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by David D. Stewart

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The current economic climate presents significant challenges for transfer pricing arrangements but may also offer opportunities for some companies seeking new advance pricing agreements, practitioners said May 21.

Members of the PricewaterhouseCoopers transfer pricing group participating in a ''Transfer Pricing in a Recession'' webcast outlined the difficulties facing companies with transfer pricing arrangements and possible responses to them.

Steve Hasson with PwC's U.K. transfer pricing group discussed difficulties related to pricing using comparables and adjusting to the current environment with existing arrangements.

Hasson noted that the data being used for determining comparables are ''historic'' and ''lagged,'' resulting in a data set that does not reflect the current economic environment.

''In short, what it means is that the data you are relying on is drawn from boom years, and you probably don't want to benchmark your pricing against that position or indeed you may not be able to,'' Hasson said. ''This whole question of comparability has gotten a whole lot harder,'' he added.

On the subject of loss sharing in the context of principal structure arrangements with low-risk distributors, Hasson explained that tax authorities appear to be open to changes in which distributors accept ''break even'' pricing when the principal is incurring losses, as such changes may be consistent with arm's-length principles. However, he noted there has been ''a bit more pushback'' from authorities on the issue of distributor sharing losses.

Joe Andrus concurred, observing that authorities are willing to allow adjustments, particularly in distressed industries such as the automobile industry, and noting that there is ''much less resistance for companies to move from profit split to loss split.''

According to Greg Ossi, a principal with PwC's transfer pricing group, companies with a current APA will face challenges in the current environment but companies in negotiations for APA's could find opportunities.

For companies with current APA's, Ossi said that while it is unlikely tax authorities would be willing to renegotiate the agreement based only on a decline in sales, it may be possible to seek an extension of a current APA with renegotiated terms for the remainder.

For companies considering or in negotiations for an APA, Ossi explained that the IRS's APA office is open to a range of ''techniques and refinements'' employed in a new agreement. Among the techniques Ossi suggested were using different pricing over several periods to reflect the current downturn and expected recovery, shortening the APA term, or including special ''critical assumptions'' in the agreement.

''I would characterize this as a work in process at the APA office,'' Andrus said. ''They are clearly working on figuring it out, but I don't think there is a fixed menu of things that they are willing to do in any case or in every case that's carved in stone at this point.''

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