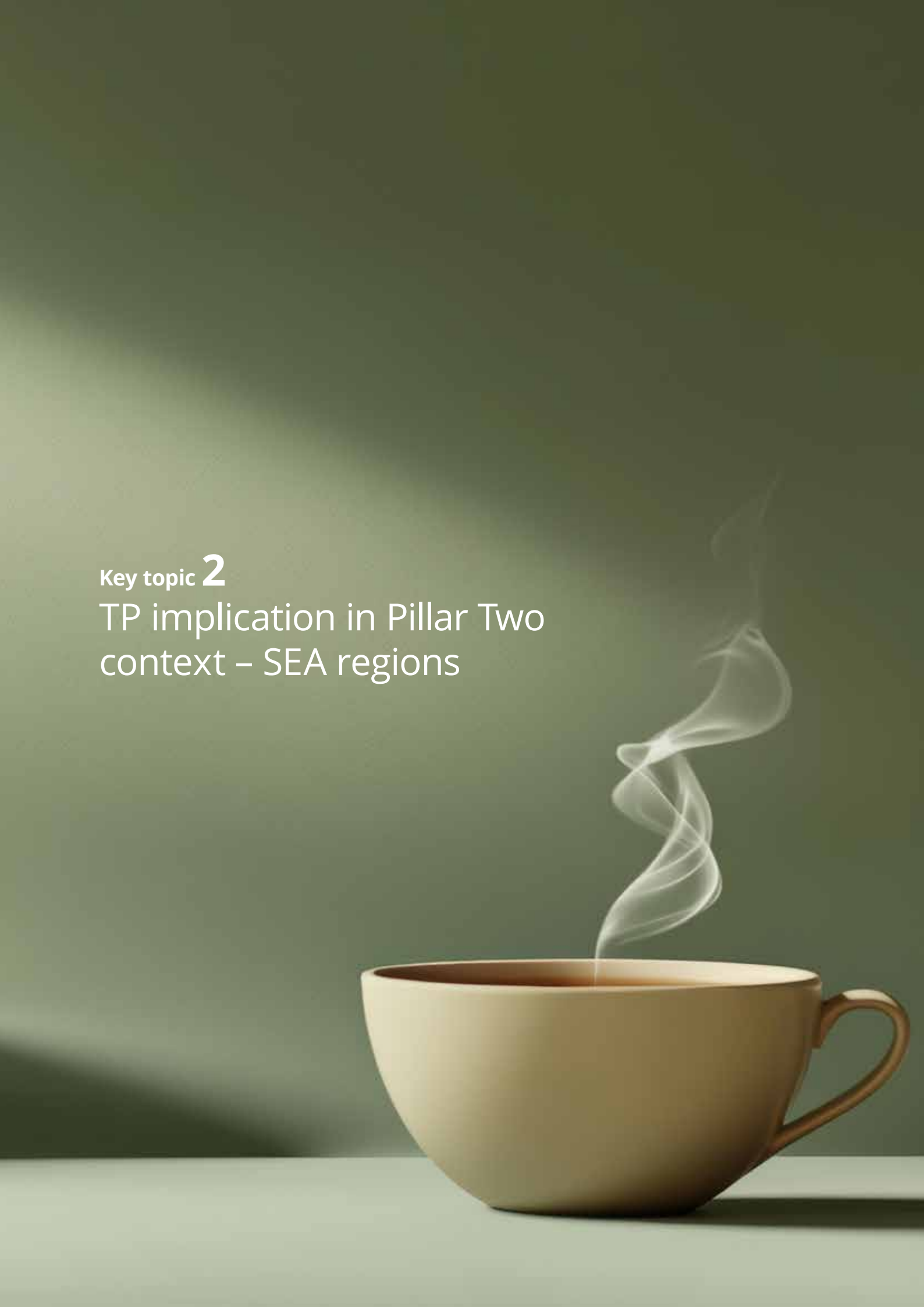
Conduct regular review

Conduct **comprehensive and periodic reviews** of key high-risk transactions—such as intragroup services, intangibles, and royalties—to ensure they meet arm's length standards and align with evolving local regulations.

Engage in strategic planning and dialogue

Build transparent and cooperative relationships with tax authorities through timely disclosures, **advance pricing agreements (APAs),** and resolution of issues before disputes escalate.

Singapore Vietnam Thailand Indonesia Malaysia Philippines



Key topic **2**

TP implication in Pillar Two context – SEA regions

TP implication in Pillar Two context – SEA regions

Contributed by Deloitte SEA firms

Quick summary of Pillar Two progress in SEA

SEA countries	GloBE rules adopted	Local safe harbours being considered	Effective date
Singapore	✓	✓	January 1, 2025
Vietnam	✓	✓	January 1, 2024
Thailand	✓	✓	January 1, 2025
Indonesia	✓	✓	January 1, 2025
Philippines	✗	Under consideration	No Implementation date set
Malaysia	✓	✓	January 1, 2025

What to consider from TP perspectives?

Stay up to date

Monitor regulatory developments and impact: continuously track the development in local GloBE implementation, administrative guidance, and filing requirements across relevant jurisdictions. There is a need to align this with your transfer pricing compliance timeline and assess whether there may be impacts to your transfer pricing framework .

Be mindful about CBCR's data points

GloBE calculations depend on a "qualified" Country-by-Country Report (CbCR). As CbCR has evolved from conventional transfer-pricing compliance documentation into the primary data source for the Pillar Two Transitional CbCR Safe Harbour (TCSH) framework, multinational enterprises should adopt enhanced preparatory measures to ensure that all relevant data elements are rigorously validated and "qualifies" for Transitional CbCR safe harbour usage. This is particularly critical as the TCSH has been extended by another year.

The arm's length principle

The arm's length principle is more important than ever. TP adjustments can impact the GloBE calculation and trigger top-up taxes. One key Pillar Two requirement is that all intercompany dealings need to be arm's length before Pillar Two calculations are made. This will lead to more transfer pricing scrutiny by regulatory authorities. MNEs should reassess the substance and pricing of intercompany transactions to ensure alignment with both arm's length principle and value creation. Advance Pricing Agreements (APAs) offer a path to tax certainty, especially in complex structures or high-risk jurisdictions. Transfer Pricing Documents have also grown in importance due to the focus on the arm's length principle and substance.

Substance-driven restructures

Pillar two rewards jurisdictions with high economic substance. Groups can offset top-ups with payroll costs and tangible assets. It has recently also introduced Substance-based Tax Credits. Taxpayers should be using transfer pricing to restructure their business and realign their supply chains to take advantage of this. These restructures need to be arm's length and based on genuine economic substance aligned with transfer pricing principles. Southeast Asia has extensive production centers, resource extraction plants, and other similar asset and employee intensive operations for MNCs – making this especially relevant in the region.

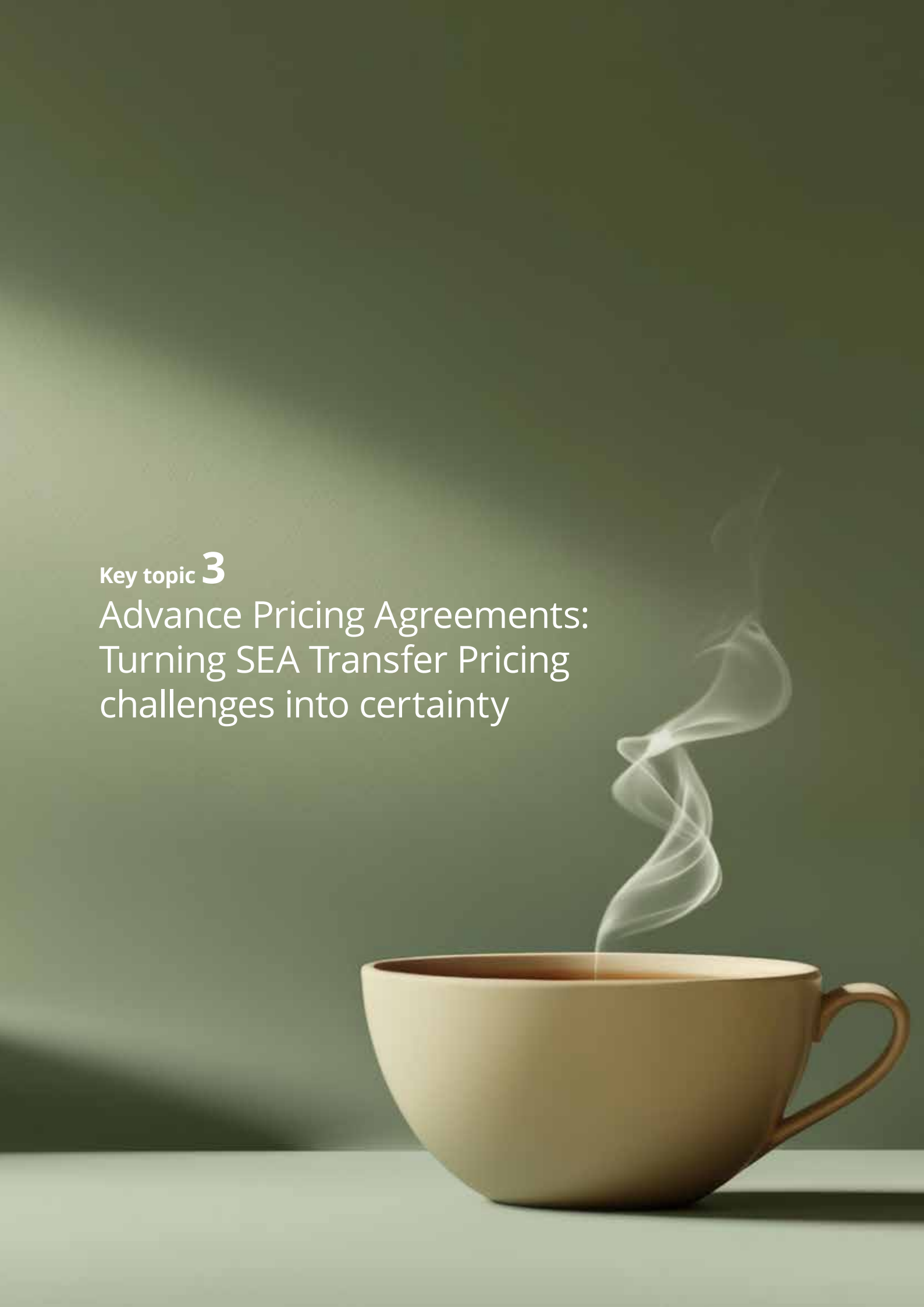
Operational transfer pricing

Tech-enabled implementation of transfer pricing is now critical. Pillar Two allows the use of TP policies to conduct simplified calculations if accounts align with your tax return. The Simplified ETR safe harbour also applies integrity rules (i.e. matching principle; full allocation principle; single expense, and loss principle; single tax principle) that need to be met to avail it. The rules focus on ensuring income, expenses, losses, taxes, etc. are only recognised once in a single jurisdiction within the same fiscal year. It is also to the taxpayer's advantage to implement TP adjustments before the close of financial accounts this prevents the need to conduct pillar two adjustments for tax/accounting differences due to TP adjustment lags. This means the accurate, consistent, and timely implementation of your TP policy is crucial – something that needs to be enabled using robust data and technologies.

Data alignment

Transfer Pricing, Consolidated Financial Reporting, and Tax data alignment. The reliance on transfer pricing, financial reporting, and tax data for Pillar Two means all data needs to be aligned. The reliance of revenue authorities on technology for reconciliation and analytics, the increased exchange of taxpayer data between revenue authorities, and access to additional through Pillar Two data means the need to ensure data alignment is more crucial now than ever.

The above provides a consolidated landscape for Southeast Asia; for country-specific details, please refer to Appendix II of this publication.



Key topic 3

Advance Pricing Agreements: Turning SEA Transfer Pricing challenges into certainty

Advance Pricing Agreements: Turning SEA Transfer Pricing challenges into certainty

Contributed by Deloitte SEA firms

With transfer pricing (TP) disputes escalating across Southeast Asia, MNEs face increasing pressure to defend their tax positions with precision and foresight. Advance Pricing Agreements (APAs) have emerged as one of the most powerful tools to preempt disputes, offering clarity, predictability, and collaborative resolution with tax authorities.

Why APAs matter in SEA

Southeast Asia is witnessing a surge in TP audits, particularly in high-risk areas such as intragroup services, intangibles, and royalties. APAs offer a proactive solution by providing:

- **Certainty:** Reduces the risk of adjustments, penalties, and double taxation.
- **Efficiency:** Minimises the time and cost spent on audits and disputes.
- **Collaboration:** Encourages constructive engagement with tax authorities.
- **Risk Management:** Roll-back provisions in some jurisdictions allow alignment of past years with the agreed methodology, reducing legacy exposure.

SEA snapshot of APA regimes

Below is a high-level comparison of APA regimes across key SEA jurisdictions designed to help MNEs quickly assess feasibility and opportunities for alignment.

Countries	APA available	Types (U/B/M)*	Tenure	Roll-back?	Remarks
Singapore	Yes	U/B/M	3-5 years (negotiable)	Possible	Mature program, highly credible and efficient
Indonesia	Yes	U/B/M	5 years	Up to 5 years (subject to T&C)	Growing uptake under PMK 172/2023; clear process
Malaysia	Yes	U/B/M	3-5 years	Up to 3 years	Recent rules clarified roll-back and fees
Vietnam	Yes	U/B/M	3 years	Not allowed	Updated regulation effective from 1 July 2025
Philippines	Draft	U/B/M**	5 years	TBD	Framework still under consultation
Thailand	Yes	U/B/M***	3-5 years (negotiable)	Up to 2 years	APA guidelines updated in October 2022

*U/B/M: Unilateral/Bilateral/Multilateral **Proposed *** U: Unilateral can be obtained on informal basis.
B: Current guidance is focused on bilateral APAs.
M: Multilateral APA can be obtained based on double tax agreement.

Best practices for MNEs

Plan ahead: With APA negotiations often taking 12-24 months, starting early allows businesses to craft a thoughtful and well-coordinated strategy.

Engage openly with the Competent Authorities: Build trust through transparent dialogue, timely sharing of information, and collaborative resolution. This would also ensure smooth roll-back application and renewal in due course.

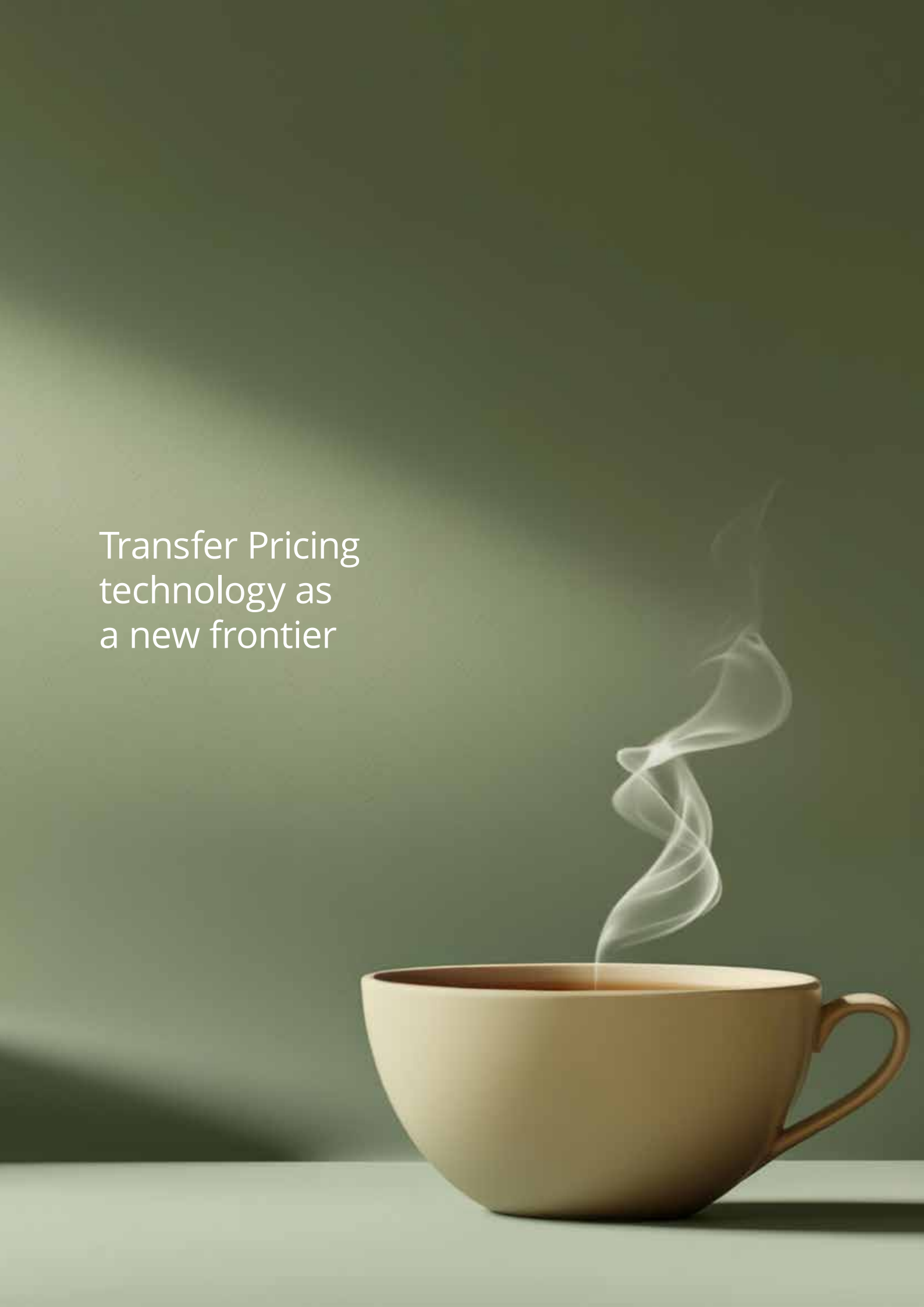
Identify high-risk transactions early: Identify key exposure areas (such as intragroup services, intangibles, and royalties) and assess APA feasibility.

Leverage data and technology: Combine benchmarking tools, analytics, and technology to prepare a robust and defensible APA submission.

Conclusion: Turning risk into resilience

For MNEs operating in Southeast Asia, where complexity is high and enforcement is intensifying, APAs are not just a compliance tool but strategic investment. Those who act early can transform transfer pricing from a recurring pain point into a competitive advantage, freeing leadership to focus on growth rather than audits.

Transfer Pricing technology as a new frontier



Transfer Pricing technology as a new frontier

Contributed by Laoh, Daniel Alexander – Tax partner

Design. Document. Defend.

This should sound familiar to transfer pricing practitioners. It's how the transfer pricing lifecycle used to work. Companies initially designed their transfer pricing framework, document it for compliance, and defended it during tax audits. The rapid digitalisation of data and developments in associated technologies (including Gen AI), has disrupted this – as it has everything else. Now, conversations have revolved around the seemingly unlimited potential of technology in transfer pricing; how does can Gen AI automate compliance? Can predictive analysis be used to manage TP risks or assist in restructures? How will digital audits work?

Revenue authorities have capitalised on developments in technology to expand their ability to identify tax risks, expand tax enforcement, and encourage taxpayer behavioural changes. Revenue authorities have gone digital and a taxpayer's accountability in the provision of taxpayer data has increased. This is the new frontier in the transfer pricing space – both globally and in Southeast Asia.

Garbage in. Garbage out

This phrase is frequently used by tech experts. The best technologies are only as good as the data coming in. Revenue authorities who were early adopters of data analytics were pushing for the maturation of taxpayer data governance – making tax data more robust and accurate. In Asia-Pacific, countries like Australia had been trailblazers, with countries like Singapore and Northeast Asia (i.e. Japan, China, Korea) following suit. Revenue authorities in Southeast Asia have taken initial steps in this direction. We foresee this to be an area of focus in the next few years.

SEA countries have invested heavily in their digital infrastructure. Singapore, Indonesia, Vietnam, and Malaysia have introduced to varying degrees one-stop digital tax platforms for the submission and retention of taxpayer data. This focus to digitalising financial and operational data has also grown more granular (e.g. e-invoicing frameworks to digitalise transactional data). A centralised data analytics teams operates in some shape or form for data-driven, tech-enabled tax enforcement. The focus is to identify high risk taxpayers and enable more targeted audits. It makes sense that revenue authorities would want to ensure taxpayer data is robust.

Revenue authorities are also focused on gaining access to alternative sources of taxpayer data. Access and exchange of information with other institutions such as banks and similar financial institutions, other revenue authorities, industrial oversight bodies, are on the rise. As such the need for companies to increase data integrity cross use cases is critical.

Next actions – Data, Digitalise, Diagnose

Tax needs to be included as a strategic decision-maker in a company's digital transformation strategy. Though tax had historically been an afterthought, the closer integration of tax, financial reporting, and business data, coupled with the maturation of the digital infrastructure to process, analyse, and share this, means incorrect tax data would not only have implications in tax – but much broader. The growing pressures for companies to increase public transparency (e.g. for TP public Country-by-Country Reporting spreading to AP through Australia), means the lack of a coherent tax strategy (or at the other end of the spectrum, an over-aggressive strategy) and tax data mismanagement might have public consequences. Environmental, Social, Governance (ESG) and Corporate Social Responsibility (CSR) being implemented in the region have strong tax reporting metrices and is another factor why the role of tax needs to be elevated.

The framework to implement this is simple.

Firstly, companies need to centralise and clean-up their data. They need to ensure data for different use cases are consistent and no longer fragmented (e.g. single Enterprise Resource Planning (ERP) system). It must be structured and tagged consistently to make it easier to extract and utilise. With all the advances in technology, this critical foundation is frequently overlooked.

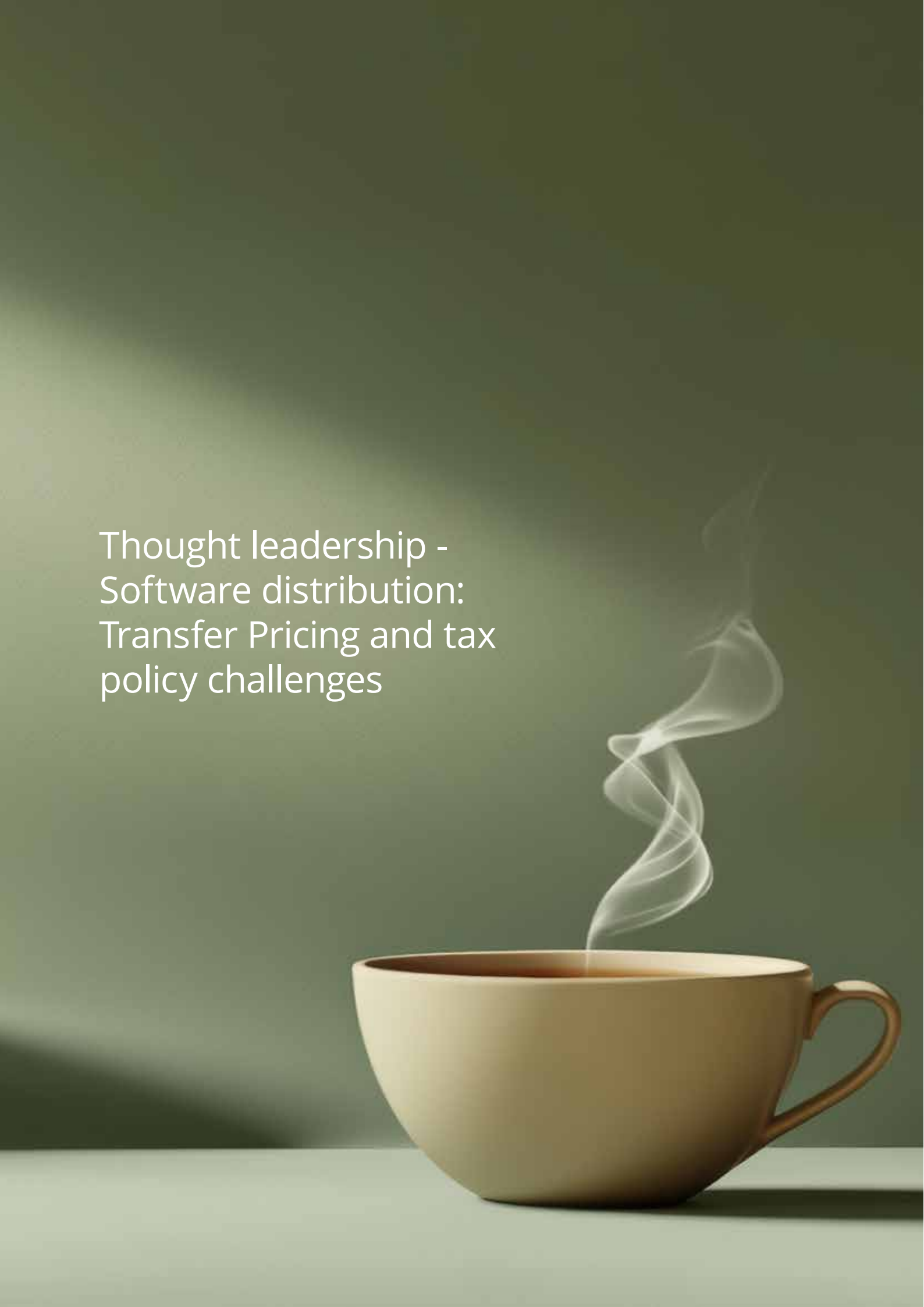
Secondly, as much data needs to be digitalised internally. The technology used needs to be adaptable, expanding to many use cases (e.g. tax/transfer pricing/finance analytics, policy implementation, financial and predictive modelling, ESG reporting, compliance, etc.).

Thirdly, use this data to pro-actively diagnose potential issues. Revenue authorities are using big data to pro-actively identify risk areas prior to audits. Taxpayers will need to pre-empt this to avoid being on the defensive during audits. This can be done effectively if steps one and two are also done.

Design. Data. Digitalise. Diagnose. Document. Defend

The rapid advancement in technology means the transfer pricing lifecycle has now evolved. A more pro-active strategy now needs to be adopted to ensure taxpayers are better able to manage their transfer pricing and tax risks.

Thought leadership - Software distribution: Transfer Pricing and tax policy challenges



The challenges of software distribution payments: A tax perspective

Contributed by by Shivaji Das, Anggaris Anggia Cininta, Yohanes Janitra Jaya

Indonesia's digital economy is growing rapidly, but uncertainty in tax rules for software distribution continues to create major challenges. Several companies have faced significant tax adjustments, largely due to disputes over how payments are characterised—whether as redistribution income or intellectual property (IP) exploitation. Globally, both OECD and non-OECD member states generally treat redistribution payments as ordinary business income rather than royalties. Indonesia's current guidance on software payments may be subject to differing interpretations, potentially affecting tax outcomes and cash flow for software distributors.

Advance pricing agreements (APAs) may provide interim stability by allowing taxpayers and the tax authority to agree in advance on characterisation and pricing. However, they are not a permanent fix. For CFOs and business leaders, the priorities are clear: understand how your software transactions are classified, assess whether an APA may mitigate risk, and actively engage in shaping Indonesia's evolving tax and transfer pricing framework.

Why Indonesia's software distribution rules pose both tax and transfer pricing challenges

Indonesia's growing digital economy offers significant opportunities for technology companies expanding their markets and distributing software across borders. At the same time, rising scrutiny from the tax authority makes it essential for businesses to understand how their transactions are characterised. Getting this right can avoid costly disputes, protect cash flow, and support long-term growth.

Beyond the legal definition, characterisation directly affects transfer pricing. How a software transaction is defined determines the pricing method applied, the profit level expected in Indonesia, and ultimately how value is allocated across group entities. When the characterisation itself is unclear, transfer pricing analyses become inconsistent, leading to disputes on both the nature of income and the margin or return expected.

With rapid digitalisation, Indonesia has witnessed a significant increase in cross-border software distribution. As recent Indonesian tax court cases show, disputes in this area are also rising. Some distributors have faced recurring adjustments, sometimes a large share of annual revenue, due to differing interpretations of what constitutes a royalty versus a business profit.

The root issue is the lack of a clear legal distinction between transactions involving the use or right to use intangibles and those intended purely for resale or distribution. This gap leads to practical problems, including incorrect withholding tax, mischaracterisation of entities, cash flow disruptions, and double taxation. Under Law Number 7 of 2021 (the Law on the Harmonisation of Tax Regulations), the term "royalty" refers to any payment made as compensation for the use of or the right to use various forms of IP or technical rights (this includes copyrights, patents, and know-how, and extends to support services related to these rights). The definition of royalty under Indonesian domestic tax law slightly differs from that in the OECD model tax treaty, which classifies the alienation of IP as a capital gain rather than a royalty.

Amidst the current domestic regulatory framework, which has yet to specifically address certain digital transactions, an important question arises: how prepared is Indonesia to address the tax and transfer pricing complexities of digital transactions? This article aims to clarify how software-related payments should be treated, and whether they are more appropriately considered as conventional royalties or as distribution profits.

Software distribution in Indonesia Transfer Pricing and tax policy challenges

Contributed by by Shivaji Das, Anggaris Anggia Cininta, Yohanes Janitra Jaya

Distinguishing redistribution payments from IP exploitation

Software is distinctive because it can take the form of both a digital product and a service, that is, a copyrighted article or a copyright itself. Its applications range from basic interfaces to complex enterprise systems and programs.

The characterisation of software payments depends on the purpose and scope of the rights transferred. The OECD model tax treaty defines royalties as "payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience."

Where the rights allow reproduction, exploitation, or further development, a payment is considered a royalty. Where rights are limited to redistribution without modification or exploitation, a payment should instead be treated as business income.

Therefore, the primary difference between software royalties and business income lies in the purpose of the acquisition itself. Royalties are paid when the licensee intends to commercially exploit the IP, such as via licensing, without reproduction or modification. Simply using or distributing the software does not qualify as a royalty payment. The distinction can be summarised as follows:

Table 1: Redistribution versus exploitation of software

Aspect	Redistribution (business income)	Exploitation (royalty)
Nature of rights	Rights to distribute software as a finished product (copyrighted article)	Rights to reproduce, adapt, exploit, or further develop software
Characterisation	Business profit/ordinary income	Royalty
Tax treatment	Subject to corporate income tax	Subject to withholding tax (and corporate income tax, depending on treaty/residency)
Transfer pricing impact	Distribution margin benchmarking (e.g., resale price method)	Licensing/royalty benchmarking (e.g., comparable uncontrolled transaction method)
Risks if misclassified	Double taxation, incorrect transfer pricing method, cash flow disruption	As for redistribution, plus additional withholding tax exposure

From a transfer pricing perspective, this distinction is not just theoretical. A redistribution model typically involves a limited risk distributor earning a routine margin benchmarked under the resale price method. In contrast, where exploitation rights are granted, the analysis shifts to a royalty-based framework, often benchmarked using the comparable uncontrolled transaction method. In practice, when the underlying characterisation is uncertain, tax authorities may apply royalty-based markups to distributor-type activities, creating mismatches and excessive adjustments.

This distinction has immediate tax and transfer pricing implications. Royalties are generally subject to withholding tax, while business income is typically taxed under corporate income tax. Divergent classification by the source jurisdiction and the residence jurisdiction may lead to mismatches, creating risks of double taxation.

Mischaracterisation may also result in inappropriate application of transfer pricing methodologies. In practice, some software distributors in Indonesia have been asked to benchmark their arrangements against license agreements tied to net sales—an approach that is often impractical and inconsistent with their business reality.

This is where transfer pricing becomes both a tool and a test, ensuring that margins reflect real functions performed in Indonesia, not just labels applied to payments.

Case law insights from Australia, India, and Malaysia

The OECD commentary on the mode tax treaty is clear: payments for the right to use or distribute software, without the right to reproduce, adapt, or otherwise exploit the underlying IP should be treated as business profits not royalties.

Paragraph 14.4 of article 12 of the OECD commentary, concerning the taxation of royalties, states "Arrangements between a software copyright holder and a distribution intermediary frequently will grant to the distribution intermediary **the right to distribute copies of the program**. ... Thus, in a transaction where a distributor makes payments to acquire and distribute software copies, the rights in relation to these acts of distribution should be disregarded in analysing the character of the transaction for tax purposes. Payments in these types of transactions would be dealt with as business profits in accordance with article 7. This would be the case regardless of whether the copies being distributed are delivered on tangible media or are distributed electronically (without the distributor having the right to reproduce the software), or whether the software is subject to minor customisation for the purposes of its installation."

Court decisions in Australia, India, and Malaysia spanning both OECD and non-OECD member states reinforce this view.

Australia: Distribution fees treated as business profits

As an OECD member state, Australia has expressly adopted the OECD commentary.

The Australian Tax Office in draft taxation ruling TR 2024/D1 titled Income tax: royalties—character of payments in respect of software and intellectual property rights issued on 17 January 2024 considers that, under paragraph 14.4 of the OECD commentary, payments made by a distribution entity that merely resells software without exploiting the underlying IP should be treated as business income, not royalties. As at the date of publication of this article, TR 2024/D1 has not yet been finalised but generally the final version of a taxation ruling would not be expected to deviate significantly from the draft version.

India: Distribution fee as ordinary business profits

India as a non-OECD member state, has also drawn on OECD guidance.

In a 2021 Supreme Court ruling, the court observed that once IP is embedded in a tangible medium (such as books, CDs, or software), the product should be treated as goods subject to sales tax.

This view was held on the grounds that the IP was incorporated into the goods for the purposes of transfer, i.e., what the buyer purchases and pays for is not the disc or CD but the content.

Based on this reasoning, payments received by the licensee to redistribute did not constitute royalties under either the Income-tax Act, 1961 or applicable tax treaties, but instead represented ordinary business income.

Malaysia: Distribution fees not royalties

Malaysia, although not an OECD member state, has shown alignment with OECD interpretations. In a 2018 decision, the High Court ruled in favor of the taxpayer, holding that software distribution fees constituted business profits under article 8 of the Malaysia-Netherlands tax treaty.

The High Court held that the distribution fee would not fall under the definition of royalties in the treaty, given that the agreement only granted the taxpayer the right to distribute software copies in Malaysia, and there was no element of proprietary rights or know-how being granted or transferred to the taxpayer. Accordingly, the distribution fee paid under the software distribution agreement was not considered a royalty and was not subject to royalty withholding tax.

This position was also reinforced by the Special Commissioners of Income Tax, and by a series of decisions of the Federal Court and Court of Appeals.

Table 2: Comparative snapshot: Treatment of software distribution payments

Jurisdiction	Court/authority's view	Characterisation of distribution payments
Australia	Payments for resale without IP exploitation are not royalties	Business profits (not royalties)
India	Software on tangible media treated as goods; redistribution payments not for exploitation of IP	Business profits (not royalties)
Malaysia	Right granted was only to distribute software, not reproduce or exploit IP	Business profits (not royalties); no withholding tax

The approaches taken by Australia, India, and Malaysia demonstrate broad consensus: software distribution payments that do not involve exploitation of IP should be treated as business income, not royalties. Without clear domestic guidance, there could be potential inconsistency, prolonged disputes, and potential double taxation. Aligning with global standards would not only reduce uncertainty but also strengthen Indonesia's credibility in handling digital economy transactions.

Using APAs to manage transfer pricing risks in software distribution

As Indonesia works toward clearer rules on the characterisation of software payments, taxpayers still require interim solutions to manage recurring disputes. One available mechanism is the APA.

The technical definition of an APA as per the latest regulation (PMK-172 of 2023) is "[...] a written agreement between the Director General of Taxation and the Taxpayer or the Double Taxation Avoidance Agreement Partner Tax Authority. It pertains to taxpayers within its jurisdiction as specified in Article 18 paragraph (3a) of the Income Tax Law, and aims to agree upon the criteria for Transfer Pricing Determination and/or to pre-approve the arm's length price or profit."

For taxpayers engaged in software distribution arrangements with related parties, an APA offers a structured forum to agree with the Indonesian tax authority the appropriate treatment and pricing of their software distribution transactions. In accordance with PMK-172 of 2023, an APA allows taxpayers to agree on the methodology and pricing policy, including characterisation of their transactions for the next five years, as well as rollback for certain years subject to meeting specified conditions. It also promotes transparency and discussion around digital business models that may not fit traditional frameworks.

Table 3: Key features of Indonesia's APA program

Feature	Details
Types	Unilateral, bilateral, multilateral
Covered transactions	Transfer pricing of cross-border related party transactions (including software distribution)
Duration	Typically covers up to five fiscal years
Validity	Prospective; may include rollback years depending on circumstances and subject to certain terms and conditions
Confidentiality	Confidentiality ensured; data submitted in an APA cannot be used to initiate tax audits
Authority	Directorate General of Taxes - International Division

Table 4: Advantages and disadvantages of APAs in software distribution disputes

Advantages	Disadvantages
Provide certainty on the treatment for up to five years	Case-specific; not universally applicable
Neutral platform for direct negotiation with the Indonesian tax authority	Requires complete transparency, extensive preparation, and disclosure
Administered by a division familiar with complex digital business models	Limited APA cases concluded to date
Confidential; fact-specific process	May not fully remove uncertainty until clearer rules are issued
Efficient process ensuring smooth timely conclusion	Process can take time, depending on complexity and the resources of both parties

While APAs can be a practical way to stabilise pricing outcomes, they cannot on their own resolve the more fundamental question of whether a payment is a royalty or a business profit. The characterisation must first be agreed upon before the APA can address the pricing of that transaction.

Future outlook and conclusion

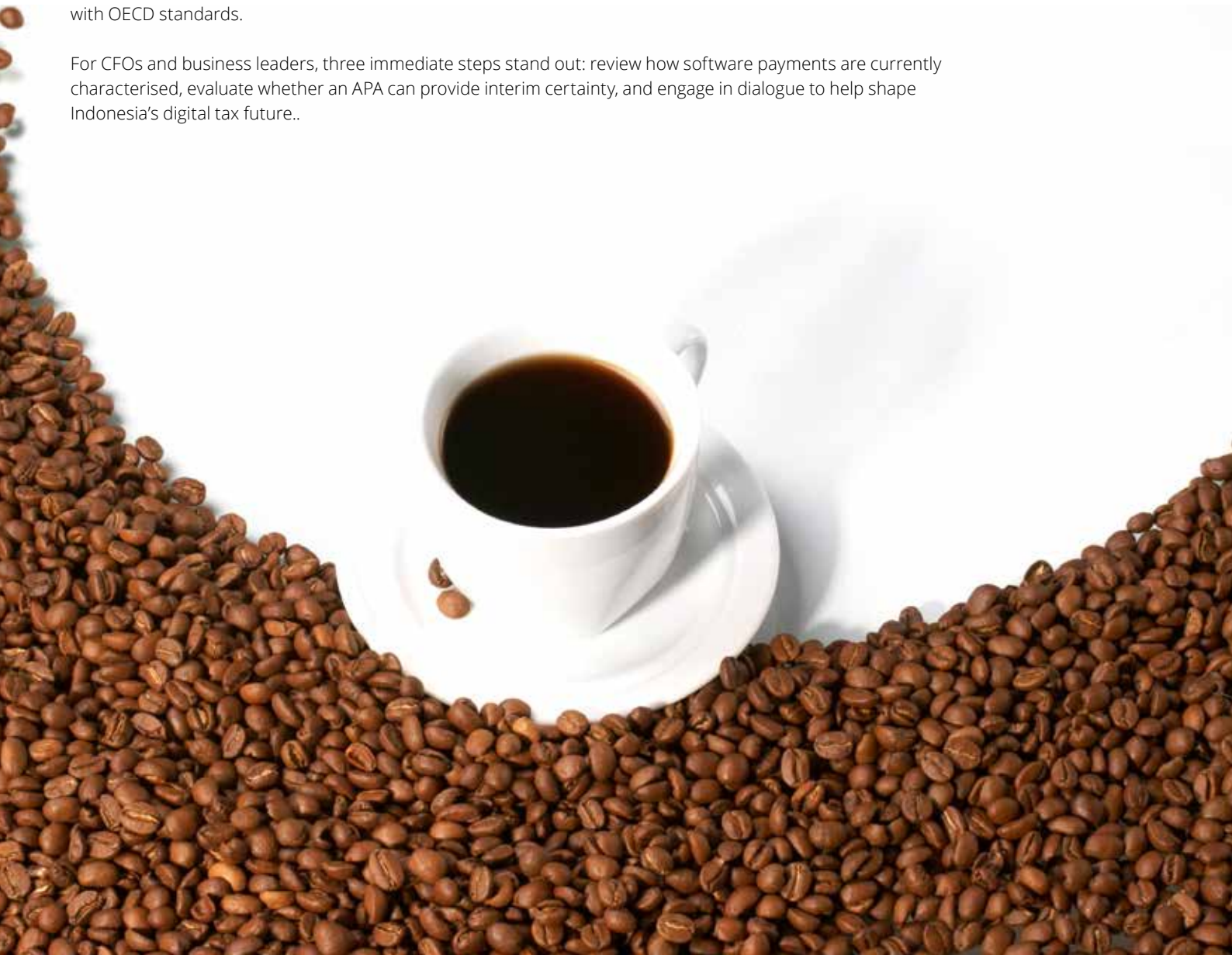
While the APA is a useful interim tool, relying on it alone to resolve software distribution disputes is not sustainable. Long-term certainty requires regulatory reform.

For Indonesia to sustain digital growth, attract investment, and advance its OECD accession, the Indonesian tax authority must align its tax and transfer pricing framework with international standards. Such alignment would not only strengthen Indonesia's standing among G20 economies but also give taxpayers the predictability they need to operate and invest with confidence.

This brings us back to the central question posed at the beginning of this article: is Indonesia ready to support the growth of its digital economy? At present, gaps in clarity create recurring disputes and discourage investment. The way forward lies in proactive engagement. By working with the tax authority, digital businesses have an opportunity to shape a modern, internationally aligned framework that reflects today's realities. If exploited correctly, it will reduce disputes, attract investment, and position Indonesia as a competitive hub for digital innovation in the region.

For policymakers, this overlap between tax characterisation and transfer pricing highlights a deeper challenge. Indonesia's TP framework must evolve in tandem with its direct tax rules so that the two speak the same language on digital transactions. Without such alignment, even well-intentioned reforms risk creating parallel interpretations—one from a treaty or withholding tax standpoint and another from a transfer pricing perspective. A harmonised approach would bring consistency, reduce disputes, and support Indonesia's credibility as it aligns with OECD standards.

For CFOs and business leaders, three immediate steps stand out: review how software payments are currently characterised, evaluate whether an APA can provide interim certainty, and engage in dialogue to help shape Indonesia's digital tax future..



Did you know?

Recent regulatory updates across SEA regions

DEC 2023

Transfer pricing rules (PMK-172)
Indonesia issued updated transfer pricing rules (PMK-172) in December 2023. The regulation consolidates and expands documentation requirements, particularly for intra-group services, royalties, and financial transactions including loans. The new documentation requirement is effective from financial year 2024.

DEC 2024

- Malaysia Transfer Pricing Guidelines
- Transfer Pricing Tax Audit Framework
- Income Tax (Transfer Pricing) Rule

In December 2024, Malaysia issued the MTPG 2024 and TPAF, following the 2023 TP rules and ITA amendments, which relax some documentation requirements and provide clarifications but leave certain areas needing further guidance from the IRB.

FEB 2025

Regulation Number 15 of 2025 (PMK-15)
On 14 February 2025, Indonesia issued PMK-15, which overhauls and harmonises tax audit procedures across all tax types under the Harmonised Tax Law.

MAR 2025

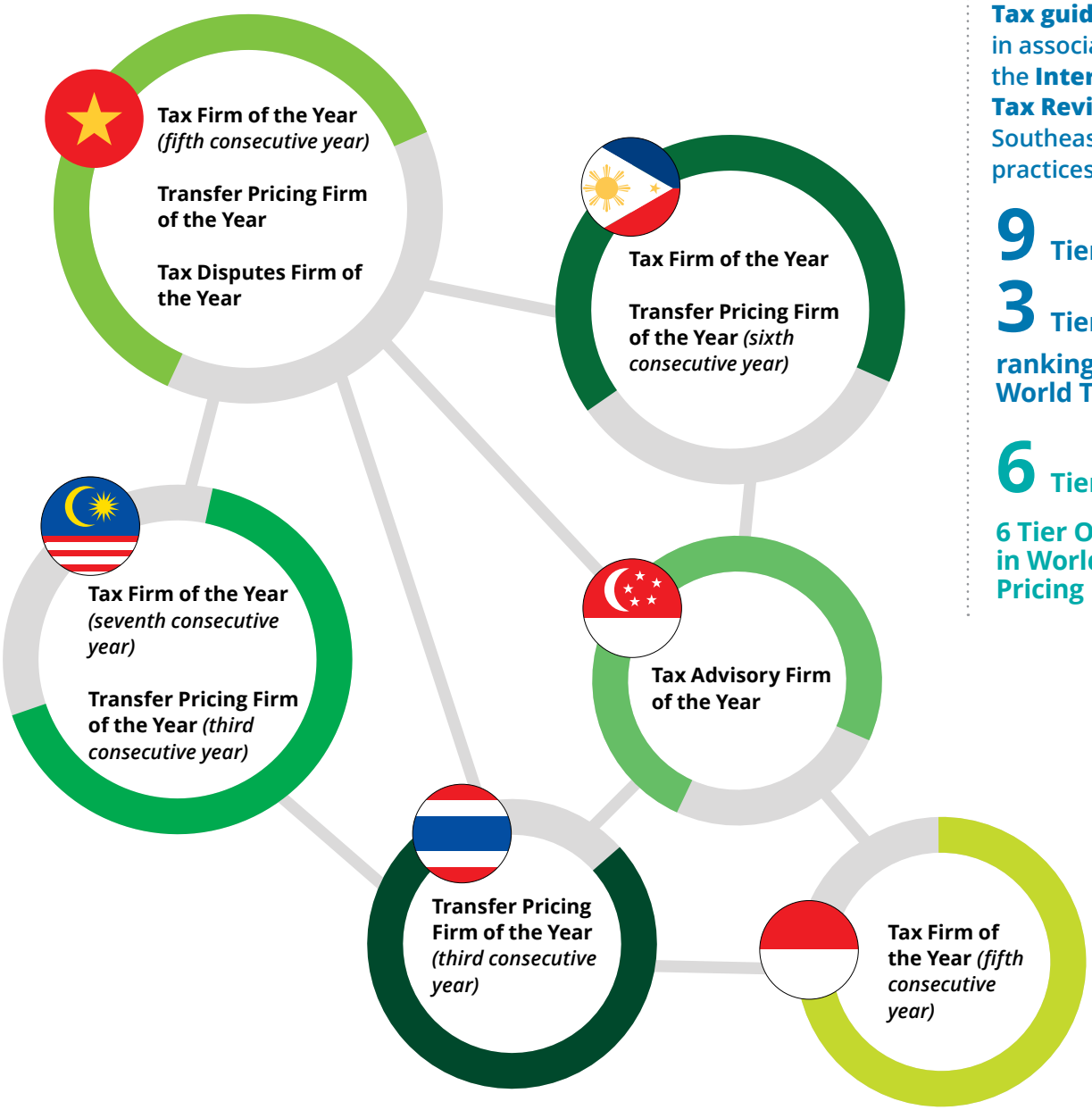
Decree No. 20/2025/ND-CP
Decree 20/2025/ND-CP amends Decree 132/2020/ND-CP, refining Vietnam's transfer pricing rules with a focus on related party relationships involving credit institutions.

NOV 2025

8th Edition of the Singapore TP Guidelines
The Inland Revenue Authority of Singapore (IRAS) released an e-Tax Guide titled "Transfer Pricing Guidelines (Eighth Edition)" on 19 November 2025." Broadly speaking, the revised 8th edition of the guidelines provides improved guidance to ease the TP compliance burden for taxpayers in Singapore; a simplified and streamlined approach to the application of the arm's length principle; and clarifications on certain existing practices. This update also aligns with OECD Pillar One developments, with Amount B implementation materials to provide a simplified, standardised return framework for baseline marketing and distribution activities.

Deloitte Southeast Asia practices were awarded

10 national awards respectively at the International Tax Review Asia Pacific Tax Awards 2025



In the **2025 World Tax guide** produced in association with the **International Tax Review**, Deloitte Southeast Asia practices achieved

9 Tier One

3 Tier Two rankings in World Tax

6 Tier One

6 Tier One rankings in World Transfer Pricing

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Around SEA Region events & ecosystem

Discover our key monthly events, designed to help you exchange insights, expand your network, and stay ahead with the latest market updates across SEA region.

February 2026

Event: Countdown to Compliance: Getting Ready for TP Filing Season and Technology as the New Compliance Partner in TP

Location: Jakarta

January 2026

Event: Transfer Pricing Updates webinar

Location: Singapore

December 2025

Event: Design Managerial & Operational strategies for Intra Group Transactions (Technology on OTP)

Location: Hanoi and Ho Chi Minh City

November 2025

Event: Annual Tax & Legal Summit

Location: Jakarta

Event: Tax Symposium 2025

Location: Bangkok

Appendix 1:
Resolving Transfer Pricing disputes in Southeast Asia: Best practices and insights Detail sharing from each country

Resolving Transfer Pricing disputes in **Singapore**: Best practices and insights

FOCUSED TP AUDIT TREND

Step-up in TP enforcement

The TP audit landscape in Singapore has evolved dramatically. Recent increases in the number of TP audit cases are not merely a matter of volume, but also of intensity: IRAS is applying a strict and literal interpretation of TP guidelines and expects full compliance with procedural matters. For instance, IRAS no longer grants extensions for the submission of TP documentation, underscoring the importance of it being fully prepared before a request arises.

IRAS has also increasingly turned to data analytics and technology to identify high-risk taxpayers. Singapore businesses with characteristics such as sustained losses, inconsistent profit margins, or heavy volumes of related-party transactions are likely to be flagged for scrutiny. This digital approach allows for a more targeted and risk-based enforcement model, putting certain industries and business models directly in the spotlight.

Common areas of dispute and audit focus

Recent IRAS TP audits notably focus on key areas that often present complex compliance challenges. For example, care should be taken in any arrangement which involves residual profit extraction by foreign counterparts, especially where the Singapore operation could be seen as performing significant functions but earning limited returns.

Likewise, in the post COVID-19 recovery phase, volatile profits in regional hubs, profit splits with global hubs, loss-makers and limited risk or incentivised companies can attract close examination. This is particularly potent if losses are recurring or lack support from strong benchmarking and industry analysis. In relation to research and development ("R&D") and intangible-related transactions, cases where the location of value creation is ambiguous or misaligned with ownership of intellectual property could trigger scrutiny and needs to be managed from TP and corporate tax perspectives.

Intra-group financing arrangements, including loans and financial guarantees, should be properly documented with market-based terms and pricing, as this is another area which companies should be ready to defend. Similarly, legacy issues such as substantiation of 'benefit test' and use of allocation keys for outbound intra-group service fee payments by Singapore businesses continue to be challenged.

In many cases, penalties have been imposed and waiver requests denied. Notably, penalties can be levied on a per-offence basis at SG$ 10,000 per offence; potentially resulting in substantial financial exposure for non-compliant taxpayers. Additionally, surcharges may be applied on TP audit adjustments, compounding the cost of non-compliance.

STRATEGIC SOLUTION

- Conduct regular TP health checks; especially for companies operating as regional headquarters or with complex cross-border transactions. TP health checks can help identify potential risk areas before they escalate into audits.
- Maintain timely, robust, complete and consistent TP documentation. In the current environment, mere compliance with statutory deadlines may not be enough; the quality and defensibility of TP documentation are equally critical.
- Consider Advance Pricing Agreements ("APAs"). Singapore has demonstrated strength in this area, with OECD statistics showing that IRAS can close bilateral cases within a general timeframe of 24 months. APAs can provide certainty and reduce the risk of future disputes, especially for companies with complex intercompany arrangements.
- Implement clear internal processes for assessing potential year-end TP adjustments and/or special factor analysis (staying aware of the precise criteria within the TP Guidelines) and ensure that any deviations from standard arm's length ranges are thoroughly explained and supported with contemporaneous evidence. Assess the impact of such adjustments on allied accounting and tax matters such as withholding taxes, permanent establishment risks, customs and other indirect taxes.
- Preparation of necessary central documentation and supporting evidence to demonstrate that services provided yield clear benefits and are priced at arm's length. Consider cost allocation methodologies and the documentation of service agreements.
- Preparation of proactive TP audit management manuals, anticipating frequently asked questions FAQs from tax authorities and documenting necessary responses. This manual also helps avoid any potential risk of loss of information arising from employee turnovers.
- Review financial transactions and IP agreements; ensure terms reflect market standards and are supported by functional and economic analyses. This includes third-party comparable benchmarks and appropriate documentation of contractual terms.
- Educate and align internal stakeholders; TP management is not just a tax function's responsibility. Legal, finance, operations, and even commercial teams need to be aware of TP implications to ensure consistent application and internal alignment.

Resolving Transfer Pricing disputes in **Vietnam**: Best practices and insights

FOCUSED TP AUDIT TREND

Comprehensive layer-test for deductibility of intragroup service expense

Recent observations from TP audits indicate that tax authorities are increasingly employing comprehensive 5-layer tests to evaluate the deductibility of IGS payments made by taxpayers. If any of these tests are not met, the IGS payment may be deemed non-deductible for tax purposes in Vietnam.

- Layer 1: Authenticity test – to test whether that the services were actually rendered.
- Layer 2: Capability test – to test that the service provider possesses sufficient competencies. assets, capacity, etc. to provide the services.
- Layer 3: Necessity / Benefit test – to test evidence/benefits to the service recipient only.
- Layer 4: Arm's length price test – to prove that the prices applied in the transactions are appropriate and in line with local and international TP guidelines.
- Layer 5: Supporting document – to gather legitimate supporting documents as required by local tax laws and practice.

Application of intersectoral regulations in TP audit

In Vietnam, to prevent related-party transactions from being challenged or adjusted during a transfer pricing audit, taxpayers must not only comply with the prevailing transfer pricing regulations but also ensure that they do not violate any other applicable regulations to their business activity.

A prime example is technology transfers. In international TP practices, technology transferred royalty expenses may be deductible as long as the transaction adheres to transfer pricing requirement. However, in Vietnam, additional steps are necessary to qualify for deductible status. Particularly, taxpayers must ensure compliance with local technology management requirements to support the deductibility of technology transfer royalties in a TP audit. Taxpayers need to register their technology transfers with the appropriate authority under the Ministry of Science and Technology (MOST), which is a different authority independently from general tax authority.

In TP audit practice, tax authorities may disregard related party transactions if there is evidence of non-compliance in many other areas but not limited to technology transfer cases above. The application of industry-specific regulations during transfer pricing audits is increasingly being utilised as a tool for more effective and comprehensive transfer pricing management.

STRATEGIC SOLUTION

Preparation for 5-layer tests

It is recommended that a TP comprehensive analyses is conducted in cooperation of both service provider and the service recipient for important intragroup service. This is to ensure that the IGS-fee-payer in Vietnam can effectively gather and retain documentation to substantiate their compliance with the five-layer test by the tax authority.

Conducting regular TP review

Beyond annual compliance preparation, taxpayers with complex transaction with related parties should regularly review their transfer price in high-risk areas such as intragroup service and intangible transfers to identify any risks of expense disallowance due to non-compliance with either transfer pricing or industry-specific regulations.

INNOVATIVE APPROACH

Navigating the complexities of transfer pricing audits requires a strategic approach, and taxpayers in Vietnam can adopt a three-step mindset as a solution for TP dispute management.

- **Good Preparation:** Thorough preparation can significantly enhance audit outcomes. Incorporating the above two strategies (i.e., Conducting regular TP review and Preparation for 5-layer tets) is pivotal during this preparation phase.
- **Right Strategy:** An effective strategy involves clearly defining objectives, understanding the audit process, identifying key regulations and risks, and recognising stakeholders in the TP audit.
- **Smart Execution:** Smart execution is key to leverage the good preparation and right strategy done in the first place. This may require effective communication, maintaining flexibility, and consulting advisors when needed to ensure smooth and adaptable implementation.

Understanding these elements and integrating best practices are essential for resolving transfer pricing disputes in Vietnam, ensuring compliance, and optimising tax positions.

Resolving Transfer Pricing disputes in **Thailand**: Best practices and insights

FOCUSED TP AUDIT TREND

Since becoming a member of the OECD's Inclusive Framework on BEPS with a commitment to implement minimum standards of BEPS Package (Action 5: Harmful tax practices, Action 6: Prevention of tax treaty abuse, Action 13: Country-by-Country Reporting, and Action 14: Mutual Agreement Procedure), Thailand has introduced specific transfer pricing laws from 1 January 2019 onwards, which empower the tax authority to request transfer pricing documentation for review and make transfer pricing assessments according to the arm's length principle.

While the tax authority already had the power to adjust pricing to be at arm's length under general tax provisions prior to the new transfer pricing regime, MNEs operating in Thailand have been subject to a greater level of transfer pricing scrutiny in recent years. Some of the most commonly observed triggers include:

- Gross margin losses
- Consecutive operating losses
- Decline or fluctuation in profits
- Significant related party transactions, especially management fees and royalties
- Year-end adjustments, residual profit models, or variable royalties
- Business restructurings, especially those resulting in reduction in profitability
- Tax refund claims
- Exchange of information with other tax authorities

In case of a formal transfer pricing audit, a maximum tax penalty of 100% together with a surcharge of 100% could be assessed. If the taxpayer does not agree with the assessment, they could take the case to the Board of Appeal of the Revenue Department within 30 days after receiving the assessment. If the appeal is not successful, they could further take the case to the Central Court and the Court of Appeal for Specialised Cases. The last resort is the Supreme Court, subject to the Court's discretion whether to accept the case.

To avoid the potential financial liabilities (which could be severe) and administrative burdens (which could take multiple years to resolve) from transfer pricing audits, the 'Prevention is always better than cure' approach should be proactively considered. Some of the measures are:

- Maintain transfer pricing documentation: Not only a local file is a statutory requirement under the Thai TP laws if an MNE reports a revenue of more than THB 200 million in any given year, but it also can be a very useful and effective tool to address some of the key issues/triggers as discussed above, such as reason(s) for loss/low profitability, or business restructuring.

The local file is one of first few documents which the tax authority would request from taxpayers during transfer pricing audits. Therefore, the robust, contemporaneous local file is a must for the first line of audit defense.

- Maintain other supporting evidence/documents: MNCs operating in Thailand should also sufficiently maintain other support evidence/documents to support their intercompany transactions and pricing policies or adjustments, as well as regularly update them to ensure their relevance. The evidence/documents may include intercompany agreements, transfer pricing policies, benefit tests and cost allocations (for service transactions), benchmarking analyses (for royalty/loan/service transactions), etc.

STRATEGIC SOLUTION

As a proactive measure, MNCs operating in Thailand should monitor their transfer pricing policies on a regular basis and make necessary amendments, when required. To help manage this process, MNCs can monitor their transfer pricing policies and directly make necessary amendments by adopting operational transfer pricing ("OTP") solutions in their financial software systems. OTP solutions ensures that transfer pricing policies are accurately implemented in a company's day-to-day financial and accounting operations. It reduces administrative burden and human errors. OTP solutions helps multinational enterprises align their financial outcomes with the arm's length standard, ensuring compliance while optimising global tax liabilities and cash flows.

Another effective and proactive measure to avoid or resolve a transfer pricing disputes or double taxation caused by transfer pricing audits, MNEs operating in Thailand have an option to apply for bilateral or multilateral advance pricing arrangements ("APAs") or mutual agreement procedures ("MAPs") under the relevant double tax agreements.

To summarise, a proactive, technically sound, and consistent approach to transfer pricing by MNEs operating in Thailand is a better strategy than a reactive response involving enquiries, disputes, and audits from the tax authority. This becomes even more relevant today with the increasing scrutiny on wide-ranging issues from the tax authority, as well as the emphasis on transparency and exchange of information between tax authorities after Thailand has signed the OECD's Multilateral Instrument.

Resolving Transfer Pricing disputes in **Indonesia**: Best practices and insights

FOCUSED TP AUDIT TREND

Transfer pricing audits in Indonesia are typically more complex and fact-intensive than other tax audits. A recurring issue is the tax authority's scrutiny of intragroup services, especially concerning the actual delivery of services, cost base determination, allocation keys, and whether pricing adheres to the arm's length principle.

In many audits, the Indonesian Tax Authority disallows intragroup service payments if taxpayers fail to prove that services were rendered and economically beneficial. Simply providing agreements, invoices, or payment proofs is often insufficient. Tax officers frequently question:

- Whether services were actually performed;
- Whether there is any measurable benefit to the Indonesian entity;
- Whether services were duplicative, shareholder-related, or "on-call"; and
- Whether cost allocation and mark-ups reflect arm's length standards

Despite guidance from the OECD Transfer Pricing Guidelines, no specific local regulation defines the exact documentation threshold to substantiate intragroup services. This uncertainty increases audit risk and leaves room for subjective assessments.

The recently enacted Minister of Finance Regulation No. 172/2023 (PMK-172/2023) introduces tighter rules through a "preliminary stage analysis" in applying the arm's length principle, which must be documented in the Local File. This stage focuses on assessing the substance, existence, and benefits of a transaction or arrangement, covering service, royalty, financial, and other transactions. If a taxpayer cannot substantiate these elements, the transaction is deemed non-compliant, allowing the tax office to re-determine income or deductions without further review of its overall arm's length compliance.

STRATEGIC SOLUTION

Responding effectively to TP audit challenges in Indonesia requires discipline, speed, and strategic preparation. Taxpayers typically have only one month to respond to information requests during audits. Failure to provide documents within this period means the tax authority is entitled to disregard any late submissions, regardless of their relevance.

To navigate these constraints, taxpayers are advised to:

- Build audit-ready files proactively, not reactively;
- Maintain clear internal documentation on business rationale, service usage, and benefits received;
- Align service documentation with local expectations, including measurable metrics like cost savings, revenue growth, or operational efficiency; and
- Consider using external validation like an Agreed-Upon Procedures (AUP) report from auditors or consultants to support cost allocation and benefit analysis.

Taxpayers must go beyond compliance checklists and engage in evidence-based storytelling - explaining clearly why the services matter to the Indonesian business and how they improve commercial outcomes.

INNOVATIVE APPROACH

One of the most effective strategies for mitigating disputes is early and proactive preparation. Companies that wait until a tax audit is underway are often on the back foot. Those that prepare in advance - with structured, well-maintained, and localised documentation - are far better positioned to handle audits confidently.

Some innovative practices include:

- **Mock audits:** Simulate a TP audit internally or with advisors to stress-test documentation and identify gaps;
- **Digital documentation systems:** Organise and index files for fast retrieval during audits;
- **Metrics-driven benefit tracking:** Link intragroup services to KPIs such as sales growth, cost optimisation, or strategic outcomes;
- **Cross-functional coordination:** Involve finance, legal, and operations teams in preparing narratives and evidence.

Ultimately, the lesson learned is that strong documentation is not just about compliance - it's about strategic risk management. By integrating transfer pricing governance into broader business operations, companies reduce the likelihood of disputes and improve audit outcomes.

Resolving Transfer Pricing disputes in **Philippines**: Best practices and insights

FOCUSED TP AUDIT TREND

The Philippines transfer pricing environment has evolved within the last few years. The Bureau of Internal Revenue (BIR) has increased transfer pricing scrutiny in their tax audits, is continuously updating their transfer pricing framework, and upskilling its examiners. Deloitte has taken a proactive approach engaging the tax office in this initiative, to ensure taxpayers are provided clarity in their dealings with the BIR and robust engagements during tax audits .

A clear focus area of the BIR during audits is transactions that lack economic substance or adequate documentation, particularly those where deductibility is questioned. Increasingly, the BIR examines whether the Philippine entity genuinely receives value from group arrangements, especially in intercompany service and IP-related transactions.

These types of arrangements — intra-group services and intellectual property transactions — are among the most prevalent and straightforward methods used for profit shifting. Because they are often paper-based, involve complex valuation, and are difficult to verify at the local level, they are seen by tax authorities as easy vehicles for base erosion. This mirrors a broader trend across developing jurisdictions in Southeast Asia, where revenue authorities are focusing on these "low-hanging fruits" of TP audits. Where taxpayers fail to demonstrate substance or arm's length justification, the BIR may disallow deductions, recharacterise payments as non-deductible expenses, or even treat them as constructive dividends. This underscores the importance of preparing robust TP documentation, articulating the business rationale behind group charges, and ensuring that local operations are aligned with functional profiles

STRATEGIC SOLUTION

TP audits in the Philippines are shifting to a more holistic review of the **story behind the numbers**, underpinned by data and substance. The following best practices have emerged from recent audits:

- **Anchor on local substance –** Even in global operating models, the Philippine entity must be able to show its economic role in the group or benefits from its transactions. This allows it to justify its profits, transactions, and pricing.
- **Framing the conversation –** understanding the context behind your transactions is key. Make sure tax examiners focus on the right issues
- **Document contemporaneously –** Waiting for an audit before preparing TP documentation or benefit analyses significantly weakens a taxpayer's position. TP reports provide the starting point of any tax payer defence, so needs to be prepared early to prevent a scramble.
- **Identify high-risk transactions early –** Payments for services and royalties, particularly to low-substance or low-tax jurisdictions, attract higher levels of scrutiny and must be justified with more than just benchmark studies.
- **Numbers behind the numbers –** early!– get workpapers behind the charges you receive. You can only justify the charges if you know how these were calculated. The difficulties of obtaining this from the data owners means you need to have this available before requested by the tax examiner.
- **Information management is key -** Ensure we give the right data, not too much to distract from the issue and not too little to be non-cooperative.
- **Engage constructively –** A respectful, early-stage engagement can help manage the timeline and tone of the audit process.

INNOVATIVE APPROACH

Proactive defence

Taxpayers in the Philippines are increasingly adopting a **proactive and transparent approach** when dealing with TP audits. Rather than merely submitting documentation, some taxpayers are taking the initiative to **engage the BIR audit team early**, providing a walk-through of the business model and operational context. This approach helps demonstrate the **commercial rationale, actual services performed, and benefits** derived by the Philippine entity, reinforcing the legitimacy of the intercompany charges. Taxpayers are encouraged to prepare **defence packages** that pre-empt potential issues for material high-risk transactions.

Collaboration with the tax office

A unique approach by Deloitte to improve audit consistency and reduce unnecessary disputes has been through our engagement with the BIR. Most recently, this has been done through a series of **capacity-building workshops** and **discussions with BIR TP leadership**. These initiatives aim to enhance the quality and reasonableness of TP audits and support the development of more effective risk assessment tools within the BIR.

Resolving Transfer Pricing disputes in **Malaysia**: Best practices and insights

FOCUSED TP AUDIT TREND

Transfer Pricing (TP) remains a primary focus in tax audits, with the Inland Revenue Board of Malaysia (IRB) actively monitoring taxpayer compliance. Beyond traditional TP issues such as method selection, comparables, and entity characterisation, the IRB has intensified its scrutiny in the following areas:

Royalty and management fee payouts

In case of royalty payouts, the IRB typically assesses the licensee's involvement in DEMPE-related activities to determine whether the local entity has performed any value-adding or customisation functions. Taxpayers are expected to demonstrate ongoing technical support, periodic updates, or other contributions made by the licensor to ensure the intangibles remain commercially relevant to the licensee's business. In case of management fees payouts, the IRB challenges these transactions, particularly under the duplication test. It evaluates the necessity and relevance of the services received and whether similar activities are already performed by the service recipient's in-house personnel. The recently introduced low-value added services (LVAS framework) could be an effective way to manage the risk arising from management fee payout transactions. Scrutiny anyway intensifies.

Business restructuring

The IRB has increased its focus on business restructuring to verify whether a genuine restructuring has occurred and whether there is a strong commercial rationale. Restructuring should not be used merely as a mechanism to reduce the local entity's profitability without a substantive change in its functional profile. The level of scrutiny is higher when restructuring involves tax-incentivised entities. Notably, the IRB now has the authority to derecognise commercially irrational arrangements and recharacterise transactions—extending beyond traditional arm's length pricing challenges.

Deemed interest on intercompany balances

The IRB is actively applying a blanket interest rate set by the Central Bank on interest-free intercompany advances, often without conducting a detailed credit assessment of the borrower or considering the perspectives of both parties. Upcoming guidelines on financial transactions, expected by year-end, are anticipated to offer greater clarity for taxpayers navigating these issues.

STRATEGIC SOLUTION

To strengthen compliance and manage transfer pricing (TP) risks amid increasing audit activity and evolving regulations, taxpayers should adopt proactive measures that ensure both regulatory alignment and audit readiness. Key strategies include:

- **Manage Local Nuances -** While Malaysia's TP Guidelines are broadly aligned with the OECD TP Guidelines, several local nuances must be addressed to minimise TP risk. It is prudent to align TP positions with local regulations and the IRB's preferences on few key aspects such as: conducting local benchmarking analyses, using single-year data for comparability, applying the prescribed arm's length range of the 37.5th to 62.5th percentile
- **Contemporaneous TP Documentation -** TPD must be prepared and dated prior to the annual tax return filing deadline to demonstrate compliance and reduce penalty exposure. Additionally, it should be supplemented with commercial justifications (e.g., start-up phase, industry downturn) in case of margins are below the benchmarking range outcome.
- **Audit Readiness Documentation-** Beyond annual compliance TPD, the IRB expects comprehensive documentation and supporting evidence for few specific transactions during audits. Taxpayers should maintain additional documentation as outlined in Appendix A of the Malaysia TP Guidelines.
- **Proactive Approach and Effective TP Operationalisation-** Conduct periodic reviews, monitor regulatory changes, raise internal awareness, and use of automation to manage compliance and audit risks.

INNOVATIVE APPROACH

Taxpayers can adopt practical strategies to strengthen their TP position and foster a more constructive relationship with the IRB:

- **Voluntary Disclosure (VD) –** Proactively resolve past-year TP exposures to reduce penalty risks, demonstrate good compliance behaviour, and show willingness to cooperate with the IRB, which may help foster goodwill for future engagements.
- **Audit handling approach –** During audits, ensure the IRB clearly understands the supply-chain of the business model and TP policies, have readiness of robust documentation, provide consistent explanations, and furnish relevant evidence to satisfactorily respond to all the IRB queries. This approach can reduce misunderstandings and potentially would lead to better audit outcome.
- **Constructive Engagement –** Maintain open, transparent and cooperative communication with the IRB to build trust and achieve more balanced audit outcomes.

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Appendix 2:
TP implication in Pillar Two context - SEA regions
Detail sharing from each country

VIETNAM

On 29 November 2023, Vietnam's National Assembly issued Resolution 107, officially adopting Pillar Two, effective from 1 January 2024. In addition, the Government issued Decree 236/2025/ND-CP dated August 29, 2025 (effective from October 15, 2025) with specific provisions on declaration, registration, determination of "top-up" tax, notification obligations, and transitional measures. Vietnam is the first country in the SEA region to adopt Pillar Two.

This regulatory framework highlights the important connection between Country-by-Country Reporting (CbCR) and the GloBE rules outlined in Pillar Two.

- **GloBE Calculation relies on "Qualified CbCR":** As CbCR is no longer a traditional TP compliance documentation but a key data source for Pillar Two, MNEs need to make further efforts during preparation stage of CbCR to ensure that all data points are meticulously refined and qualified for GloBE calculation from initial stages. In addition, it is critical to accelerate CbCR readiness now to avoid last-minute issues (ideally three months before the TCSH filing deadline).
- **Once Out, Always Out:** If a MNE does not apply for TCSH in a fiscal year during which it is subject to the GloBE Rules, it will not be eligible for that safe harbour in subsequent years for that jurisdiction.
- **The arm's length principle: more important than ever:** TP adjustment can impact the GloBE calculation and trigger top-up taxes. MNEs should reassess the substance and pricing of intercompany transactions to ensure alignment with both ALP and value creation. Advance Pricing Agreements (APAs) offer a path to tax certainty, especially in complex structures or high-risk jurisdictions. In Vietnam, Decree 122/2025/ND-CP marks a major step forward by delegating APA approval to the Ministry of Finance, streamlining the process and making APAs a more accessible and strategic tool for Pillar Two readiness.

Recommendation

The accuracy and timely availability of CbCR are essential for effective TCSH application. Delays or inaccuracies in CbCR preparation can impact the timeliness and accuracy of GloBE assessment. Therefore, early engagement is highly recommended. It is important to collaborate promptly with the UPE to ensure that CbCR data is readily available, ideally three months before the TCSH filing deadline.

MNE groups are strongly encouraged to review the substance and pricing of their controlled transactions to ensure they are fully aligned with both arm's length principle and the economic reality of value creation. This includes validating that entities performing key functions, bearing risks, and owning assets are compensated accordingly.

For MNEs seeking greater tax certainty, especially in jurisdictions with aggressive TP audits or complex supply chains, entering into an Advance Pricing Agreement (APA) can be a strategic move.

SINGAPORE

Singapore has enacted the Multinational Enterprise (Minimum Tax) Act 2024 (or "MMT Act") and the Multinational Enterprise (Minimum Tax) Regulations 2024 in order to implement the OECD's Pillar Two Global Anti-Base Erosion ("GloBE") model rules ("P2").

P2 rules in Singapore are effective for financial years starting on or after 1 January 2025 and impose a 15% global minimum tax on entities of in-scope MNEs via two mechanisms – the multinational enterprise top-up tax ("MTT"), which operates in a manner similar to the Income Inclusion Rule as described by the OECD GloBE model rules, and a domestic top-up tax ("DTT"). Singapore has not implemented the Undertaxed Profits Rule ("UTPR").

In evaluating the impact of the GloBE rules on your business, in-scope MNEs (i.e., where consolidated revenue exceeds EUR 750 million in two of the four immediately preceding financial years) should pay particular attention to their entities in Singapore that are either:

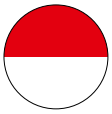
- Enjoying concessionary tax rates; or
- Have capital gains and fair value gains which are not taxable (e.g., revaluation of fixed assets, or mark-to-market gains on financial instruments which are capital in nature); or
- Have substantial amounts of financial accounting income that either are or have not been subject to tax in Singapore (e.g., foreign sourced income not remitted into Singapore).

These commonly seen features of the Singapore tax regime will lower an MNE's Singapore jurisdictional effective tax rate ("ETR") and could result in them being subject to DTT in Singapore (i.e., jurisdictional ETR < 15%).

P2 fundamentally alters the playing field in which countries compete for MNE investment. The post-P2 paradigm limits the use of tax as a policy lever and instead forces countries to compete on other factors (e.g., access to capital and talent, regulatory environment, political stability, etc.). Singapore's suite of tax incentives, which have been useful in helping to attract foreign investment, will lose their sheen post-P2.
In response, the Singapore government has introduced Refundable Investment Credits ("RIC"), which are designed to meet the definition of a Qualified Refundable Tax Credit under the GloBE model rules. MNEs should consider these if they have plans to expand their economic activities in Singapore.

Recommendation

A review of existing supply chains, tax and transfer pricing operating models, and whether they are fit-for-purpose in today's challenging geopolitical climate is timely. However, with global minimum tax looking to stay in some shape or form, ETR could lose its importance as a key tax planning metric. To better navigate today's global tax environment, factors such as audit defensibility, tax certainty, and model flexibility should be more strongly considered during planning.



INDONESIA

Pillar Two of the OECD's global tax reform introduces a 15% minimum tax on profits earned by large multinational groups, aiming to reduce tax avoidance and ensure a level playing field. Indonesia has formally adopted these rules through Government Regulation No. 136/2024, effective 1 January 2025.

While the premise - a global minimum tax appears simple, the complexity lies in determining each entity's profit. Pillar Two uses Financial Accounting Net Income or Loss (FANIL) as the starting point for calculating the "top-up" tax. Here, transfer pricing plays a critical role in shaping FANIL outcomes.

In practice, unilateral transfer pricing (TP) adjustments are common in Indonesia. These may arise from voluntary corrections under CITR or as a result of tax audits, where the transfer price recorded in one jurisdiction is not reflected by the counterparty. Such mismatches can distort GloBE income calculations. Under Pillar Two, any unilateral TP adjustment requires a corresponding adjustment to the GloBE income or loss of the affected counterparty - unless that counterparty is located in an "undertaxed jurisdiction" (with a statutory or GloBE effective tax rate below 15% for the past two years). In those cases, downward adjustments are disallowed, to avoid "double non-taxation.

From an Indonesian standpoint, while the corporate tax rate exceeds 15%, the prevalence of unilateral adjustments poses risks. These adjustments can inflate FANIL, potentially triggering top-up tax obligations at the group level - especially if the counterparty's jurisdiction allows a corresponding downward adjustment. Timing also matters: late-stage TP audit settlements can affect the year in which top-up tax is assessed, making accurate and timely documentation critical.

Recommendation

To mitigate these risks, multinationals should consider harmonising intercompany pricing policies, and where feasible, secure Advance Pricing Agreements (APAs) to ensure consistent outcomes across jurisdictions.

Taxpayers should also evaluate their eligibility for transitional safe harbour rules, which may provide temporary relief from Pillar Two calculations - subject to thresholds based on Country-by-Country Reports (CbCR) and GloBE Information Returns (GIR). Given the Indonesian Tax Authority's growing focus on data-driven compliance, ensuring the accuracy of these filings is vital.

In a post-Pillar Two world, proper documentation, consistent pricing, and early coordination between Indonesian entities and group headquarters will be essential for managing both local compliance and global top-up tax exposure.

PHILIPPINES

Deloitte continues to support the Philippine government in advancing Pillar Two implementation. Encouragingly, the MoF and BIR recognised the importance of aligning with global standards, leading to the country's entry into the Inclusive Framework in late 2023. While major legislative steps are expected post-May 2025 elections, the strong political will signal a promising path forward.

Listed below are potential TP impacts of Pillar Two in the Philippines:

- Tax incentives/CREATE MORE Bill: The Philippines introduced CREATE MORE, reshaping its tax incentives. MNEs using BOI, PEZA, or similar schemes should reassess strategies—especially if incentives push ETR below 15%, risking top-up taxes. Non-tax incentives may be worth exploring.
- Philippine advantage on SBIE: Given the Philippines' labor- and asset-heavy sectors (e.g. BPO/SSCs, manufacturing, energy and extractives), SBIE exclusions could significantly reduce top-up taxes and open planning avenues.
- Restructuring operations for planning purposes: complex regulatory requirements and limited infrastructure make such restructuring costly and time-consuming - potentially deterring longer-term structural responses.
- Fragmented MNE Presence: Many MNEs operate multiple Philippine entities without coordinated tax planning. With Pillar Two's jurisdictional ETR test, centralising tax/TP oversight is now critical.
- Introducing CbCR reporting: Though local CbCR filing isn't required, Philippine entities must ensure their reports meet GloBE standards. Early evaluation is crucial, as unlike other jurisdictions, this may pose real challenges with the BIR.

MALAYSIA

Under the Pillar Two framework, transfer pricing outcomes must be consistent with the arm's length principle and uniformly reflected in the financial accounts of all counterparties. Inconsistencies in ALP application (e.g., unilateral adjustment) could distort the computation of GloBE income and effective tax rates.

Against this backdrop, Malaysia relies on **a narrow benchmarking range (37.5th–62.5th percentile)** diverges from the more widely accepted interquartile range **(25th–75th percentile)** applied in many jurisdictions. This compressed range effectively limits acceptable profit margins and, when combined with Malaysia's other specific TP nuances such as reliance on single year results and local comparables, may increase the risk of inconsistencies in the application of ALP criteria across counterparty jurisdictions. Under Pillar Two, such inconsistencies could affect jurisdictional effective tax rates and potentially trigger top up taxes.

Recommendation

To mitigate these risks, taxpayers should ensure that Malaysian TP positions are balanced within the counterparty jurisdiction expectations as well. For sizable or complex transactions, consider bilateral APAs or MAP proceedings to secure consistency across jurisdictions and safeguard compliance with both local rules and the global Pillar Two framework.

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