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Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in transfer pricing.

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The issue of tax and transfer pricing has come sharply into focus over the last few years. Tax authorities across multiple jurisdictions, including the US, Canada and across Europe and Australia, have begun to aggressively focus on transfer pricing arrangements.

While transfer pricing has historically been a business issue in most jurisdictions, over the last decade we have seen the practice spread into the political spectrum, particularly as global economic growth has remained somewhat stagnant. With governments the world over looking to balance their budgets in difficult times, the transfer pricing arrangements of big businesses – including the likes of Google, Amazon and Apple – have caught the attention of the public as well as global regulatory bodies.

The recent decision taken by the European Commission regarding the alleged state aid received by Apple in Ireland has cast even more light on the topic of transfer pricing. The Commission’s verdict, which stipulates that Apple must pay in excess of $14bn to Ireland in back taxes and interest, could be historic. Potential transfer pricing litigation in the US against Microsoft and Coca-Cola may well be impacted by this ruling going forward.

The implementation of the OECD’s base erosion and profit shifting (BEPS) initiative has had a transformative impact on transfer pricing, given that the introduction of a uniform set of reporting standards and exchange of information mechanisms has increased the pressure on organisations to ensure they achieve compliance.

Equally, the release of BEPS reports has brought transfer pricing to the forefront of governmental thinking, requiring countries like Australia and the UK to introduce a raft of new legislation governing international tax and transfer pricing. Given the new requirements established by the BEPS initiative and increased local governmental pressure, companies would be advised to ensure their transfer pricing documentation is adequate. To ascertain whether they are compliant, companies should carry out a comprehensive review of their cross-border activities.
ARMITAGE: The most startling transfer pricing development does not involve transfer pricing, at least technically, and it is not in the US. It is the European Commission’s case against Apple under the European Union’s state aid law. Apple secured tax rulings from Ireland many years ago that the European Commission asserts are illegal state aid, so Apple should pay more than $14bn in past taxes and interest; the US Treasury has defended Apple. US companies are watching this case closely. In addition, US transfer pricing litigation, in particular, against Microsoft and Coca-Cola Inc., has grabbed taxpayers’ attention. On a positive note, the US government and India broke their stalemate over competent authority disputes and advanced pricing rulings.

Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN THE US OVER THE PAST 12 MONTHS OR SO?

ARMITAGE: The largest multinationals are keenly focused on establishing strong transfer pricing policies and ensuring adequate documentation. Smaller companies present a more mixed picture. Many of these companies have not been challenged in audits on transfer pricing so they still view transfer pricing work as ‘nice to have’ rather than essential. Many of these smaller companies will be required to prepare country-by-country reports for 2016 and that may spark companies into paying closer attention to transfer pricing.

Q IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?
**Q TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN THE US PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN RECENT YEARS, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?**

**ARMITAGE:** Tax authorities in the US, Canada and Mexico have aggressively increased their focus on transfer pricing, but this has been a decade-long development, not just a change initiated over the past few years. The US government is making a strong effort to focus its limited resources on the most important cases, matters with large amounts of tax at stake or important legal issues. US companies are well aware that other countries frequently focus their audit attention on US multinationals, both because US companies are often large and because of a perception that US multinationals engage in more tax planning than companies headquartered elsewhere.

**Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?**

**ARMITAGE:** Proper preparation for an audit begins long before tax examiners begin an audit. Most attention now is focused on country-by-country reporting; taxpayers need to make sure they can gather the information and explain any results that seem anomalous. And, the master file that most companies will be required to prepare is both a burden and an opportunity: taxpayers should view the master file as a chance to put forward an informed explanation of how the company operates and where value is created. The master file and country-by-country reports should inform and reinforce each other. Many US taxpayers face a further challenge in complying with new regulations under Section 385 that relate to loans from foreign related parties to US persons. These regulations will require taxpayers to more closely understand and document these loans. Finally, company tax professionals need to make sure their CFOs, and even their CEOs, understand the new world of transparency for international tax reporting, because of the high risk of publicity about tax matters.
**What kinds of challenges arise in calculating appropriate transfer prices, both for tangible and intangible assets? How crucial is it to have consistent supporting documentation?**

**ARMITAGE:** The biggest challenge for taxpayers is to understand – really, truly understand – the value chain for a company, and then to explain that value chain. How does the company make its money? What is the competitive advantage for the taxpayer? Under BEPS, a transfer pricing inquiry does not look at the functions, assets and risks of a single subsidiary, but extends to the value chain of the global company. Taxpayers need to be ready to explain the entire company’s operations. Furthermore, neither taxpayers nor tax authorities fully appreciate the difficulty of taking a transfer pricing method and then constructing a price list. Taxpayers do not price goods and services using a 'method'. The taxpayer must project future volumes, costs, selling prices and arm’s-length margins, and then prepare a price list. And a price list for 2017 uses data from 2015 and 2016, while the world is constantly changing. The best-prepared taxpayers have process maps to explain how they take company data, prepare a price list and then document that the results are arm’s-length.

**Q Have you seen an increase in transfer pricing disputes between companies and tax authorities in the US?**

**ARMITAGE:** There is a heightened sensitivity to transfer pricing, so more US audits are including an international examiner who raises questions about transfer pricing. These questions do not always lead to disputes, but the issue is raised more frequently than in the past. There can be tensions between the local case manager in charge of the case and the transfer pricing specialists; this process emerges from the recent restructuring of the IRS large business and international division and is still being worked through. US companies are in the crosshairs of foreign examiners, who see the publicity about Starbucks, Apple and other US companies and leap to the conclusion that all US based multinationals must be hiding money.
“The best-prepared taxpayers have process maps to explain how they take company data, prepare a price list and then document that the results are arm’s-length.”

Q IN GENERAL, WHAT ADVICE WOULD YOU GIVE TO COMPANIES ON REVIEWING AND AMENDING THEIR TRANSFER PRICING POLICIES AND STRUCTURES?

ARMITAGE: Ask yourself two questions; firstly, can you explain to a tax examiner how you construct your transfer prices? What transfer pricing method do you use? What company financial data do you use, and where do you get it? How do you project the results for the coming year when the price list will apply? And, how do you monitor performance and adjust the price list as needed? Second, can you explain the company’s value chain, and do the profits reside in the locations where you believe the value is created? These are tough questions, if we answer them honestly. But, honest answers will lead us to proper thinking and proper documentation.

An experienced lawyer in the transfer pricing sector, Clark Armitage joined Caplin & Drysdale as a Member in 2013. Before joining the firm, Mr Armitage spent eight years in the IRS Advance Pricing Agreement Program, serving as Deputy Director from 2008 to 2010. His core practice is advising multinational corporations on transfer pricing in all contexts, from planning to cross-border dispute resolution. Mr Armitage has a particularly strong background interacting with tax authorities on advance pricing agreements and mutual agreement procedures for corporations in a wide range of industries.
BELGIUM

FREDERIK DE GRAEVE
GRANT THORNTON

DE GRAEVE: In Belgium, the obligation to prepare and file transfer pricing documentation has been introduced, where before no such obligation existed. Multinational groups with consolidated gross revenues exceeding €750m will need to file a country by country report for financial years started from 1 January 2016. Furthermore, Belgium has introduced the obligation to prepare and file transfer pricing documentation in line with the master file - local file concept. Companies that are part of a multinational group and that are exceeding one of the following thresholds, which are to be evaluated on the standalone financial statements of the Belgian entity, are subject to this obligation – a total of €50m operational and financial income, excluding extraordinary income; or a balance sheet total of €1bn; or an annual average number of employees of 100 FTEs. This obligation is also applicable for financial years starting from 1 January 2016.

DE GRAEVE: Based on our experience, we feel that both multinational groups and SMEs are paying more attention to transfer pricing and transfer pricing documentation in recent years. This awareness has obviously increased since the new transfer pricing documentation obligations have been introduced. Many companies have transfer pricing systems or methodologies available. These systems are often based on a best effort exercise performed by the financial management of the company. Although these methodologies often result in prices that are consistent with the arm’s length principle, in a lot of cases, insufficient documentation is available. Furthermore, even if a decent transfer pricing system is available, it often happens that such a system is not always consistently applied throughout the group. The number of companies or groups that do not pay attention at all to an appropriate transfer pricing policy has decreased significantly in recent years.
Q TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN YOUR REGION PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN BELGIUM, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?

DE GRAEVE: The Belgian tax authorities have a specific team that focuses on transfer pricing audits exclusively. Furthermore, transfer pricing questions can also be raised during 'normal' corporate tax audits. The specific transfer pricing team expanded significantly in 2013. Moreover, at the end of 2015, it was announced that this specific team will be expanded further. Additionally, it was also announced that tax inspectors that are not part of this specific team, but that are part of the team responsible for auditing large companies, will receive specific training with respect to transfer pricing. In line with previous years, it is expected that a new wave of questionnaires, which will be the start of an in-depth transfer pricing audit, will be sent in early 2017.

Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?

DE GRAEVE: At the start of a transfer pricing audit, a company will receive an extensive questionnaire, covering all possible intercompany transactions of the group. The questionnaire covers both general information on the group, specific information about the intercompany transactions and the transfer pricing documentation available for these transactions. Companies could request a pre-audit meeting at the start of the audit process. During this meeting, companies can discuss with the tax inspectors what information is necessary, which transactions are the most important, and so on. A taxpayer needs to respond to the questionnaire within 30 days. Extensions to this deadline are possible. Within the questionnaire the company will have to provide general information about the company, the wider group and its strategies, financial information for the years under audit, and so on. Furthermore, the contractual agreements, benchmarking studies available, rulings, and so on, are all requested in the questionnaire.
Q WHAT KINDS OF CHALLENGES ARISE IN CALCULATING APPROPRIATE TRANSFER PRICES, BOTH FOR TANGIBLE AND INTANGIBLE ASSETS? HOW CRUCIAL IS IT TO HAVE CONSISTENT SUPPORTING DOCUMENTATION?

DE GRAEVE: For intangible assets, the unique character of the assets often makes it difficult to find sufficiently comparable data to determine and document arm’s length prices. Notwithstanding the fact that specific databases are available for intangible assets or royalties, it remains difficult to determine an arm’s length remuneration for transactions in which valuable intangible assets are used. For tangible assets, the same difficulties might arise, although it is in general easier to identify comparable transactions. In the past, it was already important to have transfer pricing documentation supporting the intercompany prices applied. Since transfer pricing documentation became mandatory for many companies from 1 January 2016, having consistent transfer pricing documentation becomes even more important. Penalties can be imposed if insufficient documentation is available.

DE GRAEVE: The number of auditors pertaining to the specific transfer pricing audit team has increased significantly since 2013. As a consequence, the number of transfer pricing audits has also increased. At the beginning of each calendar year, this team sends a large number of questionnaires to different taxpayers, which is the start of an in-depth transfer pricing analysis. The taxpayers that receive a questionnaire from the transfer pricing audit team are selected via a system of datamining. Based on a number of ratios and specific keywords or transactions included in the annual accounts and attachments to the annual accounts, a risk assessment is made by the system to identify taxpayers that might be subjected to a transfer pricing audit. As a consequence of the use of this system, no longer is it only large multinational entities that are subject to a transfer pricing audit, SMEs are susceptible too.
“An in-depth analysis might reveal inefficiencies within the group and will allow the group to structure its activities in an optimal way.”

DE GRAEVE: Certainly in light of the new transfer pricing documentation obligations in Belgium, it is highly recommended that companies start reviewing their existing transfer pricing policies and to start preparing transfer pricing documentation in a timely fashion. Besides the fact that this documentation has become mandatory, it can also be used by the company or group as a planning tool. The documentation allows a group to verify whether all intercompany transactions meet the arm’s length standard, whether all intercompany transactions are remunerated, and so on. An analysis of a group’s intercompany transactions provides a good overview of how the functions and risks are situated within the group. As a consequence, an in-depth analysis might reveal inefficiencies within the group and will allow the group to structure its activities in an optimal way.

After obtaining a master degree in Economics and Taxation in 2001, Mr De Graeve joined the tax practice of a big four consulting firm. He joined the tax practice at Grant Thornton in 2012 and was admitted to partnership in 2015. He leads the firm’s Direct International Tax and Transfer Pricing practices. He is also overall responsible for the contacts of the tax teams with the international network. He is a trusted business adviser to both multinational enterprises as well as SMEs with considerable expertise in various areas, mainly related to the Belgian and international taxation of corporates and partnerships.
**NETHERLANDS**

**JUAN DOSAL**  
**RSM NETHERLANDS**

**DOSAL:** The OECD’s base erosion and profit shifting (BEPS) project has provided a new framework for creating more coherent international tax rules, reinforcing the link between the substance requirements and international tax standards and increasing transparency. Resulting from this, on 22 December 2015 the Dutch parliament passed legislation implementing the BEPS final report on transfer pricing documentation and country by country (CbC) reporting. The new legislation was implemented with detailed regulations, which came into force on 1 January 2016. Under the new regulations, multinational enterprises (MNEs) must ensure that they are compliant with the following requirements in a timely fashion. Firstly, the parent companies of MNEs with a minimum consolidated turnover of €750m are obliged to comply with CbC reporting obligations. Secondly, Dutch entities that are part of a MNE with a minimum consolidated turnover of €50m must have a master file and a local file available at the time of filing their tax return.

**Q** WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN THE NETHERLANDS OVER THE PAST 12 MONTHS OR SO?

**DOSAL:** Today, we are seeing a notable increase in the number of transfer pricing related tax audits and tax adjustments. MNEs often get into trouble when they do not have robust transfer pricing documentation clarifying that the intercompany transactions they are undertaking are in compliance with the arm’s length principle, or when the transfer pricing documentation that they do have available is not updated to reflect changes to their business operations or the recent changes in the transfer pricing regulations.

**Q** IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?
Q TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN THE NETHERLANDS PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN RECENT YEARS, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?

DO SAL: To demonstrate that transfer pricing has been designated as a key focal point by the Dutch tax authorities (DTA), the Netherlands was one of the first countries to fully implement the OECD’s BEPS final report on Action 13. Subsequently, this initiative has been broadly implemented throughout all the European Union where most of the Member States have already implemented, or have announced that they will soon implement, the BEPS final report on Action 13. In the Netherlands, the tax authorities are increasingly not only focusing on the arm’s length nature of the conditions of a transaction, but also on the arm’s length nature of the transaction itself. These aspects were clarified in the Decree of 26 November 2013, issued by the Ministry of Finance, which includes a section addressing the ‘non-arm’s length loan’ doctrine, as developed by the Dutch Supreme Court in 2011 and 2013.

Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?

DO SAL: MNE groups should be prepared to achieve compliance with the new transfer pricing regulatory environment well in advance, lest they become subject to tax audits or investigations. This compliance could only be possible if sound transfer pricing policies are implemented and transfer pricing documentation – that meets the new documentation requirements – is available prior to the initiation of a tax audit or investigation. Moreover, for complex situations it is advisable that companies obtain an advance pricing arrangement (APA) from the DTA. Currently, the DTA is a strong advocate of entering into bilateral, or even multilateral, APAs.
What kinds of challenges arise in calculating appropriate transfer prices, both for tangible and intangible assets? How crucial is it to have consistent supporting documentation?

DOSAL: Resulting from the release of the BEPS final report on Actions 8 to 10, a substantial revision was undertaken to the OECD Transfer Pricing Guidelines in relation to the interpretation of the arm’s length principle, where it is necessary to assess the economic substance of intercompany transactions. In practice, this revision requires MNEs to conduct a more detailed functional and risk analysis to support the contractual allocation of risks in intercompany transaction. Moreover, this revision requires MNEs to separately identify the various risks involved in their intercompany transactions and analyse and document, for each of those risks, the group entity that is actually making decisions to take on, lay off and mitigate risks. This modification to the OECD Transfer Pricing Guidelines will have significant relevance in cases of intercompany transactions involving intangibles, cash box entities or loss making companies.

DOSAL: The number of transfer pricing disputes is increasing everywhere. Thus, Dutch taxpayers engaged in intercompany transactions are exposed to eventual challenges from tax authorities in multiple countries. This further stresses the importance of having robust transfer pricing documentation demonstrating that the intercompany transactions undertaken by a MNE are in compliance with the arm’s length principle.
Q IN GENERAL, WHAT ADVICE WOULD YOU GIVE TO COMPANIES ON REVIEWING AND AMENDING THEIR TRANSFER PRICING POLICIES AND STRUCTURES?

**DOSAL:** MNEs will be required to adapt to the post BEPS environment, and establish a strategy that pays more attention to substance and transparency requirements. In this respect, being able to anticipate and articulate the reality of the company’s transfer pricing policies, and how such policies are a true reflection of the businesses operations, is key. This is crucial because the BEPS measures require MNEs to provide more insight into the transfer pricing models applied, as a result of which they may be facing additional questions and tax audits. Therefore, success in the BEPS changing environment requires the reassessment of whether the transfer pricing policies applied accurately reflect the business operations of the MNE; and to ensure that robust transfer pricing documentation, which meets with the new BEPS requirements, is available. To achieve such success, MNEs must prepare to meet the new requirements, including how to collect the additional required data and also how to disclose key information in the transfer pricing documentation.

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Juan Dosal brings over 13 years of relevant TP experience. He leads RSM Transfer Pricing Team in the Netherlands. His work includes advising multinationals in different sectors in the design and implementation of transfer pricing arrangements. Moreover, he possesses a robust experience in preparing transfer pricing documentation for multinationals operating in multiple jurisdictions and is experienced in the negotiation of advance pricing agreements and in controversies related to transfer pricing. He also advises clients on the transfer pricing consequences of actual and potential transactions and assists in documenting transfer pricing policy reviews.
DE PRETER: Luxembourg’s transfer pricing regime has, since 1 January 2015, been based on Article 56 of the Luxembourg Income Tax Law (LITL), which broadly replicates the arm’s length principle wording as set out in Article 9 of the OECD Model Tax Convention. With the BEPS Project text formally adopted into the OECD transfer pricing guidelines at the May 2016 OECD Council, Luxembourg took further action by introducing a draft bill, which was published on 12 October 2016. It now proposes to introduce a further article, 56bis, into the LITL. The article has been designed to explicitly sign some of the key principles set out in the OECD guidelines in their 2016 form into law. Furthermore, it is expected that the Luxembourg transfer pricing circular, which provides guidance for financial transactions, will be updated from 1 January 2017.

Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN LUXEMBOURG OVER THE PAST 12 MONTHS OR SO?

DE PRETER: Companies have generally increased their focus on transfer pricing in recent years and have made additional efforts to align their policies for related party transactions to the overarching operational business reality. Given the increased complexity of the global economy and market pressures to constantly explore possibilities for operational improvement, such an alignment becomes a challenge. As transfer pricing has an impact on the allocation of system-wide profit to the functions, assets and risks in all locations in which companies operate, an increasing number of internal stakeholders have an interest in ‘getting it right’.

Q IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?
DE PRETER: On 12 October 2016, a bill was presented to parliament outlining the government’s 2017 budgetary measures. One article in the bill sets out new transfer pricing provisions, with increasing details of the basic arm’s length rule. The proposed new wording closely follows some of the key text of the OECD transfer pricing guidelines making the already authoritative status of these guidelines in Luxembourg even more explicit. Assuming that the bill is enacted, the new provision will formally apply from 1 January 2017.

DE PRETER: Best practice experiences show that the internal tax department should be actively involved in ensuring that all queries are managed diligently and consistently. In any case, we recommend having a main contact person through which companies can channel all communications and who is responsible for create a transparent and trusting relationship with the tax auditors, as well as understanding the international aspects of any transfer pricing arrangement. Upon request, OECD compliant transfer pricing documentation must be provided.
Q WHAT KINDS OF CHALLENGES ARISE IN CALCULATING APPROPRIATE TRANSFER PRICES, BOTH FOR TANGIBLE AND INTANGIBLE ASSETS? HOW CRUCIAL IS IT TO HAVE CONSISTENT SUPPORTING DOCUMENTATION?

DE PRETER: The arm’s length principle requires the performance of a hypothetical comparison, as if the related-party transaction had occurred between independent parties. For transactions that are not typically observed between third parties, such comparisons create challenges. Any calculation of prices and resulting profitability of the transacting parties should be aligned to the operational reality considering functions, assets and risks of the parties. A full value chain analysis reflecting the relative contribution to the value created by each related party is in many cases a challenge. It would, however, facilitate the selection of a transfer pricing method which would allow an analysis of the arm’s length nature of profits realised by both or one of the contracting parties. A transfer pricing policy, consistent application and documentation are crucial to demonstrating compliance with tax authorities.

Q HAVE YOU SEEN AN INCREASE IN TRANSFER PRICING DISPUTES BETWEEN COMPANIES AND TAX AUTHORITIES IN LUXEMBOURG?

DE PRETER: The number of tax disputes is on the rise globally and Luxembourg is no exception. Luxembourg taxpayers engaged in international transactions are exposed to challenges from authorities in multiple jurisdictions, which further stresses the importance of an arm’s length global transfer pricing policy with which they will be able to respond adequately to disputes. With the introduction of transfer pricing documentation requirements, an increased review of the transfer pricing arrangements can be observed.
“A transfer pricing policy, consistent application and documentation are crucial to demonstrating compliance with tax authorities.”

Q IN GENERAL, WHAT ADVICE WOULD YOU GIVE TO COMPANIES ON REVIEWING AND AMENDING THEIR TRANSFER PRICING POLICIES AND STRUCTURES?

DE PRETER: The most important consideration should be around adopting an OECD compliant approach, aligning their transfer pricing policy with the operational reality of the multinational group. We recommend not waiting for a request from the tax auditor to submit transfer pricing documentation, but rather companies should initiate a review of all intercompany transactions and associated transfer pricing arrangements in order to ensure compliance with the OECD transfer pricing guidelines.

Loek de Preter has more than 28 years of experience in international tax and transfer pricing. As a fiscal economist, he started his career with the Dutch Ministry of Finance and worked with PwC in the Netherlands for five years. After working in industry for eight years he returned in 2006 to PwC as transfer pricing and value chain transformation partner in Germany. As the transfer pricing leader at PwC Luxembourg since April 2015, he has supported the firm’s transfer pricing and international tax structure practice in servicing its clients to adequately master their increasing transfer pricing challenges.
GERMANY

MARKUS BREM
GTP GLOBALTRANSFERPRICING BUSINESS SOLUTIONS GMBH

Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN GERMANY OVER THE PAST 12 MONTHS OR SO?

BREM: The most significant change is the increase in the general awareness of transfer pricing matters, be it within multinationals, on the part of local tax consulting teams of small and mid-sized consulting firms, or local tax authorities. Of course, in 2016 we have seen the administrative principles on profit attribution to permanent establishments, and we will soon see the new code sections of the Article 90 Tax Procedures Act on transfer pricing documentation with master file, country file and country by country reporting.

Q IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?

BREM: There is considerable room for companies to prepare adequately to meet the challenges and complexities of transfer pricing compliance, particularly as it pertains to structuring TP systems, the preparation of documentation packages, benchmarking, and the like. Interestingly, after more than 10 years of having the documentation provisions in Germany, there are still some corporate groups headquartered in our jurisdiction which have not worked through their transfer pricing systems to establish their TP policy or even a basic documentation framework for related-party transactions, simply because they have not yet gone through an audit. Indeed, companies will have to spend more effort in structuring their TP policies and executing sound price setting models for intragroup transactions which are compliant with the arm’s length principle and with documentation provisions across the globe. However, this will first have to become an internal process within multinationals.
Q TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN GERMANY PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN RECENT YEARS, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?

BREM: In Germany, today almost every tax audit covers TP issues where cross-border related-party business is part of the company’s day to day operations. Each regional tax authority (OFD) or state tax organisation is now in possession of an in-house expert team responsible for identifying transfer pricing issues. Yet, one also should note that some ‘experts’ misunderstand the difference between the decision-making freedom granted by the law of obligations – ‘freedom of contracts’ – on the one hand, and the ‘documentation law’ on the other hand, and finally the tax authority’s view, which is guided by administrative principles. The administrative principles are merely binding for tax authorities, while in Germany – as in most of the constitutional states around the globe – contractual freedom enjoys priority over the definition of transfer pricing methods, as defined in administrative principles. The tax code in Germany does not define price setting methodologies or arm’s length testing methods.

Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?

BREM: Firstly, companies must differentiate between the tax code the administrative principles. They must also be aware that the bulk percent of the material necessary for a tax audit already exists within the taxpayer’s domain; companies should make that available by searching for it prior to the audit. Thirdly, though Germany’s ‘documentation package’ can provide the tax auditor with an overview on the transfer pricing system, it is not the ultimate ‘proof’. Evidence has to be provided by solid documentation rather than by 150 pages of verbal descriptions. Furthermore, for audit periods up to 2016, we do not have code provisions on master file, country file and country by country reporting; instead it is the GAufZV and other regulations like the one on base shifting or on profit attribution to permanent establishments which will determine what needs to be delivered. Last but not least,
companies should prepare the basic documentation by means of an internal transfer pricing documentation project – it will not take more than a small internal project to identify the pattern.

BREM: Our experience is that most decision-makers in multinationals know quite well what the price setting for tangibles or intangibles should look like. Such asset pricing is negotiated in the context of bonus models and labour contracting. They are also in possession of information concerning pricing decisions in the past. The challenge is to arrive at a definition relating to transfer pricing and the extent by which the exchange of assets should be priced separately through distinct transactions or conjoined by groupings such individual transactions together. Also, a further issue to address relates to the accounting data from the ERP-system and existing documentation which tells us about TP structures.

BREM: Obviously we have seen an increase in the number and size of these disputes. Yet, while in the first instance the tax auditor behaves snappily and directly with regard to their position on non-arm’s length transfer pricing, they have turned out to become quite moderate in adjusting income allocation, once the transfer pricing system has been explained. The reason for this is quite simple; tax laws in Germany and in most countries do not dictate specific transfer pricing definitions. If at all, such a dictation is presumed by local administrative principles, however they are not binding for the taxpayer. In tax jurisdictions based on constitutional law, the position of the authorities is not the only ‘truth’ and is likely to be overruled by the courts if the case was brought there. To avoid such an overruling, many tax audits result in porous final arrangements rather than in the initial position of the auditor. Though I doubt that this is the intention of the lawmaker, it is a daily occurrence.
Q IN GENERAL, WHAT ADVICE WOULD YOU GIVE TO COMPANIES ON REVIEWING AND AMENDING THEIR TRANSFER PRICING POLICIES AND STRUCTURES?

BREM: Our advice is relatively straightforward: companies should set up an internal project designed to include the use of external expertise to structure their transfer pricing system, as they would do when launching a new building construction project, which always is done with external or internal architects. Expertise should be sought and leveraged regarding transactions, price setting, arm’s length test models and definitions of indicators to establish arm’s length information, including price comparisons, profitability ratios, cost ratios, and so on. Companies should then execute the related-party transactions based on that definition. They should also manage the archiving of contracts, documents and other information being used as ‘evidence’ for arm’s length behaviour. They should conceptualise the company’s group-wide transfer pricing documentation as an introduction into, and as an repository on, the transfer pricing system. Finally, they should carry out all of these functions centrally in the company’s headquarters and as a distinct group-internal service with the service function towards the entities and PEs abroad.

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NEUKOMM: The BEPS reports and an increase in transparency related to tax rulings has triggered some rather drastic changes in the way the Swiss tax authorities’ approach to transfer pricing issues. However, to date there have been no legislative changes regarding transfer pricing documentation or requirements. Historically, the Swiss authorities have not had a very sophisticated practice regarding transfer pricing. This is obviously because the low tax environment creates an incentive for groups to determine a transfer pricing policy that would generally be in favour of the Swiss entity.

NEUKOMM: Thus far there has been little attention paid by Swiss companies to transfer pricing questions. Generally, transfer pricing issues arise in Switzerland mainly in connection with outbound transfers of assets such as participations, intellectual property, and so on. The main area where there have been transfer pricing disputes and issues with the tax authorities have been related to the interest rates on intragroup debts and claims. Every year, the Swiss tax authorities publish the safe harbour minimum and maximum interest rates, which are not typically in line with the rates determined by the group’s transfer pricing policy. It has often proven difficult to obtain the approval of the authorities on a rate that would be different from the safe harbour rate based on a transfer pricing policy, analysis or report.
NEUKOMM: The Swiss authorities have placed an increased importance on transfer pricing in recent years, even though there has been to date no formal integration of the BEPS report into Swiss law or practice, save for the automatic exchange of tax rulings under Action 8. The Swiss tax authorities are now systematically referring to works published in this area notably when discussing transfer pricing matters. Lately, Swiss companies have noted that Swiss tax authorities may be launching large scale investigations and challenges based on transfer pricing disputes. These types of disputes are typically difficult because the authorities tend to consider that incorrect transfer pricing must also be sanctioned by a penalty, usually set at a multiple of the additional taxes claimed to be due.

NEUKOMM: Swiss legislation is completely silent on transfer pricing documentation. Swiss companies are thus typically not bound to prepare or provide any transfer pricing documentation to the authorities. In practice, in the event of an audit or investigation, it would be typically advisable to retain a reputable firm to prepare a transfer pricing report or analysis. This type of documentation, if convincing, may be critical to the settlement of a dispute with the Swiss tax authorities.

NEUKOMM: One of the main challenges is connected to the fact that Swiss authorities will have their own approach that is not typically in line with the transfer pricing policy in place within certain groups and, as the case may be, recognised by tax authorities of other countries where the group has entities. Even though there are no obligations, either imposed by the legislation or the published practice of the

Q TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN SWITZERLAND PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN RECENT YEARS, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?

Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?

Q WHAT KINDS OF CHALLENGES ARISE IN CALCULATING APPROPRIATE TRANSFER PRICES, BOTH FOR TANGIBLE AND
authorities, to have transfer price documentation in place and to make it available to the authorities, having this documentation in place allows Swiss companies to have the authority to accept an approach which is different from their standard approach.

NEUKOMM: There has been a rather drastic increase in the number of transfer pricing disputes both by the authorities in charge of Swiss corporate income and from those in charge of Swiss withholding tax. These issues with transfer pricing may result in the company having made constructive dividends, subject to Swiss withholding taxes. In practice, if the company has reliable transfer pricing documentation available, disputes and challenges may be settled rather swiftly. Should that not be the case, however, settling the issue can be much more of a challenge. The increased number of challenges is impacting a variety of different entities, such as trading companies and Swiss banks, among others.

NEUKOMM: In the event that a company is reviewing or amending its transfer pricing policies and structures, the classic option that would come into play is whether the company hopes to file and obtain a ruling from the relevant tax authorities. This can obviously be a very interesting feature as it provides the company with a good degree of certainty that the tax authorities will not challenge or question the new policies or structures. However, this approach must always be carefully considered as it may uncover possible transfer pricing risks from previous years. A Swiss tax ruling is generally granted for a fixed number of years, usually five. Requesting and obtaining a ruling would thus generate a duty to approach the authorities every five years to update or revisit the ruling. When considering the opportunity to require and secure a Swiss transfer pricing ruling, the company must also consider the fact that, pursuant to BEPS Action 8, the Swiss authorities will need to
“If the company has reliable transfer pricing documentation available, disputes and challenges may be settled rather swiftly.”

provide information on the existence and nature of the ruling with the concerned countries. The company could also consider requesting that Switzerland agree with the relevant other country a bilateral advanced pricing agreement. The main advantage of this approach is obviously avoiding future challenges by the concerned country too, which would generate a rather lengthy and complex mutual agreement procedure between both countries. The Swiss authorities are generally willing to consider these types of bilateral advanced pricing agreements.

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ITALY

ALDO CASTOLDI
DELOITTE

CASTOLDI: Transfer pricing regulations are constantly being amended and updated in various jurisdictions, but the wave of changes triggered by the completion of BEPS Actions final reports on transfer pricing matters, and more specifically that on Action 13 – transfer pricing documentation and country by country reporting – have definitely been the most significant. Indeed, most European countries have promptly adopted the new three tier documentation package recommended by the OECD as the new standard for transfer pricing documentation, including an absolute novelty like the so-called 'country-by-country reporting' which most countries have introduced for MNEs with a turnover equal or in excess of €750m starting from financial year 2016.

CASTOLDI: Notwithstanding the fact that the attention paid to transfer pricing compliance by companies with cross-border intercompany transactions has been steadily increasing in the last few years, prompted by an equally increasing attention from tax authorities, there is probably room for improvement, especially in the field of ensuring ongoing compliance of actual pricing with disclosed – in the relevant documentation packages – policies and consistency between intercompany agreements and actual behaviour of the parties to them. Also, more attention should probably be paid to cross-border intercompany financial transactions, a topic which the tax authorities are becoming increasingly focused upon and developing special audit and assessment skills.

Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN ITALY OVER THE PAST 12 MONTHS OR SO?

Q IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?
CASTOLDI: Although it is not possible to provide an exact measure of the increase in the tax authorities’ monitoring and enforcement activities regarding transfer pricing, there is a clear perception throughout Europe of a significantly greater focus by most countries’ tax authorities. This has been demonstrated by the increasing number of audits, the greater ratio of audits resulting in final assessments and increasingly detailed and strict documentation requirements being set forth by the authorities. Recent trends are represented by a widespread use of exchange of information tools and bilateral and multilateral agreements and more frequent joint or contemporaneous audits.

CASTOLDI: Today, most companies would be expected to have some sort of transfer pricing documentation readily available, to be handed over to tax auditors upon their request. Cooperating with the authorities in this regard is paramount given that it can shorten the length of the audit and help companies either reduce their penalty or help them to avoid harsh tax penalties. In addition, companies should be ready to show their contractual framework and to respond to the tax auditors’ additional requests concerning their business activities and profile, as well as their intercompany transactions and transfer pricing model. Nevertheless, companies should not feel obliged to provide local tax auditors with information they would not be expected to have access to if they were third parties to their related counterparties, for example, segregated financial statements of their related providers or clients, or they would not need to have for conducting their ordinary activity or complying with local civil or tax regulations.
Q WHAT KINDS OF CHALLENGES ARISE IN CALCULATING APPROPRIATE TRANSFER PRICES, BOTH FOR TANGIBLE AND INTANGIBLE ASSETS? HOW CRUCIAL IS IT TO HAVE CONSISTENT SUPPORTING DOCUMENTATION?

CASTOLDI: There are a number of challenges which must be faced and overcome by companies when it comes to determining appropriate transfer pricing. First of all, a comprehensive and accurate functional, risk and asset analysis should be performed, followed by a thorough comparability analysis on the basis of which an appropriate methodology has to be determined or developed to be applied to determine the target arm’s length results in terms of prices, margins or profits. The efforts required can be significant, however the ‘reward’ of a well designed, appropriately implemented and regularly monitored transfer pricing process is the creation of a consistent supporting documentation, which is vital to helping protect companies from the risk of heavy tax adjustments.

Q HAVE YOU SEEN AN INCREASE IN TRANSFER PRICING DISPUTES BETWEEN COMPANIES AND TAX AUTHORITIES IN ITALY?

CASTOLDI: The situation of transfer pricing controversies is not the same across Europe. While there are countries where transfer pricing disputes have remained stable or even decreased such as Belgium, Portugal and Germany, for example there are other countries, such as Italy and France, where disputes have increased, sometimes significantly, over the last few years. In general, however, there seems to have been something of an increase in disputes recently, likely triggered by greater attention from the tax authority and higher claims, the slowdown of alternative dispute resolution tools, including MAPs and EU arbitration, and, last but not least, more decisions by tax courts favourable to taxpayers.
“It is vitally important that transfer pricing policies closely follow the evolution of the business.”

CASTOLDI: It is vitally important that transfer pricing policies closely follow the evolution of the business, steadily and consistently reflecting its substance in terms of functions, risks and asset allocation among group entities. Almost equally significant is the preparation of appropriate transfer pricing documentation. This paperwork must also be regularly updated in order to eliminate the risk of penalties in the case of adjustments. Finally, a multinational company should consider negotiating an adequate network of advance pricing agreements in order to secure intercompany pricing going forward and avoiding transfer pricing audits.
UKRAINE

OLGA TRIFONOVA
PWC UKRAINE

**TRIFONOVA:** Even though the OECD based transfer pricing rules are rather new in Ukraine – having come into force in September 2013 – they have already been amended several times. A short while ago, certain important amendments were adopted which became effective in January 2015. In particular, the thresholds for controlled transactions were increased, along with penalties for non-compliance, control over transfer pricing for VAT purposes was dropped and the deadline for filing transfer pricing documentation was extended. In addition, in 2016 the form of a report on controlled transactions – which is a return notifying the tax authorities about controlled transactions – was extended with profit level indicators to be included. This amendment motivated businesses to perform transfer pricing analysis before filing this report, by 1 May the following year, to assess the profitability and mitigate the risks of being not at arm’s length. Last but not least has been the so called ‘de-offshorisation’ initiatives in Ukraine; the Ukrainian authorities are developing new legislation with respect to this initiative. This law is expected to implement certain BEPS transfer pricing initiatives, such as country-by-country reporting, master files, and so on.

**Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN UKRAINE OVER THE PAST 12 MONTHS OR SO?**

**TRIFONOVA:** The attention paid to transfer pricing in Ukraine has not been sufficient and there are several factors explaining this. First of all, since transfer pricing rules are relatively new to Ukraine, the practice of transfer pricing audits and reviews of transfer pricing documentation has been very limited. Therefore, many businesses believe that transfer pricing is not a priority for the tax authorities, but this is not the case. The authorities simply need time to learn how to apply transfer pricing rules correctly. The second factor is the lack of experience in transfer pricing in Ukrainian companies, in particular, within local businesses. Local businesses sometimes mistakenly believe the transfer pricing analysis is easy and that they can avoid transfer pricing controls by utilising sophisticated structures. As for multinationals,
they are sure that the transfer pricing documentation prepared at a group level can be easily used in Ukraine and thus do not consider local nuances. Again, I strongly believe that such an attitude from both multinational and local businesses is temporary.

TRIFONOVA: Due to the fact that Ukraine’s transfer pricing rules are relatively new, transfer pricing practice in the country is limited. The developments in transfer pricing and its importance for the tax authorities are becoming clearer and more obvious. A year ago the tax authorities only requested and reviewed transfer pricing documentation from businesses; now several transfer pricing audits have been already completed, resulting in the first transfer pricing assessments. To my knowledge, there are several audits currently in progress. Furthermore, more and more companies are being requested to provide transfer pricing documentation. This concerns not only very large businesses but medium sized firms as well. All of these developments point to the growing attention transfer pricing matters are receiving from the tax authorities.

TRIFONOVA: In Ukraine, transfer pricing monitoring works in such a way that after filing a report on controlled transactions, a taxpayer may receive a request to provide transfer pricing documentation. At this stage, this does not represent a transfer pricing audit but rather the internal procedures of the tax authorities. Non-filing of transfer pricing documentation will result in penalties and will likely attract a transfer pricing audit. After review of the transfer pricing documentation, the tax authorities may initiate an audit. This is likely to happen if they identify risks or suspect violations while reviewing the documentation. In the event of an audit, the authorities may request primary documents such as contracts and invoices, various explanations or extensions to transfer pricing documentation, and may
even look to interview the company’s employees to verify functional
analysis of the parties. I am aware of cases when companies received a
seven page query containing only questions to clarify information outlined
in their transfer pricing documentation. If a business feels that there are
transfer pricing risks associated with its transactions, I would recommend
companies not wait for the audit but be proactive and prepare a strong
defence file to support its transfer pricing position.

TRIFONOVA: We have seen a number of challenges that businesses face
in calculating proper transfer pricing. First, I would mention the lack of
consistent policies and manual control over prices. Inconsistent pricing is
a red flag for the tax authorities. Having consistent transfer pricing policies
and supporting documentation in place is crucial for transfer pricing risk
management. For a number of businesses, multinationals in particular, there
is an opposite problem: they have overregulated transfer pricing policies and
fix prices for a certain period of time. Even though the situation may change
significantly throughout the year, the companies do not monitor a need for
change or simply cannot change the transfer prices. This was a real issue for
Ukrainian importers in 2014-15 due to substantial currency fluctuations
and foreign exchange losses. Most of them ended up with huge losses and,
consequently, were exposed to transfer pricing risks. Unfortunately, credit
notes or year-end adjustments, which are widely used in other countries,
do not easily work in Ukraine. They should be properly structured and
documented in order to mitigate tax, customs and legal risks.

TRIFONOVA: Looking back at late 2014, and early 2015, there were no
cases of transfer pricing audits in Ukraine. Several audits have now been
completed, with assessments and a number of transfer pricing audits in
progress. As a result of one audit, the taxpayer filed no appeal, agreeing
with the assessments. Other transfer pricing audit assessments will be in
court shortly. Therefore, soon we will have an opportunity to see the court’s
view and approach to transfer pricing disputes and the first court practice
on transfer pricing will appear in Ukraine in the coming years.
TRIFONOVA: I believe methods such as relying on sophisticated structures to avoid transfer pricing controls or covering certain information are no longer sustainable. In light of various international initiatives aimed at transparency, such as the BEPS Action plan, the automated exchange of information between the tax authorities of various jurisdictions, and so on, I would recommend businesses build transparent legal and trading structures based on sustainable transfer pricing policies and documentation. Aside from this, I would recommend companies monitor the consistency of transfer pricing policies with up-to-date business models. There are cases where companies use transfer pricing policies developed a number of years ago even though their business model and commercial relationships within the group have changed. At the end of the day, this may result in transfer pricing issues for the group as a whole.

Olga Trifonova is a director with the tax and legal services practice in PwC Ukraine. She leads the transfer pricing practice in PwC Ukraine. She has 10 years of extensive experience providing consultancy services on taxation for large international and Ukrainian companies on tax related issues (including transfer pricing issues) and on tax structuring of domestic and cross-border transactions (including intercompany transactions). Ms Trifonova managed the PwC Ukraine team that advised the Ukrainian authorities on developing and improving the new TP rules based on best TP practices. She has extensive experience in delivering transfer pricing projects.
AUSTRALIA

JAMES NETHERSOLE
NEXIA AUSTRALIA

Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN AUSTRALIA OVER THE PAST 12 MONTHS OR SO?

NETHERSOLE: Transfer pricing has been at the forefront of the business news in Australia and following the release of the 2015 BEPS reports, the government has responded with the introduction of a suite of new laws related to international tax and transfer pricing. Similarly to the UK’s response, these new measures include taking unilateral action in new legislation specifically targeting the artificial avoidance of a permanent establishment (PE), known as the Multinational Anti-Avoidance Law (MAAL). Broadly, the MAAL seeks to recharacterise structures and transactions by multinational groups which are seen to artificially avoid creating a PE in Australia by the use of ‘low value service companies’ which, in substance, contribute to the conclusion of contracts with local customers. Where the MAAL applies, the foreign entity is effectively brought into the Australian tax net via a deemed PE and may be subject to income tax and increased withholding tax.

Q IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?

NETHERSOLE: Over the last few years, transfer pricing has perhaps gone from being a predominantly business issue to a political one. Media coverage of high-profile businesses’ transfer pricing, together with the need to balance government budgets, have meant increased scrutiny of transfer pricing for all taxpayers. In recent years, new rules have placed increased importance on transfer pricing documentation. For those wishing to mitigate penalties on any future ATO review, documentation is now effectively mandatory, and penalties for adverse findings have increased. On the upside, however, the preparation of documentation often leads companies to think about their transfer pricing policies in-depth, which often leads to favourable outcomes for the global group.
NETHERSOLE: It is probably fair to say that the Australian Taxation Office (ATO) has ramped up its operations on all fronts in targeting tax avoidance through transfer pricing. The ATO is already a signatory to the automatic exchange of financial information with other governments and is in the process of enacting country by country (CbC) reporting which will apply to years commencing on or after 1 January 2016. The automatic exchange of information as well as the information provided from CbC reporting will give the ATO unprecedented information on multinationals’ tax policies and global division of profits. In addition, the Australian government has enacted new legislation which applies to large multinationals with global income in excess of A$1bn. This new legislation potentially doubles penalties for such groups and brings in new measures targeting tax anti-avoidance through transfer pricing such as the MAAL. This additional information and legislative regime are expected to be enforced through the use of the government’s new tax avoidance taskforce which has been established specifically to audit and investigate multinationals and other high risk taxpayers.

Q TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN AUSTRALIA PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN RECENT YEARS, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?

Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?

NETHERSOLE: As a rule, taxpayers should always consult their tax adviser at the first sign of interest by the ATO. This is often in the form of a general risk review which may not have specific transfer pricing questions. However, the taxpayer’s responses may lead to further enquiry in that direction as the ATO better understands the business model. Where these answers are insufficient, the ATO’s investigation may widen. As a result, it is important to get on the front foot and control the process with the ATO. The taxpayer’s first action before any response should be to consider what documentation is available to support profit outcomes as being commercially realistic – focusing on the robustness of the functional analysis and its conclusions as to the relative value-drivers in the business. Any weaknesses should be
identified and considered, as early disclosure will usually mitigate any associated penalties.

NETHERSOLE: Intangibles undoubtedly present the biggest challenge in establishing arm’s length pricing, particularly where there is a unique manufacturing intangible. The OECD has released reports covering BEPS Actions 8 to 10, which aim to provide further clarification on how intangibles should be valued and in particular, require companies to be able to demonstrate the ongoing creation and control of value in the intangible, rather than focusing solely on its legal ownership. An added danger is the difference in approach of global tax authorities to the valuation of intangibles, for example, where one country deems there to be an assignment of IP rights rather than an ongoing licence in the other country. Valuations of marketing intangibles also give rise to significant risk, and royalties charged to related parties in Australia should be well documented in light of the local conditions, such as market size and strength of a brand at the time the local party enters into the transaction.

NETHERSOLE: The ATO has historically been seen as being relatively aggressive in its enforcement of transfer pricing, which is viewed as particularly important to protecting Australia’s tax base given the country’s position as a net capital importer. In recent years, the ATO has sought to challenge a number of multinationals, particularly in the technology sector but also in resources, where it believes transfer pricing has led to profit outcomes in Australia which are commercially unrealistic. The ATO achieved its first major win in court on transfer pricing in 2015 against Chevron when the ATO won on all major issues. Although litigation is most obvious in high profile cases, it would be a mistake for taxpayers to assume ATO resources are only dedicated to looking at the larger multinationals. We have seen significantly increased activity and focus on transfer pricing in ATO risk reviews faced by smaller corporate taxpayers with international dealings, particularly with regard to intangibles.
“Intangibles undoubtedly present the biggest challenge in establishing arm’s length pricing.”

Q IN GENERAL, WHAT ADVICE WOULD YOU GIVE TO COMPANIES ON REVIEWING AND AMENDING THEIR TRANSFER PRICING POLICIES AND STRUCTURES?

NETHERSOLE: An overriding principle would be to ensure that their transfer pricing documentation is risk-appropriate. This can only be established after performing a robust functional analysis of the group’s cross-border dealings. Smaller companies in particular carry a significant tax compliance burden, but this should not be a reason to avoid the preparation of transfer pricing documentation. Provided the functional analysis supports it, Australia’s rulings make it clear that the level of documentation required should be relative to the materiality of that company’s transfer pricing risk. In other words, those with simpler related party dealings may require less documentation and thus associated resources. In addition, Australia has a set of seven simplified documentation options that may be available to qualifying smaller companies. These are being trialled for a three year period and provide the taxpayer with protection from audit on transfer pricing policies other than the taxpayer’s eligibility to use the simplified option itself.
TAIWAN

MING CHANG
DELOITTE TAIWAN

**Chang:** Over the past 12 months, there have been two significant transfer pricing (TP) developments. One was the enforcement of stricter TP audits by the Taiwan tax authorities. The second was the proposed amendment to the Taiwan TP regulations and the potential impact it would create on the preparation of TP documentation in accordance with the Base Erosion and Profit Shifting (BEPS) Action Plans, especially Action Plan 13. Although there have not yet been any specific timelines regarding the release of the amendment draft, Taiwan multinational enterprises (MNEs) should still be aware of these changes and their potential effects on their business strategy and tax compliance costs. This follows the pattern by which many OECD member countries have recently amended their tax regulations to address BEPS Action Plans. In recent months, we have seen many MNEs begin the process of reviewing their group structures and business models, as well as their TP policies. Companies are also starting to examine whether their intercompany transactions are consistent with their TP policies and the arm’s length principle. We have also seen many MNEs start to prepare their three-tier TP documentation as required by BEPS Action Plan 13.

**Q** WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN TAIWAN OVER THE PAST 12 MONTHS OR SO?

**Chang:** Most MNEs have established their own transfer pricing policies. Regardless, few companies pay much attention to the challenges and complexities of maintaining compliant transfer pricing policies. The Taiwan tax authorities have increased the numbers of TP audit cases year-by-year by focusing on MNEs and on companies that have complicated intercompany transactions. Moreover, the tax authorities have requested separate analyses for each type of intercompany transactions. As the TP auditing skills of the tax authorities become more mature, taxpayers should periodically review their TP policies and check whether their profit allocation is reasonable.

**Q** IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?
CHANG: The Taiwan tax authorities have been paying more attention to TP audits in recent years. According to the press release issued by the National Taxation Bureau, a Taiwan company would be a potential target for transfer pricing audit under the following circumstances, which include but are not limited to: the reported gross profit margin, operating profit margin and net profit margin of the company being lower than those of the other companies in the same industry; the group’s consolidated profit being positive while the Taiwan entity’s profit is negative, or the reported profit of the Taiwan entity being significantly lower than those of the other affiliates within the group; the reported net income or loss of the company significantly fluctuating over three consecutive years, including the current year and the two preceding years; the taxpayer failing to disclose the related party transactions in accordance with the provisions of the format; the taxpayer failing to analyse whether the related party transaction is in compliance with the arm’s length principle and failing to prepare a transfer pricing report in accordance with the Taiwan transfer pricing guidelines; the taxpayer avoiding or evading tax liability through other non-arm’s-length arrangement; the taxpayer conducting large and frequent transactions with its related parties located in tax-free or low-tax countries or regions; the taxpayer conducting large and frequent transactions with its related parties of which enjoy the tax incentive; and the taxpayer having other arrangements to avoid or evade tax liability. According to the official statistics, the Taiwan tax authorities selected about 160 companies for the 2014 financial year TP audit. The average amount of adjusted taxable income for financial year 2012-13 TP audit cases was around NTD3bn.

CHANG: The Taiwan tax authorities would like to thoroughly understand intercompany transactions streaming from suppliers to customers, in
order to check if there is a lack of intercompany charge due, such as supporting services provided by expatriates, or further, to examine if every intercompany charge is at arm’s length. The tax authorities would usually require companies under a TP audit to provide segmented financials on the basis of their transaction processes or different transaction types for benchmarking analysis. In addition, the tax authorities would ask to review the transaction papers, such as purchase orders, invoices and transaction agreements, in order to validate the intercompany transactions. In order to facilitate the tax authorities’ understanding of the business model, intercompany transactions and the pricing methods of companies under the TP audit, we would recommend those companies, together with their tax advisers, have a meeting with the tax officers in charge of the TP audit to explain their transactions.

CHANG: Compared to intangible assets, it is easier to obtain the information about comparable uncontrolled transactions for calculating appropriate transfer prices of tangible assets by adopting the comparable uncontrolled price method or the comparable profit method. As for the pricing of intangible assets, companies may refer to comparable uncontrolled transactions or consider the profit split method if more than one group entity participates and makes contributions to research and development activities. Moreover, companies could take into account the DEMPE principle, which represents ‘development, enhancement, maintenance, protection and exploitation’ – the functions that group entities do with the intangible assets. Facing TP audits, companies must provide various transaction papers for tax officers to examine whether the intercompany transactions under review are in line with the information disclosed in the TP documentation. Accordingly, it is very important to have consistent supporting documentation.

CHANG: If taxpayers do not accept the assessment result of the TP audit, they can petition for administrative remedies. However, according to unofficial statistics, the success rate of TP disputes is quite low. Even if
“If taxpayers do not accept the assessment result of the TP audit, they can petition for administrative remedies.”

the petition was accepted, due to the specific technique requirements for TP auditing, it would still go back to discuss the methodologies applicable to the TP analysis. Therefore, taxpayers do not often appeal against the assessment results of a TP audit. We would recommend taxpayers negotiate and settle with the Taiwan tax authorities.

CHANG: We would suggest companies review their TP policies periodically in order to ensure that their intercompany transactions and actual pricing are compliant with TP policies. Moreover, companies should note the potential impact from the implementation of the BEPS Action Plans, and check whether the profit allocated is commensurate with its function and risk profile. Additionally, they should check whether the transaction arrangement is consistent with the business role of the company. If there are differences, we would recommend companies consult their tax advisers in order to review and adjust their TP policies and structures.
KENYA

PETER KINUTHIA
KPMG KENYA

KENUTHIA: Kenya is a member of the G20/OECD inclusive framework on BEPS. Kenya and Uganda have completed phase one of the Global Forum’s exchange of information on request, which is a review examining the legal and regulatory framework. The Global Forum has finalised and published the phase two review examining the implementation of the framework in practice. Phase two for Uganda is currently ongoing, though Kenya was found to be largely compliant. In 2016, Kenya signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAATM). Uganda submitted the ratification instruments and it has now entered into force. Kenya, along with six other countries, is now leading the G20/OECD Africa Initiative, a three year programme which supports the effective use of Exchange of Information (EOI) in African countries. Targets include structural changes to the organisation of EOI work, a minimum number of EOI requests to be sent and the signing of the MAATM. Kenya has had transfer pricing regulations pending since 2014, and though draft guidelines have been issued for comment, to date there has been no publication. The recently enacted Tax Procedures Act 2015 (TPA) the Kenya Revenue Authority (KRA) to investigate pricing arrangements between local units of multinationals with their parent companies and overturn any that are deemed to have been structured with the intention of avoiding taxes.

Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN KENYA OVER THE PAST 12 MONTHS OR SO?

KINUTHIA: Companies in our region do not allocate significant resources toward addressing the challenges and complexities of maintaining compliant transfer pricing policies. We have, however, taken note of two substantial issues. First, there is often a failure to document or annually update TP policies. TP policies are often updated or documented only when the KRA raises a query. Companies are slowly becoming more proactive however; some companies are localising their global policies as part of group reporting requirements. Second, many companies fail to prepare

Q IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?
their business for the implementation of a TP policy. Businesses have predominantly focused on obtaining a policy for regulatory compliance purposes rather than the implementation and enforcement of that policy. Given the increased administrative burdens of the OECD BEPS project, and their influence in the region, implementation and operating applications have become increasingly important. A major challenge we will begin to face in our region is the lack of internal expertise on transfer pricing. Companies have heavily relied on advisers to update and adjust transactions for transfer pricing purposes, but have largely failed in a number of respects. The first failure has been concerned with the efficient governance and management of intercompany processes. They have also failed to represent all of the key functional constituents in the TP process. Overseeing the execution of all processes in accordance with tax policy and accounting requirements has also been an issue, as has maintaining internal communication with all subsidiaries. Managing transfer pricing compliance cycles and maintaining communication across the company on intercompany transactions has also proved to be a challenge.

KINUTHIA: There has been a significant increase in monitoring and enforcement. In the past year we have noted the increased expertise and ability of the revenue authority to benchmark. The KRA is subscribed to Orbis and Moody’s Risk Calculator for benchmarking purposes; Orbis has over 65 million companies in its database and is more advanced than the benchmarking tools currently in use by most tax advisers. The online tax return platform, iTax, requires taxpayers to disclose details of related party transactions and their related entities. In addition there has been increased cooperation between the KRA and other competent authorities globally for information sharing and the settlement of transfer pricing disputes through mutual agreement procedures.
“Internal training, knowledge and awareness of the impact of transfer pricing is key for any company.”

**Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?**

**KINUTHIA:** Other than an up to date transfer pricing policy, the company should always have the following information available: agreements documenting the terms of the intragroup services, invoices evidencing payment for those services, details of the team in the related entity providing the service if the direct method for a recharge is used, details of the basis of the recharge if the indirect method for a recharge is used, justification of this basis and breakdowns demonstrating the method, and finally, up to date information on intercompany transactions.

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**Q WHAT KINDS OF CHALLENGES ARISE IN CALCULATING APPROPRIATE TRANSFER PRICES, BOTH FOR TANGIBLE AND INTANGIBLE ASSETS? HOW CRUCIAL IS IT TO HAVE CONSISTENT SUPPORTING DOCUMENTATION?**

**KINUTHIA:** Justifying the payment made for services relating to tangible and intangible assets and providing evidence of value creation on the part of the receiving entity are the major challenges which have arisen. A lack of major commercial databases with sufficient comparables for African countries is also an issue.

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**Q HAVE YOU SEEN AN INCREASE IN TRANSFER PRICING DISPUTES BETWEEN COMPANIES AND TAX AUTHORITIES IN KENYA?**

**KINUTHIA:** The KRA has taken up more transfer pricing audits in the past year and has increased its focus on more complex issues.
Q IN GENERAL, WHAT ADVICE WOULD YOU GIVE TO COMPANIES ON REVIEWING AND AMENDING THEIR TRANSFER PRICING POLICIES AND STRUCTURES?

KINUTHIA: Internal training, knowledge and awareness of the impact of transfer pricing is key for any company. This should lead to the voluntary disclosure, by any department, of an intercompany transaction. This will then trigger the need for an update to the existing policy. Preparation of both a master file and a local file is now crucial given the KRA’s development of relationships with other revenue authorities and developments in the exchange of information. Even though the OECD guidance under various actions points of the Base Erosion and Profit Shifting (BEPS) initiative have not been yet become part of local legislation, it is indicative of future thinking about these services. Companies should review the likely impact on their operations in the near future.
TANZANIA

TOM PHILIBERT

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PHILIBERT: The release of the final OECD reports on Base Erosion and Profit Shifting (BEPS) is probably the most significant transfer pricing development in a long time. The final report on Action 8, 9 and 10 provides detailed and substantially new guidance on transfer pricing aspects of intangibles and on the allocation of risks between related parties. And then, of course, there is the final report on Action 13 that will change the transfer pricing documentation landscape for many multinationals. This will, of course, have a big impact on transfer pricing analyses in the coming years globally, including Africa and Tanzania.

Q WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN TANZANIA OVER THE PAST 12 MONTHS OR SO?

PHILIBERT: Many taxpayers in Tanzania take transfer pricing seriously and have the best intentions with regard to complying with the relevant regulations to the best of their ability. In particular for significant transactions, I see many taxpayers making resources – both time and money – available to address the transfer pricing aspects in an adequate manner and to prepare robust documentation. In practice, not all transfer pricing aspects are addressed in a similarly detailed manner, as that would create an immense administrative burden. And, of course, the limitation with respect to data sometimes practically prevents taxpayers from doing a very detailed analysis. I think it is important that tax authorities are cognisant of the challenges that taxpayers face and adopt a reasonable approach when auditing.

Q IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?
Q TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN TANZANIA PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN RECENT YEARS, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?

PHILIBERT: The Tanzanian transfer pricing regulations were introduced in 2014. Ever since, the Tanzania Revenue Authority (TRA) has been strongly focused on transfer pricing policies applied by Tanzanian taxpayers and has requested many taxpayers submit their transfer pricing documentation reports. Such documentation tends to get scrutinised in great detail.

Q HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?

PHILIBERT: First of all, every Tanzanian taxpayer should maintain documentation which would enable an accurate determination of the tax payable in Tanzania. The TRA may audit taxpayers and request substantiation for positions taken in the tax return and, in more general terms, for any information that is needed to determine the tax liability of the taxpayer. In addition, Tanzanian transfer pricing rules require Tanzanian taxpayers that have concluded controlled transactions to have contemporaneous transfer pricing documentation on file. That documentation should substantiate the arm’s length nature of the pricing and the conditions of the controlled transactions entered into. Such documentation needs to be in place prior to the due date for filing the corporate income tax return and, upon request by the TRA, should be submitted within 30 days from the date of the request.
Q WHAT KINDS OF CHALLENGES ARISE IN CALCULATING APPROPRIATE TRANSFER PRICES, BOTH FOR TANGIBLE AND INTANGIBLE ASSETS? HOW CRUCIAL IS IT TO HAVE CONSISTENT SUPPORTING DOCUMENTATION?

PHILIBERT: All kinds of challenges can arise when calculating transfer prices. Arguably there are three main types of challenge. Firstly, there are ‘technical’ challenges; some transactions are so complex that it can be difficult to select an appropriate transfer pricing method. This, in turn, makes it difficult to calculate an appropriate price. Secondly, there are challenges with respect to the availability of data. For example, it is difficult to find data with respect transactions entered into by independent parties in Tanzania. Thirdly, there are plenty of implementation challenges. For example, it can be difficult to obtain sufficiently detailed data, and it can be difficult to manage prices and margins throughout the year. In practice, we see discussions arise if the transfer pricing policy as described in a report cannot be supported by means of underlying documents and calculations. Consistency between a report and the underlying documents is therefore very important.

Q HAVE YOU SEEN AN INCREASE IN TRANSFER PRICING DISPUTES BETWEEN COMPANIES AND TAX AUTHORITIES IN TANZANIA?

PHILIBERT: In line with the global trend, transfer pricing has attracted increased attention from revenue authorities in the region. Before the introduction of transfer pricing regulations in Tanzania, transfer pricing, as such, was not really on the radar. The TRA only conducted a few transfer pricing audits and occasionally addressed smaller transfer pricing issues as part of an overall audit. Since the transfer pricing regulations came into force and transfer pricing specialists were hired and formalised by the TRA, specific transfer pricing audits have been executed, predominantly in specific industries such as the telecoms, manufacturing and waste industries. Unsurprisingly, the number of transfer pricing disputes between the TRA and taxpayers has increased significantly since then. This trend will likely continue in the future.
Q IN GENERAL, WHAT ADVICE WOULD YOU GIVE TO COMPANIES ON REVIEWING AND AMENDING THEIR TRANSFER PRICING POLICIES AND STRUCTURES?

PHILIBERT: Taxpayers should be well aware of the global focus on transfer pricing. Sometimes there is a feeling that in the media transfer pricing is often used in the same sentence as tax avoidance or evasion and no differentiation is made between ‘good citizens’ and a few groups that try to shift profits to low tax jurisdictions by mispricing controlled transactions. Taxpayers should also realise that revenue authorities in emerging countries may also have this picture in mind when scrutinising local tax returns. Therefore, we would advise them to have robust local transfer pricing documentation in place in order to defend the positions they take. Given the substantial changes in the field of transfer pricing, this means that relying on transfer pricing analyses that were performed a few years ago may not be appropriate anymore. Furthermore, we would advise Tanzanian companies to be cautious when using group transfer pricing policies as leverage material. Using such analyses as a form of leverage is, of course, a great way to manage the compliance burden, but it is important that the specific facts and circumstances regarding local operations are carefully taken into account and are well documented.

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Tom Philibert is a tax partner and leads EY’s tax practice in Tanzania. He has more than 16 years of experience. Before relocating to Africa he worked in the Netherlands at EY’s international tax department for more than 12 years. In 2013 he relocated to Senegal where he was head of tax and header for International Tax Services and Transfer Pricing in Francophone Africa. He services local and foreign multinational companies in different sectors on a wide variety of tax matters, including mergers and acquisitions, cross-border investments, corporate reorganisations and transfer pricing.


**ZAMBIA**

MICHAEL PHIRI
KPMG ZAMBIA

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**PHIRI:** The Zambia Revenue Authority (ZRA) has set up a four man team dedicated to conducting transfer pricing audits. The team has so far conducted transfer pricing audits on two mining companies. The ZRA has also acquired a database to assist them in determining arm’s-length prices.

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**Q** WHAT DO YOU CONSIDER TO BE THE MOST SIGNIFICANT TRANSFER PRICING CHANGES OR DEVELOPMENTS TO HAVE TAKEN PLACE IN ZAMBIA OVER THE PAST 12 MONTHS OR SO?

**PHIRI:** Very little attention appears to have been paid to maintaining transfer pricing policies or, for that matter, compliance policies. Though transfer pricing has been a topical issue for multinational companies, the absence of detailed transfer pricing regulations in Zambia has meant that most companies have not felt obliged to undertake transfer pricing studies or maintain compliant transfer pricing policies. Corporate income tax returns, however, have required companies to disclose various related party transactions. Disclosure of these transactions via tax returns has been the basis on which companies to be audited have been selected.

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**Q** IN YOUR OPINION, DO COMPANIES PAY ENOUGH ATTENTION TO THE CHALLENGES AND COMPLEXITIES OF MAINTAINING COMPLIANT TRANSFER PRICING POLICIES?

**PHIRI:**
PHIRI: In January 2016, a dedicated team was set up to conduct transfer pricing audits. Prior to the establishment of the team, the ZRA conducted various audits and made adjustments, particularly relating to interest deductibility and management and consultancy fees. The adjustments have been made on the basis of the OECD’s guidelines. Furthermore, over the years the country’s legislation governing transfer pricing has been strengthened. For copper mining companies, for example, the reference price used when determining mineral royalty to be paid is the London Metal exchange reference price. Mining companies are required to maintain a thin capitalisation debt to equity ratio of three to one.

Q: TO WHAT EXTENT HAVE THE TAX AUTHORITIES IN ZAMBIA PLACED GREATER IMPORTANCE ON THE ISSUE OF TRANSFER PRICING IN RECENT YEARS, AND INCREASED THEIR MONITORING AND ENFORCEMENT ACTIVITIES?

PHIRI: The ZRA will require proof, in the first instance, that there is an agreement governing the provision of the services. Secondly, the ZRA will require proof that services on which payment is made were actually received by the Zambian entity from its related party. Thirdly, the ZRA will require proof that the basis on which the services were charged is an arm’s-length price and related to the services provided. Another consideration is whether the country from which the services were received has ‘substance’.

Q: HOW SHOULD COMPANIES RESPOND IF THEY BECOME THE SUBJECT OF A TAX AUDIT OR INVESTIGATION? WHAT DOCUMENTATION NEEDS TO BE MADE AVAILABLE IN THIS EVENT?
The absence of appropriate comparables’ inevitably results in disputes with the tax authority.

Q WHAT KINDS OF CHALLENGES ARISE IN CALCULATING APPROPRIATE TRANSFER PRICES, BOTH FOR TANGIBLE AND INTANGIBLE ASSETS? HOW CRUCIAL IS IT TO HAVE CONSISTENT SUPPORTING DOCUMENTATION?

PHIRI: The key challenge faced by companies in Zambia is the absence of Africa specific comparable prices in most of the databases available on the market. As a result, companies are forced to rely on comparable European prices which do not take into account the peculiar circumstances in which companies operate in Africa and Zambia in particular. Furthermore, the absence of guidelines on documentary evidence to be maintained by companies is a challenge in that taxpayers are at the mercy of tax authorities as ZRA officials could request information that may not be readily available or in a format that the ZRA would require.

Q HAVE YOU SEEN AN INCREASE IN TRANSFER PRICING DISPUTES BETWEEN COMPANIES AND TAX AUTHORITIES IN ZAMBIA?

PHIRI: The absence of clear guidelines on what transfer pricing documents must be kept by companies and the absence of appropriate comparables’ inevitably results in disputes with the tax authority. Most of the disputes are settled without recourse to the tax appeals court.
PHIRI: Transfer pricing will remain a key risk for multinationals with related party transactions. Companies are encouraged to keep agreements for goods and services provided by related parties, as well as proof that services were provided by a related party. Companies must also maintain their transfer pricing policies and in their absence, a clear basis on which the goods and services from the related party are priced. They must also retain proof that the jurisdiction to which the payment is made is indeed where the goods and services were provided from. Finally, in the case of services, companies must also ensure that the persons providing the services do not create a permanent base in Zambia.