

INTERNATIONAL TAXATION CONFERENCE

DECEMBER 1 - 3, 2011, ITC MARATHA HOTEL, MUMBAI

Transfer pricing: what are the pressure points?

Foundation for International Taxation

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Coordinator: Caroline Silberztein



The panel:

- **Chair: Mr. Uday Ved (KPMG, India)**
- **Session led by Ms. Caroline Silberztein (Baker & McKenzie; formerly Head of OECD Transfer Pricing Unit)**
- **Ms. Michelle Levac (Canada Revenue Authority + Chair of OECD Working Party No. 6)**
- **Mr. Sanjay Kumar Mishra (Indian Ministry of Finance)**
- **Mr. Shanto Ghosh (Deloitte India)**
- **Mr. Marc Levey (Baker & McKenzie, USA)**



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**‘For over a decade,
transfer pricing has remained the
number-one tax issue
facing multinational companies –
and there is no sign of the trend abating.’**



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Emerging pressure points

- **More and more countries are introducing Transfer Pricing rules.**
- **Increased scrutiny of international transactions by the tax authorities.**
- **Business transactions are becoming more complex as are the transfer pricing rules that seek to address them.**



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Current hot issues

1. Theoretical challenges
2. Administrative challenges (enforcement and compliance)
3. Dispute prevention and resolution
4. Transfer pricing beyond the OECD borders



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1. Theoretical questions

1. Lack of comparables that provide realistic results
2. Intangibles, risks: high profit potential, geographically mobile, economic intangibles
3. High value-added services or those with embedded intangibles
4. Global business models, synergies, economies of scale, location savings, multiple success drivers



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1. Theoretical questions (cont'd)

5. **Business restructurings from basic to innovative**
6. **Contractual freedom of MNEs / economic substance, commercial rationality, alternative options**
7. **Financing transactions, e.g. guarantees and interest rate determinations**



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2. Administrative challenges (compliance and enforcement)

- **Need more complex guidance for more sophisticated transactions; can compliance and enforcement follow this sophistication and also be simplified for less risky / smaller transactions?**
- **Effective use of taxpayers' and tax administrations' resources**
- **Are tax inspectors properly trained for this constantly evolving area?**



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2. Administrative challenges (compliance and enforcement)

- Select the “right” cases for audit; streamline audit procedures; create industry focus and business like procedures
- Organise the TP administration internally for MNCs as well as the tax administration?
- Use of experts throughout the administrative process



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3. Dispute prevention and resolution

- Increased certainty essential for business and govts: speedier resolution of cases, dispute prevention;
- Increased transparency, fairness and certainty.
- OECD statistics show a 60% increase of MAP cases initiated in 2009 compared to 2006.
- India sets a record in terms of TP cases going to court.



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3. Dispute prevention and resolution

- Prevention of disputes:
 - Consensus / narrow down diverging views; clearer international guidance
 - Clearer guidance and controls from taxing authorities
 - Administrative procedures (APAs, mediation enhanced relationship, simplification measures, safe harbours?...).
 - What are the short term prospects of APAs in India?



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3. Dispute prevention and resolution

- Dispute resolution:
 - Clearer, consensus guidance (international and domestic)
 - Administrative procedures (MAPs, arbitration and mediation and resource allocation by countries)
 - Creating clear independent measures to narrow issues?
 - Consider US Fast Track Mediation as a Model?
 - Reduce arbitrariness at audit level



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4. Transfer pricing for emerging and developing markets

BRICS:

- Very active on the legislative and enforcement fronts; address the whole range of issues – basic to sophisticated

Less developed countries:

- Transfer pricing is a key component of the debate on tax and development

What is the OECD doing?

What is the UN doing?



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Thank you for your attention!

Open discussion

