Transfer Pricing Q4 Briefing

2024

Start

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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 October 1 through December 31, 2024.

TP Talks

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

Navigating transfer pricing, trade and tariffs in a protectionist world

In this TP Talks episode, Kristina Novak is joined by Kristin Bohl to discuss the transfer pricing aspects of the current customs and trade environment.

Transfer Pricing in the Middle East: Opportunities abound

Kristina Novak sits down with Steven Cawdron and Zachary Noteman to discuss the evolving transfer pricing environment in the Middle East.

Brazil's big shift: The new transfer pricing reality

Kristina Novak sits down with Marcelo Vieira to discuss the progress of Brazil's overhaul of its transfer pricing regime.

Pillar One Amount B: A fragmented future written in the tea leaves

This TP Talks episode addresses Amount B of Pillar One, focusing on the OECD's February 2024 final report and subsequent June guidance.

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Americas

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Treasury releases Pillar One Amount B guidance

On December 18, Treasury and the IRS issued guidance (Notice 2025-04) (Notice) announcing their intention to issue proposed transfer pricing regulations adopting the simplified and streamlined approach (SSA) (i.e., Amount B) of Pillar One as a taxpayer-elective safe harbor.

According to the Notice, the proposed regulations will “provide a new method for pricing certain controlled transactions involving baseline marketing and distribution activities” as described in the OECD’s February 2024 Report on Amount B (OECD Report). The Notice states that Treasury and the IRS expect that the proposed regulations will not substantively diverge from any aspect of the OECD Report and will implement the substance of the OECD Report in its entirety. See PwC’s Tax Policy Bulletin dated March 14, 2024.

Understanding the implications of this notice is essential for businesses to assess compliance and analyze their transfer pricing strategies.

For more information, read PwC’s Tax Insight.

Taxpayers engaged in distribution activities that could fall within the scope of the SSA should evaluate the potential impact of the SSA on their existing transfer pricing policies. It is important to determine whether electing the SSA would be beneficial and to identify any necessary steps to qualify for its application. Additionally, taxpayers and organizations should consider participating in the public comment process, with written comments requested by March 7, 2025, to help shape the final regulations.

It is also critical to analyze the tax policies of counterparty jurisdictions to anticipate potential challenges if they do not adopt the SSA. Aligning SSA pricing with general transfer pricing rules may reduce risks in the event of disputes and potential mutual agreement procedure proceedings.

Americas

United States

Trump re-election signals need for businesses to prepare for impending global trade shifts

President-elect Trump has proposed substantial tariffs aimed at reshaping US trade relations and encouraging domestic manufacturing. His proposals include a general 10% to 20% tariff on all imports, with a potential 60+% tariff specifically targeting Chinese origin imports. Additionally, Trump has proposed significant tariffs of 100% to 200% on vehicles manufactured in Mexico, and as his campaign concluded he proposed a broad 25% tariff on all Mexico-origin goods coming into the United States. Each of these proposed measures could have a major impact on companies reliant on Mexican Maquiladora operations.

Observation: Tariff impact will be driven by sourcing and manufacturing locations and may drive cost increases across supply chains. President-elect Trump's tax proposals, which include lowering corporate tax rates to encourage domestic production, will also need to be considered. While the president can impose tariffs unilaterally in some cases, Congressional action may be required for certain of his tariff proposals and ultimately for revenue to be counted toward offsetting costs in a tax reform bill. Consequently, Republican control of the White House and Congress and the legislative environment could significantly affect these proposals.

For more information, read PwC's Tax Insight.

The anticipated trade landscape of 2025 will likely involve substantial disruption and uncertainty. To navigate this environment, companies should start by conducting a modeling exercise to understand their tariff impact. Companies should also assess production and sourcing strategies, integrate customs and tax planning, and monitor potential retaliatory actions. A modeling exercise is particularly relevant for companies that are reliant on foreign-sourced materials or trade structures like the Maquiladora program. With recent tariff changes in Mexico and changes to Maquiladora rules, companies may risk unnecessarily overpaying tariffs into the United States-Mexico-Canada Agreement (USMCA) territory. Additionally, unifying customs and tax strategies can help businesses manage financial impacts across various tariff scenarios and build resilience into supply chains.

Americas

United States

Final regulations address Section 367(d) treatment of repatriation of intangible property

Treasury and the IRS on October 9 released final regulations under Section 367(d) that address repatriation of intangible property (IP) from a foreign corporation to certain US persons. Section 367(d) applies when a US person (a 'US transferor') transfers IP described in Section 367(d)(4) to a foreign corporation ('transferee foreign corporation') in a Section 351 or 361 exchange. The final regulations address the consequences that arise when the transferee foreign corporation subsequently transfers the intangibles to a US person, including when the US transferor would recognize gain upon the repatriation and when the paradigm under Section 367(d) requiring annual income inclusions over the useful life of the intangibles ('Section 367(d) inclusions') should terminate. The final regulations follow proposed regulations published on May 3, 2023, with minimal changes.

For more information, see PwC's Tax Insight.

In light of the tax benefits of FDII and aggressive foreign transfer pricing audits, several companies are considering repatriating their IP to the United States. These regulations provide a method for doing so without suffering potential double taxation under Section 367(d).

AsiaPac

Japan

Proactive approach to disclosing underdeclarations will mitigate penalty costs

Considering the high non-compliance costs of import duty and tax underdeclaration in Japan, we have consolidated the below information based on prevailing regulations to facilitate improved compliance management.

Background

Once the Importer of Record (IOR) is aware that an import declaration has been filed with an under-declared import duty and consumption tax value, the IOR is obliged under law to file an amended declaration to correct the declared values and pay the shortfall duty and tax amount. Prompt payment of import duty and tax shortfall must be made alongside an amended declaration to prevent incurrence of interest tax for deferred payment and additional penalty tax.

Why taking a proactive approach to disclose import duty and consumption tax is important

Voluntary disclosure of underdeclarations as soon as they are identified can significantly reduce penalty exposure, even leading to a complete penalty waiver if the voluntary disclosure is made early enough. For more information, see PwC's Trade Intelligence Asia Pacific September/October edition, page 19.

EMEA

Czech Republic

Transfer Pricing in the Czech Republic – Cost Base Complications

In recent years, the Czech Republic has seen a significant increase in tax audits concerning transfer pricing, largely driven by systematic risk assessments conducted by the Czech tax authorities. These assessments help select taxpayers for audits, leading to a surge in tax adjustments. A recent ruling by the Supreme Administrative Court of the Czech Republic has further clarified the treatment of goodwill amortization for transfer pricing, a decision that has substantial implications for multinational enterprises operating in the region. The issue at hand involved whether the amortization of goodwill should be included in the cost base when determining transfer prices for a contract manufacturer.

For more information, see PwC's blog.

The Czech tax authorities focus on the economic substance of transactions and decision-making authority during tax audits, requiring transfer pricing documentation to support the taxpayer's position. Attention is given to local legal requirements, transaction substance, and the differences between Czech GAAP and IFRS or US GAAP. To address potential risks, business should consider obtaining an Advanced Pricing Agreement, usually a unilateral agreement with the tax authorities.

EMEA

Hungary

Hungary: Focus on transfer pricing documentation review

The Hungarian Tax Authorities (HTA) continue to prioritize the review of transfer pricing documentation. Tax inspectors strictly examine formal requirements and frequently impose default penalties for non-compliance. The review of transfer pricing data provision is also a major focus during tax audits.

For more information, see PwC's Tax & Legal Alert.

Hungary's autumn tax bill passed by parliament on November 26 reinforces the review of transfer pricing data provision, specifying the rules for compliance review and explicitly authorizing the HTA to check transfer pricing documentation and data provision during the compliance review. According to the tax bill, effective January 1, 2025, the HTA will have 60 days to review these documents.

EMEA

Middle East

Transfer pricing in the Middle East: What multinationals need to know

Transfer pricing (TP) is relatively new in the Middle East. Prompted by changes in the international tax landscape, and domestic economic developments, countries across the Middle East are just beginning to introduce corporate tax regimes, while also aligning their TP regulations with international standards. As governments in the region seek to diversify away from a dependence on oil revenues, they are implementing a series of tax incentives and regulatory changes to increase foreign direct investment and improve the business climate. Meanwhile, for similar reasons, there is also an increased drive to enhance TP enforcement and tax collections.

TP compliance landscape

Many countries in the region, including the United Arab Emirates (UAE), Saudi Arabia, Qatar, Egypt and Jordan, have recently established a comprehensive legal and regulatory framework to govern rules for pricing of cross-border transactions between related entities. The TP regimes in these countries are broadly aligned with the OECD TP Guidelines in that they require the arm's length standard, apply the same TP methods, and require the OECD's three pillars of transfer pricing compliance (i.e., the Master File, Local File, and Country-by-Country Reporting (CbCR)).

For more information, see PwC's blog.

By understanding local regulations, establishing robust TP policies and support, and being aware of new developments, companies can manage their TP obligations more effectively and continue operating successfully in the region.

EU/OECD/Global

EU

ECOFIN approves VAT in the Digital Age package

On November 5, 2024, the EU Finance Ministers at ECOFIN approved the latest version of the VAT in the Digital Age (ViDA) package released on October 30, 2024. This is positive news given that Estonia had earlier raised concerns in relation to the platform rules, a matter which was the subject of compromise discussions throughout 2024.

The latest ViDA package contains several compromises and new start dates, compared to the original December 8, 2022 proposals: see our previous PwC Tax Policy Alert. The main pillars of ViDA relate to:

1.Digital Reporting Requirements (DRR) and mandatory e-invoicing on intra-EU business-to-business (B2B) transactions - the application date and transitional date for DRR are July 1, 2030 and January 1, 2035 respectively;

2.The platform economy - the application date is July 1, 2028 (at the earliest) with a mandatory application date of January 1, 2030; and

3.Simplifying VAT compliance by taking away the need for multiple VAT registrations - application date of 1 July 2028.

For more information, see PwC's Tax Policy Alert.

Given the substantial differences between the EC proposal and the compromise text, the European Parliament will need to be reconsulted through a simplified written procedure. This approval should be forthcoming because the start dates are well into the future and the compromise text reflects a balance of factors.

EU/OECD/Global

EU

European Commission puts forward proposed (DAC9) to simplify Pillar Two implementation

The European Commission has proposed amendments to the EU Directive on administrative cooperation in taxation (DAC9). These changes aim to facilitate the exchange of top-up tax information between Member States and allow multinational enterprises (MNEs) to switch from local to central filing. If adopted by the Council of the EU, the rules would enable MNE groups and large domestic groups to file a single Top-up tax information return in one EU Member State instead of multiple filings across different Member States.

DAC9 aims to simplify reporting requirements by incorporating the GloBE Information Return (GIR) from the OECD/G20 Inclusive Framework on BEPS (IF) into EU law. This proposal sets up a system for tax authorities to exchange information with other EU Member States. Once adopted by the Council of the EU and the EU Parliament, governments have until December 31, 2025 to implement DAC9. The first Top-up tax information returns are due June 30, 2026, with information exchange required by December 31, 2026.

For more information, see PwC's Tax Policy Alert.

Businesses should consider the Member State where they might wish to file their Top-up tax information return, using a designated filing entity if that is not the location of the Ultimate Parent Entity (UPE). They should also consider the data requirements if they have not already done so.

EU/OECD/Global

EU

Council of the EU approves changes to the EU list of non-cooperative tax jurisdictions

The EU General Affairs Council (acting as the Council of the EU) has approved the recommendations of the EU Code of Conduct Group in relation to the updated list of non-cooperative tax jurisdictions. The Council removed Antigua and Barbuda from the list of non-cooperative jurisdictions for tax purposes. With these updates, the EU Annex I list of non-cooperative jurisdictions for tax purposes now consists of 11 jurisdictions.

Being listed may lead to increased withholding taxes and non-deductibility with respect to payments to a listed jurisdiction, CFC issues, reporting obligations, public country-by-country implications, or limitations on the participation exemption on shareholder dividends.

For more information, see PwC's Tax Policy Alert.

Businesses should review the updated lists and consider the potential consequences for entities located in impacted jurisdictions.

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