



Transfer Pricing Q2 Briefing

2024

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Welcome

PwC's quarterly transfer pricing briefing helps multinational organizations keep up with the continuous flow of relevant tax and transfer pricing developments. Included in this quarterly briefing is a summary of Tax Insights and News Alerts published by individual members of the PwC network* covering April 1 through June 30, 2024.

TP Talks

Kristina Novak (Principal in PwC's US Washington National Tax Services Transfer Pricing practice) hosts specialists from the PwC global transfer pricing network to share insights on key transfer pricing developments around the world.

Who bears the risk? Navigating HMRC's guidance

Kristina Novak is joined by Ian Dykes (Transfer Pricing Partner and Global Disputes Leader with PwC UK) to discuss the recent guidance issued by HMRC (His Majesty's Revenue and Customs) on identifying and pricing contributions to risk control by decision-makers.

Pricing intercompany loans: why implicit support matters

Kristina Novak is joined by Tanja Keser (Partner, PwC Germany and EMEA Financial Transactions Transfer Pricing Leader), Aaron Okin (Principal in PwC's US National Tax Services Transfer Pricing practice), and Bob Ritter (Principal in PwC's Transfer Pricing practice and US Financial Transactions Transfer Pricing Leader) to discuss the recent administrative guidance issued by the IRS regarding implicit support and its impact on the pricing of intercompany loan transactions from a US and global perspective.





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Americas

United States

US Supreme Court overrules Chevron doctrine

The United States Supreme Court on June 28 released its [opinion](#) in *Loper Bright Enterprises v. Raimondo, and Relentless, Inc. v. Department of Commerce*, overturning the *Chevron* doctrine that compelled federal courts to defer to a federal agency's reasonable interpretation of an ambiguous statute. Six justices joined in the majority opinion of the court; two justices joined the majority opinion while also filing separate concurring opinions, and two justices dissented with another justice (Justice Jackson) joining the dissent as it applies to *Relentless* (Justice Jackson did not take part in considering or deciding the *Loper Bright Enterprises* case).

The *Chevron* doctrine played a critical role in the relationship between administrative agencies and the courts. Virtually all federal agencies that engage in rulemaking may be impacted by the Supreme Court's decision to overturn the *Chevron* doctrine. This development is particularly relevant in tax, where taxpayers are challenging a number of recent regulations in the courts.

For more details, see our [PwC Insight](#) regarding the court's decision, and our [PwC Insight](#) on the tax and transfer pricing implications.



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United States

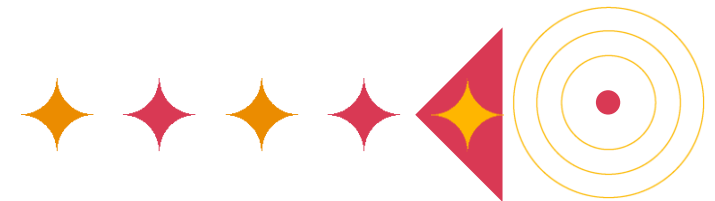
US APA report for 2023 shows significant increase in executed APAs

The IRS Advance Pricing and Mutual Agreement Program (APMA) on March 26 issued its 25th Annual Statutory Report Concerning Advance Pricing Agreements (APAs). The report shows there was a significant increase in the number of APAs executed in 2023, with the number more than doubling from 77 in 2022 to 156 in 2023, making 2023 a record year in the history of the APA program in terms of the number of executed APAs. For APAs completed in 2023, there was a slight improvement in the time to finalize APAs, decreasing slightly in 2023 to three and a half years, and down from the all-time recent high of approximately 43 months in 2022.

APMA's APA program continues to improve in efficiency with respect to finalizing APAs, suggesting that the organization is recovering from recent low numbers affected by impacts from the COVID-19 pandemic in 2020 and that APMA's commitment to increasing personnel along with a focus on resolving some of its older cases are paying off. Even with a slight decrease in applications and pending cases in 2023, the longer sustained trend of increased pending cases shows a continued interest in taxpayers participating in the APA program to manage risk around transfer pricing disputes. The interest in advanced tax certainty is likely to be heightened given looming changes to existing international tax rules as a result of the implementation of the OECD's two-pillar solution.

Companies in the APA program should evaluate how the implementation of Pillar One, especially Amount B, and Pillar Two will impact APA-negotiated income allocations. The existence of parallel dispute resolution venues as a result of the new global tax regime will be a space to watch.

For more details and our observations, read the [PwC Insight](#).



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AsiaPac

Malaysia

Malaysia issues Revised Advance Pricing Arrangement Guidelines 2024

Following the issuance of the Income Tax (Advance Pricing Arrangement) Rules 2023, Malaysia's Inland Revenue Board has issued revised Advance Pricing Arrangement (APA) Guidelines dated April 2, 2024.

Some of the salient points addressed in the 2024 Guidelines include:

- Application process
- Criteria to apply
- Failure of negotiation for Bilateral APA/Multilateral APA

The revised Advance Pricing Arrangement Guidelines 2024 replaces the 2012 edition
For more details, read the [PwC TaXavvy publication](#).



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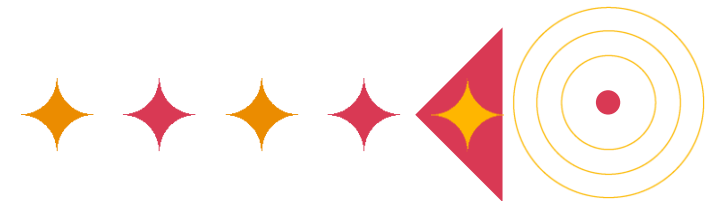
Portugal

Transfer Pricing inspections in Portugal: The hegemony of the median

Transfer pricing in Portugal is often viewed as a tax compliance obligation, leading to a reactive approach and lack of understanding of its importance by some taxpayers. On the other hand, from an international perspective, transfer pricing is widely recognized as a crucial and strategic matter for companies.

This [article](#) addresses the importance of transfer pricing for companies and the challenges they face in Portugal, where the Tax and Customs Authority (AT) tends to adjust intra-group transactions to the median of the arm's-length range.

Taxpayers should be prepared to justify their profitability positioning and pricing policies and to invest in robust and complete documentation to support their transfer pricing practices.





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Sweden

Sweden's upcoming increased transparency with country-by-country reporting and GRI 207

In 2017, the Swedish Parliament adopted the government's legislative proposal regarding documentation for submitting country-by-country reporting to the Swedish Tax Agency. However, new regulations are now being introduced that require certain parts of this information to be made public.

This [article](#) compares the current and upcoming rules on country-by-country reporting with the information that should be included in accordance with the global sustainability standard GRI 207-4.



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Switzerland

Swiss tax authorities publish transfer pricing Q&A

The SFTA in March published a [Q&A dealing with issues relating to transfer pricing](#). We have provided an unofficial translation of the Q&A that was published by the SFTA on its website. The SFTA has indicated that it will periodically update the Q&A and there may be a delay between the SFTA updating the website and this page being updated.

The selected topics addressed in the Q&A include:

- Cost plus method
- Withholding tax in connection with primary, corresponding and secondary adjustments
- Tax consequences of the *Altera v. Commissioner* decision of the US Tax Court of 7 June 2019 for Swiss taxpayers
- Intra-group loans



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Zambia

Transfer pricing disclosures on your income tax return

On June 6, 2024, PwC Zambia hosted a webcast delving into the intricacies of transfer pricing disclosures in the income tax return, touching on various aspects of the ever-evolving tax landscape.

The session was designed to provide a comprehensive walkthrough of Section E: Related/Associated Persons Transactions on the TP Disclosure Form.

The key takeaways for participants include:

- Ensuring transactions comply with the arm's length principle.
- Understanding the documentation requirements for transfer pricing, including the nuances of country-by-country reporting.
- Identifying and making necessary transfer pricing adjustments contemporaneously with Income Tax Return submission.
- Gaining insights into how the Zambia Revenue Authority leverages disclosed related party information for risk assessment purposes, among other critical topics.

To learn more, [watch the webcast](#).



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OECD

OECD releases guidance relating to Pillar Two GloBE and Pillar One Amount B

The OECD/G20 Inclusive Framework on BEPS (IF) [published](#) the fourth set of [Administrative Guidance](#) (the guidance) on the Global Anti-Base Erosion Model Rules ([GloBE rules](#)) of Pillar Two on 17 June 2024, intending to clarify the operation of the GloBE rules. The guidance will be incorporated into the [Commentary](#) to the GloBE rules, which was updated in [April 2024](#) to reflect the previous sets of Administrative Guidance. While elements of the guidance are undoubtedly helpful, in many cases that is vitiated by a corresponding increase in complexity.

Two separate Pillar Two FAQ documents accompanied the guidance - one [general FAQ](#) covering a range of topics, and another focused on the peer review mechanisms for determining the [qualification status](#) of countries' GloBE rules.

Also on 17 June, the OECD released [supplementary guidance on Amount B of Pillar One](#) (the supplementary guidance) that includes definitions of 'qualifying jurisdictions' to apply the operating expense cross-check and data availability mechanism. The supplementary guidance also includes a list of 'Covered Jurisdictions' (previously referred to as 'Low-Capacity Jurisdictions') within scope of the political commitment on Amount B.

The guidance reaffirms the need for advance planning around data identification, classification and utilisation for GloBE purposes. The Amount B clarifications in the supplementary guidance are helpful for the first phase of implementation, but businesses should monitor which countries decide to adopt it and whether their domestic legislation and administrative practices reduce its significance.

For more details, see our [Tax Policy Alert](#).



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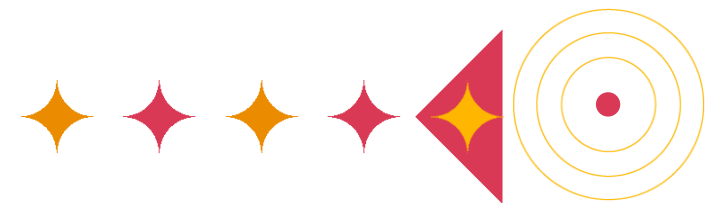
OECD

OECD releases Pillar Two GloBE Consolidated Commentary & Examples

The OECD on 25 April 2024 published Consolidated Commentary (Commentary) to the Pillar Two Global Anti-Base Erosion (GloBE) Model Rules that incorporates all agreed Administrative Guidance that has been released by the Inclusive Framework (IF) from March 2022 through December 2023. The Commentary aims to provide tax administrations and taxpayers with guidance on the interpretation and application of the GloBE Model Rules, which are designed to ensure that large businesses pay a minimum level of tax on the income arising in each jurisdiction where they operate. The OECD also released updated Illustrative Examples (Examples), originally published in March 2022, including the examples developed as part of the various pieces of Administrative Guidance approved by the IF before the end of December 2023.

For more details, see our [Tax Policy Alert](#).

The Commentary now stands at 334 pages, which is notably shorter than the sum of the pages in the original commentary and all the piecemeal published guidance to date. Consolidation should help in terms of referencing a single source of guidance. However, as the IF plans to issue more guidance on specific areas, it is expected that the commentary will be further updated and consolidated in the future.



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Global

The impact of IFRS 17 on transfer pricing

The transition from International Financial Reporting Standard (IFRS) 4 to IFRS 17 has been a transformative change for actuarial and accounting practitioners but has not necessarily been high on the agenda of transfer pricing professionals, until now. IFRS 17 significantly alters the measurement of income from insurance contracts for fiscal years starting on or after January 1, 2023. This is most evident in arrangements with a longer timeframe, such as life insurance policies.

With the first year of financial statements prepared based on IFRS 17 now behind us there is increased focus on the impact of IFRS 17 on tax, and transfer pricing should be part of this discourse. IFRS 17 could have a significant impact on transfer pricing policies related to intra-group reinsurance and intra-group services.

Impacted taxpayers should:

- Review the transfer pricing documentation of existing intra-group reinsurance arrangements and consider if additional analysis of the options realistically available to the parties in 2023 should be included.
- Consider alternative allocation keys to allocate certain costs incurred by a service provider to related parties benefiting from such services.
- Adjust tested party or comparable entities' financial data to ensure that the benchmarked financial information from a pre-IFRS 17 world is comparable to the tested party financial information in a post-IFRS 17 world.

For more information, see our [PwC Insight](#).



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EU

EU Finance Ministers agree on FASTER but EU Parliament needs to be reconsumed following changes

On 14 May 2024, the EU Finance Ministers reached agreement on the Faster and Safer Relief of Excess Withholding Taxes (FASTER) Directive. The FASTER compromise proposal seeks to address the problems of double taxation and administrative burden, as well as tax fraud and abuse that can be linked to securities investments, hampering development of the Capital Markets Union (CMU). Although the EU Parliament had already reached consensus approving the proposal, the number of changes made to the proposal in recent months means that the Parliament will need to be consulted again on the updated proposal.

The aims and ambition of the FASTER Directive are clear – that of a faster and safer relief mechanism that would apply broadly across all EU markets, contributing to the CMU. Some elements, such as the creation and delivery of a common digital tax residence certificate (eTRC), clearly will be beneficial and hopefully will be adopted quickly.

On other parts of the proposal, it has been difficult (or impossible) to secure unanimous approval. Therefore, there have been a number of compromises, such as the introduction of the market capitalisation ratio, which means the implementation will not be uniform or ubiquitous. Also, the pushback of the start date to six years from now is disappointing.

For more information, see our [Tax Policy Alert](#).



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ViDA approval not obtained and work continues on a key aspect

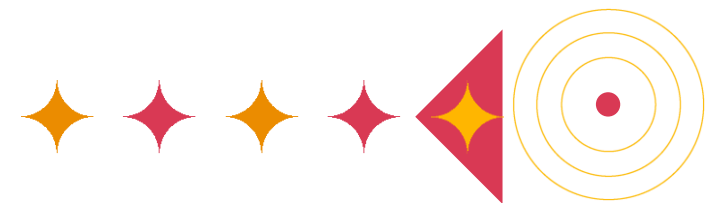
On 14 May 2024, the EU Finance Ministers at ECOFIN debated the revised VAT in the Digital Age (ViDA) package released by the European Commission (EC) on 8 May 2024. During the ECOFIN debate, Estonia raised a concern in relation to the platform rules and this aspect now needs to be worked through.

Positively, two of the three core ViDA proposals were accepted. As unanimous consent is required on all parts of the ViDA package, none of the proposals can proceed until a compromise solution is found.

ViDA is highly significant in the European Union and on the global tax policy stage. The ViDA proposals are designed to:

- Help streamline and harmonise the EU's VAT rules (thus lessening fragmentation and making the VAT more apt for the modern economy and the single market);
 - Reduce administrative burdens for businesses operating cross-border; and
 - Safeguard significant tax revenues for Member States.
- See our [Tax Policy Alert](#) for more details.

For more information, see our [Tax Policy Alert](#).



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