

ASIA PACIFIC

Q&A with Fiona Craig

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What was the significant trend you have noticed in transfer pricing practices over the past 12 months?

One of the newer developments in transfer pricing follows the digital trends we see in other areas of commerce – i.e., a continual striving for better use of available data, quicker solutions with more sophisticated analytics, and automation of manual processes. This is a trend for multinationals and Revenue Authorities alike in the area of transfer pricing, and one that has certainly accelerated over the last year.

What are the effects of that change?

Revenue Authorities have access to far more taxpayer data than they used to, both from their local taxpayers and from international information exchanges with foreign Tax Administrations. This has prompted new approaches to Tax Administrations' compliance activities, including investment in analytics capabilities. Transfer pricing risk-based compliance is on the increase by governments as risk assessments can increasingly be made with greater certainty. Where Revenue Authorities may previously have focussed on large value flows or particular transaction types, such as royalty payments or loan arrangements, data analytics can now be run over the full population of a multinationals related party transactions, facilitating scrutiny on areas that appear out of line with benchmarks or prior reporting periods.

Where is the market moving in this practice area?

The market is definitely moving towards more real time transfer pricing. It won't happen immediately as taxpayers have embedded systems and processes, but when multinationals upgrade finance systems and processes, the Tax function is increasingly at the front of the queue with its asks of the CFO, CIO and CTO. As the scale of related party dealings within multinationals continues to grow, and the complexity of business models increases, the benefits to the overall business of accuracy and consistency in the calculation of transfer prices is increasingly understood by those investing in systems upgrades.

What kind of impact will this have on your work?

The work we are doing at Deloitte is already increasingly focusing not only on our core transfer pricing compliance and advisory services, but also on finding solutions for clients to the way in which transfer pricing information is collected, screened, analysed, reported and stored. There is a spectrum of work in this space. For some clients, we are helping them with long standing processes and streamlining the way in which transfer pricing calculations are performed — this could be a simple upgrade to existing spreadsheets to remove the potential for manual errors, or producing exception reports so the efforts of the tax function can be focused in higher risk areas. For other clients, we have been automating the entire transfer



pricing process including the information flows between systems, the analysis of financial data and preparation of calculations, and the reporting of transfer pricing outcomes in user-friendly dashboards and reports.

Do you anticipate any significant legislative changes in the future with a material impact on transfer pricing in Asia Pacific?

Most of the larger countries in the region have TP legislation and practices in place. There have been, and it is likely that there will continue to be, changes to ensure that the countries are compliant with the 2017 OECD TP Guidance and Base Erosion Profit Shifting (BEPS) requirements or correspondingly the UN TP Guidance as well as verifying that they are using best practice. Some of the smaller countries are going through legislative processes to make them reach minimum standards but still have a bit of work to do to address all issues, specifically with respect to documentation, transparency and improving Mutual Agreement Procedure (MAP) dispute processes. Developing countries are looking to use Advanced Pricing Agreements' (APAs) as a means of mitigating TP risk. Penalties relating to transfer pricing are also increasing in the region, including in as Australia, Indonesia, Malaysia, and Vietnam.

We are also expecting more countries to become parties to the Multilateral Instrument and as such opening up the opportunity for mandatory binding arbitration for unresolved MAP disputes.

If these come into force, how will the industry look in the future?

We expect the growing trend of increasing international tax disputes to continue across the region as more countries begin to adopt transfer pricing legislation and look to administer it through increased compliance activity in the transfer pricing space.

We are seeing revenue administrations such as the Philippines and Indonesia looking to develop their TP capability in terms of numbers, skills, and systems.

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We also expect continued sharing of information between revenue administrations requiring multinationals to pay closer attention to the results being achieved in each country. We expect that there will need to be greater consistency in TP documentation to ensure that the results being achieved across all parts of the Global Supply Chain are supportable from a TP perspective.

With time, we may see more reasonable positions being negotiated by revenue administrations given the exposure to possible mandatory binding arbitration.

How would you describe the MAP landscape in Asia Pacific?

The MAP landscape varies across Asia Pacific with 2017 OECD MAP statistics indicating:

- increases in the number of cases in some countries such as China, Hong Kong, Singapore, India, and Vietnam;
- reductions in case numbers in others including Australia, Indonesia, New Zealand, and Thailand

We expect the number of TP disputes to escalate as more countries rate their TP risk as high. Armed with stronger TP laws, greater transparency and cooperation between revenue administrations, as seen through the International Compliance Assurance Programme (ICAP) and Joint International Tax Shelter Information Centre (JITSIC) programs, multinationals will be asked to justify their global supply chain individual country performances.

Do you expect transfer pricing procedures in Asia Pacific to move towards common standards or diverge in the future?

We are seeing a convergence of approaches with countries sharing practices and procedures across the region. Developed Revenue administrations still support the Study Group for Asian tax administra-

tions (SGATAR) program and resource training programs on better practices. As a result, we are seeing some degree of consistency in approach. However, the countries are at different levels of capacity, capability, and experience and so, there is still a long way go to get consistency. Whilst there is a degree of convergence on approach, practice, and process, we are seeing some divergence on interpretation of the how the arms length principle is being applied specifically regarding benchmarking and comparability. Specifically, the use of secret comparables, overseas comparables, and approaches to comparability that seem to be at odds with the OECD guidance. An example would be the Australian Taxation Office's recent publication of Practical Compliance Guide 2019/1.

Is the global drive towards regulation going to affect TP practice? If yes, in which areas?

Certainly yes. The areas that it will affect for multinationals will be tax compliance with a requirement for more consistency in countries' documentation and we also expect an increase in company restructuring required to address some of the BEPS changes, such as the anti-hybrid rules as well as profit attributions.

The increase in TP documentation requirements and the global transparency measures will cause multinationals to look closely at their Global supply chain results to confirm that they have supporting documentation. All aspects of the multinationals business will need to be reviewed to verify that there are no anomalies from a Functions, Assets, Risks (FAR) and return perspective.

Finally, multinationals will want to have confidence that any local country dispute resolutions in the future, do not have unhelpful global precedent implications, e.g., ensuring that solving a small problem in one country does not cause a bigger problem in larger jurisdictions.

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