TP WEEK
TRANSFER PRICING WEEKLY NEWS FROM INTERNATIONAL TAX REVIEW™

www.tpweek.com

World Transfer Pricing 2015

The comprehensive guide to the world's leading transfer pricing firms

World Transfer Pricing 2015

TP WEEK
TRANSFER PRICING WEEKLY NEWS FROM INTERNATIONAL TAX REVIEW™

Nestor House, Playhouse Yard
London EC4V 5EX UK
Tel: +44 20 7779 8308
Fax: +44 20 7779 8500

International Tax Review is published 10 times a year by Euromoney Trading Limited, London.

 ISSN 0958-7594

Introduction

Welcome to the second edition of World Transfer Pricing, 2015, *TPWeek's* directory to the leading transfer pricing advisory firms around the world.

Multinational companies' transfer pricing operations have never been under more scrutiny; not just from the tax authorities but from politicians and the public as well. Consequently, finding the right transfer pricing adviser, that can manage a company's transfer pricing demands and offer industry experience, has never been more crucial.

Going to the biggest firm, or the adviser with the highest profile, may seem like the obvious thing to do. Or hiring the team that has an established reputation in related industries, or areas of practice, may seem logical. What about the practice that does the largest transactions?

A tax executive can go down many routes before finding the right adviser. Listening to recommendations from peers, relying on international networks and opening the work up to tender offers are all options available to tax and transfer pricing directors.

World Transfer Pricing is another resource. Each edition rates the transfer pricing expertise offered in more than 50 jurisdictions globally, giving tax executives the most comprehensive information about the market for tax advice.

The publication is unique among directories because it classifies professional services, law firms and other transfer pricing advice providers, such as economists, together, rather than looking at them separately, because they undoubtedly compete for work.

The fact that this competition exists is also evident in the regular moves that practitioners make between law firms and other providers. It is common for advisers to spend different periods at law firms and a Big 4 practice during their careers.

It's all about quality

If this guide was just about depth and breadth of practice, then the firms who have the largest practice would always come out on top. But those practices may have stayed the same numerically for a number of years and while doing solid work, only retain clients out of loyalty. They may not have equipped themselves to deal with key transfer pricing developments.

It is usually clear-cut in most jurisdictions covered in this publication where firms should be placed relative to the tier criteria and to each other. The criteria (which you can see elsewhere in this introduction) covers size, breadth and depth of practice, and specialisms. While these are all important, they are not the crucial factors. Quality of work has to be.

The few marginal decisions required about which firms should go in which tiers are made according to the ingenuity and innovation that lawyers and advisers bring to client engagements.

Much goes into that criterion – knowledge, experience of advisers, attentiveness, diligence – to work out a seemingly intractable issue where the advice has been in conflict.

Any other way is just not helpful to tax executives.

It is in this context that *TPWeek* presents World Transfer Pricing 2015, its comprehensive guide to the world's leading transfer pricing firms. We hope it will help tax executives obtain the best advice for their situation.

Methodology

TPWeek researchers and journalists interviewed corporate tax and transfer pricing directors and their advisers by phone, e-mail and face-to-face to compile the tiers of leading firms and write the commentaries for 51 jurisdictions in World Transfer Pricing 2014.

Tiers and methodology

Tier 1
Firms have a leading reputation in their jurisdiction. They have a varied portfolio of work. They offer a range of transfer pricing services. They boast a variety of different clients.

Tier 2
Firms have a leading reputation in their jurisdiction. They have a varied portfolio of work. They offer a range of transfer pricing services.

Tier 3
Firms have a leading reputation in their jurisdiction. They have a varied portfolio of work.

The corporate interviewees were chosen from a representative sample of clients of the leading firms in the market. One of the questions we asked was: "Who is your primary adviser?" We clearly could not know this in advance so the representative sample could only be constructed after the interviews were completed.

Interviews with tax and transfer pricing directors were more extensive this year than ever before. On an anonymous basis, we asked them questions about, for example, the quality of advice received, opinions about teams and individual advisers and what their advisers did well or badly.

The objective of interviewing both practitioners and tax executives was to get an opinion of transfer pricing advisers from their peers and their clients.

Tax directors have their own view of the market, based on the advisers they use, while practitioners have a broader view of practice because they advise many more clients than the number of external advisers a tax director uses.

At the same time, there was a possibility of bias and ulterior motive in what anyone contributed to the research and we tried to minimise this as much as possible through a verification process.

No recommendation from any adviser for their own firm or their colleagues in that firm was taken into account. Firms could not pay to be included in the tiers or to have their individuals listed but were offered independently the opportunity to list their professional details for a fee.

Tiers of leading firms from 51 countries or territories have been included.

Unique rankings

Leading individuals have been highlighted in the text about their firm in the market commentaries on each country and territory, rather than being listed separately by specialism.

At the top end of the rankings are the firms that have the greatest depth of resources, experience, and range of specialisms. They are considered the best teams overall for tax advice in the country concerned. The important point to note about the rankings is that all the firms listed have highly reputable tax individuals in their advisory teams.

We hope you find World Transfer Pricing 2015 to be a valuable tool in helping you identify the appropriate advisers in the jurisdictions covered.

Sophie Ashley
Managing editor *TPWeek*

Global introduction

James Fuller, David Forst, Kenneth Clark, Andrew Kim, of Fenwick & West, provide a global overview of transfer pricing in terms of how taxpayers are being affected.

The global transfer pricing landscape continues to evolve with numerous significant developments during the past year and additional anticipated changes in the pipeline. The OECD is continuing its work on various BEPS (base erosion and profit shifting) action plan items, as participating countries debate competing views and expectations regarding how the BEPS action items should be implemented. Transfer pricing documentation remains a topic of central importance and interest for stakeholders, with the OECD's proposed country-by-country reporting being a central feature (and central area of concern) for the new guidelines. In the US, the Internal Revenue Service (IRS) has issued a transfer pricing roadmap that is expected to impact the conduct of transfer pricing audits in the US. Other countries also have seen a number of important recent developments in the transfer pricing area as well.

BEPS

As the BEPS project continues to gather momentum, US government officials have expressed concerns with respect to certain aspects of the BEPS proposals. Some members of the US Congress have expressed concerns that the BEPS project may be used as a way for other countries to simply increase taxes on American taxpayers. The Senate Finance Committee held a hearing on June 22 to consider the need for comprehensive tax reform, including BEPS. Senator Hatch (R Utah) expressed a concern that BEPS could be used by other countries to increase taxes on US taxpayers, and sought assurances from a US Treasury official, Robert Stack, and OECD representative, Pascal Saint-Amans, that the US would not be rushed into accepting a "bad deal" just for the sake of reaching an agreement. Stack recently stated that, as an overarching principle, it is important that the product of the BEPS project be "clear and straightforward rules rather than something subject to and susceptible of lots of interpretations".

According to the OECD BEPS discussion drafts: "Special measures, either within or beyond the arm's-length principle, may be required with respect to intangible assets, risk and over-capitalisation", to address purported flaws in the transfer pricing system. The OECD is considering circumstances in which related-party contracts can, or should be, ignored under a "special measure". One concern with such "special measures" is that they inherently will involve a degree of subjectivity and ambiguity, which likely will obscure the application of the arm's-length standard.

As some countries are pushing the international community to adopt rules that would substantially deviate from the arm's-length method, the US is a leading proponent of preserving the arm's-length standard. Stack said the US has an interest in preserving respect for legal entities and contracts unless there are unusual circumstances, and that value should be attributed to the place where the functions, assets and risks are performed. Stack also said the US has worked hard to make the arm's-length principle well-articulated and clear. The US, however, is willing to look at situations that are being called "special measures" that could preclude "unacceptable" policy results, for example, in the case of transferring intangibles. Stack did acknowledge, however, that, from a US perspective, such measures could be "within § 482, or they may need special legislation".

The OECD's work in this area bears close scrutiny by the tax community since the implementation of a "special measure" almost certainly would be a deviation from the arm's-length principle. Work on these BEPS actions is likely to be the most difficult work for 2015.

Transfer pricing documentation and country-by-country reporting

Multinational companies face the challenge of ever increasing complex and costly transfer pricing documentation rules that vary significantly by country. The OECD continues its work on transfer pricing documentation guidelines and country-by-country reporting, a topic that has been the subject of considerable debate. The amount of information that will be requested under the OECD's guidelines is expected to be scaled back from the 17 original proposed items to six or seven items, including the expected removal of intercompany transactional data (related party royalties, interest, and service fees) from the reporting template. An important subject of discussion is whether to exclude small and medium-size businesses from some of the more burdensome filing requirements that would apply to larger multinational taxpayers.

Stack said the US has been working to convince other countries that less data should be required for purposes of conducting a transfer pricing risk assessment. The US wants to make sure this is a risk assessment tool, not a backdoor way to formulary apportionment. The concern is that the scope of information being requested by the draft country-by-country template exceeds the level of detail that would otherwise be necessary to conduct a high-level risk assessment. The amount of detail being requested is contributing to concerns the information will be used to achieve a result that deviates from the arm's-length method.

Among the list of unresolved issues for the transfer pricing documentation guidelines is the method of filing the master file and country-by-country template. Larger multinationals and their home governments (including the US) generally prefer a system in which information is filed centrally in the parent company's country of residence. Other countries would then request copies of documentation from the resident country via treaty information exchange procedures. However, some countries have expressed a preference that transfer pricing documentation be filed directly with local countries, to avoid having to request information from another country via treaty mechanisms.

Opponents of direct local filing raise concerns over confidentiality and unauthorised information disclosures, while opponents of a centralised filing system cite concerns regarding having to work with a slower and more burdensome treaty-based information exchange system. Stack has said the US is trying to ensure that companies are able to prepare the documentation and that the information would be shared by the IRS under its treaty network or through treaty exchange agreements. Stack said the US wants to have some kind of mechanism to withhold information from countries if they are misusing the information.

Another sharply divisive issue is whether local files should be maintained in the local country language, or alternatively maintained in English (as would be the case with the master file). Larger multinationals generally prefer maintaining local files in English, while developing countries generally prefer maintaining local files in the local country language to make such information more accessible to local country tax administrators.

The working party for Action 13 is expected to issue a new analysis regarding implementation around the beginning of 2015 in an effort to address confidentiality and consistency concerns with respect to transfer pricing documentation.

US transfer pricing roadmap

The IRS has designed and made public a transfer pricing roadmap. The roadmap is a tool to assist IRS examiners and taxpayers to cooperatively audit and resolve transfer pricing issues. The roadmap is designed to provide audit techniques and tools to assist with the planning, execution and resolution of transfer pricing examinations. It encourages open communication and cooperation with taxpayers, instructing examiners to engage in up-front planning and to involve transfer pricing specialists at the earliest stage of an audit. The roadmap asserts that transfer pricing specialists can ensure that the audit timeline is appropriate given the complexity of the case, provide guidance regarding resources and staffing, and help determine which issues are not worth pursuing. The roadmap states that if the taxpayer's financial results are reasonable the transfer pricing issue may not be worth pursuing.

Transfer pricing cases are usually won and lost on the facts. The key in transfer pricing cases, the roadmap explains, is to assemble a compelling factual story based on a thorough analysis of functions, assets, and risks, and an accurate understanding of the relevant financial information. The roadmap instructs IRS examining agents to base the story on a thorough analysis of functions, assets, and risks, and an accurate understanding of the relevant financial information. The particular industry should be considered. The conclusion should come across as inevitable. A presentation developed with these guidelines, the roadmap explains, will lend credibility to a proposed adjustment and increase the odds of early resolution or sustention on review.

Developments in other countries

Considering the transfer pricing landscape around the world, it is evident that the pace of audits and legislative activity in the area of transfer pricing continues to be quite high. We note just a few examples below.

In Germany, taxing authorities are testing new ground when it comes to intra-group financing activities. Based on a questionable interpretation of several Federal Tax Court rulings, German tax examiners recently have adopted the view that counterparty risks may no longer be taken into account when determining interest rates on intra-group financing. The argument is that a controlled relationship is a substitute for security and therefore any intra-group loan should be regarded as a loan for which security has been provided that is at least equal to the solvency of the group parent.

Another issue is whether a royalty may, or should, be charged to a group member if it uses a trademark that is identical to the group's name, with the German tax authorities taking conflicting views on inbound versus outbound contexts.

Transfer pricing and BEPS issues continue to be at the top of the list of areas of interest for French lawmakers and auditors. France recently introduced new anti-hybrid provisions, and extended transfer pricing documentation requirements to assist government auditors. As part of the new documentation requirements, corporate taxpayers will be required to file an annual simplified documentation with the tax authorities (with the normal documentation to be provided in case of an audit). France also has increased its scrutiny of internet companies, which have been the subject of raids by the tax authorities focusing on PE issues and the deductibility of royalties paid to foreign companies.

In the Netherlands, a new Dutch transfer pricing decree was issued at the end of 2013 that links many of the Dutch tax authorities' positions to the OECD transfer pricing guidelines, while also including elements of the OECD's report in relation to intangibles. Dutch practitioners are seeing a trend in policy and case law with an increased focus on profit allocations based on functions, and in particular, significant people functions relevant to the ownership of assets and the assumption of risks.

In Spain, subsidiaries of foreign multinationals are seeing a marked increase in transfer pricing audits, with the Spanish tax authorities largely applying BEPS principles. Auditors are targeting arrangements that have weak economic content or involve payments to foreign entities with little substance that are viewed as improperly eroding the Spanish tax base.

In India, the Parliament passed a finance bill legislating a four-year roll back of APAs, introducing a range concept as compared to an average mean, and the use of multiple year data. Although APAs have started being issued by the Indian government, the relationship between US and Indian tax authorities remains strained, and the current impasse on US-India APAs and the MAP process continues.

In China, as in many other jurisdictions, taxpayers face more aggressive and sophisticated approaches to transfer pricing audits. Chinese tax authorities are asserting more novel theories as a way of justifying higher returns for a Chinese affiliate, including location-specific advantages and market premiums. Chinese authorities are also examining the profitability of the entire supply chain when reviewing profit allocations based on specified functions, and looking to attach higher returns to locally developed IP (including marketing intangibles). One concern for taxpayers is that China selectively will choose among the BEPS proposals that are most advantageous to China, undermining the benefits of standardisation and consistency that are intended by the BEPS project.

In Canada, the tax authorities have had victories on a number of fronts in the past year, including wins in some high profile tax cases that were critical of the taxpayers' transactions and transfer pricing documentation (including the assessment of penalties in one case, and double-taxation in another). The tax authorities continue to be aggressive in their examination of transfer pricing cases.

Conclusion

In summary, the global transfer pricing landscape is marked by dramatic and continuing shifts in both the coordinated actions of the OECD and the unilateral actions of foreign governments around the world. Needless to say, much more is to come.

Argentina

Tax authorities

Administración Federal de Ingresos Publicos (AFIP)
Hipólito Yrigoyen 370, C1086ADD, Buenos Aires
Tel: +54 11 4347 2000
Website: www.afip.gov.ar

LEADING FIRMS

1
- Bruchou, Fernandez Madero & Lombardi
- Deloitte
- EY (Pistrelli, Henry Martin y Asociados)
- PwC
- Rosso Alba Francia & Asociados

2
- Estudio O'Farrell
- Goldemberg & Asociados
- KPMG
- Teijeiro y Ballone, Abogados

Argentina, once again threatened with a default, continues the uphill climb to rebuild its global economic image. Included in this rebuilding process has been an increasingly aggressive tax authority with regards to transfer pricing audits and initiatives revolving around global and regional BEPS compliance. Two newly signed tax treaties, one with Spain and one with Switzerland, have given some hope that the country's mission to expand its tax treaty network may ameliorate the gloomy present circumstances.

The US Supreme Court decision in May 2014 might, according to tax professionals, cause a stirring among taxpayers who have already been subject to the aggressive auditing techniques of the tax authority since the country's first default in 2002. The government's fundraising efforts have become "political rather than technical" according to several tax professionals speaking on Argentina's 2003 originated general anti-avoidance rule (GAAR). But all agree that the search for revenue may lead to very aggressive digging and assessment tactics on the part of the authorities.

"They're alleging that most of the Argentine exporters are declaring their income tax considering the prices of the commodities at time of shipment and not at time of the execution of the contract," said Martin Barreiro, Baker & McKenzie's head of tax."

The proper measurement of comparables has also been a point of contention between taxpayers and revenue collectors. Cristian Rosso of Rosso Alba describes a recent dispute in which the Federal Tax Court of Appeals ruled in favour of agro-exporter Glencore in its assertion that the Argentine Revenue Service's comparability analysis was ungrounded.

Agribusinesses remain huge targets for transfer pricing audits, with several of the biggest exporters now steeped in litigation or deep investigations for years. "Transfer pricing is the name of the game," said Rosso. "The trend is more and more transfer pricing controversies as Argentina faces revenue needs."

The aforementioned double taxation treaties with Switzerland and Spain both comprise details on information exchange and dividends taxation, along with capital gains and royalties.

Tier 1

Led by **Matias Olivero Vila**, Bruchou, Fernandez Madero & Lombardi advises clients on transfer pricing planning, compliance and litigation. The practice is part the firm's Tax, Customs & Foreign Trade Practice, which comprises five partners, 14 associates and benefits from the international Taxand network's global reach. The firm advises such clients as Bunge, OnMobile, Molinos, and Prosegur on their day-to-day transfer pricing needs and tax counseling matters. They are defending Molinos Rio de la Plata in an ongoing, multiple-court litigation concerning the suspension of the company's inclusion in the Fiscal Registry of Grain Traders based on accusations of tax evasion on the part of the Federal Tax Authority. The firm has two other ongoing cases, in court, revolving around agricultural exportation and transfer pricing matters.

Deloitte provides planning, documentation and valuation services, and represents clients before the authority and in court. **Horacio Di Nice** leads the practice, focusing on advising pharmaceutical companies in transfer pricing and international tax issues.

Pistrelli, Henry Martin y Asociados, an EY member firm, comprises nearly 40 professionals, and two partners working on transfer pricing. Their team focuses on planning and compliance services, including reviews of documentation, supply chain structures and transaction flows. Additionally the team analyses transactions before implementation to reduce the risk of challenges by tax authorities. **Carlos Casanovas** and **Gustavo Scravaglieri** lead the transfer pricing team, and are also in charge of EY's International Tax Service.

Led by **Juan Carlos Ferreiro**, PwC's transfer pricing team uses a multidisciplinary approach to advising clients on transfer pricing strategy, documentation, regional transfer pricing policy developments and audit defense. **Violeta Maresca** and **José María Segura** are both associate partners at the firm.

Rosso Alba Francia & Asociados provides a full range of transfer pricing services, with controversy accounting for a significant part of its business. **Cristian Rosso Alba** leads the transfer pricing practice, which has recently hired former KPMG director **Juan Carlos García** to add to their in-house team of economists and accountants. In August 2013 the firm defended a large multinational commodity exporter in the Federal Tax Court of Appeals, obtaining a precedent-setting victory by establishing the Argentine Revenue Service's (ARS) comparability assessment to be ungrounded and thus reassessed in view of the prices fixed at the contractual dates. The firm also provides consultancy and planning services to domestic and international clients in the oil and gas, pharmaceutical and automobile industries.

Tier 2

Michael Tesón leads the transfer pricing practice of Estudio O'Farrell, which assists some of Argentina's largest domestic and foreign corporations with the development and defense of their transfer pricing strategies. One key member, **Eduardo Baistrocchi**, lectures at the London School of Economics, and is the author of a leading book on resolving transfer pricing disputes. Two new partners have joined the transfer pricing team in 2014: **Valeria Estathio**, and **María Celina Valls**.

Goldemberg & Asociados' transfer pricing team is led by **Cecilia Goldemberg**, who actively participates in, and contributes, to the development of Argentina's transfer pricing practices. The firm's transfer pricing practice advises on a full range of issues from developing and analysing transfer pricing structures, assessing comparable transactions, preparing documentation, and supporting clients during tax audits and administrative litigation cases. Clients include Bayer, Affina, Omya, and Chemtura, among others.

KPMG's transfer pricing practice assists clients with designing, documenting and implementing sound and sustainable transfer pricing strategies. Led by **Marcelo Castillo**, the transfer pricing team has a comprehensive understanding of the country's transfer pricing rules and regulations.

Guillermo Teijeiro, a founding partner of Teijeiro y Ballone, Abogados, is head of both tax and transfer pricing at the practice. The team advises local and international companies on transfer pricing planning and compliance issues, as well as representing clients in litigation. The firm's four partners – Teijeiro, fellow founding partner **Mariano Ballone**, **Ana Lucia Ferreyra** and **Gloria Gurbista** – are acting as lead counsel to a large agribusiness company on an important transfer pricing dispute concerning a tax assessment resolution appeal before the federal tax court.

Tax rates at a glance

(As of September 2014)

Corporate income tax rate	35% (a)
Capital gains	15%/35% (b)
Branch Tax	35% (c)
Witholding tax	
Dividends	10% / 35% (d)
Interest	15.05% / 35% (e)
Royalties	12.25/17.5/21/28/31.5 (f)
Net operating losses (years)	
Carryback	0
Carryforward	0

a) A 1% asset tax, which operates as a minimum income tax, is imposed on corporate assets, including shareholdings in foreign companies (but not holdings in resident companies). Asset tax paid may be credited against the company's income tax liability for up to 10 fiscal years.

b) The 15% rate applies to capital gains derived by foreign residents from sales of shares, quotas, and other participations in entities, titles, bonds and other securities. Similar treatment is granted to Argentine individuals. Argentine corporate residents are subject to the regular 35% corporate rate.

c) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

d) dividends paid to nonresidents are subject to a 10% withholding tax. There is an additional withholding tax that applies only if dividends exceed the payer company's accumulated taxable income, after certain adjustments

e) The general 35% withholding tax is reduced to 15.05% in the following cases: – Where the borrower is a financial institution; – The lender is a bank or financial institution located in a non-tax haven jurisdiction; – The interest relates to certain bonds registered in countries that have concluded an investment protection agreement with Argentina; or – The transaction involves the financing by a seller of depreciable movable property.

f) Royalty payments made to a nonresident author for the exploitation of a copyright in Argentina are subject to a final withholding tax of 35% on 35% of the gross payment (effective rate of 12.25%), provided the work is registered with the National Copyright Bureau and certain other conditions are satisfied. Film and television royalties are subject to a final withholding tax of 35% on 50% of the gross payment (effective rate of 17.5%). Patent royalties paid to a nonresident are subject to a final withholding tax of 35% on 80% of the gross payment (effective rate of 28%) if the agreement under which the royalties are paid is registered by the National Institute of Industrial Technology (INTI). If these conditions are not satisfied, the effective rate on the royalties or fees is 31.5% (35% × 90%). Fees for technical assistance, engineering or consulting services paid to a nonresident are subject to a final withholding tax of 35% on 60% of the gross payment (effective rate of 21%) if the agreement under which the fees are paid is registered by the INTI and the services cannot be obtained in Argentina. If these conditions are not satisfied, the effective rate is again 31.5% (35% × 90%).

Australia

Tax authorities

Australian Taxation Office
Ground Floor, Ethos House,
28-36 Ainslie Ave
Civic Square ACT 2600
Tel: +61 2 6216 1111 **Fax:** +61 2 6216 2830 **Website:** www.ato.gov.au

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Ashurst
	Baker & McKenzie
3	DLA Piper
	Grant Thornton

The appointment of Chris Jordan as head commissioner of the Australian Tax Office in 2013 marked the beginning of substantial changes in the way tax authorities handle transfer pricing. Practitioners are hopeful that the new commissioner's administration will provide updated regulations and greater clarification on transfer pricing policy.

Partners at Ashurst say the new commissioner is "giving the industry a bit of hope that there may be more clarity". Layoffs at the tax office create uncertainty about the future efficiency of tax authorities, but many are confident in Jordan's ability to enforce effective collection.

Australia has established greater engagement with foreign revenue authorities to clamp down on tax evasion. Anti-avoidance provisions have been completely overhauled, and firms say the reform is now friendlier to apply. Tax Laws Amendment 2013 contains the updated changes to the general anti-avoidance provision in Part IVA. Changes to Part IVA includes precise definitions of when a taxpayer has received a tax benefit.

Transfer pricing laws have also been rewritten over the past two years, with firms working to implement the changes to address the needs of clients. Judicial rulings in the coming years will help determine how the laws will be practically applied. Subdivision 815 b-d of the Income Tax Act, which came into effect July 1 2013, contains transfer pricing regulations that comply with arm's-length principles and are consistent with OECD guidelines.

Division 820 concerns thin capitalisation and also provides further information on arm's-length determination. However, Jock McCormack of DLA Piper said two sets of rules regarding cross-border debt arrangements could cause confusion. "In my view, there is some overlap, some duplication of documentation and other compliance requirements and that is creating challenges for taxpayers," McCormack said.

The auditing authorities remain aggressive in their scope and approach, which could be indicative of the added stress of hosting the G20 meeting in November. "With the government being in deficit, there is pressure on the ATO to make sure they are collecting tax in the appropriate way," said Rosheen Garnon of KPMG.

Australia is hopeful to play a critical part in debates on tax avoidance and BEPS initiatives at the G20 meeting in Brisbane. Insiders expect important tax rulings to be released in the months leading up to and after the conference.

Tier 1

Deloitte's transfer pricing practice boasts eight partners under the leadership of **Jacques van Ryhn**.

Partner, **Mark Kenny**, and tax practice leader **Paul Riley**, come highly regarded in the market for their expertise in APAs. The TP team maintains some of the top transfer pricing minds in Australia.

Deloitte is making strides to differentiate itself in the fast moving transfer pricing market. The firm anticipates that clients will begin to look for ways to supplement their own in-house capabilities, rather than outsource entirely, resulting in a need for technology solutions. The technology platform Deloitte is creating will help clients to make real time TP decisions and thus keep many aspects of transfer pricing in-house, leaving Deloitte's role as partner adviser in an outsourced function.

Fiona Craig and other team members advised a large US technology company in one of Australia's largest BEPS audits to date. Given the novel nature of such audits, the deal involved rigorous analysis and advice to develop a consistent global defence position. "She not only does a good job, but she has a very deep understanding of all our different issues," said a client of Craig.

Deloitte's clientele is varied and includes banks, high tech firms, pharmaceutical companies, TMTs, and energy and resources operations. The firm represents many of Australia's major banks and mining companies.

Paul Balkus and **Jasper Soulgaard** co-lead the transfer pricing offerings in **EY**'s global tax practice. EY's key offering is its operating model effectiveness, in which teams work to design a business model, restructure, and determine systems and transfer pricing implications. The professionals at EY can then help clients to build and defend these TP strategies.

The transfer pricing team at EY is continuing to make heavy investments in personnel, and is making several partner additions during the remainder of 2014. The team also focuses on providing cutting edge services and products at a high value for money.

Anthony Seve leads the transfer pricing practice at **KPMG**. The past year has proven to be a year of growth for the firm, which added two new TP partners and 10 professionals. The team has full transfer pricing capabilities, and notes that this practice will be a major area of growth in the coming years. Given complexity in global compliance regulations, KPMG

Tax rates at a glance

(As of September 2014)

Corporate tax rate	30%
Capital gains	30 (a)
Branch tax	30% (b)
Witholding tax	
Dividends	0%/30% (c)
Interest	10%
Royalties	30%
Net operating losses (years)	
Carryback	0
Carryforward	0

a) The coalition government elected in September 2013 is proposing to reduce the corporate rate to 28.5%, effective from 1 July 2015. A new 1.5% Paid Parental Leave Scheme Levy will be imposed on companies with taxable in -comes in excess of AUD5 million (levied on the excess income amount), effective from 1 July 2015. For corporations, capital gains are taxed at the corporate income tax rate, with no reduced tax rates.

b) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

c) Dividends paid to nonresidents are subject to a 30% withholding tax, unless the rate is reduced under an applicable tax treaty. Under domestic law, to the extent a dividend is "franked" under Australia's imputation system, no dividend withholding tax is imposed (irrespective of the rate prescribed in a treaty and the level of ownership in the Australian company). Conversely, to the extent a dividend is not franked, dividend withholding tax generally is imposed, subject to limitations in a relevant treaty.

has seen increased demand from clients wanting to obtain APAs to ensure security in their business transactions.

Seve and partner **Tony Gorgas** are both able to handle complex APA agreements. Gorgas led a case creating a bilateral APA to ensure an arm's-length pricing structure for a client and its US subsidiary in a highly regulated market. His work resulted in securing the APA on behalf of the client for a seven-year period, decreasing annual compliance costs.

Frank Putrino joined the firm this year, bringing his 23 years of experience as a transfer pricing professional in both industry and professional service firms, providing insight from both sides. Also joining the practice this year is **Jeremy Capes**, who has experience in global supply chain planning, IP valuation, and migration and transfer pricing dispute resolution.

Peter Callejo is the transfer pricing partner leading **PwC**'s practice in Asia Pacific. He also leads the domestic team from his base in Sydney. Callejo has on the ground experience working in more than 30 countries. His team of more than 100 professionals offers compliance, business planning, document management and audit defence strategies. Managing partner, **Helen Fazzino**, is also regarded for expertise in TP.

Tier 2

Ashurst's TP practice continues to take on large and challenging deals on behalf of global business leaders under the leadership of **Peter McCullough**. The team has a broad-based clientele ranging from property developers, fund managers, large corporations, and mining and oil companies.

The team said many of its clients have technical challenges when allocating income and expenses between head offices and various branches. The firm also sees many clients audited by the ATO based on Part IVA on general anti- avoidance principles. **Vivian Chang** undertook on a contentious deal regarding intra-group loans. The team argued on behalf of a client that the ATO was over extending the reach of Part IVA, resulting in a successful resolution for the taxpayer.

The team advised an Australian-based international bank on questions from the ATO on its global markets business operations. In the absence of technical legal regulations in this area, the firm had to apply knowledge of domestic law, international tax treaties, and relevant OECD guidelines.

Dixon Hearder is TP leader for **Baker & McKenzie** in Australia, and is highly regarded by rival firms for his skill in documentation project management and risk management. For the past year, he has focused on legal developments in various industry sectors and TP risk management. Tax head, **John Walker**, and two other partners also have some transfer pricing expertise.

Hearder acted on behalf of American commodities trader Archer Daniel Midlands to navigate Australia's new transfer pricing and thin-regulation laws. Because the new laws have yet to be challenged in the court, the firm emphasises that TP strategy is often an art rather than a science.

The firm challenges audits and resolves disputes with the ATO and has capabilities in organising bi-lateral and uni-lateral APAs for clients. Both multinationals and smaller organisations utilise the firm's services to establish operations in Australia.

Tier 3

Jock McCormack heads **DLA Piper**'s transfer pricing practice with the assistance of senior associates, **Anshu Maharaj** and **Eddie Ahn**. The group focuses on technical tax aspects of TP strategy and compliance requirements including documentation and dispute work. They serve a variety of clientele, both international corporations aiming to invest in Australia and local firms looking to expand outwardly.

The firm acted on behalf of insurer Unilife in a $75 million controversy case concerning intellectual property jointly owned by the Australian and American research and development teams within the company. The firm successfully supported the taxpayer in securing an ATO ruling authorising that the intercompany advance was defined as equity for tax purposes in Australia.

DLA Piper's international network gives it access to global economists specialising in transfer pricing, and has allowed the Australian firm to take several cases involving intra-country work for clients operating jointly in Australia and the US. McCormack authored an article on "The Interaction of the Transfer Pricing and Thin Capitalisation" rules, an area of the market that remains unclear even for many practitioners.

Jason Casas is leader of **Grant Thornton**'s developing transfer pricing practice in Australia. Casas and nine additional team members make up the practice, focusing on analysis, advice, and structuring.

In a recent case, the firm acted on behalf of an Australian entrepreneur and subsidiary companies. The deal involved effective supply chain restructuring to balance transfer pricing policy objectives with potential increases in customs duty. The resulting structures caused a 30% decrease in customs duty expense for the client.

The firm has also advised a client on its distribution operations in China to avoid permanent establishment risks.

Austria

Tax authorities

Federal Ministry of Finance
Johannesgasse 5, 1010 Vienna
Tel: +43 1 51 433 0 **Fax:** +43 1 51 262 00 **Website:** www.bmf.gv.at

AUSTRIA

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	BPV Hügel Rechtsanwälte OG
	Leitner & Leitner
3	Freshfields Bruckhaus Deringer

Advisers in the Austrian market were optimistic about the early signs of economic recovery, and expressed concern over sheltering progress to date. Since transfer pricing has become a key revenue stream, Austria has found itself ideally positioned as a developed country between the countries of the West and those of the former Warsaw Pact. Tax professionals in Austria see their jurisdiction as the natural gateway for investment flowing between the two former spheres.

"We are still going strong," said Michael Sedlaczek of Freshfields. "The players in the market are growing again, following the aftermath of 2008."

Transfer pricing structuring typically remains Big 4 territory in the jurisdiction, and benefits from the analytical capability of accounting practices. Conversely, legal advice is mandatory in the BEPS era: Clients require the ethical advice that transfer pricing increasingly necessitates. "When it is an issue of reputation and paying your ethical share of tax everywhere, this is an area made for law firms with international capability," said Claus Stauringer of Freshfields.

It seems likely that the role of law firms will be further expanded whilst the initiatives of BEPS are implemented and interpreted.

There were a number of corporate tax amendments contained within the Austria Tax Bill 2014. In addition to placing limitations on the deductibility of excessive salaries, changes have been made to group taxation. Foreign companies can now only be members of an Austrian consolidated group for tax purposes if they are EU entities, or resident in a non-EU country with which Austria has a mutual assistance agreement. In addition, the head of the group may now only deduct up to 75% of the consolidated profit of domestic group members. Previously, the head could deduct up to 100% of domestic income via the losses of foreign group members.

Additionally, there was a limitation of interest deductibility and royalty payments to related entities in low tax jurisdictions. If the interest is judged to have been taxed at an effective rate of below 10%, the payments will no longer be deductible. This has affected many of the structures currently in place in Austria, but with the advent of BEPS this was not unforeseen by professionals.

"Until recently Austria was one of the last countries where interest was fully deductible without restriction," noted Sybille Novak. "In addition to the change to Basel III regulation, this has significantly affected structuring in Austria."

There is still a certain lack of clarity though, as Erwin Holzer of Deloitte said: "It is interesting that the measures were taken prior to issuance of policy recommendations. There is a new law, but scepticism over how to apply it. Guidance is due by the end of next year. We expect further changes when the OECD determines the best method."

The removal of bank secrecy created further seismic change in the Austrian market this year, having previously vetoed the initiative on other occasions. The amendment applies to interest paid to those resident in an EU member state other than the one where the savings interest is paid. Pencilled for EU Parliament adoption in 2016, it is hoped this will address tax fraud. "This is a fundamental shift in policy, it was the holy cow," said Niklas Schmidt of Wolf Theiss. Many advisers have been engaged by concerned clients to offer advice on appropriate disclosures.

In spite of these changes, advisers are confident Austria remains a good hub for investment, due to its treaty network. "The CFC rules are slightly unclear," said Holzer, "but broadly speaking, there are stricter rulers elsewhere."

The tax authorities in Austria are regarded as amiable. "You can agree with tax authorities on the phone regarding assessment queries, and they will keep their word," said Gerald Schachner of BPV Huegel.

The system of handshake agreements is not always so favourable in terms of advance pricing agreements and forward planning. "There are a lot of areas which lack clear regulation," added Schachner. "Whilst advance rulings are now obtainable, none have been issued as the authorities find it very difficult to assess whether the rates are correct for businesses between countries, and want to assess such issues retrospectively through tax audits."

Concurrently, advisers have noticed a general increase in transfer pricing and tax audits, compounded with an increase in fraud and business crime cases.

Politically, Austrian elections are two years away, and advisers predict that BEPS loopholes will be closed gradually in the run-up.

Tier 1

The **Deloitte** Austrian transfer pricing group has grown significantly over the last few years, mirroring the rise of transfer pricing globally. The practice now includes two separate teams and 12 professionals who specialise in transfer pricing. The teams are represented by two dedicated partners. As the leader of the practice, **Andrea Lahodny** is responsible for work delivered across a range of transfer pricing disciplines. Lahodny draws on her experience as an assistant professor at the Vienna University of Economics and Administration, where she specialised in inter-company pricing. Additionally, Lahodny maintains a close relationship with the authorities and is regularly invited to speak at tax authority training events. **Gabriele Holzinger** works alongside Lahodny, as the other partner responsible for transfer pricing. Specialising in international tax law and transfer pricing, Holzinger is a specialist in defending multinational enterprises in transfer pricing audits and is involved in providing planning and documentation solutions to companies with cross-border transactions. The partners have led on a number of restructurings and benchmarkings this year, including the acquisition of an Austrian group with pan-European subsidiaries and operations. This was further complicated post-acquisition, when the Austrian headquarters was closed down. Significant business functions were relocated to other group companies, requiring extensive transfer pricing and restructuring expertise.

The transfer pricing practice of **EY** Austria is well-regarded in the Austrian market, having a reputation for tax structuring and planning. The practice offers a multitude of cross-border services, including documentation, management of transfer pricing policies and processes. Additionally, EY operates in conjunction with its other service lines and worldwide tax practice to offer global services to its clients.

KPMG Austria offers the full spectrum of transfer pricing services. "Our transfer pricing practice has been growing over the last three years," said **Barbara Polster**. "Three partners – **Sabine Bernegger**, **Florian Rosenberger** and myself – work on transfer pricing. We are supported by a dedicated specialist in **Werner Rosar**, who leads his own team." The team draws wider support from within the KPMG network, and works closely with KPMG's team of in-house economists who provide support on economics-related

Tax rates at a glance

(As of September 2014)

Corporate tax rate	25% (a)
Capital gains	25%
Withholding tax	
Branch tax	25% (b)
Dividends	25% (c)
Interest	0% (d)
Royalties	20% (e)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited (f)

a) There is an annual minimum corporate income tax of €500 for a limited liability company and €3,500 for a joint stock company.

b) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

c) A 25% withholding tax is imposed on dividends paid to nonresident companies, unless the rate is reduced under a tax treaty. Dividends paid to qualifying EU or Swiss shareholders may be exempt from withholding tax under the provisions implementing the EU parent-subsidiary directive and the Swiss agreement with the EU.

d) Austria generally does not impose withholding tax on interest paid to nonresidents. However, interest paid on loans secured against Austrian real estate or other Austrian rights may be taxed at the regular corporate income tax rate and payments made to a nonresident silent partner in an Austrian company are subject to a 25% withholding tax, unless otherwise provided under a tax treaty or the interest is paid to a qualifying associated EU or Swiss company under the EU interest and royalties directive and the Swiss agreement with the EU, respectively.

e) A 20% withholding tax is imposed on royalties paid to nonresidents unless the rate is reduced or eliminated under a tax treaty. If the royalty payment is made to a qualifying associated EU or Swiss company under the EU interest and royalties directive and the Swiss agreement with the EU, respectively, no tax will be withheld.

f) The offset of loss carryforwards against taxable income is limited to 75% of taxable income.

issues. The firm expects this to grow further in response to the BEPS initiative, as documentation requirements begin to take effect in Austria.

Herbert Greinecker is head of tax at **PwC** Austria, and leads a respected transfer pricing practice, which is capable of delivering a range of transfer pricing services, including benchmarking, audit support, restructuring and planning. Greinecker himself is a specialist in tax law for the Chamber of Auditors with focus on restructuring and international tax law, and has more than 24 years' experience as an auditor and tax adviser.

Tier 2

Imke Gerdes is the sole partner of **Baker & McKenzie**'s Austrian practice, and focuses on international taxation, operating in conjunction with partners from the wider practice. Specifically, a large number of transfer pricing deals are done with the firm's Düsseldorf office. Still, Gerdes has set herself up as a Big 4 alternative for transfer pricing work and has completed a number of deals in the field this year, in excess of $2bn. This has included ruling negotiations for Brazilian food and chemical manufacturers, in addition to advising on tax audit issues for an international fashion label. Gerdes is respected in the market as one of the leading tax lawyers in Austria, and is vice president of the Austrian branch of the Society of Trust and Estate Practitioners.

Hanns Hügel and **Gerald Schachner** lead **BPV Hügel Rechtsanwälte OG's** transfer pricing practice which operates with one other partner and another fee earner. While transfer pricing is not the main focus of the firm, the firm has expertise in dealing with it. This has come as a result of reorganisational work, including the determination of arm's-length prices for an Austrian permanent establishment and French holding company.

The firm specialises in the oil and gas industry – counting Shell and BP among its clients – and is also relied upon by other entities for tax structuring and M&A advice, including Nestlé.

The firm has advised the Ring International Holding group on restructuring and interest rate determination for debt instruments, as a part of a large corporate tax deal taking several dedicated months. The firm has also advised on the refinancing and lending structure of the Helios-Group, covering 13 jurisdictions in cooperation with other firms and a consortium of five banks.

Leitner & Leitner in Austria has a relatively large transfer pricing offering for a law firm. **Clemens Nowotny** and **Manfred Wänke** focus on transfer pricing and have extensive experience in the area. Leitner works in conjunction with its member firms in other jurisdictions to deliver bespoke solutions to its clients. "They are a very good firm, with a lot of former Big 4 people," said one adviser.

Tier 3

Michael Sedlaczek heads the moderate transfer pricing practice of **Freshfields Bruckhaus Deringer** in Austria, with the majority of deals being operated by **Claus Staringer**. This year the firm has been involved in advising an international consultancy in a transfer pricing dispute, which was the first of its kind in Austria, and has advised on a transfer of major intellectual property assets from Finland to Austria. Principal Associate **Mario Zuerger** supports the team, and specialises in corporate taxation, M&A transactions, and structured finance.

The transfer pricing practice benefits from the global reach of the Freshfields brand, and works alongside experts from other jurisdictions. The tax practice works as a standalone practice, which differentiates the firm in its dedicated specialities. The transfer pricing practice specialises in the financial, automotive, online-gaming, family-owned and chemical industries.

Baltic States

Tax authorities

Estonian Tax and Customs Board	Latvian Ministry of Finance	Lithuanian Ministry of Finance
Lōōtsa 8a, 15176 Tallinn	1 Smilsu Street, Riga, LV-1919	Lukiskiu 2, 01512 Vilnius
Tel: +372 676 1200	**Tel:** +371 6709 5405	**Tel:** +370 5 239 0000
Fax: +372 676 2709	**Fax:** +371 6709 5410	**Fax:** +370 5 279 1481
Email: emta@emta.ee	**Email:** info@fm.gov.lv	**Email:** finmin@finmin.lt
Website: www.emta.ee	**Website:** www.fm.gov.lv	**Website:** www.finmin.lt

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
	Sorainen
2	VARUL
3	Borenius
	Tark Grunte Sutkiene

Formal requirements for transfer pricing documentation were only introduced in Latvia in 2013, which has caused a large increase in transfer pricing audits by the Latvian tax authorities, for which many taxpayers were underprepared. The number of audits was already increasing, and this has brought a high workload for advisers in the jurisdiction who specialise in documentation.

Jānis Taukačs of Sorainen said transfer pricing services are on the rise.

Advance pricing agreements (APA) are available in Lithuania and, more recently, Latvia, but are still not part of the tax landscape in Estonia.

Ivo Vanasaun, who is responsible for transfer pricing at Deloitte Estonia, said "in principle" they could become available relatively soon, but he does not anticipate them becoming part of Estonian tax law within the next year or two.

Vanasaun also said: "TP documentation requirements are developing all the time. The tax authorities are not too aggressive, but they are focussing more and more on TP issues."

Lithuania remains the most difficult jurisdiction to implement transfer pricing in, with frequent new tax laws unsettling taxpayers, as well as making the jurisdiction less attractive tax-wise, with increasingly aggressive tax authorities.

Conversely, Latvia is unlikely to make any big changes to tax or transfer pricing rules in the next few years after recent changes, and the Estonian tax environment has remained stable for a number of years, leaving taxpayers feeling fairly secure in both jurisdictions.

Any changes to transfer pricing regulations in the two countries are likely to be OECD-led, in line with the BEPS initiative.

A problem for all three jurisdictions, in particular Lithuania, is a lack of university courses providing adequate training in tax.

This means firms often look to hire low and mid-level staff from the tax authorities, leaving the public sector struggling to retain talent.

Despite this, the transfer pricing sophistication of the authorities in all three jurisdictions is gradually increasing after bigger leaps forward three or four years ago, and all three are moving towards electronic administration.

Latvia joined the Eurozone in 2014, while Lithuania will become the final Baltic state to adopt the currency on January 1 2015.

Tier 1

Transfer pricing is one of **Deloitte**'s key specialisations in the Baltic States, and they deploy two partners

Estonia: Tax rates at a glance

(As of September 2014)

Corporate tax rate	21% (a)
Capital gains	0/21 (b)
Branch tax	21% (c)
Withholding tax	
Dividends	0%
Interest	0% (d)
Royalties	10% (e)
Net operating losses (years)	
Carryback	Unrestricted
Carryforward	Unrestricted

a) Only distributions are taxable in Estonia; retained earnings are not subject to tax. The distribution tax is levied at a rate of 21/79 of the net amount (21% of the gross amount).
b) Resident companies and permanent establishments of nonresident companies are not subject to tax on their capital gains received. They are subject only to tax at a rate of 21% on distributed profits. Nonresident companies without a permanent establishment in Estonia are subject to tax at a rate of 21% on their capital gains derived from Estonian sources.
c) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.
d) From 1 January 2014, Estonia does not levy withholding tax on interest, except where a nonresident investor derives interest income from an Estonian contractual fund or other pools of assets. This exception applies to contractual funds or other pools of assets if more than 50% of the assets at the time the interest is paid or at any period during the previous two years, consist, directly or indirectly, of Estonian-situs real property and the nonresident held at least 10% in the fund/pool at the time of payment.
e) Royalty payments made to a nonresident are subject to a 10% withholding tax, unless the rate is reduced under an applicable tax treaty. Royalty payments made to a qualifying EU company may be exempt if the conditions for the application of the EU interest and royalties directive are satisfied (however, the exemption will not apply to any part of the royalty that exceeds the value of similar transactions carried out between unrelated persons).

and ten other fee earners in the practice area across the three jurisdictions, with offices in Talinn, Rīga and Vilnius.

The firm offers a full range of transfer pricing services, and is particularly prolific at preparing and amending transfer pricing documentation.

The Latvian practice has assisted several multinational clients through a spate of transfer pricing audits brought on by the introduction of formal requirements to have transfer pricing documentation in 2013.

The leader of the Estonian transfer pricing practice, **Ivo Vanasaun** explains, "there have been only very few cases purely of transfer pricing", meaning that all audit cases are unique and, as well as having educational elements, have the potential to create precedents, meaning documentation and support granted during audits is of high importance.

Vanasaun is very active in creating and guiding legislation. He is one of five people nominated by the Estonian Minister of Finance to form a transfer pricing advisory commission to hear disputes between EU Member States, and will serve on an advisory commission that will deliver its opinion on the elimination of cross-border double taxation.

The branches in different jurisdictions are used to working together and sharing knowledge, and this is reflected in the industries they serve: Latvia and Estonia both specialise in the financial sector, Estonia and Lithuana both do a lot of work in energy and resources and Latvia and Lithuania both work with agriculture and agricultural machinery and products.

Latvia: Tax rates at a glance

(As of September 2014)

Corporate tax rate	15%/9% (a)
Capital gains	15%
Branch tax	15% (b)
Withholding tax	
Dividends	0% (c)
Interest	0% (d)
Royalties	0%
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited (f)

a) The general rate is 15%, with a 9% rate on the annual turnover of microenterprises.

b) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

c) Dividends paid by a Latvian resident company to a nonresident company are exempt from withholding tax, unless the payments are made to a resident of a black list jurisdiction (in that case, a 15% withholding tax will apply unless special written permission is obtained from the tax authorities not to levy withholding tax). Interim dividends are not subject to withholding tax, except for payments made to a resident of a black list jurisdiction (in that case, a 30% withholding tax will apply unless special written permission is obtained from the tax authorities not to levy withholding tax.

d) As from 1 January 2014, Latvia does not levy withholding tax on any interest (whether EU or non-EU), except for interest payable to persons resident in black list jurisdictions, which is subject to a 15% withholding tax (5% for interest paid by Latvian banks) unless special written permission is obtained from the tax authorities not to levy withholding tax.

e) As from 1 January 2014, Latvia does not levy withholding tax on royalties, except for royalties payable to persons resident in black list jurisdictions, which are subject to a 15% withholding tax unless special written permission is obtained from the tax authorities not to levy withholding tax.

f) Losses incurred in or after 2008 may be carried forward for an unlimited number of years.

EY has full-service transfer pricing teams in Estonia, Latvia and Lithuania.

The Latvian team, led by **Ilona Butane**, has expanded, bringing in four graduates, to employ six full-time and four part-time staff. The practice has been involved in transfer pricing for over 10 years, since before detailed transfer pricing legislation was implemented in Latvia.

The firm led the first ever APA agreement in Latvia this year, completed in June 2014, for an international company operating in homeware and home accessories.

They also worked on a cross-Baltic cost contribution agreement – a rare arrangement in the Baltics – to coordinate operations to reach compliance in each jurisdiction for a well-known multinational insurance company.

The firm has a variety of clients across sectors such as retail and wholesale, banking and insurance, manufacturing, transportation and professional services.

The firm participated in the drafting of new transfer pricing laws, which came into force in 2013, and works to keep its staff updated and informed.

In another deal, the firm represented a retail chain in court regarding cash pool financing transactions, and has been successful in the first two stages of litigation.

Transfer pricing is one of **KPMG**'s strongest areas of practice in the Baltics. Led by the firm's partner **Steve Austwick**, the team offers a full suite of transfer pricing services including drafting policies, working on documentation and assisting during disputes.

Their record is particularly strong in Estonia where, for example, none of their clients have had a transfer pricing assessment.

Lithuania: Tax rates at a glance

(As of September 2014)

Corporate tax rate	15%/5% (a)
Capital gains	15
Branch tax	15% (b)
Withholding tax	
Dividends	0%/15% (c)
Interest	0%/10% (d)
Royalties	10% (e)
Net operating losses (years)	
Carryback	0
Carryforward	5/Unlimited (f)

a) The general corporate income tax rate is 15%. Micro companies (those with up to 10 employees and up to LTL 1 million ($380,000) in income per year) may be entitled to a reduced rate of 5%.

b) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

c) The withholding tax on dividends paid to a nonresident entity is 15%, unless the rate is reduced under a tax treaty, the participation exemption applies or the conditions for the application of the EU parent-subsidiary directive are satisfied. Under the participation exemption, dividends are exempt from corporate income tax if the parent company holds at least 10% of the shares of the payer company continuously for at least 12 months. This exemption does not apply if payments are made to an offshore jurisdiction or if the company distributing the dividends has not paid corporate income tax rate at the standard rate of 15% or the reduced rate of 13%.

d) No withholding tax is levied on interest paid to a company resident in an EEA country or a company resident in a country that has concluded a tax treaty with Lithuania; otherwise, the rate is 10%.

e) A 10% withholding tax generally is levied on royalty payments made to a nonresident unless the rate is reduced under a treaty, or the payment qualifies for the exemption under the EU interest and royalties directive.

f) Losses from disposals of securities and derivative financial instruments may be carried forward five years to offset gains derived from disposals of such items. Losses from the disposal of shares of companies registered in an EEA country or in another tax treaty country cannot be carried forward if the shares have been held for at least two years and if the holding represents at least 25% of shares of the company throughout that period. However, these losses can be offset against capital gains derived from disposals of securities and derivative financial instruments in the current year. Other losses may be carried forward for an unlimited period, unless the entity ceases to carry on the activity that resulted in the loss.

In Latvia, practitioner **Ilze Berga** was recommended by a fellow Big 4 firm for her work in transfer pricing disputes.

The team's portfolio of clients includes companies in industries such as finance, construction, production, retail and telecommunications.

Centrally, the team includes lawyers, economists and analysts to provide high-quality international assistance for clients.

The firm said its competitive advantage lies in its "multidisciplinary approach". It guarantees its advice will not create adverse effects in any way. This approach means that tax and legal issues are considered when offering transfer pricing services.

PwC is active in all three Baltic States and offers a full complement of transfer pricing services in each jurisdiction. Highly recommended by fellow advisers is **Nerijus Nedzinskas**, who leads the firm's transfer pricing operations in the Lithuanian branch.

Sorainen's transfer pricing practice has seen strong growth this year, and has advised firms across a variety of sectors including food and catering, wholesale of goods, financial services, insurance and energy.

In one deal, the firm helped a large paint producer prepare transfer pricing documentation to defend its position from both the Latvian and Estonian tax authorities. The complexity of the deal lay in substantiation of inter-company pricing for the client's operations from the perspectives of the provider and the receiver of the same service.

The team have added **Indrė Ščeponienė** to the team, who for almost six years was deputy director of the Large Taxpayer Monitoring and Consulting Department of the Lithuanian State Tax Inspectorate, as well as two former Big 4 employees, bringing the total staff in the transfer pricing division to four partners and six other fee earners.

Sorainen offers a full scope of transfer pricing services and is a member of Transfer Pricing Associates Global, a network with members in over 30 countries.

Tier 2

VARUL have offices in all three Baltic States, and offer transfer pricing services in each jurisdiction. Their offering is particularly strong because they employ economists.

In one deal, the firm analysed the tax and transfer pricing aspects of transactions between Bauhof Group and its affiliated company. The firm also initiated a dispute with the Estonian Tax and Customs Board and the first instance court annulled the tax claim of the tax authority.

The tax authority filed an appeal, which the firm again contested, and both parties are now awaiting the court's verdict.

The firm merged with BDO Zelemis & Liberte in 2013 and now employs a total of 90 professionals across all areas.

Tier 3

Transfer pricing is a relatively new area of practice for Borenius, working with clients in relatively few deals. They are able to draw on the experience of colleagues in Finland to assist in these matters.

They are led by **Egon Talur** in Estonia, **Indrikis Liepa** in Latvia and **Nerijus Jurkus** in Lithuania, and have five other staff who are active in transfer pricing across the three jurisdictions.

Deals they have been involved with have, however, been significant. For example, they are involved in one of very few cases in Latvia where the courts will have to solve a legal dispute regarding transfer pricing. The $24 million dispute between the tax authorities and stock company Severstaļlat, part of steel producer Severstal, has been in progress since 2011.

Borenius has provided the client with legal services in all proceedings and has prepared the legal documents (applications and claims), as well as represented the client in the court hearings on implementation of interim measures and on substance.

The transfer pricing departments at Tark Grunte Sutkiene are led by **Marius Matonis** in Lithuania, **Ivars Grunte** in Latvia and **Rolan Jankelevitsh** in Estonia.

Four of the firm's partners are active in transfer pricing, along with six other fee-earners. The key industries for the firm are production and wholesale, banking, finance, pharmaceuticals and healthcare, retail and real estate.

Tark Grunte Sutkiene represented a client in an unprecedented tax dispute regarding the application transfer pricing rules.

In another deal, worth $55.6 million, the firm provided comprehensive tax and corporate law advice, and evaluated transfer pricing issues for Phoenix group companies restructuring of their operations in the Baltics by creating a German Phoenix group company owned by a holding company in Latvia.

Belgium

Tax authorities

Service Public Fédéral Finances

Finance Tower, Boulevard du Jardin Botanique, 50, 1000 Bruxelles

Tel: +32 2 576 2111; +32 2 572 5757 **Website:** www.fiscus.fgov.be

LEADING FIRMS

1
- Deloitte
- EY
- KPMG
- PwC

2
- Baker & McKenzie
- Liedekerke
- Loyens & Loeff
- Mayer Brown
- Stibbe

Tax rates at a glance

(As of July 2014)

Corporate income tax	33.99% (a)
Capital gains	0/0.412/25.75/33.99%
Branch tax	33.99%
Withholding tax	
Dividends	0/10/15/20/25%
Interest	0/15/25%
Royalties	0/15/25%
Branch remittance tax	N/A
Net operating losses (years)	
Carryback	N/A
Carryforwards	Unlimited

a) Surcharge of 3% on income tax makes effective corporate tax rate 33.99%.

Source: *Tax advisers from AB Taxand, Taxand Belgium*

"Belgium is coming out of recession very slowly. Smaller and mid-market deals are re-emerging," said Howard Liebman of Jones Day.

Recovery is proceeding with gradual certainty, and advisers are keenly awaiting the formation of a new government following elections in May 2014. Change of leadership from the socialist-led Di Rupo government, to a conservative coalition may precipitate some tax policy reforms. There is substantial optimism that an economically liberal government may bring tax improvements, desired by both advisers and Belgian business federations. This is particularly true amongst small domestic businesses, who do not benefit from notional interest deductions yet are still impacted by the high tax rate.

"Many of the parties are agreeing that we should revamp the corporate tax system," said Alain Huyghe of Baker & McKenzie. "The fundamental question is how? Currently we have a relatively high rate but possess incentives through deductions and notional interest adjustments, which benefits some companies more than others."

The Belgian temperament of compliance to OECD policy is unlikely to change, and this is reflected in the increased diligence of the tax authorities.

"The authorities are becoming tougher, there is an increased volume of audits and the technique has changed," said Huyghe. "There are now teams of five to 10 auditors coming to client offices and taking copies of entire IT systems, including emails."

It is disputed to what extent this is legal. Some advisers perceive this as mere diligence in the 21st century, whereas others find it to be an invasion of privacy. The development can likely be interpreted as part of the response of the authorities to the challenges of the digital economy, as highlighted by BEPS.

As a jurisdiction, Belgium is moving ahead of schedule of BEPS compliance, and was quick in 2013 to implement a new set of anti-abuse rules that are very similar to the BEPS equivalent. "We do not have a big tradition of shelf companies," said Natalia Reypens of Loyens and Loeff. "Most enterprises here have a lot of substance, compared to other countries. We have been responding to the increase in transfer pricing audits, for which the authorities are now training specialised units."

Furthermore, advisers anticipate further organisation change in the ways in which the authorities approach tax. "The Ministry of Finance is now encouraged and prepared to do a substantial restructuring," said De Neef. "On a more local basis there will be more collaboration between direct and indirect tax departments, I think this more organised approach will lead to quite a different tax landscape."

Despite an increase in audits, tax firms were optimistic about the aims of the authorities. There is a perceived balance between the need to raise revenue and the ethical values represented by BEPS. "Each should pay their fair share of taxes," said Astrid Pieron of Mayer Brown. "Specific countries are viewed as a break in that fairness."

Changes to notional interest deductions have been the primary concern of tax advisers, with debate over the best way to attract investment.

"A couple of measures have been taken by the government, which have caused Belgium to lose some appeal compared to Luxembourg or the Netherlands," noted Enrico Schoonvliet of Loyens & Loeff.

"The complexity puts people off," said Van Stappen. "Our nominal tax rate as it stands, will not attract investment."

The rates for assessment year 2015 will be 2.63%, and 3.13% for SMEs. For assessment year 2014 the rate is 2.742% and 2.242% for SMEs.

Transfer pricing advisers agreed that although the economy has slowed, because of some of the rule changes, they have seen an increase in risk assessment and transfer pricing work, which reflects the governance situation. Many firms are now viewing transfer pricing as a solid revenue stream that can be relied on, and have fielded specialists in the area.

Tier 1

Deloitte Belgium utilises its international network, and a partnership with the law firm Laga, to deliver a one-stop-shop for transfer pricing services in Belgium and internationally. **Patrick Cauwenbergh** is head of tax and draws on his expertise developed as a professor of the University of Antwerp where he lectures in international and comparative tax law. His partnership team includes **André Schaffers** – an economist and leader of Deloitte's Global Economics network – and **Jeroen Lemmens** – and economist and lawyer. The practice has grown with the transfer pricing market, and has hired a manager and four junior consultants in the last 12 months, taking the overall team to three partners and 21 fee earners. The practice has recognised a trend towards BEPS compliant transfer pricing work, and has been innovative in offering to assist clients with developing contribution analyses to determine where their substance lies. This year, the practice has assisted on a number of complex deals. Cauwenbergh has been involved in global profit splits for a number of clients to bring their entities in line with BEPS requirements in more than 40 jurisdictions. Meanwhile, Lemmens has cooperated with the legal and consulting service lines to design a global centralised business model for a client. The client required a central Belgian headquarters steering R&D, and distribution activities, whilst regional clusters manage local group entities. Specifically, Deloitte designed and implemented a new transfer pricing model, setting up new companies and providing tax advice, VAT and customs assistance.

EY's Belgian practice has a particular focus on supply chain management, offering documentation services and engaging in the full spectrum of transfer pricing work. The firm complements this through a strong international tax service which operates in conjunction with the wider EY network. This year the firm saw a significant increase in transfer pricing audit activity in Belgium, and has made itself available to assist clients with transfer pricing policies and documentation.

Dirk Van Stappen heads the transfer pricing practice of **KPMG**, of which he is the sole partner with 10 other fee earners operating with him. Van Stappen has been participating as a private sector member of the EU Joint Transfer Pricing Forum since its establishment in 2002. The firm considers itself well placed to deal with the rising transfer pricing challenge in the advent of BEPS, because of its recent focus on digital services. The Global Compliance Management Services practice, which is a mixture of IT and tax specialists, is one example of this. KPMG has developed such initiatives because "they see taxation as high on the agenda, not only because it's an element of cost, but because of BEPS", said Van Stappen. "Parties who would not have cared for tax a year ago, are suddenly very interested." The firm is able to provide for every step of transfer pricing from documentation preparation, to planning, APAs, and the resolution of tax disputes.

Axel Smits – managing partner – and **Isabel Verlinden** – EMEA transfer pricing leader – lead the reputable transfer pricing practice of **PwC** in Belgium. The firm has one of the largest tax practices in Belgium, and is also able to draw on the wider PwC network to deliver cross-border transfer pricing services. The firm assists in developing tax optimised business models, IP planning, APAs and documentation services through its two transfer pricing service lines of planning and transfer pricing documentation.

Tier 2

The transfer pricing department of **Baker & McKenzie** was created seven years ago, and is run by a single partner – **Alain Huyghe** – with the assistance of two other professionals. The firm prides itself on tailoring its services to the market and recently had positive results from a detailed surveying of more than 300 Belgian subsidiaries to find out exactly which functions were performed in Belgium, the risks taken from a tax perspective, and supply chain structure. The firm has also noted an increase in the scope and depth of tax audits in the jurisdiction, which has contributed to their revenues. The firm relies on being part of one of the largest international law firm networks to provide cross-border solutions, and can provide economics-related services such as benchmarking through its in-house team of economists. A client of the firm found them to be "a very valuable adviser for transfer pricing and M&A".

This year Huyghe has been involved in assisting Belgian subsidiaries of two US pharmaceutical companies in the renewal of Belgian TP rulings from the Belgian TP audit centre, which does not typically grant TP rulings. The practice has advised on restructurings, and assisted a US pharmaceutical group with the reshaping of its Central and Eastern European distribution models, converting local distributers, sales agents and rep offices into non-selling agents, to avoid exit taxation and simplify VAT.

Daniel Garabedian is head of tax at **Liedekerke**, which is highly recommended by other tax practitioners in Belgium. Generally, the practice is recognised as a legal market leader in tax. The tax proactive consists of nine partners and 20 staff members who all spend time on transfer pricing projects. Services include advice on transfer pricing principles and on their implementation, in addition to assisting on an increasing number of transfer pricing audits and litigation cases. In recent work, the firm has assisted a Belgian financial institution in obtaining a ruling from the Belgian tax rulings commission with respect to its funding on the capital market and has assisted with various tax audits and pricing activities. The broad litigation experience of the firm is an asset when dealing with transfer pricing issues, but it leaves the data-heavy work – such as transfer pricing studies – to the accountancy firms.

Loyens & Loeff operates a respected transfer pricing practice of three attorneys-at-law which is headed by **Natalia Reypens** and overseen by **Enrico Schoonvliet**. The team covers the full scope of transfer pricing issues ranging from planning, documentation and interaction with other tax and legal issues to negotiations with tax authorities and dispute resolution. The team is also responsive to the market, and has picked up extra work because the authorities have responded to BEPS initiatives. There has been a general increase in audits, specifically transfer pricing audits," said Reypens. "The authorities have improved their training, and there are larger, better equipped teams. This is good, but it means we have to make very strong cases." As such, Reypens has advised on a diverse range of deals this year, including assisting France Telecom with Belgian tax implications of the Belgian operations of a French joint venture, and providing transfer pricing analysis for Merrill Lynch. Reypens is academically conscious of thought-leadership on transfer pricing, in addition to making several publications on transfer pricing, she is a teaching assistant at the University of Antwerp.

Mayer Brown operates a global network with tax specialists in London, Frankfurt, Honk Kong and the USA. In transfer pricing, the Belgian office can rely on a pan-European team of 15 dedicated lawyers. Locally, the practice is run by **Astrid Pieron** with the assistance of two other fee earners. Pieron is a member of the EU Joint Transfer Pricing Forum (JTPF), and the team has participated in policy initiatives at the OECD and EU level. The team has responded to an increased number of tax litigations in transfer pricing, as the authorites seek revenue. "Transfer pricing work ensures ongoing work for the team, and on top of this we have had a series of projects and special work," said Pieron. As such, the firm has had an active year in transfer pricing deals, assisting in a pan-European supply chain reorganisation for Materis, and advising on the restructuring of an acquisition by LBO France. The firm was also able to assist a French toy group in preparing transfer pricing documentation in five jurisdictions in response to an examination under the French documentation requirements. Mayer Brown's five strongest industries are listed as consumer goods, pharmaceutics, automotive, financial services, and manufacturing.

The transfer pricing practice of **Stibbe** is led by **Xavier Gillot** who operates with a team of two other transfer pricing junior associates. Gillot made partner in 2012, following admittance to the bar in 2002. The team draws on the wider network of the Stibbe firm in the Benelux region to deliver a range of transfer pricing services. Gillot assisted on a number of deals this year, including the design of a new transfer pricing policy for the Belchim Crop Protection group, and is engaged in assisteing the Franco Dragone Entertainment Group with regards to a transfer pricing audit. The firm's specialities are listed as industrial services, media and entertainment, financial services, telecoms and the public sector.

MAYER • BROWN

More than just a European practice, Mayer Brown has created, in Brussels, a fully integrated European Transfer Pricing Centre with the ability to pull EU and country-specific information, as well as materials and information to coordinate pan-European transfer pricing planning, together with the Americas and Asian teams.

Moreover, the Centre capitalizes on a wide-range of expertise of its members ranging from sound transfer pricing knowledge to in-depth EU VAT and customs expertise.

The breadth of practice experience and the concentrated focus of the Centre will ensure that each client's transfer pricing strategy is optimized on a multi-country and cross-practice level.

The Centre is headed by Astrid Pieron, a partner based in our Brussels office and a non-governmental member of the EU Joint Transfer Pricing Forum.

Contact:
Astrid Pieron
Partner
apieron@mayerbrown.com
Brussels
T +32 2 551 5968

Brazil

Tax authorities

Secretaria da Receita Federal do Brasil
Ministério da Fazenda
Esplanada dos Ministérios, Bloco P
CEP 70048-900, Brasilia, DF
Tel: +55 61 3412 2000/3000
Website: www.receita.fazenda.gov.br

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	Lacaz Martins, Pereira Neto, Gurevich & Schoueri Advogados
	Lilla, Huck, Otranto, Camargo Advogados
	Trench, Rossi e Watanabe (associated with Baker & McKenzie)
2	Machado Associados, Advogados e Consultores
	Machado Meyer
	Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados
	PwC
	Rolim, Viotti e Leite Campos Advogados
3	Barbosa, Mussnich & Aragao
	Felsberg e Associados
	Siqueira Castro Advogados

There are now seven types of indirect taxes in Brazil as a result of the latest VAT reform, giving tax professionals a new round of re-education after the accounting transition five years prior to IFRS from Brazilian GAAP.

Additionally, a change to the CFC rules in November 2013 brought further distinctions, relating to the taxing of undistributed profits, between foreign affiliated and controlled companies. Among other provisions, the new rules lower the risk of double taxation by extending foreign tax credits to withholding income tax paid abroad on profits relayed to the Brazilian parent company without a time constraint.

"It's quite easy to shift an intangible from Brazil to abroad without having to calculate market value," said Paulo Bento, lead tax and transfer pricing practitioner at Barbosa, Mussnich & Aragao. "I wouldn't say that we have a lot to disclose here – the profit margin is the main thing in transfer pricing," he added.

Despite the lack of attention paid to BEPS in Brazil relative to its neighbouring countries in Latin America, tension has built in the past year regarding the form versus substance debate.

"Tax authorities continue to be very aggressive even though no legislation has happened," said Gustavo Haddad of Lefosse. "They are changing their positions, in the sense of trying to apply concepts of lack of business purpose and abuse to transactions."

Transfer pricing professionals in Brazil all point to the lack of legislation proposed to correct inconsistencies in the transfer pricing rules relative to international, or OECD, standards. The forecast is nearly universal that this will not change, as the Brazilian deficit has pushed tax authorities to put further pressure on corporations to cover public investments and collect as much revenue as they can.

Tier 1

Deloitte is a full-service transfer pricing practice that focuses on compliance and advisory services. Deloitte is widely recognised by peers for its excellence in transfer pricing. The practice is led by **Cristina Arantes Berry**, who is also head of tax.

EY's client base includes some of the largest companies involved in the exploration, extraction and export of the country's oil, natural gas and minerals.

Tax rates at a glance

(As of September 2014)

Corporate income tax rate	15% (a)
Capital gains tax	15% 25% (b)
Branch tax	15% (c)
Withholding tax	
Dividends	0%
Interest	15% 25% (d)
Royalties	15%
Branch remittance tax	0%
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited (e)

a) In addition to the statutory corporate income tax rate of 15%, a surtax of 10% on income of more than BRL240,000 ($106,000) a year is imposed on legal entities and a 9% social contribution tax (CSLL) is levied on adjusted net income. For financial institutions, the CSLL rate is 15%.

b) If the capital gains are derived by a tax haven resident, the rate is increased to 25%. Foreign investors on the financial market may be subject to different rates.

c) Branches are taxed at the same rates as domestic companies.

d) The rate is 25% if the recipient is domiciled in a tax haven.

e) The amount of the carryforward is limited to 30% of taxable income in each carryforward year.

Source: tax advisers from BM&A Consultoria Tributaria, Taxand Brazil

EY also serves clients in the financial services, pharmaceutical and technology sectors. The practice comprises two partners and 46 other transfer pricing professionals, and is led by **Werner Stuffer**, who focuses on compliance issues. **Marcio R de Oliveira** leads the practice in Rio de Janeiro.

Led by **Marienne Coutinho** and **Eliete Ribiero**, **KPMG**'s transfer pricing practice specialises in planning, advisory and documentation services for international companies. Coutinho has spent 18 years at KPMG, where she also worked at the firm's Customs Group in New York. Ribiero is a 15-year company veteran with a strong reputation as a leading transfer pricing adviser. She has particular expertise in the chemical, automobile, electronics and consumer goods industries.

Lacaz Martins, Pereira Neto, Gurevich & Schoueri Advogados's transfer pricing practice is led by transfer pricing professional **Luis Eduardo Schoueri**. The firm's tax litigation practice is recognised by peers to be one of the strongest in the country, and the team is known for its particular expertise in transfer pricing controversy. Schoueri offers legal opinions that are considered of the highest quality in the field, and is almost universally regarded by his peers to be either among the best, or the best, transfer pricing controversy practitioners in the country.

Led by **Mauricio de Carvalho Silveira Bueno**, **Lilla, Huck, Otranto, Camargo Advogados**' transfer pricing practice focuses on assisting domestic and foreign companies in complying with Brazil's transfer pricing rules on imports and exports. The team also comprises **Joao Paulo de Seixas Maia Krepel** and **Isabel Garcia Calich de Fonseca**.

The firm is advising a manufacturing company on structuring its investment in Brazil, requiring the transfer pricing team to analyse the relationship recent transfer pricing legislation and thin capitalisation rules have with the Double Tax Convention signed between Brazil and the Netherlands. There is so far no precedent as to how these recent developments interact, creating a challenge for Lilla Huck's transfer pricing professionals.

The transfer pricing practice of **Trench, Rossi e Watanabe (associated with Baker & McKenzie)** focuses on high-end consulting work, including planning, studies and litigation. It also reviews documentation, particularly in preparation for litigation, while leaving the calculations to accounting firms. **Clarissa Machado** and **Simone Dias Musa** lead the practice, which comprises five partners and nine fee earners. The firm recently concluded an analysis of the Brazilian transfer pricing rules in view of a long-term engineering service, where the client could use only one method of determining the maximum deductible amount of import expense under the resale price less profits method (RPM). It was a particularly challenging case because the RPM does not specify how it can be applied to a taxpayer engaged in long-term service agreement, requiring some interpretation of RPM and the transfer pricing methods.

Tier 2

Machado Associados Advogados e Consultores' transfer pricing team is led by **Luis Rogério Farinelli**, who specialises in planning and foreign investment, as well as transfer pricing. The firm assists clients from a diverse array of sectors including pharmaceutical, chemical products, and technology in calculation, planning and litigation defence at all levels of the administrative and judiciary branches. Other partners include **Julio M. De Oliveira** and **Carlos Augusto Cruz**. The team is currently advising a video streaming service company on import and export transactions relating to its streaming and marketing services for the 2013 tax year.

Raquel Novais leads **Machado Meyer**'s transfer pricing practice, which comprises five partners and four other fee earners providing advice on transfer pricing planning, calculation and litigation to domestic and international corporations. The dedicated transfer pricing team at Machado Meyer rendered a tax assessment discussing comparability adjustments mandatory on the application of the CUP method in a dispute between a Brazilian fertilizer company and the tax authorities. The firm is also leading the assessment of the resale price method with a 60% margin in a high profile Brazilian transfer pricing dispute. One peer said of Machado Meyer's transfer pricing practice: "This law firm continues to increase its participation in litigation cases related to transfer pricing matters in Brazil, and with success and praise from clients and peers alike."

Led by **Luiz Felipe Ferraz**, the transfer pricing practice of **Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados** focuses on assisting clients, comprising large domestic and foreign multinationals with transfer pricing strategies and dispute resolution. It also assists with the preparation and filing of documentation. Clients include the local subsidiaries of Dow Chemical and Fujifilm and STMicroelectronics. Last year the team assisted Bunge in structuring transfer pricing planning for 2013 imports and exports of goods between related parties to comply with the new legislation surrounding commodities in Brazil.

Led by **Cristina Medeiros** and **Graziela Batista**, **PwC**'s transfer pricing practice focuses on transfer pricing planning and documentation that is in compliance with Brazil's new transfer pricing rules, which were enacted in September 2012 and implemented the following January.

Rolim, Viotti e Leite Campos Advogados' 12 transfer pricing partners and 69 fee earners focus primarily on compliance issues relating to their strong portfolio of corporate clients. **Joao Dacio Rolim**, leader of the firm's transfer pricing and tax disputes practices, has written extensively on transfer pricing and has been published by the London School of Economics and Cambridge University Press in a book on transfer pricing. The firm is defending a technology company in a suit brought against the Federal Revenue regarding the profit rates-based transfer pricing method PRL60. Clients include global corporations and market leaders in the automotive, mining, oil and gas, and telecommunications sectors.

Tier 3

Paulo Bento leads the transfer pricing practice at **Barbosa, Mussnich & Aragao**, which comprises four partners and 29 other fee earners. The firm specialises in transfer pricing policy and planning for multinational corporations. Clients include the Latin American branch of a company that makes tools used in some of Brazil's fastest-growing industries, including automobiles and aerospace. The practice also advises the clients of international law firms on a regular basis, regarding transfer pricing planning for their Brazilian subsidiaries.

Felsberg e Associados not only provides guidance on transfer pricing planning but reviews procedures, calculations and criteria used by companies engaging in transfer pricing in Brazil. It also reviews documentation and represents clients in transfer pricing disputes. **Thiago Rufalco Medaglia** leads the practice. The group advises clients in many industry sectors including oil and gas and telecommunications.

Led by **Richard Dotoli**, **Siqueira Castro Advogados**' transfer pricing practice focuses on transfer pricing planning for large domestic and foreign multinational corporations. In continuing its advisory work relating to Brazil's January 2013 implemented transfer pricing rules, the firm has assisted local subsidiaries of foreign corporations such as Sony, Samsung, and Ajinomoto in the companies' efforts to comply with the aforementioned transfer pricing reforms. They are particularly involved in matters of litigation surrounding PIS/COFINS in administrative and judicial court proceedings.

CASTRO, BARROS, SOBRAL, GOMES
ADVOGADOS

Office
Av. Rio Branco, 110 – 14th floor
20040-001 – Rio de Janeiro – RJ
Brazil
Phone: (+55 21) 2132-1855
Fax: (+55 21) 2132-1856

Contact
André Gomes de Oliveira
Andre.oliveira@cbsg.com.br

www.cbsg.com.br

KPMG
cutting through complexity

KPMG Transnational Tax Services Ltda
Paulista Avenue, 2313 - 5th and 6th floors
01311-300 – São Paulo/ SP/ Brazil
Tel: +55 11 3138-5000
Fax: +55 11 3138-5058
Website: www.kpmg.com/BR

Contacts:
Marienne Coutinho
Partner
Tel: +55 11 2183-3182
mmcoutinho@kpmg.com.br

Eliete Ribeiro
Partner
Tel: +55 11 2183-3288
eribeiro@kpmg.com.br

Profile
KPMG is a global network of professional firms providing Audit, Tax and Advisory services. We operate in 155 countries and have 155,000 people working in member firms around the world. In Brazil, approximately 4.000 professionals working in 22 cities located in 13 States and the Federal District.

KPMG in Brazil relies on a Transfer Pricing team of experienced advisors who provide advisory services on transfer pricing matters including global policy, planning and implementation. Our approach differential lies in the experience of our professional team which combines knowledge of the market and legislation with the use of information technology resources.

Machado Associados Advogados e Consultores

HEAD OFFICE
Avenida Brigadeiro Faria Lima, 1656, 11th floor
01451-918 – São Paulo, SP – Brazil
Phone: +55 11 3819 4855
Website: www.machadoassociados.com.br
Supporting offices: Brasília and Rio de Janeiro

Machado Associados is a leading Brazilian law firm with over 24 years of experience assisting its clients in the main areas of business law. Our transfer pricing team, composed of highly qualified individuals with expertise in tax and legal issues, as well as complex accounting and financial concepts, is dedicated to assist clients in all areas of the industry and services with:

- analyzing the effects of the adoption of each possible method prepared by the client;
- identifying the best transfer pricing method considering the activities and transactions performed by the client;
- preparing legal opinions addressing specific concerns/doubts raised by the client;
- fulfilling ancillary obligations;
- obtaining the necessary support documents in Brazil and abroad; and
- supporting and defending our clients in transfer pricing tax litigations at all levels.

Contact
Luís Rogério Godinho Farinelli
lfarinelli@machadoassociados.com.br

Bulgaria

Tax authorities

Ministry of Finance
102, G.S. Rakovski str. Sofia, 1040
Tel: +359 2 9859 2027
Email: feedback@minfin.bg
Website: www.minfin.bg

LEADING FIRMS

1
- Deloitte
- EY
- KPMG
- PwC

2
- Baker Tilly Klitou
- Delchev & Partners Law Firm
- Grant Thornton
- Pavlov & Partners

3
- Tax & Financial Solutions

Tax rates at a glance

(As of 2014)

Corporate income tax rate	10%
Capital gains tax rate	10%
Branch tax rate	10%
Withholding tax	
Dividends	0% to 5% (a)
Interest	5% to 10% (b)
Royalties from patents and Licences	5% to 10% (b)
Branch remittance tax	No
Net operating losses (years)	
Carryback	No
Carryforwards	5

a) Dividends paid to companies and other entities that are residents of an EEA country are exempt from withholding tax.
b) As of January 1 2011 until December 31 2014, a 5% tax rate applies on interest and royalties payments made between associated companies.

Source: *Professionals from Eurofast Global, Sofia Office/Bulgaria*

The Bulgarian transfer pricing system is not well developed.

However, despite not being a member of the OECD, the authorities generally accept the principles laid out by OECD guidelines and the country has double taxation treaties in place with more than 70 jurisdictions.

The most common methods used by the tax authorities are comparable uncontrolled price, cost plus and transactional net margin method.

No APAs or advanced rulings of any kind are available although Deloitte's Pieter Wessel said that this is an area that many people are keen to work on.

"There is a long lasting discussion between the business community and high profile officers from the tax authorities on the introduction of a mechanism for voluntary disclosure of errors and omissions by the taxpayers, of advance rulings binding for the tax authorities and of holding/participation exemption regime," he said.

"In future, we may see some of these things become a reality in Bulgaria."

There are also signs that transfer pricing is moving up the agenda of the tax authorities in Bulgaria. EY said: "Transfer pricing was one of the hot topics of all tax events we had with clients and business chambers."

Tax proceedings in Bulgaria are not public until reaching the court appeal phase, but KPMG has reported a "significant increase in the number and materiality of transfer pricing issues being identified by tax authorities".

Wessel also expects transfer pricing to become more of an issue in the near future. He said that a new enclosure to the annual corporate tax return was introduced to enable the tax authorities to collect information on the types and volumes of related party transactions carried out by taxpayers.

He added: "It is expected that the preparation of adequate transfer pricing documentation by the companies having material related party transactions would become a true necessity."

An extension of the definition of related parties was also introduced, but it remains to be seen how this will be applied by the tax authorities.

Progress is likely to remain slow, as the political situation in Bulgaria means that the country faces more pressing issues than updating transfer pricing regulations.

As Veselina Petkova of Delchev and Partners said: "Transfer pricing is not very developed in Bulgaria. There are more important things for them [the government] to do."

Tier 1

Two partners and six other fee earners work in transfer pricing in **Deloitte**, with **Pieter Wessel** leading the team. The team offers a full service in all applicable areas of transfer pricing.

The firm assists clients investing in Bulgaria as well as those looking to expand out of the jurisdiction. One of the firm's strengths is its ability to combine advice on transfer pricing with other areas of tax.

The firm advises a range of large clients, including a leading telecommunications operator, leading multinational pharmaceutical companies, an expanding Bulgarian chemical industry group, a multinational company in the energy and resources sector and a premium TV company.

In a $65 million deal for a software solutions provider the firm reviewed a transfer pricing documentation prepared for 2013 and worked backwards to adapt it for 2012 to ensure compliance with transfer pricing regulations.

In another deal, Deloitte provided its client, a premium TV company, with transfer pricing documentation, combining this service with comments on identified tax risks such as cost deductibility and permanent establishment.

The practice is active in working to improve the tax environment within Bulgaria, and participates in regular meetings with the National Revenue Agency and the Ministry of Finance, as well as giving its opinions on drafts of amendments of tax laws. The firm is also involved in long-running discussions between business leaders and the tax authorities on the implementation of APAs, or some form of advanced ruling system.

EY Bulgaria offers a full range of applicable transfer pricing services. The transfer pricing team consists of one partner, **Marcel Schwabb**, and six other fee earners.

The firm predominantly provides transfer pricing documentation services to large MNEs and their Bulgarian subsidiaries. In most of the cases, the documented transactions were distribution and marketing services, manufacturing, intra-group financing and routine administrative services.

The majority of local work comes from strong relationships between clients and members of the tax and audit teams. In addition to work in the local market, the firm assisted primary EY TP offices in the preparation of TP master files of EY's global TP clients.

KPMG has offices in Sofia, Varna, and Burgas, and employs 330 people across its advisory, audit and tax and transfer pricing practices. The firm's transfer pricing operations are led by **Kalin Hadjidimov**, who also leads the tax department.

Another important name at the firm is **Arkadiusz Mierzejewski**, who worked for KPMG in Poland from 2000 to 2006 before launching the firm's tax and legal operations in Albania and Kosovo in 2007. He has worked in Bulgaria since 2011. The firm's Balkan operations are led from Bulgaria.

The firm offers a full complement of transfer pricing services which are relevant in Bulgaria, from drawing up and implementing transfer pricing policies and documentation to defending clients from challenges by the tax authorities.

The transfer pricing operations of **PwC** Bulgaria are led by partner **Irina Tsvetkova**, who is also the managing partner of the whole Bulgarian branch.

Another partner at the firm is **Paul Tobin**, who spent over a decade as an in-house tax professional at BP, Unigate and BT in the UK before moving to become head of indirect taxation for PwC Russia and the Commonwealth of Independent States for nine years.

Tobin now operates in Bulgaria, and across the rest of the Balkans as leader of PwC's tax and legal operations in Albania, Kosovo and FYR Macedonia.

A key part of the firm's transfer pricing offering is assisting multinational clients in adapting their transfer pricing policies to Bulgarian requirements. The firm is also proficient in preparing transfer pricing policies and strategies by analysing inter-company transactions.

Tier 2

The two-person team at **Baker Tilly Klitou** is led by **Svetla Marinova**, who has almost 20 years' experience in all tax and transfer pricing matters.

The firm does a lot of work around tax compliance, structuring, due diligence and diagnostic reviews. All of these disciplines incorporate elements of transfer pricing, particularly the preparation of transfer pricing documentation, which makes up most of the firm's work in this area.

In Bulgaria, Romania and Moldova Baker Tilly are known as Baker Tilly Klitou and are led from Cyprus independently of the main, UK, Baker Tilly International. Practitioners in all four countries work closely together on cross-border deal, and have access to the Baker Tilly network and expertise.

The transfer pricing team at **Delchev & Partners** offers a full range of services and is well adapted to the Bulgarian market.

Led by **Galina Slavova**, and employing two other fee-earners, most of their work over the last year has been preparing transfer pricing documentation for taxpayers. Members of the firm are fluent in several languages. Among the clients they have performed these services for agricultural companies, KWS Semena Bulgaria and Limagrain Central Europe, along with Swiss construction, automotive and shipbuilding consultancy company, Sika's Bulgarian subsidiary. Founder and managing partner **Emil Delchev** also plays an active role in transfer pricing deals.

When working on the cross-border aspects of deals, the firm liaises with WTS Alliance, a global network of tax firms represented in approximately 100 countries worldwide.

Delchev & Partners are the Bulgarian cooperation partner of WTS, and has been in association with the network for over eight years.

One client, Cordeel Bulgaria Inc, part of Belgian construction company Cordeel Group said: "All services provided by Delchev & Partners are impressive as the most important for us is providing of the services in different languages."

Pavlina Georgieva, finance manager of Sika Bulgaria, said: "During our work in transfer pricing and other tax and legal due diligence projects Delchev & Partners demonstrated professionalism and high quality service. Cooperation with the team of Delchev & Partners has been a valuable professional experience for me."

The transfer pricing team at **Grant Thornton** is led by **Milena Mladenova**. The firm has offices in Sofia and Varna.

The practice advises on how to avoid double taxation, and covers the preparation of transfer pricing documentation, as well as covering business analysis and functional analysis. The firm then assesses the characteristics of transactions and guides companies on their choice of method through benchmarking and economic analysis.

The firm also provides a summaries on risks and opportunities within transfer pricing for their clients.

Pavlov and Partners Law Firm, in cooperation with CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH's transfer pricing team, is led by senior attorney **Valentin Savov**. Partner **Gentscho Pavlov** also does work for the team, along with four other fee-earners.

The firm offers a full range of tax and transfer pricing services, usually incorporating transfer pricing advice as part of its services in restructuring and M&A. It also provides support and representation for clients affected by transfer pricing challenges by the tax authorities.

The firm specialises in advising taxpayers in the manufacturing sector, banking and finance, IT, defence, pharmaceuticals and medical equipment.

The firm is part of CMS, a network with 3,000 law and tax practitioners across 58 different jurisdictions.

Tier 3

Plamen Grozdanov, **Dimitranka Spiridnova** and **Andreana Premyanova** are the joint leaders of Sofia-based tax advisory firm **Tax and Financial Solutions**, which offers independent advisory services on transfer pricing, tax and EU grants and incentives.

There are seven staff working in transfer pricing overall. The firm intends to stay relatively small to ensure that the quality of the advice they offer remains high, and good value for money.

Canada

Tax authorities

International Tax Services Office

Office address: 2204 Walkley Road, Ottawa ON K1A 1A8

Mailing address: P.O. Box 9769, Station T, Ottawa ON K1G 3Y4

Tel: +1 613 940 8497

Fax: +1 613 952 3845

Website: www.cra-arc.gc.ca

LEADING FIRMS

1	Deloitte
	EY
	Gowlings Taxand Canada
	KPMG
	PwC
2	Blake, Cassels & Graydon
	McCarthy Tétrault
	Osler, Hoskin & Harcourt
3	Grant Thornton
	McMillan
	Stikeman & Elliott

The explosion in Canadian transfer pricing and the controversies surrounding it that defined 2012 continued into 2013 and are still going in 2014. Tax professionals argue that the ruling tax authority in Canada, the CRA, is not only aggressively pursuing funds, but pushing a moral agenda as a political rationale for such aggressive collection tactics.

"What we're seeing in part is the revenue agency exercising a "Gotcha" mentality," said Neil Bass of Dentons, in describing the CRA's anti-avoidance and the tactic of requesting original documents to perform forensic investigations.

Anti-treaty shopping rules have been proposed, in which all of Canada's 92 tax treaties would be overridden in favour of the imposition of a statutory amendment called the "main purpose rule". The main purpose rule, much like the limitations-on-benefits provisions located in the Canada-Hong Kong treaty, works to prohibit transactions where the main purpose is to obtain treaty benefits.

The CRA's preference for substance-finding over legal framing in transfer pricing disputes involving restructuring has been placed under the scrutiny of the courts recently, which are determining in a case-by-case fashion the overstepping of bounds by the authority in its accusations against certain taxpayers.

Michael Bussman of Gowlings asserted that the CRA has lately "been increasingly inclined to assess first and ask questions later," thus driving away disputes on the level of audits and towards the Tax Court, which itself becomes overburdened and defers disputes to the Court of Appeals. He does note, however, that the aggressiveness is very much "fiscally-driven, not ideologically-driven," contrary to some tax professionals' beliefs.

Janice McCart of Blakes contests that the CRA's mission is to "protect the integrity of the Canadian tax base," which "has manifested itself in rules to prevent Canadian companies from using excessive amounts of debt to erode Canadian profits".

Tier 1

Led by **Markus Navikenas**, **Deloitte**'s transfer pricing practice comprises 13 partners and 59 fee earners. The firm's transfer pricing practice has also hired 10 new practitioners since May 2013. Deloitte recently developed a bilateral APA for a client entering the Canadian market for the first time, helping them price the various supports they received from their headquarters including contract negotiations, materials pro-

Tax rates at a glance

(As of June 30 2014)

Corporate income tax rate	15% (a)
Capital gains tax rate	7.5% (b)
Branch tax rate	25% (c)
Withholding tax	
Dividends	25% (d)
Arm's-length Interest	0% (e)
Non-arm's length interest	25% (f)
Rent, royalty or similar payments	25% (g)
Net operating losses (Years)	
Carryback	Seven
Carryforward	20

a) The general federal corporate rate is 15% applicable to income earned by corporations other than Canadian-controlled private corporations. A general corporation typically includes public companies and their subsidiaries that are resident in Canada and Canadian resident private companies that are controlled by non-residents. As a result of provincial tax, the combined federal-provincial general corporate tax rate varies by province or territory, from 25% to 31%.

b) Only 50% of capital gains are included in income as taxable capital gains and taxed at the general corporate rate.

c) The branch tax rate applies to taxable income of a non-resident corporation not reinvested in Canada, and may be reduced by virtue of an applicable tax treaty. Where a treaty does not specifically reduce the branch tax rate, but reduces the withholding tax rate on dividends, the branch tax rate generally equals the reduced withholding tax rate on dividends.

d) Canada's tax treaties generally reduce the rate of withholding tax on dividends to between 5% to 15% depending on the treaty and the status of the beneficial owner of the dividends.

e) Canada does not impose withholding tax on arm's-length interest (other than participating debt interest) paid to a non-resident in any country.

f) Withholding tax applies to non-arm's length interest paid to a non-resident, but Canada's tax treaties generally reduce the rate of withholding on interest. Under the Canada-US Income Tax Convention, there is generally no withholding tax on interest (other than participating interest) paid to non-arm's length US residents.

g) Canada's tax treaties generally reduce and, in some cases, eliminate withholding tax on certain types of royalty payments.

Source: *Tax advisers from Gowlings, Taxand Canada*

curement, and manufacturing plant set up and knowledge. **Richard Garland** is particularly praised by peers for his work in documentation project management.

EY's transfer pricing practice is a full-service group comprising 12 partners and nearly 70 other transfer pricing professionals. It is divided among six regional offices located in Vancouver, Calgary, Kitchener, Ottawa, Toronto and Montreal. Clients are multinationals from both inside and outside of Canada. A large part of its controversy practice is devoted to advance pricing agreements. It also advises on treaty compliance. **Sean Kruger** is the national leader of the transfer pricing practice and is based in Toronto.

Led by Canadian Revenue Authority alumnus **Dale Hill**, **Gowlings Taxand Canada**'s transfer pricing and competent authority team focuses on transfer pricing planning and implementation strategy. Another former CRA member, economist **Jamal Hejazi**, assists the team's attorneys in reducing clients' exposure to unfavorable audit assessments. The transfer pricing team very recently concluded an APA for an Asian auto manufacturer, dealing not only with the application of APA but also mutual agreement procedure (MAP) issues simultaneously to relieve double taxation issues. **Jim Wilson** is considered by peers to be of particular talent in APA negotiation matters.

Led by **David Frencescucci**, **KPMG**'s transfer pricing practice comprises 11 partners and 39 fee earners in four offices across the country. One client said **Barry Travers** "is one of the best advisers I know, and we work in all continents with tax advisers". Peers recognise **Francois Vincent** as having great expertise in the area of transfer pricing documentation.

PwC's **Andy McCrodan** is recognised by peers and clients alike as an excellent transfer pricing practitioner, particularly in the realm of APA negotiation and documentation project management.

Tier 2

Blake, Cassels & Graydon provides clients with a full range of transfer pricing services, from planning and compliance to defense. The practice is also helping a growing number of clients to avoid transfer pricing disputes through mutual agreement procedure (MAP) and advance pricing agreements (APAs). **Scott Wilkie** and **Janice McCart** lead the transfer pricing practice, who work significantly in resolving transfer pricing disputes at both the administrative and judicial levels.

The firm recently represented a major multinational pharmaceutical distributor in the Tax Court of Canada regarding the application of Canadian transfer pricing rules to the determination of an arm's-length discount rate in receivables factory transaction.

Led by **Doug Cannon**, **McCarthy Tétrault**'s transfer pricing practice comprises seven partners including the widely praised transfer pricing disputes specialist **Thomas Akin**. The firm has assisted multinationals in the past year in media and entertainment, food and beverage, automotive, and other industries in several high profile transfer pricing disputes.

Osler, Hoskin & Harcourt's transfer pricing team, led by **Al Meghji**, advises clients on a large number of transfer pricing matters including the development of transfer pricing methodologies, management of audits, the preparation of contemporaneous documentation, and assistance related to competent authority. Meghji is almost universally praised by peers for his transfer pricing disputes practice, which involves litigating and advising on issues such as tax avoidance, treaty interpretation and interest deductibility.

Tier 3

Led by recently appointed national transfer pricing leader **Brad Rolph**, **Grant Thornton**'s transfer pricing team has added, in addition to Rolph, five new transfer pricing professionals in the past year. They recently developed an acquisition funding solution for a leading North American mining company, providing an intercompany loan transaction analysis, thin capitalisation analysis, and a methodology for debt capacity analysis.

Led by **Michael Friedman**, **McMillan**'s transfer pricing practice assists clients at all stages of the transfer pricing dispute resolution process, including in negotiations with domestic and international tax authorities, managing clients' audits and negotiating advanced pricing agreements (APAs). Clients include domestic and international companies from every major sector of the Canadian economy, including oil and natural gas, mining, financial services and automobiles. **Mickey Yaksich**, a senior partner with McMillan's transfer pricing group, advises clients primarily in the automotive industry, commercial and industrial sectors.

Led by **John Lorito**, the transfer pricing team of **Stikeman & Elliott** focuses primarily on planning and compliance with respect to Canadian transfer pricing rules on income, consumption and customs duties. It also defends clients in transfer pricing disputes before both the Canadian Revenue Authority and the federal and provincial courts.

gowlings
Taxand

Unique among Canadian law firms, Gowlings has a Transfer Pricing and Competent Authority Team that includes senior partners with over 50 years combined experience working for the Canada Revenue Agency ("CRA"), that is dedicated to assisting organizations in optimizing their global tax position and reducing exposure to unfavourable audit assessments through proper tax planning and implementation strategies.

Located in Gowlings' Ottawa office near the headquarters of the CRA, Gowlings has become Canada's pre-eminent transfer pricing group, achieving appropriate results for clients when dealing with both the CRA and foreign tax authorities. Multinationals seek out Gowlings' expertise in the areas of Advanced Pricing Agreements and Audit Defence.

Gowlings invaluable work experience with CRA allows them to provide efficient solutions to clients' complex legal matters. Gowlings is the only Canadian law firm that has a PhD economist (Dr. Jamal Hejazi) with CRA experience dedicated solely to its transfer pricing practice. This allows for complex economic analysis that goes above and beyond traditional comparability analysis, which is often needed to settle client matters in a favourable manner.

The transfer pricing team is an integral part of Gowlings' tax practice, which has been ranked as a leading Canadian firm in the areas of International Tax Transactions and International Tax Planning Excellence by ITR. The transfer pricing team has been recognised as Transfer Pricing Firm of the Year by ITR (2011 and 2013).

Gowlings is, exclusively, Taxand Canada. Taxand provides high quality, integrated tax advice worldwide and access to more than 400 tax partners and over 2000 tax advisors in nearly 50 countries. Being a part of Taxand allows Gowlings to seamlessly deliver responsive practical tax advice to clients anywhere in the world.

Website: gowlings.com

Contacts:
LEADER
Dale Hill
Tel: 613-786-0102
Email: dale.hill@gowlings.com

Quality tax advice, globally

Taxand

www.taxand.com

Chile

Tax authorities

Servicio de Impuestos Internos (SII)
Alonso Ovalle 680, Santiago
Tel: +56 2 395 1115
Website: www.sii.cl

LEADING FIRMS

1	Deloitte
	EY
	PwC
2	KPMG
	Salcedo & Cía
3	BaseFirma
	Carey y Cía
	Grant Thornton

As a member of the OECD, Chile has in the past year rolled out further efforts to strengthen its alignment with BEPS standards and continue to enforce the provisions from the major 2012 tax reform. The new administration, led by Michelle Bachelet, is planning to dramatically increase social programme spending, and has promised further reform later in 2014. This has, of course, caused a great deal of worry.

Some transfer pricing professionals worry about the tax authority's suddenly expanded oversight, noting that the major reform regarding substance over form has given the IRS a broad authority in enforcing anti-abuse and newly enacted CFC rules.

"There was a change in the hierarchy of the tax administration," said Juan Pablo Guerrero of KPMG, "the new officials are following the trend of being less cooperative with taxpayers, being more suspicious, and trying to extract as much revenue as they can from large corporations, which are our clients."

There is still a great deal of uncertainty among taxpayers, who, according to professionals, are either pre-emptively moving to anticipate further tax reform, or are stalling their operations for the same reason.

Advance pricing agreements, a relatively new tool to Chile, have been filed but the authority has not yet acted upon them. Many tax professionals are of the mind that the authority is not yet willing to entertain negotiations surrounding APA, and are thus advising clients to be cautious in this regard.

Firms in the tax and transfer pricing space continue to be active in discussing the reforms with the tax authority, with tax professionals frequently advising on different steps in audits and transfer pricing disputes. Included in this is a major discussion over VAT reform, the most central argument being that tax finds applied to practitioners for alleged abuse in tax planning are unconstitutional and should be overturned. Attributed income is also a subject under discussion by authorities and professionals alike during the upcoming tax reforms.

Tier 1

Deloitte's transfer pricing group provides a full range of transfer pricing services, including planning documentation and business model optimisation. The group also has a strong transfer pricing dispute avoidance and resolution service that represents clients in negotiations for advance pricing agreements, competent authority assistance and audit defense. The group is led by **Pablo Vera**, who is also the tax practice leader.

EY provides a full range of transfer pricing services, including the preparation of benchmark analysis, transfer pricing studies, transfer pricing compliance services, planning and dispute resolution through litigation and negotiations with tax authorities. **Mauricio Loy** leads the practice, which comprises 16 dedicated transfer pricing practitioners from Chile, Spain, Peru, Ecuador and Venezuela. The firm's clients include some of the most important foreign companies doing business in Chile, as well as a growing number of Chilean companies expanding overseas.

Led by **Roberto Carlos Rivas**, **PwC**'s transfer pricing practice recently hired 17 transfer pricing professionals in the last year, as well as a number of commercial engineers to enhance the technical capacities of the team's transfer pricing analyses. The team primarily advises multinational clients doing business in Chile, including pharmaceutical and finance companies. Domestic clients include key companies in such sectors as mining and agribusiness; PwC renders services to over 90% of the major mining companies in Chile, and has been the top adviser to clients in the big scale mining industry. Along with advising clients in appeals to the country's tax authority, litigation, and advanced pricing agreements, PwC is often involved in discussions before the Tax Court on a variety of transfer pricing issues.

Tier 2

KPMG's transfer pricing practice, led by **Juan Pablo Guerrero** and **Francisco Lyon**, advises clients frequently on transfer pricing audit processes, as well as offering litigation support and transfer pricing compliance. Their controversy practice has been successful in obtaining positive resolutions to transfer pricing audits, and was chosen to advise on the first transfer pricing trial in Chile. Clients include several well-known foreign brands of tires, networking solutions and food and beverage companies.

Salcedo y Cía's transfer pricing practice, led by **Claudio Salcedo**, provides strategic advice on the design and implementation of transfer pricing strategies, documentation filing with the Chilean tax authority, and compliance reviews. The transfer pricing practice also advises clients on any administrative contentious matters with the tax authority, whether in or outside of the courts.

Tier 3

BaseFirma's transfer pricing practice, led by **Susana De Jesús**, has added a number of transfer pricing professionals to its ranks in the last year. The firm's specialty transfer pricing practice works with clients in the chemical, finance and insurance, and medical supplies and equipment industries, among other sectors, in transfer pricing documentation, master reports, audit defence and other related transfer pricing and OECD compliance services.

Led by **Jaime Carey**, **Carey y Cía**'s transfer pricing group provides strategic advice on the design and implementation of transfer pricing strategies and on how to file documentation with the Chilean tax authority. For Origin Energy, Carey prepared a transfer pricing analysis related to interest rates and other commercial terms to be agreed in an intercompany loan requiring a determination of arm's-length conditions. Clients also include those in the extractive, financial, insurance, energy and infrastructure industries.

Grant Thornton's transfer pricing practice provides transfer pricing document preparation, compliance support, business optimisation processes and dispute avoidance.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	20% (a)
Capital gains	20%/35% (b)
Branch tax	20% (c)
Withholding tax	
Dividends	35% (d)
Interest	4%/35% (e)
Royalties	0%/15%/30% (f)
Net operating losses (years)	
Carryback	Unlimited
Carryforward	Unlimited

a) Corporate income tax is imposed at a rate of 20% ("first category income tax"). In addition to the 20% corporate tax, either the global complementary income tax for individual residents or the additional withholding income tax for nonresident entities and individuals must be paid upon the distribution of profits, with the corporate tax available as a credit.

b) Capital gains on the disposal of certain assets may be exempt from tax or subject to reduced rates if certain requirements are met.

c) Branches are taxed at the same rates as domestic companies. A 35% additional withholding income tax applies to the remittance of profits attributable to the branch with the first category income tax paid at the branch level creditable.

d) Dividends paid to a nonresident are subject to a 35% withholding tax with the 20% corporate tax paid creditable against the withholding tax.

e) Interest is subject to a 35% additional withholding income tax on the gross amount. A 4% reduced tax rate applies, inter alia, to interest on loans granted by a foreign bank or foreign/international financial institution and by an insurance company and pension fund that comply with certain registration requirements, provided the lender and borrower are unrelated. If the parties are related, the thin capitalization rules must be observed.

f) Royalty payments for the use of shrink-wrapped software are exempt. Payments for the use, enjoyment or exploitation of invention patents, utility models, industrial designs and drawings, blueprints or topography of integrated circuits, and of new vegetable varieties, are subject to a 15% withholding tax. The 15% rate also applies to payments for the use, enjoyment and exploitation of computer programs. The rate increases to 30% if the parties are related and/or if the income beneficiary is resident in a tax haven jurisdiction, as provided in a list issued by the Chilean treasury. Royalty payments for the use, enjoyment and exploitation of trademarks, patents, formulas and other similar services are subject to a 30% withholding tax.

Roberto Carlos Rivas
Partner
Tel: +56 2 29400151
roberto.carlos.rivas@cl.pwc.com

Gabriel Bernal
Senior Manager
gabriel.bernal@cl.pwc.com

Carolina Alexandres
Manager
carolina.alexandres@cl.pwc.com

Maria Carolina Camargo
maria.carolina.camargo@cl.pwc.com

China

Tax authorities

State Administration of Taxation
No 5 Yangfangdian West Rd
Haidian District, Beijing 100038
Tel: +86 10 6341 7114 **Website:** www.chinatax.gov.cn

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	DLA Piper
	Grant Thornton
	Hendersen Taxand
	NERA
3	King & Wood Mallesons

Firms to watch

WTS consulting

Tax rates at a glance

(As of August 2014)

Enterprise Income Tax	25% (a)
Capital Gains	10%
Withholding Tax	
Dividends	10% (b)
Interest	10% (b)
Royalties	10% (b)
Net operating losses (Years)	
Carryback	0
Carryforwards	5

a) From January 1 2008, when the New Enterprise Income Tax (EIT) Law became effective, a common 25% tax rate (down from 33%) applies to both domestic and foreign investment enterprises (FIE). Under certain transition grandfather rules, FIEs that enjoyed substantially lower than 25% tax rates under the old EIT law will gradually increase to the new 25% rate over a five-year period. However, some incentives still exist for specific kinds of enterprises. "New & High Technology Enterprises" which shall be recognised by special recognition authorities in accordance with established criteria qualify for a 15% tax rate. Qualified small-scale enterprises may enjoy a 20% tax rate.

b) The standard withholding rate is 10%. Treaty relief to a reduced rate may be applicable.

Source: *Taxand advisers from Hendersen Taxand, Taxand China*

The transfer pricing landscape in China remains dynamic yet delicate. The state authorities are constantly moulding the way they respond to ever-complex transfer pricing issues. At the same time, they remain a firm and aggressive approach to anti-avoidance. "[The] SAT has been working hard to amend regulations to reflect the current position and respond to the modern economy," said Eunice Kuo of Deloitte.

Inbound investment has historically been the primary area of growth for tax firms operating in China. Now, practitioners mention that the domestic Chinese market is growing in sophistication. Previously, demand for tax services existed, but clients had little desire to pay for high quality tax advice. The China-based clientele is slowly realising the value of tax firms and is utilising their services more frequently. The tax authority, though reportedly understaffed, is also working to increase its sophistication and understanding of complex international tax matters.

Many firms still mention that taking up litigious cases with the tax authorities is unwise. However more taxpayers, especially multinationals, are finding a need to assert their tax positions, resulting in an increased need for dispute resolution services.

Although APAs have been available to the Chinese market for several years, clients and firms often complain about the wait time for processing. Partners at PwC note that the authorities are selective about which APAs they consider, avoiding agreements with low tax jurisdictions, and favouring corporations from growing and unique industries. "You need to make a good case because they don't have a very transparent numbering system as to a priority list," said Cecelia Lee of PwC. "If your case sticks out and is attractive, you may be able to jump the queue, so to speak."

Notice 698 on the taxation of capital gains to offshore holdings continues to be a hot topic. Practitioners note that Notice 698 is not categorically applied across the country, causing confusion and friction. Amendments to Notice 698 have been announced, but have yet to be implemented due to internal disagreement about how subsidiary companies of a parent should be taxed.

As a G20 member, China has indicated its strong support of BEPs initiatives. "I think China wants to respond to [OECD] best actions and will try to include if not all, most of the actions in the domestic regulations," predicts Kuo.

In late April, the State Tax Bureau of Jiangsu Province (a popular destination for MNC investments) issued a paper on its plan for international tax compliance. The paper covered issues such as place of effective management, shell companies, and treaty benefits. Pending the success of Jiangsu STB's plan, these proposals may be rolled out to the rest of China in the near future.

Tier 1

In response to new regulations in 2014, **Deloitte**'s transfer pricing practice has witnessed a boom in demand among multinational corporations for audit defence cases. Adjustment amounts have also increased, in some cases upwards of $100 million. **Eunice Kuo** heads Deloitte's transfer pricing department and has 27 years of cross-border tax experience.

Victor Li led a $35 million deal that successfully resolved a six-year-long transfer pricing dispute between the PRC subsidiaries of a Japanese firm and the local tax authority. The client was questioned regarding the rights of marketing intangibles. Deloitte negotiated with authorities to apply the transactional net margin method and referred to a previous bi-lateral APA with similarities to the present case, resulting in successful resolution of the dispute.

With 13 years of experience in the Tianjin Municipal State Tax Bureau, partner **Frank Tang** has played a significant role in aiding MNCs and Japanese companies to resolve transfer pricing issues in mainland China.

Deloitte boasts a well-rounded transfer pricing approach that has a heavy emphasis on economics, innovative solutions, and team collaboration to deliver seamless results.

Jessica Tien leads the transfer pricing team at **EY**. The firm is making efforts to establish the strongest TP department in the market and has made several lateral hires from rival firms over the past year. **Jessica Su** and **Joanne Su** are both recommended by peers for their TP knowledge and capabilities.

The team successfully obtained bi-lateral APAs on behalf of three clients operating in Japan, Korea, and the US. These three agreements make up a significant proportion of the successful APA deals conducted in China last year.

Within EY's transfer pricing practice, the team also offers operating model effectiveness to establish ideal supply chain models, business restructuring, systems implications, human resources, and tax issues. The team is able to both build and implement the new operating model for clients.

"**Cheng Chi** has always been the driving force of our transfer pricing practice," said head of tax **Khoon Ming Ho** of **KPMG**'s China and Hong Kong transfer pricing leader. Chi has experience working within consumer markets, logistics, communications, electronics, and financial industries – many of the key sectors in China's growing transfer pricing market.

The firm pinpoints pharmaceuticals, automotive, and luxury products as key markets of growth in transfer pricing. It also notices a growing demand for tax advice regarding intangible assets and equity interest.

Kelly Liao secured several key deals on behalf of the firm over the past year. She advised and developed tax efficient business models for a large Chinese company involving over 40 different entities. The deal included regulatory issues, turnover and CIT, transfer pricing policies, and thin capitalisation rules.

Efficient supply chain structuring is essential for China's many domestic and international manufacturers. In an ongoing project, **Ho Yin Leung** is leading the redesign of the supply chain structure for a large industrial manufacturer with potential tax savings of $2 million annually.

Jeff Yuan leads China's largest fully dedicated transfer pricing team at **PwC**, consisting of seven partners, four directors, and more than 200 other professionals. He is supported by **Spencer Chong**, who additionally covers Hong Kong, Macau, and Taiwan.

The financial services transfer pricing programme, under **David McDonald**, provides expertise on corporate finance, derivatives, investment and treasury management, funding, IT services, processing services, securitisation and risk transfers. The team is also prepared to defend clients audited by the tax authorities.

Ken Kurokawa leads the Japanese transfer pricing team to aid clients with issues between the two jurisdictions. The practice provides strategic advice for Japanese and foreign clients on Japanese transfer pricing regulations, including negotiations with the competent authority and audit defence.

Chong and Yuan also have APA capabilities. The team oversaw the first five bilateral APA agreements in China between countries including Japan, Korea, and Singapore.

Tier 2

Headed by economist **Glenn DeSouza**, **Baker & McKenzie**'s transfer pricing team boasts top multinationals as its clientele in sectors including retail, technology, consumer electronics, chemicals, and semiconductors. DeSouza and his team come highly regarded by clients for their well-rounded practice. "They give you a strategy, something that can actually be executed," said one client.

Baker & McKenzie maintains a steady relationship both with clients to defend tax positions and also with the SAT to advise and establish constructive regulations. The team is assisting on China's revision of controversial Circular 698.

Shanwu Yuan supports the transfer pricing programme from New York City, offering strategic, real-time, China-focused advice for Baker's many US clients. Yuan spent time with the OECD and 17 years with SAP, and is thus an excellent resource for negotiations. His expertise ranges from structuring and planning to controversy and he is credited for Baker & McKenzie's increased negotiation capabilities.

The firm is pioneering novel deals on behalf of its clients. One example is its indirect tax advice for an international express company on its expansion into China under the VAT pilot programme. The team is also undertaking several substantial transfer pricing auditing defences. One of these deals is one of the first practical applications of concepts and methodologies set out in the 2013 UN Practical Manual on Transfer Pricing for Developing Countries.

Windson Li heads **DLA Piper**'s transfer pricing professionals in both Hong Kong and China. A bulk of the firms work continues to be inbound from MNCs looking to access the Chinese market. However, the firm recognises a trend in an increasing number of Chinese firms that are looking to invest outwardly. **Daniel Chan** oversees the tax practice in both jurisdictions and can advise on transfer pricing documentation and efficient supply chain structuring.

Li and **Tina Xia** split time between Hong Kong and Beijing to cater to clients in both jurisdictions. In a recent case, the team advised a US manufacturer on aligning its China transfer pricing policy with its global practice, keeping in mind related customs and tax implications.

The firm has a large base of telecommunications and media clients and foresees e-commerce becoming an area of increasing demand. As China's growth rate plateaus, the firm predicts they will see more M&A and joint ventures. DLA's global network of transfer pricing specialists supports these large operations.

Doris Ho was promoted to the partnership in May of 2014 and provides insight on restructuring and corporate acquisitions.

Rose Zhou leads **Grant Thornton**'s transfer pricing practice, and is considered an expert in the field. This year Zhou published an updated copy of her book "Transfer Pricing Practice".

Richard Bao leads the transfer pricing team in Shanghai. Bao is leading what the firm believes to be the first formal locations saving dispute in China, involving expenses saved when a multinational re-established its operations in the country. The taxpayer found itself under TP audit in which a tax adjustment related to locations savings became a major aspect of the dispute. The case has the potential to serve as precedent for future cases regarding locations savings.

To better serve its clients, the firm integrated its transfer pricing services and customs valuation services in mid-2013. The integration came about amid increased demand for the firm's custom valuation services and serves to provide multinational clients with tax professionals who have greater expertise in both areas.

Now in its 10th year, the transfer pricing practice at **Hendersen Taxand** is headed by **Dennis Xu**, a practitioner with corporate expertise and one of the founders of the global network's China division. Taxand China's transfer pricing team consists of Dennis and seven additional personnel.

The team offers a range of transfer pricing services including documentation, planning, and effective structuring. In a recent deal worth tens of thousands of dollars, Xu and the team advised their client on both customs tax and transfer pricing strategy. The firm has also been advising a large liquor company to develop their transfer pricing and tax strategy in the competitive Chinese market.

Global economic consulting firm **NERA** has offices in both Beijing and Shanghai. While the team offers a variety of global business services, two partners focus on Chinese transfer pricing. **Harlow Higinbotham** is an economist, CFA, and a published writer on transfer pricing. **Sébastien Gonnet** has special expertise on intellectual property and valuation. Gonnet has also recently authored a series of articles on the topic of location savings.

Transfer pricing remains a key area of interest for the team's China tax practice. They offer a full range of services, independent advice and valuation from the firm's large team of economists.

Tier 3

King & Wood Mallesons' transfer pricing practice is headed by **Tony Dong** out of Beijing. The firm is one of the only local Chinese firms to offer sophisticated transfer pricing services for both inbound and outbound clients. Joining Dong are partner **Yan Zhao** and four additional professionals. The group prepares transfer pricing documentation and negotiates with the authorities to provide resolutions to clients. Many of the firm's clients come from the chemicals and electronics industries.

The team is providing advice on a multi-million dollar, four year dispute between a tire making company and the Fujian State Tax Bureau. The client was utilizing a Big 4 firm, but after the problem couldn't be resolved, consulted King & Wood. The deal now involves both the firm and the previous accounting advisors and has since escalated before the SAT.

Firms to watch

WTS is undergoing a restructuring involving the replacement of management. They plan to return to the industry next year.

Colombia

Tax authorities

Dirección de Impuestos y Aduanas Nacionales (DIAN)
Carrera 8 No 6C – 38 Edificio San Agustín, Bogota
Tel: + 57 1 6079999; +57 1 5462200; +57 1 3256800
Fax: +57 1 3337841
Website: www.dian.gov.co

LEADING FIRMS

1	Deloitte
	Baker & McKenzie
	Brigard & Urrutia Abogados
	PwC
2	EY
	KPMG
	prietocarrizosa

Colombia is expected to become an official member of the OECD in 2016, and is taking great measures to comply with the standards set forth by the European institution on all BEPS and transfer pricing matters. The departure of DIAN director Juan Ricardo Ortega, whose efforts to align Colombian GAAP with OECD recommendations afforded him international recognition, will cause a stir among the profession according to some.

"I've expressed publicly my disagreement with Ortega," said Juan Pablo Godoy of Godoy y Hoyos, "but I agreed that his work in the tax office is of significant importance for the country."

Additionally, Godoy notes the anxiety felt on the part of clients regarding the compliance with BEPS and FATCA due to the "ability of tax authorities to look at operations and the way they structure domestically and internationally". Advanced pricing agreements, like in much of Latin America, have yet to materialise as attractive solutions for companies due largely to this uncertainty, and partially to a mistrust of tax authorities in handling sensitive business information.

One ongoing trend that many tax professionals remarked on is the prevalence of litigation. Oil companies, mining companies and insurance companies in particular have been targeted for audits by the authority, causing a string of tax controversies to enter into the Colombian tax courts.

New decrees put into place in December 2013 elaborate on taxpayer liabilities with regards to transfer pricing return filings, including updates on documentation requirements in the annual filing. Another addendum to the decree is a note on thin capitalisation, whereby the deduction of loan interest accrued is allowed only if a debt-to-equity ratio of three-to-one is maintained.

Other items of note are an emphasis on the use of internal comparables and, in the case of sustaining the integrity of the arm's-length principle, external comparables for asset valuation proceedings.

Tier 1

José Erney Guarin leads **Deloitte**'s transfer pricing practice, which provides a number of transfer pricing services including compliance, consulting and planning, value chain management, valuations and dispute resolution. The group recently worked with a Canadian-based oil and gas company on a treaty planning project to optimise the company's tax position, providing a structure involving an attribution scheme for permanent establishment.

Baker & McKenzie's transfer pricing group provides documentation and audit defense services for companies throughout Central and South America. The practice is led by **Gustavo Sanchez-Gonalez**, who recently advised Repsol on an advance pricing

Tax rates at a glance

(As of September 2014)

Corporate tax rate	25% (a)
Capital gains	25
Branch tax	25%/33% (b)
Withholding tax	
Dividends	0%/33% (c)
Interest	0%/14%/33% (d)
Royalties	33% (e)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited (f)

a) The corporate tax rate applicable to resident companies and permanent establishments (PEs) of nonresident companies is 25%. The rate on foreign companies that do not have a branch or PE in Colombia is 33%. A lower rate of 15% applies to companies located in free trade zones. The "income tax for equality" (CREE) is levied in addition to the corporate tax at a rate of 9% on net income for the first three years (i.e. to 2015), and thereafter reduces to 8%. A presumptive minimum income is calculated annually for income tax and income tax for equality purposes, at a rate of 3% on the taxpayer's net worth held in the year immediately preceding the taxable year. Certain assets, such as shares in Colombian companies, may be excluded from this calculation.

b) Profits remitted abroad by a branch of a foreign company that have not been subject to tax at the corporate level are subject to a 33% withholding tax.

c) Dividends paid to a foreign company or entity may be remitted abroad free of tax if the profits from which the dividends are paid already have been taxed at the corporate level. Otherwise, tax is imposed at the 33% corporate tax rate applicable to foreign companies.

d) The rate is 33% if the loan term does not exceed 12 months; otherwise, the rate is 14%. Interest derived from the following is exempt: short-term import credits and overdrafts; credit to finance or pre-finance exports; credit obtained by financial corporations and authorized banks; credit for trade transactions obtained through financial corporations or authorized banks; and credit obtained by foreign, mixed or local companies whose activities are considered beneficial to national economic development under guidelines set by the National Council on Economic and Social Policy.

e) Royalties paid to a nonresident company are subject to a final withholding tax of 33%. Royalties paid for the exploitation of software are subject to a 33% withholding tax, but only on 80% of their amount (i.e. the effective rate is 26.4%).

f) Beginning with the 2007 fiscal year, tax losses may be carried forward without limitation. Restrictions apply to the transfer of losses with respect to spin-offs or mergers.

agreement. The discussion between the firm and the tax authorities regarding transfer pricing policy lasted a period of four years, ultimately ending in the processing and approval of the contractual framework of what became the country's first APA. The group is also involved in a number of transfer pricing audit disputes based on comparability differences, intercompany transactional methods and technical formulations of profit level indicators.

Led by **José Romero**, **Brigard & Urrutia Abogados**' transfer pricing practice provides a range of transfer pricing services to aid in clients' understanding of regulatory constraints and advice on local and foreign implications of intercompany transactions and businesses. The team recently advised Avenida Colombia on the correct application of the Colombian transfer pricing regime regarding intercompany loans, helping the client avoid challenges from the tax authorities in the process through fixing a correct interest rate for those intercompany loans. Other clients include companies from the agriculture, mining, oil and gas and entertainment industries.

PwC's transfer pricing group is one of the largest in Colombia, with three partners and 57 fee earners. Led by Carlos Mario Lafaurie Escorce, the group advises clients on a broad range of transfer pricing matters, including documentation, planning, valuations and regional policy developments. The practice also represents clients in negotiating advance pricing agreements and competent authority assistance, as well as in audit defense and litigation.

Tier 2

EY's transfer pricing group in Colombia is led by Andrés Parra, a highly respected transfer pricing adviser with more than 20 years of law practice experience. The group advises domestic and multinational companies on a number of transfer pricing matters, including planning, documentation and transfer pricing matters involving cross-border transactions and valuations.

Led by Vicente Javier Torres, KPMG's transfer pricing practice focuses on planning and compliance services for multinationals with operations in Colombia and elsewhere in Latin America. Active clients include major domestic and foreign corporations in the oil and gas, food, pharmaceutical and air travel industries.

Led by Martín Acero, prietocarrizosa's transfer pricing practice advises on a wide range of transfer pricing issues, including structuring, benchmarking, contract drafting, documentation and litigation. The firm also has a special arrangement with economist Marcela Lopez, formerly of Charles River Associates, who assists with some of its transfer pricing cases.

The group is advising RCN in the sale, to perpetuity, of all the rights over the company's films and screenplays to RCN Distribution. The deal involved price readjustments as well as debt refinancing.

Czech Republic

Tax authorities

Ministry of Finance
Letenská 15, 118 10 Praha
Tel: +420 257 041 111; +420 257 042 719
Fax: +420 257 042 788
Email: podatelna@mfcr.cz; informace@mfcr.cz
Website: www.mfcr.cz

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	WTS Alfrey

Transfer pricing is becoming an increasingly prevalent issue in the Czech Republic, much as it is across the rest of Europe.

"We see a systematic move towards the reporting of information," said White & Case's Ales Zidek.

On this year's tax returns, the tax authorities attached an extra form concerning related party transactions, which is indicative of their increasing interest in transfer pricing.

"It's getting tighter and tighter," said Libor Fryzek of EY. "They want to look at the TP more closely. There are two trends: first, to collect more money, and secondly, the Base Erosion Profit Shifting (BEPS) initiative."

The Czech Republic's new civil code, which was introduced in January, had no major effect on transfer pricing, but an amendment of a tax law which will change a few small things for taxpayers.

Previously, the wording of the law implied that if the price differed from the market then the tax authority could change it, but the phrase has now been changed to make it explicit that taxpayers can also make changes to transfer prices.

Fryzek said: "It is definitely useful. It clarifies the situation for taxpayers."

More tax changes, however, are on the horizon, with most advisers expecting amendments to tax law in both 2015 and 2016.

These changes are not, however, likely include the introduction of mandatory documentation for companies in the Czech Republic. The jurisdiction was recently rated towards the bottom of a report by the World Bank Group and PwC on administrative burden of tax.

The government will be wary of exacerbating this statistic, especially as the authorities become more active in transfer pricing, but uncertainty around what changes to tax in the next two years could bring is a hotly debated topic within the tax community.

"I wouldn't expect a fundamental change in the principles as it is broadly in line with the OECD," said Fryzek, before adding that he does, however, "expect more tax audits".

The tax authorities are carrying out more and more transfer pricing audits, and are becoming more experienced and knowledgeable as a result.

They are also far more organised than they were five to 10 years ago, working with electronic data and aiming to be more accessible and open to conversations with taxpayers.

"It is getting better – the discussion is getting more sophisticated," said Fryzek. "On the other hand, they have more experience, go after more issues and are stricter.

"Discussions with the specialised office were very good. They want to present themselves as taxpayer-friendly," he added.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	19% (a)
Capital gains	0%/19% (b)
Branch tax	19% (c)
Withholding tax	
Dividends	15% (d)
Interest	15% (e)
Royalties	15% (f)
Net operating losses (years)	
Carryback	0
Carryforward	5

a) The corporate income tax rate is 19%, with a 5% rate applying to pension funds and certain other types of fund specified in the income tax legislation.

b) Capital gains derived by Czech or EU/EEA parent companies (except for Liechtenstein companies) on transfers of shares in their subsidiaries are exempt from tax if certain conditions are satisfied.

c) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

d) Dividends paid to a nonresident are subject to a final withholding tax of 15%, unless the rate is reduced under an applicable tax treaty. A 35% rate applies where dividends are paid to a tax haven jurisdiction (i.e. a jurisdiction that has not concluded a tax treaty with the Czech Republic or an agreement for the exchange of information on tax issues). If the conditions for application of the EU parent-subsidiary directive are satisfied, no tax is withheld.

e) Interest paid to a nonresident is subject to a 15% withholding tax, unless the rate is reduced under an applicable tax treaty. A 35% rate applies where income is paid to a tax haven jurisdiction (i.e. a jurisdiction that has not concluded a tax treaty with the Czech Republic or an agreement for the exchange of information on tax issues). If the conditions for application of the EU interest and royalties directive are satisfied, no tax is withheld.

f) Royalties paid to a nonresident are subject to a 15% withholding tax, unless the rate is reduced under an applicable tax treaty. A 35% rate applies where income is paid to a tax haven jurisdiction (i.e. a jurisdiction that has not concluded a tax treaty with the Czech Republic or an agreement for the exchange of information on tax issues). If the conditions for application of the EU interest and royalties directive are satisfied, no tax is withheld.

"There is likely to be a new head of the tax authorities who has a background in the criminal side," said Zidek. "There is a new finance minister and under-minister for taxes, due to the election."

A move to increase the criminalisation of tax fraud and corruption would follow trends across Western Europe, as well as pleasing the public who have been tested by numerous reports of corruption in the media.

This increase in knowledge is mirrored in the court system, where judges are becoming more experienced.

There is, however, a degree of uncertainty in the rulings due to the lack of precedents in the law, as the Czech Republic's transfer pricing laws were only aligned with the OECD relatively recently.

Rulings sometimes follow the letter of the law, and are sometimes more pragmatic; the way the law will be interpreted can depend on which court and judge hears the case, something which tax practitioners need to prepare for.

In the majority of cases, taxpayers will automatically appeal decisions in the first instance to have their cases heard in the Supreme Court, where expertise is greater.

Tier 1

Senior manager **Jiří Teichmann** leads the transfer pricing operations of **Deloitte**, which offers a full range of transfer pricing services.

The firm's transfer pricing department has been growing over the last year, and there are now 15 professionals working solely in transfer pricing at the firm, making it one of the largest transfer pricing departments in the market.

One of the firm's key practice areas is the negotiation of APAs. The firm has multi-jurisdictional experience in this area and is well-equipped to deal with the changing transfer pricing environment in the Czech Republic.

As well as this, the firm works in preparing and modifying transfer pricing documentation, advisory, dispute avoidance and resolution and business optimisation.

The firm's key industries are consumer business, energy and resources, financial services, healthcare, life sciences, manufacturing, the public sector, real estate, media, technology and telecommunications, although they have adequate experience to deal with clients from any industry.

Transfer pricing is one of **EY**'s most accomplished practice areas. The department is led by **Libor Fryzek**, who has been working at the firm for more than 10 years.

The firm offers a full range of transfer pricing services, and is particularly proficient at negotiating APAs. They also prepare a lot of documentation for clients, work to improve clients' operating model effectiveness and are active in transfer pricing litigation.

Another of EY's key areas of practice is international tax structuring. The firm offers this service not just for companies in the Czech Republic, but also in other areas of central Europe, leading the operations from its office in Prague.

A key name at the firm is tax partner **Jan Čapek**, who joined the firm as a partner 12 years ago and also acts as an adviser to the Ministry of Finance.

The firm's services are divided up by business lines as well as geographically to provide a specialised service in all areas of tax.

Fryzek is vocal in his appreciation of the team at his disposal, and is happy with the way the firm develops talent: "I was looking at our hiring and leaving pattern, and 99% of the team are people who we took from university and developed."

Senior manager **Daniel Szmaragowski** is the key contact for transfer pricing at **KPMG**. He has worked at the firm since graduating from the University of Economics in Prague in 2000. He was promoted to manager in 2006 and to senior manager in 2010. He is a member of the Czech Republic's Chamber of Tax Advisors.

The firm offers the full scope of transfer pricing services. They focus on devising tax-effective business models, which satisfy both clients and the tax authorities, transactional work, restructuring in accordance with changes to legislation, preparing transfer pricing documentation, obtaining APAs and assistance during tax audits and court procedures.

The firm has performed well in restructuring and reorganisations recently. One adviser at another firm said KPMG has managed to win several large tax structuring mandates in the past year.

PwC has three offices in the Czech Republic, located in Brno, Ostrava and Prague. **Peter Chrenko** leads the tax department.

The firm's services are split along industry lines to provide a specialised service in the following areas: Automotive, banking, energy and utilities, entertainment and media, insurance, pharmaceuticals, private equity, the public sector, real estate and retail and consumer packaged goods.

The firm provides a full transfer pricing service, from reviewing and risk-assessing companies' existing transfer pricing procedures, or drafting new policies, up to negotiating APAs, preparing documentation and assisting companies in any discussions with the tax authorities.

Tier 2

The transfer pricing operations at **WTS Alfrey** are led by **Jana Alfrey**, who has more than twenty years' experience in tax. Having worked for EY in both the Czech Republic and neighbouring Austria, she is experienced in working in cross-border deals, and is particularly proficient in litigation as well as transfer pricing.

WTS Alfrey is part of the WTS Alliance, a growing network of tax firms present in around 100 jurisdictions worldwide. Membership of WTS Alliance provides the firm with a wealth of expertise, as well as supplying the firm with more referrals for cross-border work.

Denmark

Tax authorities

Danish Ministry of Taxation
Nicolai Eigtveds Gade 28, 1402 Copenhagen K
Tel: +45 3392 3392
Fax: +45 33 14 91 05
Email: skm@skm.dk
Website: www.skm.dk

Told- og Skattestyrelsen – Danish Tax and Customs Administration
Østbanegade 123, 2100 Copenhagen Ø
Tel: +45 72 22 18 18
Website: www.skat.dk

LEADING FIRMS

1	Deloitte
	EY
	KPMG ACOR TAX
	PwC
2	Bech-Brunn, Taxand Denmark
	Plesner
3	Corit Advisory
	Vistisen

Denmark has not introduced any major transfer pricing reforms in the past year, however, there have been minor changes and major market changes.

The Danish market was hit particularly badly by the economic crisis and has experienced further turbulence this year with the acquisition of KPMG's member firm by EY. This event is unprecedented in the market, and has threatened to completely change the landscape of Danish tax.

"All clients that KPMG serviced inbound, want to shift and stay with the network," said Ole Schmidt of KPMG ACOR TAX. "However, domestically a lot of clients have gone to tender and have the bargaining power to drive prices down in tax audit services."

Several advisers expressed concerns for the ethical issues associated with competing on fees, especially in the shadow of the EU Audit directive. However, there is also optimism that it will allow smaller firms to attract work, and create opportunities for smaller firms to fill the gap.

"The tax market has been declining over the past year, said Niclas Holst Sonne of Horten. "There has been financial crisis and companies have been holding on to their money more."

The Danish corporate tax rate continues to match its EU and Scandinavian peers, and will decrease to 22% in 2016. Denmark has the highest tax to GDP ratio in the EU at 48.1%, and the authorities are likely to continue the tradition of collecting taxes from large international groups, including thorough transfer pricing adjustments.

"Tax incentives are a novelty in Denmark, and tax is not perceived this way," noted Jakob Bundgaard of Corit Advisory. "Still, there is hope we can attract foreign investors, and we are still hoping for a patent box system and favourable changes for intangibles."

There have also been changes to the Danish exit taxes. Previously the transfer of assets to a PE or head office outside Denmark has required Danish exit tax if the assets are no longer subject to Danish tax. Following the ruling by the European Court of Justice that this contravenes EU law, this rules have changed to allow for a deferred payment. Taxpayers may apply these rules retroactively from the 2008 financial year.

Effective March 1 2013, there is a requirement for auditor's statements for transfer pricing documentation for certain taxpayers. Denmark passed a bill in June 2012 focused on countering zero tax companies, and this is reflected in Denmark's approach to transfer pricing audit. There is a substantial amount of pressure on the tax authorities to audit and present detailed results to the government.

Danish authorities are very active when it comes to pursuing transfer pricing litigation, and this characterises the jurisdiction. The Danish tax authorities have roughly doubled their transfer pricing organisation during the past couple of years. Transfer pricing continues to be the focus of litigation, and the authorities have introduced new anti-avoidance rules. "This introduction means things are getting more complex here," noted Søren Lehmann Nielsen of Brun & Hjejle.

This is worth a substantial amount to the authorities. In March 2014 the authorities published their transfer pricing report for 2013, which noted that they had adjusted the taxable income of 77 Danish companies which totalled in excess of €2 billion ($2.7 billion). Of these corrections 74% are related to intellectual property rights and 21% to companies making losses. It seems likely that the strategy of audit for the transfer pricing department concerns IP and loss-making companies and notes them as high-risk in this regard.

China has also just signed its first European bilateral APA with Denmark.

Tier 1

Deloitte's Danish practice is headed by **Niels Josephsen**, who took on the role this year after joining from EY. The transfer pricing service line continues to be led by **Asger Kelstrup**, who can draw on his experience heading Deloitte's European economist network for goods and services in providing a deep raft of transfer pricing services. Deloitte's confidentiality policy prevents deal disclosure, but Kelstrup lists documentation, transfer pricing audit defence and strategy, benchmarking, policy advice, and APAs amongst his specialities.

EY in Denmark have had an outstanding year due to the merger with KPMG and have added former KPMG partner, **Anders Bjørn**, as their new head of tax. The merger will enhance EY's capacity, and competitive edge against the two other established Big 4 firms within the jurisdiction. In transfer pricing services, **Henrik Arhnung** – a transfer pricing partner – comes highly recommended. Advisers in the market have tipped EY to have a big 2015, following the completion of the merger in July 2014.

Following the acquisition of KPMG Denmark by EY Denmark, Accura Tax were approached by the KPMG network on the recommendation of advisers in the market who said that "they were the only firm who would be positioned to rebuild the tax practice". As a result, the **KPMG ACOR TAX** was admitted to the KPMG network this year and has set about the process of rebuilding the firm's presence in addition to keeping their former clients. The firm can now offer additional services, as it was formally a corporate tax specialist and is now becoming a full service tax establishment. This includes a new transfer pricing service consisting of former Big 4 professionals, predominantly from EY and KPMG. **Martin Nielsen** and **Henrik Lund** have joined the firm, both recognised transfer pricing professionals and former equity partners in the old KPMG. Accura Tax founders, Ria **Falk** and **Ole Schmidt**, remain with the firm.

PwC has a well-established transfer pricing practice that can deliver the full spectrum of transfer pricing services, and includes individuals respected in the market, such as **Klaus Okholm**, **Erik Todbjerg** and **Jørgen Juul Andersen.** The firm's focuses include documentation and planning, tax audit, dispute resolution, APAs and value chain transformation. The practice can draw on the wide PwC network in member jurisdictions to deliver these cross-border services with relative ease.

Tier 2

Bech-Brunn, Taxand Denmark has a small but respected transfer pricing practice, to which head of tax, **Anders Oreby Hansen,** devotes a substantial amount of time. The business is engaged in developing its offerings in documentation preparation, planning, and advisory work. The focus of the team is largely split between transfer pricing disputes and transfer pricing documentation work, and the team have a dedicated partner and associate engaged on these issues. From an academic perspective, Hansen has written several articles on transfer pricing issues, and published a book on the practical handing of transfer pricing cases. This year, Hansen successfully represented the Celsa Group in a transfer pricing matter against the Danish Tax Authorities.

The transfer pricing practice of **Plesner** is led by **Hans Severin Hansen** who operates in conjunction with five other partners and five other professionals. The capacity of the team has been expanded this year with two hires from Hannes Snellman, who closed their Danish offices this year. The former head of tax, **Nikolaj Bjørnholm**, and senior associate, **Bodil Tolstrup**, will both contribute their transfer pricing expertise. As such, the firm is poised to develop in this rising market area. Although the firm has chosen not to reveal their deals because of their position before the courts, the matter value for the year accounts roughly to $3.5 billion. Transfer pricing accounts for a significant portion of the tax group's work, which is currently centred on the transfer of IP and allocation of profit. This reflects the focus of the authorities in Denmark. The firm is recognised as a leader in the jurisdiction, and draws on the other departments of a full-service tax firm to deliver a range of tax and hybrid solutions. The firm has close to 400 employees overall, 200 of which are lawyers. Hansen is one of the leader practitioners in the jurisdiction, which is reflected in his position as chairman of the Danish branch of the IFA.

Tier 3

Following its foundation nearly three years ago, **Corit Advisory** is offering transfer pricing services for the first time this year. The transfer pricing practice is headed jointly by **Jakob Buundgaard** and **Hendrik Fügemann** who joined in 2013 from NIRO. The firm has been engaged by clients in a number of deals already, including a benefit test for intercompany transactions, a valuation of IP and assistance following a merger. The firm is nascent, but rising fast, and has already attracted a number of top tier clients. "The corporate sector in Denmark has taken notice," said Bundgard. "Three of the Big 4 firms have tried to acquire us."

The firm runs an independent think-tank for international tax matters and is actively engaged with the leading edge of market change. Corit is the only firm on the OECD international network, and is specialised in offshore activities and the oil and gas sector.

Vistisen is a single-partner firm run by **Eduardo Vistisen**, which specialises in tax consultancy, and automotive, real estate, insurance, and financial industries. Vistisen focuses on litigation, and, at the time of writing, is involved in one of the first expected transfer pricing cases to reach the courts, with an estimated value of $12 million.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	24.5%
Capital gains	24.5%
Branch tax	24.5% (a)
Withholding tax	
Dividends	0/15/27% (b)
Interest	0/25% (c)
Royalties	25% (d)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited

a) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

b) Dividends paid to nonresident companies are exempt from withholding tax under Denmark's domestic law if either of the following requirements are met:

- The shares constitute "subsidiary shares": No tax will be withheld if Danish taxation of the dividends should be reduced under the EU parent-subsidiary directive or a tax treaty. (Shares qualify as subsidiary shares where the shareholder owns at least 10% of the share capital of the payer.)
- The shares constitute "group shares:" No tax will be withheld if the shareholder is resident in the EU/EEA and Danish taxation of the dividends would have been reduced under the parent-subsidiary directive or a tax treaty had the shares been subsidiary shares. (Shares qualify as group shares where the shareholder and the Danish company qualify for Danish cross-border tax consolidation, which usually requires that they are controlled by the same ultimate parent company holding more than 50% of the voting power.)

Certain group-related transfers of shares, where the remuneration is totally or partly not in the form of shares, may trigger Danish withholding tax. Furthermore, for dividends declared on 1 January 2013 or later, Danish withholding tax may be imposed if the Danish company is not the beneficial owner of the dividends received directly or indirectly on foreign subsidiary or foreign group shares and the taxation of the on-declared dividend is not eliminated under the EU parent-subsidiary directive or reduced under a tax treaty. The rate is 15% where the recipient holds less than 10% of the company distributing the dividends and the tax authorities in the state in which the recipient is resident are obliged to exchange information with the Danish tax authorities either under an applicable tax treaty or other international treaty or convention, or according to an administrative assistance agreement in tax cases. The withholding tax rate on dividends paid to nonresidents in other cases is 27%.

c) Withholding tax generally is not imposed on interest paid to a nonresident company, although in certain cases, a foreign company that controls a Danish company will be taxable on interest received from a Danish company at a rate of 25%. The rate may be reduced under a tax treaty and there is no withholding tax if the payment is made to a qualifying associated company under the EU interest and royalties directive.

d) A 25% withholding tax is levied on royalties paid to a nonresident unless the rate is reduced under an applicable tax treaty or the payment is made to a qualifying associated company under the EU interest and royalties directive.

Finland

Tax authorities

National Board of Taxes

Finnish Tax Administration, OCR Service, Corporate, PL 200, 00052 VERO

Tel: 020 697 051 (from inside Finland); +358 20 697 024 (from outside Finland)

Website: www.vero.fi

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Alder & Sound Oy
	Borenius – Taxand
3	Roschier

There have been no major changes to Finnish transfer pricing legislation in 2013 and 2014. Last year, a limitation on deductible interest in some cases became effective on January 1 2013.

This has not altered the attitude of the Finnish tax authorities towards transfer pricing. "There has been a sharp increase in tax audits in the jurisdiction which is due to the government's transfer pricing project for large corporations. A team of transfer pricing specialists has been formed, and handle all auditing and litigation issues related to the service," said Mika Ohtonen of Roschier.

"This project started in 2012, and has resulted in significant tax assessments, which take time to resolve in a litigation arena. "11 of 14 tax audits in 2013 ended with claims of €900 million to the tax audit. There are 23 audits ongoing this year," added Ohtonen.

However, in July 2014 this was somewhat derailed as the Finnish Supreme Administrative Court ruled against the Finnish Tax Administration, over tax law reclassification. The court gave preferential status to Finnish legislation over OECD guidelines, one consequence of which is that loans from parent companies based abroad are now deductible again.

The case is likely to add to the appeals backlog in Finland as taxpayers seek to have assessments overturned and poses questions for the future of Finnish compliance to OECD initiatives. The ruling reinforces the sovereignty of Finnish tax law over the OECD guidelines as a source of guidance.

"In some cases in Finland, tax authorities are trying to force Finnish multinationals into centralisation," noted Hannu-Tapani Leppänen of Alder and Sound. "Where previously they were decentralised across Europe, the tax authorities are attempting to allocate profits to Finland."

It is clear there is a degree of uncertainty related to the transfer pricing regulation in Finland, however this is not so for the business itself. Several firms listed it as their number one service, and it has been easily one of the biggest revenue generators for law and accountancy firms in the Finnish jurisdiction. However, this is partially due to the draconian nature of the transfer pricing auditors themselves. A number of firms have said that planning and structuring in Finland is not at the heart of their clients' concerns. Instead, clients are focused on compliance and documentation. "Business is concentrating on developing the best ERP and transfer pricing models to support business in an automated fashion," added Leppänen.

Tier 1

Deloitte's transfer pricing practice is relatively small but focused. Although the firm recently lost head of transfer pricing, **Titta Heikkinen**. The transfer pricing practice reports an increase in the number of transfer

Tax rates at a glance

(As of September 2014)

Corporate tax rate	20% (a)
Capital gains	20% (b)
Branch tax	20% (c)
Withholding tax	
Dividends	20% (d)
Interest	0% (e)
Royalties	20% (f)
Net operating losses (years)	
Carryback	0
Carryforward	0

a) The rate reduced from 24.5% to 20% for financial years ending on or after January 1 2014.
b) 32% for capital income exceeding €40,000 ($53,000)
c) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.
d) Dividends paid to a nonresident company are taxed at a rate of 20% (reduced from 24.5% for financial years ending on or after January 1 2014), unless the rate is reduced by an applicable tax treaty or the dividends are paid to a qualifying EU parent company under the EU parent-subsidiary directive. If paid to an EEA resident shareholder, domestic nondiscrimination provisions may lower the withholding tax rate to a level corresponding to similar domestic distributions.
e) Interest paid to nonresidents is subject to withholding tax only in exceptional cases. Interest paid on bonds, debentures (and other such debts), bank account deposits, accounts originating from international trade or debt that is not equivalent to equity is exempt from tax. If interest is deemed to be a hidden profit distribution, withholding tax is levied on the payment at a rate of 24.5%, unless a tax treaty provides for a lower rate.
f) Royalties paid to a nonresident company are subject to a 20% withholding tax (reduced from 24.5% for financial years ending on or after January 1 2014), unless the rate is reduced under an applicable tax treaty or the royalties are paid to a qualifying EU related company under the EU interest and royalties directive.

pricing audits this year, many of which have results in mutual agreement procedures and subsequently follow-up work for the team. Partner **Outi Ukkola** sits on the team, and has more than 20 years of experience in taxation, with a focus on transfer pricing. Ukkola contributes to thought leadership in the market, and regularly speaks at tax seminars.

The transfer pricing department of **EY** Finland is symbolically categorised with effective supply chain management, to encourage a solutions-first approach rather than waiting for disputes resolution, which is categorised separately. **Kennet Pettersson** heads the transfer pricing practice and is supported by a number of partners specialising in indirect tax, direct tax, transaction services, business tax and legal services. Furthermore, **Kari Pasanen**, head of tax for EY, is responsible for the corporate business modelling side of the transfer pricing work and the overall team will help contribute to the practice. The firm can assist in transfer pricing planning, documentation, regulatory processes, supply chain management, financial services transfer pricing and customs work.

KPMG is widely regarded as one of the strongest transfer pricing practices in Finland, and is based within arguably the largest tax team. The practice is led by **Eric Sandelin** and supported by senior manager, **Sanna Laaksonen**. The firm can assist with operational work, documentation, benchmarking, value management and dispute resolution. Benchmarking is provided by a dedicated team of advisory professionals which contributes to the M&A services of the firm, and is led by **Steve Palm**.

PwC harbours one of the larger transfer pricing teams in Finland, which is led by **Sari Takalo**. The firm's services come recommended by peers, and it relies on a large tax team in delivering them, in addition to the PwC network.

Tier 2

The transfer pricing practice of **Alder & Sound** is led by **Hannu-Tapani Leppänen**, a former EY transfer pricing specialist, in conjunction with the firm's two other partners. The firm began as a transfer pricing boutique in 2010, and grew rapidly into a wider practice over the past year. "Transfer pricing is still our number-one service, and we are one of the largest practices in Finland," said Leppänen. The partners and 11 other fee earners are regularly involved in transfer pricing work, whether this is as part of a wider deal or on dedicated project, such as a transfer pricing audit. The firm counts construction, product manufacturing and forestry amongst its specialties. Recent work has included advising a group on the management of simultaneous transfer pricing audits across four jurisdictions, concerning transactions of over $1 billion. **Reima Linnanvirta** led a project concerning the transfer of a marine propulsion manufacturing business, with operations in more than 70 countries, from Northern and Central Europe to Eastern Europe and China. The firm has developed a number of in-house transfer pricing software pieces for management of group companies and transfer pricing documentation.

Janne Juusela leads the Finnish transfer pricing practice which represents the Taxand network in the jurisdiction. "The quality of Borenius' work has always been excellent, they have a can-do attiude," said Vesa Jarvonen of Paroc Group. **Borenius, Taxand Finland** has been involved in a number of deals in the rising field of transfer pricing this year, which are largely disputes with the Finnish tax authorities. This reflects an overall trend of increased diligence by tax auditors, and has challenged Borenius because it is unprecedented in the Finnish transfer pricing market. One example includes a challenge to the applied transfer pricing model, and a subsequent characterisation of the model. The practice lost transfer pricing specialist **Jouni Honka-aho** to Deloitte this year. Whilst Honka-aho has not been replaced, the firm retains a focused team led by Juusela. Sector specialities of the team include energy, manufacturing, pharmaceuticals and extractive industries. In delivery, the transfer pricing team can rely on both the wider tax team and the Taxand network to assist with cross-border taxation issues.

Tier 3

"We are focused in our transfer pricing practice," said **Mika Ohtonen**, head of tax and structuring at **Roschier**. "We provide a disputes-based service." Ohtonen is the sole transfer pricing practitioner in a growing firm that has added a fully-functional office into the Swedish jurisdiction, giving an additional edge to their Nordic transfer pricing abilities. The main focus of the firm is M&A work, and the transfer pricing practice assists with related aspects of this. Reflecting the trend in the jurisdiction, Roschier has represented a number of clients involved in tax audits and related disputes, but has also represented a multinational group in public tender offer for all shares and option rights in a Finnish listed company. This was one of the largest deals on the takeover market for the year. The firm focuses on the energy, chemicals, pharmaceuticals, financial and forestry industries.

BORENIUS

Jarno Mäkelä
Senior Associate, M.Sc. (Econ.)

ATTORNEYS AT LAW BORENIUS LTD
Yrjönkatu 13 A, FI-00120 Helsinki, Finland
Direct tel. +358 9 6153 3224
Mobile +358 40 536 2615
Fax +358 9 6153 3499
jarno.makela@borenius.com
www.borenius.com

Taxand Finland
www.taxand.com

Member of Borenius Group
FINLAND | RUSSIA | ESTONIA | LATVIA | LITHUANIA | U.S. NEW YORK
www.boreniusgroup.com

France

Tax authorities

Ministry of Economics and Finance (tax section) – Direction générale des Impôts DGI
139 Rue de Bercy, 75012 Paris Cedex 12
Tel: +33 140 04 04 04
Fax: +33 1 53 18 95 00
Website: www.economie.gouv.fr

LEADING FIRMS

1	Arsene Taxand
	CMS Bureau Francis Lefebvre
	EY
	KPMG
	Taj (Deloitte)
2	Baker & McKenzie
	Freshfields Bruckhaus Deringer
	PwC Société d'Avocats
3	August & Debouzy
	LexCase
	Mayer Brown
	TPHC Associés

Transfer pricing is becoming increasingly important in France, but has also become a more difficult field to operate in during the last year.

In the words of Gianmarco Monsellato of Taj: "TP is going to be huge."

The authorities have continued to act very aggressively, and are now applying penalties more frequently for infringement of regulations.

Vincent Desoubries of Arsene Taxand said: "They are applying penalties more, and they require more documentation from taxpayers."

A key change in transfer pricing regulations is the introduction of an obligation to file a summary of the transfer pricing report.

Monsellato said: "It is the biggest change in the tax market ever… It gives access to the tax authorities. It is like a tax lie detector. If there are any inconsistencies then you will be found wrong."

"This is something which really bothers our clients," remarked Antoine Glaize of Arsene Taxand.

Other advisers found the regulation less unpleasant. Franck Berger, head of transfer pricing at EY, said: "The French tax authorities have new abilities to check things. I think it is fair – what is not fair is the fact that auditors have the information."

"Clearly it is totally new. We were in a situation where we only had to prepare reports for audits," he continued. "This is changing, these groups are now understanding that they have something to do. It is similar to what will be expected under country-by-country reporting."

Véronique Millischer of Baker & McKenzie agreed that the new obligation is likely only the first of many transparency initiatives by the French government under BEPS. "We have additional obligations. This is a trend but it is probably only the beginning," she said.

The introduction of the new regulations has not gone smoothly so far, however. "What was a surprise to us was we were expecting the French authorities to release guidelines, but they reached a bottleneck and postponed the deadline until November," said Berger. "We really need to have the guidelines."

The transfer pricing environment is similar to that of the rest of the tax market in that the authorities are very aggressive, criminalisation of tax matters is increasing and media pressure is intense.

The authorities are not only aggressive, sophisticated and thorough, but difficult to work with, as lamented by Stephan Baller, partner at EY.

"I feel if we could have a very open dialogue with the authorities, like in the UK or the Netherlands, then we could have better strategy."

There is also interest in transfer pricing specifically in the French press, particularly concerning the digital economy.

"You have a clear interest of journalists in transfer pricing. I feel today that there is huge pressure in terms of image," said Baller. Despite this, he said that he has "never seen a good explanation of TP in the press".

Criminalisation is also an issue, with dawn raids on the headquarters of French and international companies a regular occurrence.

"Two years ago the criminal aspect was not something we dealt with," said Véronique Millischer of Baker & McKenzie. "They [the state] have doubled the number of staff and the number of people working in criminalisation for the tax police. In the near future there will be more cases brought by the FTA."

In contrast to the rest of the tax market, however, most transfer pricing cases are settled before reaching the court. This is due to a number of factors.

Firstly, transfer pricing cases take a long time to be processed. For a case to go through two appeals to the Supreme Court is likely to take over a decade, leaving companies in limbo for this time.

Secondly, the success rate in contesting transfer pricing cases against the authorities is generally quite low, and courts tend to look at the "burden of proof, not on the economic rationale of the case," according to Desoubries.

Tier 1

The transfer pricing department at **Arsene Taxand** is separate from the tax department, and is led by partner **Antoine Glaize**. There is one other partner in transfer pricing, **Vincent Desoubries**, and eight other fee-earners. The department recruited three consultants in the last year, one senior and two junior, as the firm looks to grow its transfer pricing operations.

The department offers a wide range of services and has developed a particular expertise in business structuring international operations that combine transfer pricing and international tax approaches, particularly in the context of the BEPS initiative.

They are also specialised in tackling "peculiar" transfer pricing situations that require implementation or justifications of a specific nature, such as the use of specific economic approaches or profit split.

The firm focuses on tier one French multi-national enterprises, and specialises in clients in the industries of waste and water, civil works, e-business, luxury goods and oil and gas.

In one deal, the firm advised a leading car manufacturer, headquartered in Switzerland, in undertaking a high-level review of its European business structuring from a transfer pricing perspective, and suggesting efficiency improvements.

Improvements implemented to the structure by the firm included the modification of routine remuneration earned by the European entities, the implementation of non-existing transactions and adapting the transfer pricing policy by adopting a gross margin resale price method to remunerate sales entities in order to show that they could be loss making.

Glaize said: "We take into account [the] financial and business situation of the clients' constraints. Transfer pricing to us is linked in to the business."

CMS Bureau Francis Lefebvre has five partners working in transfer pricing in France: **Xavier Daluzeau**, **Pierre-Jean Douvier**, **Stéphane Gelin**, **Bruno Gibert** and **Arnaud Le Boulanger**.

The firm advises companies on planning and optimisation and strategic reorganisations, provides assistance during transfer pricing audits and all phases of documentation and economic analysis, explaining the implications of different transfer pricing policies in conjunction with other areas of tax and negotiations with the tax authorities, particularly concerning APAs.

The firm has a multi-disciplinary approach which combines tax and legal expertise and deploys specialists in different areas to support clients with their transfer pricing decisions.

Across CMS's international network there are 3,000 law and tax practitioners, working in 58 offices in 32 different countries. The firm has practical expertise in a variety of cases in European, American and Asian markets.

Franck Berger leads the transfer pricing tax team at **EY**, which employs five partners and 40 other fee-earning associates. The team handled 400 projects over the last year, a slight increase from the previous year.

Key names are economist and partner **Jan Martens**, and **Jean-Pierre Lieb**, a partner who focuses on transfer pricing-related litigation.

The firm is involved in all areas of transfer pricing. Key areas include APAs, MAPs, assisting French groups in expansions to emerging markets, designing transfer pricing policies appropriate for the digital economy, which encompass all areas of tax and law, operating model effectiveness, strategic management of intangibles, tax audit assistance, assistance during raids by the tax authorities including cancellation of judges' warrants, transactional work, benchmarking in jurisdictions without databases, game theory, projects to anticipate country-by-country reporting, global documentation and finance and IT assignments.

As well as this, the firm performs international transfer pricing studies, provides training and technical monitoring, participates in OECD working groups and publishes articles.

The firm is mostly based in Paris, but also has practitioners in other regions including Lille, Lyon, Nantes and Strasbourg. It primarily serves clients in the consumer goods, pharmaceutical and financial sectors, as well as in the digital economy.

The firm is actively involved in some North African countries, and as well as working on local transfer pricing products the team assists in the adoption of new legislation and training of local stakeholders.

KPMG offers auditing, accounting and tax advisory services. The firm employs 8,300 people in 238 locations across France. In transfer pricing the firm offers a full range of services including documentation, assistance during transfer pricing audits, devising and implementing TP policies and economic analysis.

Taj (Deloitte)'s transfer pricing department consists of five partners and 18 other fee-earners, led by **Gianmarco Monsellato**. The department has grown in the last year, adding two partners by internally promoting **Aymeric Nouaille-Degorce** in 2013 and hiring Ares & Co's **Grégoire De Vogüé**.

The firm employs international tax practitioners, economists and lawyers, and works alongside other professionals from Deloitte's transfer pricing practices worldwide in over 150 countries to provide international perspectives.

They offer a full complement of transfer pricing services, including consultancy and documentation, APAs and dispute avoidance, dispute resolution and business model optimisation.

The firm was involved in discussions about the new French transfer pricing documentation requirements, and used this process to gain a valuable understanding of the new regulations and of what the tax authorities' expectations would be.

As well as leading the transfer pricing department, Monsellato is the managing partner of Taj. He has contributed to books on, and written many articles about transfer pricing in France, and is a member of the global transfer pricing task force of the International Chamber of Commerce, as well as being a member of the French-US Chamber of Commerce.

Other key names at the firm are **Sabine Sardou**, who often advises American and Japanese clients and is particularly involved in negotiation with French tax authorities in the course of French tax audits, and **Jean-Luc Trucchi**, who founded and led the French tax authorities' national transfer pricing audit team until 2001. The pair have 18 and 19 years' experience in transfer pricing respectively.

Tier 2

The transfer pricing team at **Baker & McKenzie** is led by **Caroline Silberztein** and employs one partner and six other fee-earners.

Silberztein was head of the OECD transfer pricing unit from 2001 to 2011, and was in charge of the 2010 update of the OECD's transfer pricing guidelines. She remains a member of the UN's sub-committee on transfer pricing and is involved in policy discussions with both OECD and non-OECD countries.

Transfer pricing has been a growth area for the firm and three new members of staff have been hired during the last year including **Julien Rouge Delmouly**, a senior analyst formerly employed by EY.

The practice is split into two sections: economic and legal. The economic part of the practice is led by **Lionel Ochs**, who has over a decade of experience working on intercompany pricing and valuation methodologies in a hefty range of industries, as well as expertise in Germany, Italy, Spain, Switzerland, the US and the UK.

The legal side is led by Silberztein, who works with MNEs on their transfer pricing risk assessment and management, design and implementation of transfer pricing policies, tax audits, tax litigation, mutual agreement procedures and APAs on a local and a global basis.

In one deal, the firm reviewed the global transfer pricing policy for a major European-based group to ensure its business model and transfer pricing policy are sustainable in the developing BEPS environment.

The firm's key industries are asset management, private equity, finance, e-commerce, telecoms, pharmaceuticals, hotels, infrastructure and industry.

Freshfields Bruckhaus Deringer's transfer pricing team is led by **Cyril Valentin** and is made up of three partners and nine other fee-earners.

The firm has adapted to the increasingly sophisticated nature of French transfer pricing, which focuses on fine points of law and economics, by specialising in these areas and tasking senior lawyers to interpret tax law and the finer points of clients' related party agreements and contracts with third parties.

The firm has a full suite of databases and a central research department dedicated to ascertaining arm's-length prices and preparing transfer pricing documentation. By working on complex technical issues the firm has won plenty of work providing second opinions on other advisers' advice, and developed expertise in cash pooling and bank restructuring.

The firm's key industries are finance, investment (including private equity), real estate, healthcare, infrastructure and transport.

In one deal, led by **Antoine Colonna d'Istria** the firm advised Airbus-EADS in relation to the financing of a $400m military programme, subsequently setting up an APA for the firm. The deal was an important transaction for EADS because it followed a delay for delivery of aircraft to various states, and was extremely strategic with political connotations because it was the result of negotiations between the French, German and UK governments.

In another deal, the firm assisted Moroccan-based mining company, Office Chérifien Phosphates, on multi-jurisdictional tax planning and transfer pricing projects. The firm coordinated the work of advisers in more than 10 jurisdictions spanning Africa, Europe, South America and the Middle East.

PwC Société d'Avocats is the French branch of **PwC**, and has branches in 10 cities around France.

The firm's key industries are aerospace and defence, automobiles, banks and capital markets, chemistry, local authorities, distribution and consumer goods, energy, real estate, media and entertainment, technology, pharmaceuticals, industry, health and social care, telecommunications and transport and logistics.

Tier 3

August & Debouzy is an independent law firm with offices in Paris, Brussels and Casablanca, as well as being a founding member of an international network with 9,000 lawyers in 45 independent firms. **Philippe Lorentz** is a partner in the tax and finance department, which encompasses transfer pricing.

The firm offers a full range of legal advisory services, with its white collar crime practice being increasingly relevant to transfer pricing in the current French economy.

In transfer pricing, the firm assists clients with validating and implementing transfer pricing policies to meet French and OECD standards, utilising their international network of firms and economic analysts.

LexCase operates out of three locations, Paris, Marseille and Lyon. **Philippe Drouillot** leads the firm's transfer pricing team, as well as heading up the tax department.

The key areas the firm operates in are food, construction, public works, industry, health facilities, energy, video games, the luxury industry, media and entertainment and telecoms.

Mayer Brown operates in both national and international transfer pricing and is led by partner **Benjamin Homo**.

Homo focuses on large multi-country deals involving the reduction of companies' global effective tax rates, tying in French and international tax planning to his transfer pricing work.

The firm's lawyers are proficient in representing clients during litigation from audits to appeals, negotiating APAs and preparing documentation.

The firm's international transfer pricing work is assisted by its European transfer pricing centre, which has its headquarters in Brussels.

TPHC Associés is part of international network Transfer Pricing Associates, which has a presence in more than 50 countries. The firm's leader and sole practitioner is **Marie France Demade**.

Demade has more than 22 years of experience in transfer pricing, and previously worked as the head of corporate transfer pricing at multinational healthcare group, Sanofi-Aventis. During her time there she managed several large transfer pricing projects including a cost-sharing agreement, business conversion, setting up transfer pricing documentation in several countries and successive mergers and acquisitions.

The firm operates mainly in transfer pricing strategy and methodology including risk assessment, audits and litigation, transfer pricing management and devising and preparing documentation. The firm is not industry-specific but has had several clients in the fields of consumer products, B2B, services, and the luxury industry. Due to Demade's employment history she also has great experience in pharmaceuticals and medical devices.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	33.33% (a)
Effective	38% (b)
Capital gains	0%/15%/33.33% (c)
Branch tax	33.33%/30% (d)
Withholding tax	
Dividends	30% (e)
Interest	0% (f)
Royalties	33.33% (g)
Net operating losses (years)	
Carryback	1 (h)
Carryforward	Unlimited (i)

a) The standard corporate income tax rate is 33.33%. Small or new businesses may benefit from lower rates. A 3.3% social surcharge applies to the standard corporate income tax liability that exceeds €763,000. A 10.7% temporary surtax (increased from 5% as from January 1 2014) applies to the standard corporate income tax liability for large companies with turnover exceeding €250 million, resulting in an overall effective corporate tax rate of 36.9%, or 38% for the largest companies, when subject to the 3.3% social surcharge.

b) Taking into account the 3.3% social security surcharge and temporary surcharge, the overall effective corporate tax rate is 36.9%, or 38% for the largest companies.

c) For resident companies, surtaxes are imposed on the corporate income tax and capital gains tax.

d) Branches are taxed at the same rates as domestic companies. In addition, the after-tax income of a French branch of a foreign company is deemed to be distributed to nonresidents and is subject to a 30% branch tax. The tax may be eliminated or reduced under a tax treaty, and is not due if the foreign head office is located in the EU and is subject to income tax with no possibility of opting out or of being exempt, and the income is taxable in the foreign country.

e) Dividends paid by a French company to a nonresident (company or individual) are subject to a final withholding tax of 30% calculated on the gross amount. Individuals that are EU resident, however, benefit from a reduced withholding tax rate of 21% on dividends paid from France. If the dividends are paid to a person located in a "noncooperative country" (included on a list issued by the French tax authorities), the rate is increased to 75%. The withholding tax may be reduced or eliminated under an applicable tax treaty or the EU parent-subsidiary directive. A 3% surtax is levied on dividend distributions and deemed dividends paid by French entities subject to corporate income tax.

f) Interest payments made to a nonresident (company or individual) generally are exempt from withholding tax in France unless the payment is made to an entity or individual located in a noncooperative state or territory, in which case a 75% withholding tax applies.

g) Royalties, commissions, consultancy fees and fees for services performed in France paid to a nonresident (company or individual) are subject to a domestic withholding tax of 33.33%, unless the payment is made to an entity or individual located in a noncooperative state or territory, in which case a 75% withholding tax applies. The withholding tax may be reduced or eliminated by an applicable tax treaty or where the payments qualify for application of the EU interest and royalties directive.

h) Losses carried back may not exceed €1 million ($1.33 million).

i) The amount of losses used in a given year may not exceed €1 million ($1.33 million) plus 50% of the taxable profit exceeding this limit for such year.

Germany

Tax authorities

Bundesministerium der Finanzen – Federal Ministry of Finance
Wilhelmstraße 97, 10117 Berlin
Postanschrift: 11016 Berlin
Tel: +49 3 018 682 0
Fax: +49 3 018 682 32 60
Website: www.bundesfinanzministerium.de

Bundeszentralamt für Steuern - Federal Central Tax Office
An der Kueppe 1, 53225 Bonn
Tel: +49 228 406 0
Fax: +49 228 406 2661
Website: www.bzst.de

LEADING FIRMS

1	Deloitte
	EY
	Flick Gocke Schaumburg
	PwC
2	Baker & McKenzie
	KPMG
	Luther, Taxand Germany
	Voegele Partner – NERA
3	Dentons
	Freshfields Bruckhaus Deringer
	Oppenhoff & Partner
	WTS

Firms to watch

LW TAX Lemaitre Wittkowski

Before the federal elections in 2013 it was expected that there would be tax increases in Germany, which did not come. Instead, "we are confident there will be tax breaks at the expense of business-related incentives", said Martina Ortmann of EY. This is characteristic of what has been a watershed year for the German economy, as the government reported a budget surplus.

"The tax changes which have happened are generally of minor importance," said Chrisoph Röper of Deloitte. "The number one concern of clients has been tax audits, which are becoming more and more

Tax rates at a glance (As of August 2014)

Corporate income tax	15% (a)
Capital gains	25% (b)
Branch tax	15% (c)
Withholding tax (d)	
Dividends	25%
Interest	0%
Royalties	15%
Branch remittance tax	
Net operating losses (years)	
Carryback	1
Carryforwards	indefinitely

a) 5.5% solidarity surcharge also levied on corporate income tax. Local business tax of 10% to 18%. Effective corporation tax rate of 28% to 33%.
b) Additionally, 5.5% solidarity surcharge. 95% participation exemption may be available depending on the shareholder.
c) 5.5% solidarity surcharge also levied on branch corporate income tax. Depending on branch: Local business tax of 0% or 10% to 18%.
d) Additionally, 5.5% solidarity surcharge. Payments to European companies that qualify under EU directive may be exempt.

Source: *Tax advisers from Luther, Taxand Germany* aggressive in the current climate. The authorities have hired a huge number of specialists in the past year."

However, some advisers were reluctant to describe the tax authorities as aggressive. "They are more deeply specialised," noted Ute Benzel of EY. "The roots of this are complex but one cause is the rise of double tax agreements. There is a direct competition between jurisdictions as to who collects the tax."

The sheer volume of tax audits has been a concern for tax advisers, "virtually every company is getting field tax and transfer pricing audits without exception, which would be unimaginable in other jurisdictions", said Alexander Voegele of Voegele Partner NERA. "This is tedious, but has resulted in lots of litigation work for some practices."

This trend has compounded with the rise of electronic accounting software, necessitating the use of IT assurance personnel during tax and transfer pricing audits, both of the side of the client and the authorities.

The lack of changes stems from a BEPS compliant system with strong anti-avoidance legislation. The majority of changes in other jurisdictions have been in this direction, whereas Germany does not require it. "We have very strong CFC legislation already," said Benzel.

While there have been few changes, the Federal Ministry of Finance (BMF) published clarification in July on the definition of certain terms, including transfer prices, the arm's-length principle and the business relationship. For example, as summarised by KPMG: "In instances of foreign business relationships with a related party, transfer prices are only recognised for tax purposes if the prices correspond to what independent third parties would have agreed to in the same or in comparable circumstances – the arm's-length principle."

In the coming year advisers are expecting transfer pricing and business crime to remain a huge focus, with some heads of tax losing their jobs over it already. "Many business cases simply won't fly in a couple of years," said Voegele. "There are still a few firms doing tax arrangements with no personnel anywhere."

Tier 1

Jobst Wilmanns heads the transfer pricing team at **Deloitte** in Germany, since his hiring from PwC earlier this year. Wilmmans is one of the top professionals in the discipline and forms part of the head of tax's, **Christoph Röper**, plan to rebuild the tax practice following several high profile departures this year. "Prior to the leavers, we had around 60 partners," said Röper. "We are now back to that number and have recruited more technology specialists to respond to changes in the market." This responsiveness is felt in the transfer pricing practice, as the practice added **Michael Puls** to the partnership team in addition to three directors from KPMG and EY. The team has noticed an increased focus on compliance by the authorities and has responded to this by drawing on the abilities of other service lines. "We have been working closely with IT and assurance to deliver effective services," said Röper. "This has required process mapping, and the burden is substantial as there is a huge delay on tax audit. 2005 to 2008 are the years currently under scrutiny." This year the practice has been involved in the relocation of functions for a DAX-listed company, and has been engaged as an expert witness in an arbitration procedure in a major dispute between a majority and minority shareholder. This is illustrative of the thought leadership of Deloitte in Germany, and the tax partners are regularly contributors to tax publications. Deloitte's transfer pricing team of 73 professionals specialising in advising the automotive, pharmaceutical, chemistry, transport and financial services industries.

The transfer pricing department of **EY** in Germany is led by **Oliver Wehnert**, and is supported by a 2000-strong tax practice headed by **Ute Benzel** – the managing tax partner for Germany, Switzerland and Austria. The practice is considered market leading, and is one of the leading teams within the EY network. This team is made up of 160 different professionals and provides a one-stop shop for transfer pricing, including planning, documentation and dispute resolution. EY can assist with implementing transfer pricing models and intellectual property planning to suit the needs of clients, which extends to using other service lines to provide a full-scale business optimisation service on an international basis. The team works both locally and cooperatively around the globe to deliver consulting services and assistance in finding APAs abroad.

Flick Gocke Schaumburg (FGS) has been steadily expanding its transfer pricing team over the past four years. The practice was founded 40 years ago as a tax and accounting law boutique in Bonn. Since then, it has rapidly blossomed into a practice that spans Germany with nearly 100 partners and additional offices in Frankfurt, Berlin and Munich. The practice consists of five partners and 14 further tax professionals led by **Xavier Ditz**, who provide consultative insight on legislative developments in addition to the main body of their transfer pricing work. Recently, the team was invited to submit its recommendations for the German position regarding the BEPS action plan, to the Finance Committee of the German Bundestag. FGS has orchestrated a number of significant transfer pricing deals this year. Ditz led on the transfer of the European headquarters of a US multinational from Germany to Sweden, which involved the transfer of place of management and significant intangibles. The practice has the capacity to fully assist in the implementation of a new transfer pricing system, and helped a German pharmaceutical company in doing this across Europe and Latin America. In another case, the practice obtained a tax ruling from the Swiss tax authorities in relation to advising a multinational on the implementation of a Swiss structure in dealings worth around $3 billion. The practice has the capacity to deal in tax audit, and did so for a German family-owned multinational this year.

PwC operates a respected transfer pricing practice in the jurisdiction, which utilises international PwC member firms to deliver a transfer pricing service that draws on more than 1000 specialists. The practice lost **Jobst Wilmanns** who takes over as transfer pricing leader at Deloitte. However, the practice is headed by **Lorenz Bernhardt** who is particularly well-regarded in the industry for planning, tax structuring and transfer pricing services. The team was bolstered this year with the hire of around 30 transfer pricing professionals, which included five partners from Deloitte. These were **Heinz-Klaus Kroppen**, **Axel Eigelshoven**, **Jörg Hülshorst**, **Stephan Rasch and Roman Dawid.** Bernhardt frequently lectures at international seminars and renowned universities on the topic of transfer pricing. Furthermore, he is one of the global leadership team of PwC's transfer pricing service line. Whilst being smaller than some other practices in Germany, the PwC practice can provide a comprehensive transfer pricing service including documentation services, structures and business models.

Tier 2

Stephan Schonorberger is the sole partner in the transfer pricing practice of **Baker & McKenzie** and oversees a team of six transfer pricing professionals. This team sits within the wider tax practice, and can rely on the expertise of eight further partners and 12 tax professionals to assist with specific aspects of transfer pricing. The firm has been involved in benchmarking and analytics services this year for several global companies. Due to the nascent nature of transfer pricing generally, this has involved complex processes where no comparable European transactions could be identified. Moreover, the transfer pricing department has provided support to longstanding clients of Baker & McKenzie as and when required, including VAT structures in Italy and for a major manufacturer in Germany. The firm specialises in the areas of pharmaceuticals, IT, chemicals, manufacturing, and retail.

KPMG's German transfer pricing practice is led by **Matthias Kaut** who has more than 15 years of experience in advising multinationals on transfer pricing issues. These have included planning, restructuring services which Kaut supplements in his role as global leader of KPMG's value chain management network which assists in optimising business practices. KPMG ranks transfer pricing as one of the highest priority issues for the German tax authorities, which have been able to aggressively audit business restructuring cases as of the 2008 fiscal year. As a result, transfer pricing has come under greater focus from the practice in recent years.

Ulrich Siegemund leads the transfer pricing and overall tax practice of the mid-sized **Luther, Taxand Germany**. This year the firm has made several new hires, in addition to having its staff recruited elsewhere into partnership position, which is illustrative of the firm's level of expertise. Transfer pricing sits within the tax practice, and supplements the corporate M&A, planning and restructuring functions.

Alexander Voegele is one of the most respected professionals in the German tax market and leads the firm named for him – **Voegele Partner NERA**. The two partner firm has nine additional fee earners who all participate in transfer pricing engagements on both a specific basis, and as part of other deals. The firm is specialised in sophisticated planning, valuation and defence services, and uses a number of bespoke solutions to address client needs, including intellectual property valuation, risk quantification and game theory. "We have seen a lot of sophisticated IP cases since 2005," said Voegele. "We have made a lot of progress in how we value IP and risk." This has been crucial in the current environment where extensive tax audits are becoming commonplace. Deals this year have included assisting the IRS and IRS economists in the adjustment of royalties between the US and Mexico, as well as assisting a US-bought group of European companies in the centralising of their distribution and IP in Switzerland. The firm counts the pharmaceutical, chemical, consumer, automotive, energy and TMT industries amongst its specialities.

Tier 3

Dentons in Germany is led by managing partner, **Stephan Busch**, who leads the tax practice with the assistance of several other partners. The firm relies upon the expertise of partner **Michael Helm** in Berlin, who has transfer pricing experience through his structuring work, and **Michael Graf** in Frankfurt who specialises in tax optimised structuring and tax audits. Typically, Dentons is not involved heavily in the documentation side of transfer pricing but prefers to engage in the planning and disputes aspect of the business. Dentons has structured itself in key locations across Germany to accommodate the transfer pricing needs to international business, and uses the Dentons firms in other countries to provide a complete legal service.

Freshfields Bruckhaus Deringer has a respected transfer pricing team in Germany, which provides a capable transfer pricing service providing planning services in relation to tax efficiency and dispute resolution. Freshfields can assist with advance pricing agreements and will offer litigation support where necessary. The tax practice consists of eight individuals, led by **Norbert Schneider**, who has built his reputation on his structuring work and financing of M&A transactions, which include transfer pricing aspects. Before joining Freshfields, Schneider worked as a tax inspector and has authored a number of works on tax law, including tax-efficient restructurings.

Oppenhoff & Partner is a two partner law firm led by **Axel Bödefeld**, which primarily deals in M&A tax work with transfer pricing aspects. Bödefeld himself specialises in structuring, restructuring and transfer pricing. The firm has a long history in Germany, dating back to the imperial era and growing throughout Germany to the modern day. Founder, Walter Oppenhoff, was noted for deciding to oppose the Nazi regime in continuing to advise Jewish clients during the 1930s. Bödefeld is complemented by partner **Gunnar Knorr**, who specialises in M&A and corporate financing, with a focus on cross-border transactions. The team has further grown this year with the addition of **Matthias Bassüner**. The partners have been involved in mutual agreement procedures for a German automotive manufacturer and its Italian distributer worth around $120 million; the relocation of functions for a German subsidiary of a US multinational; and a tax dispute over a multi-tier financing transaction through four jurisdictions.

WTS' transfer pricing team is led by **Maik Thomas Heggmair** and two other partners. The firm lost transfer pricing expert Arwed Crueger this year, but has bolstered their practice with two new hires. The team has advised 10 of the biggest 30 DAX corporations over the past year in addition to many medium-sized enterprises and foreign corporations with subsidiaries in Germany. In terms of transfer pricing, the practice is one of the most specialised outside the Big 4 and can provide a full range of solutions. In a demonstration of the ability of the firm to rely on its wider network, Maik Heggmair and the team advised parts of the WTS alliance in Honk Kong, Italy and China over the reorganisation of a German luxury manufacturer. The firm provides specialist advice to the engineering, electronics, biotechnological, automotive and financial services industries.

Firms to watch

Following the termination of the Taxperience network this year Lemaitre Taxperience has formally changed its name to **LW TAX Lemaitre Wittkowski**. Claus Lemaitre noted that the firm continues to work cooperatively with the former Taxperience network, and now receives more referrals from non-Taxperience firms. The firm advises on transfer pricing issues regularly as a part of its wider work, and recent work involved a shift of function for a Russian client. The firm lists its specialities as private equity, software and internet business. Lemaitre said the practice should be seen as "focused, fast, very experienced and competitive".

Deloitte.

Franklinstrasse 50
60486 Frankfurt am Main, Germany

Jobst Wilmanns
Tel: +49 (0)69 75695 6120
jwilmanns@deloitte.de

Deloitte's transfer pricing team in Germany is led by Jobst Wilmanns who works alongside three partners, ten directors and a team of 70 further colleagues. This team includes business economists, economists, tax advisors, CFAs and attorneys. With its eight hubs in Germany Deloitte's transfer pricing practice serves clients in almost all regions and industries. These industries span across automotive, consumer business, real estate and construction, chemical and pharmaceutical, energy, utilities and transport as well as financial services. Besides our industry-specific competencies we offer a wide range of service-related competencies, e.g. in the fields of business model optimization, transfer pricing operationalizing, controversy and dispute resolution and technology approaches. As such, transfer pricing advice within Deloitte Germany starts with understanding the tax-related circumstances, covers also questions in terms of strategic Group-alignments and ends up into implementation- and defense-related topics. Especially in terms of transfer pricing implementation our regular exchange with CEOs and CFOs confirms that clients are increasingly faced with challenges in the fields of transfer pricing planning, budgeting, invoicing, monitoring and adjusting. The diverse competence fields of Deloitte Germany allow us to provide individual and specific advice to its clients.

Deloitte Germany can demonstrate above mentioned expertise in a number of projects. One of them is a multinational technology group where Deloitte gave integrated transfer pricing advise in a global business model optimization project, including the definition, implementation and documentation of a new transfer pricing model. In the context of the current OECD developments Deloitte Germany is demonstrating that documentation does not only mean to fulfill minimum documentation requirements with the aim of penalty protection, but also to build up a strategy for future tax audit management.

FGS Flick Gocke Schaumburg

Flick Gocke Schaumburg
Johanna-Kinkel-Straße 2-4
53175 Bonn, Germany

Tel: +49 228 9594-0
Fax: +49 228 9594-100
Email: bonn@fgs.de
Website: www.fgs.de

About the firm:

Flick Gocke Schaumburg is an independent law firm that has established itself as one of Germany's leading tax law practices, combining the experience of lawyers, tax advisers and certified public auditors to develop tailor-made and tax-efficient legal structures and solutions. Transfer pricing is

today one of its major disciplines. The TP team's main strengths include defense of TP mechanisms in tax audits, tax litigation, mutual agreement and arbitration procedures as well as APAs.
Based in Bonn, Berlin, Frankfurt and Munich the firm has 97 partners and more than 200 associates with multiple qualifications in law and economics.
In addition to its representative offices in Vienna and Zurich, the firm maintains strong working relationships with premier consultants in many other countries.
Flick Gocke Schaumburg's client base includes national and international groups, affiliated corporations, family-owned businesses and high-net-worth individuals.

Contact: Dr. Xaver Ditz
Tel: +49 228 9594-0
Email: xaver.ditz@fgs.de

NERA
ECONOMIC CONSULTING

NERA Economic Consulting GmbH
Messeturm
60308 Frankfurt am Main
Tel. +49 710 447 500
www.nera.com

Firm profile:
NERA Economic Consulting is a global firm of worldclass economists providing expert valuation reports. In the context of international tax, NERA is the perfect complementer to in-house tax departments and law firms for economic advice:

- Field tax audits
- Mutual Agreement Procedures
- Advance Pricing Agreements
- Intellectual Property

NERA has over 50 years of Experience, and its Experts are also renowned for their standard setting books and articles.

Your contacts:

Tom Braukmann
Consultant
Tel: +49 710 447 511
Tom.Braukmann@nera.com

Philip de Homont
Consultant
Tel: +49 710 447 502
Philip.de.Homont@nera.com

Alexander Voegele
Chairman of the Advisory Board
Tel: +49 710 447 501
Alexander.Voegele@nera.com

wts TAX LEGAL CONSULTING

WTS Steuerberatungsgesellschaft mbH
Thomas-Wimmer-Ring 1-3
80539 Munich
Germany

Contact
Maik Thomas Heggmair
MaikThomas.Heggmair@wts.de
Phone +49 89 28646-212

Greece

An audit profile by Alexandros Karakitis of EY.

Tax authorities

Hellenic Republic Ministry of Finance
Kar. Servias 10, GR-105 62 Athens
Tel: +30 210 3375000
Fax: +30 210 33 32 608
Email: minister@minfin.gr
Website: www.minfin.gr

1. How does the tax authority select transfer pricing cases to audit?

Since 2011 each certified auditor performing the statutory audit of a company is obliged to issue a tax compliance certificate for the company, which is uploaded on the relevant database of the tax authorities. If the certificate contains findings, the tax audit authority issues an audit order in relation to the areas for which there are findings. In addition, regardless of the level of compliance ascertained by the certified auditor in his certificate, the tax authority selects a sample of companies for tax audit on the basis of a risk assessment point system. Also subject to tax audit can be companies for which there is information they have violated their tax obligations.

2. How will a company find out it is being audited?

According to the Tax Procedures Code, a prior notification of the taxpayer that he has been selected for an audit, is mandatory only in cases of a full scope tax audit carried out at the premises of the company. However, partial tax audits, pertaining to specific areas, for example transfer pricing, may start without a prior notice. The company would then find this out when the tax officer visits its premises for the purpose of completing his audit. Hence a tax audit on a particular field may start remotely without a notification to the taxpayer and continue at his premises. For example, companies that are obliged to document their intercompany transactions must submit to the tax office, for every year under examination, a summary information table with the value of each intercompany transaction they are a party to, including a reference to the transfer pricing method applied. Such data can be subject to verification of completeness and accuracy before, or in combination with, a visit at the company. When the tax auditor requests from the company its transfer pricing documentation file, which, unlike the summary information table, is submitted only upon the tax officer's request and within 30 days from such request, then it would mean that it is subject to a tax audit. Whilst a tax audit may start without a prior notification, it cannot be completed before the lapse of 20 days from communicating to the taxpayer the preliminary findings, in order for him to present his case.

3. When a company has been notified of audit, what is the first thing it should do?

The taxpayer should be informed of the scope and time frame of the tax audit and discuss the tax auditor's plan in order to facilitate his work. Naturally it is good practice to have determined before the audit, the communication channels with the auditor and ensure that the company's representatives in the discussions are familiar with the matter and can easily retrieve any supporting documentation to the position taken.

4. Is there any legislation for general procedure for a taxpayer under audit? If not, what is the recommended practice?

Tax audits are governed by the tax procedures code, the code of administrative procedures and constitutional and other equivalent safeguards.

5. How does Greece differ in its approach to TP audit to other countries?

The Greek tax authorities have only recently started to develop transfer pricing expertise and only at the headquarters level. The approach of tax auditors, so far, has been rather formalistic and with a "one size fits all" mindset, in that they tend to compare the company with the relevant sector's average operating margin rate. Some new rules introduced on tax anti-avoidance and operating model restructurings and the growing importance of transfer pricing as an audit focus area, together with the broader "fair share of tax debate" and the BEPS related developments are expected to lead to more qualitative and demanding tax audits in the future.

6. How does the tax authority compile its information on a taxpayer for an audit?

The information that may lead the tax authorities to initiate a tax audit indicatively includes: the tax records submitted by the taxpayer with the tax office, the tax compliance certificate, data from tax audits on other related fields and on other taxpayers, data from foreign tax authorities.

7. What are the most likely instances that provoke an audit from the tax authorities?

Such instances can be, for example, the findings of the certified auditor, substantial variances of the company's results with the relevant sector's average profit margin rates, losses produced by trading companies, a disproportionate increase of the expenses compared to the increase of the turnover, a material decrease of turnover, substantial findings of previous tax audits.

8. What documents are required by the taxpayer during TP audit?

The taxpayer should provide to the tax auditors, within 30 days from his request, the TP documentation file, containing all mandatory information determined in the local documentation rules and including copies of the relevant intercompany agreements. Within a reasonable deadline set, he should also provide any other relevant data requested, such as any supporting documentation regarding the computation of intra-group allocations and evidence on access and relevance of corresponding benefits.

9. Are there any restrictions on a company's business during audit?

No

10. Are there any restrictions on the taxpayer's advisers during audit?

No, other than any identified involvement of the adviser in the violation of the tax legislation by the company

11. How long does an audit last?

The duration of the audit depends on the complexity, scope and size of the company and there can be instances of lasting more than a year. In the tax audit order the duration must be specified and can be extended, before the lapse of the initial period for another six months and in exceptional cases two times for six months.

12. What happens after an audit has been completed?

The taxpayer should have the opportunity to provide his views on the findings of the tax auditor before completion of the tax audit and a time frame of 20 days is stipulated for him to get prepared. Within a month from receiving the taxpayer's views on the findings, the tax authority issues the tax reassessment notice with the final findings. This notice can be challenged by the taxpayer within 30 days, by means of an administrative appeal, but he must then prepay 50% of the amount under dispute. Eventually, and provided the taxpayer has followed that route, he may resort to the administrative courts.

13. Tips on negotiating with the authorities.

Be prepared and cooperative.

14. How can a company manage its audit risk?

It is very important the company has established good communication with the headquarters of the group and gets all support needed. Moreover, in case of a change in the operating model, it should ensure that the reasons of the change are properly explained and are commercially sound and that the charge is consistent with the actual functions performed by its people locally. There is also the newly introduced possibility of an APA, which might make sense to apply for, especially in cases of profit split or operating model restructuring.

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Dryllerakis & Associates (Baker & McKenzie)
	Zepos & Yannopoulos – Taxand

After various changes to transfer pricing provisions including the start of transfer pricing audits in 2013, there have been no major developments in Greek transfer pricing legislation other than to fine-tune the provision of APAs in Greece, which were introduced at the same time.

Stelios Kyriakides of Deloitte said the government "would like to encourage multinationals to enter into APAs".

"But it is not clear if they will provide stability," he added. "Guidelines on the specifics have not been issued yet."

George Naskaris, of Koutalidis, said multinational companies are beginning to take advantage of advanced rulings.

This promising move towards stability, along with a new corporate tax code and a general move towards modernisation of the Greek tax system, is undermined by the aggression and inexperience of the Greek tax authorities.

Despite their inexperience, they have become increasingly interested in transfer pricing.

"They are focussed on transfer pricing," said Kyriakides. "Transfer pricing is fashionable, they believe that everybody violates transfer pricing."

Sophia Grigoriadou of Dryllerakis said: "The tax authorities don't even have the necessary training. The tax audits have practical difficulties."

She said there is a special tax office from which the local tax authorities can get advice, but "it takes weeks every time", and this can be used to the advantage of the taxpayer. "It gives the taxpayer a lot of room to manoeuvre."

Kyriakides said: "They have not been trained in law, they have to review transfer pricing focus. This makes our lives very difficult."

An attempted solution to these issues was the decision by the Greek authorities in 2011 to allow auditing firms the power to present companies with a "clean" tax certificate, in which transfer pricing is included.

Grigoriadou said: "It is comforting because the Big 4 have experts with TP. It creates some security because if you have one you know you won't be subject to a large assessment."

She also said the auditors went deeper into tax affairs than the tax authorities had been able to, and fixed some of the problems.

Kyriakides, whose firm has the ability to award these certificates, is less enthusiastic about the initiative and believes it creates the potential for a conflict of interest.

"Companies who provide the tax certificate can't provide certain tax advice, but I think they should not be allowed," he said.

"I wouldn't like the tax adviser to do this. He has his job and the tax authorities have their job."

The Greek economy is showing promising signs that a recovery is underway, and is expected to grow by 0.7% in 2014 after six years of recession, with consumption and investment both up.

"This year the spirit is turning around. The banks have restructured their capital and are ready to start lending, but it hasn't happened yet" said Grigoriadou.

"Right now there is a sociological pickup, we expect to see an economic pickup next year."

Kyriakides said: "The attitude towards Greece from foreign investors is changing."

Tier 1

Eftichia Piligou leads the transfer pricing team at **Deloitte**, which employs one partner and 13 other professionals.

The firm has worked hard to establish a presence in the market, and is now endeavouring to increase the range and depth of services it offers, focussing on transfer pricing controversy and policies, particularly for Greek multinationals.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	26% (a)
Capital gains	26%
Branch tax	26% (b)
Withholding tax	
Dividends	10% (c)
Interest	15% (d)
Royalties	20% (e)
Net operating losses (years)	
Carryback	0
Carryforward	5

a) Profits are taxed at a rate of 26%. The rate for partnerships with double-entry books is also 26%; for partnerships keeping simplified accounting books, progressive rates apply (26% for income up to €50,000 and 33% on the excess).

b) Under the new Income Tax Code, it appears that profits remitted by a branch to its foreign head office are no longer subject to withholding tax (formerly, a 25% branch remittance tax applied). Further guidance is awaited.

c) The withholding tax on dividends reduced from 25% to 10% for distributions after January 1 2014. The rate may be reduced under a tax treaty or an exemption may apply if the dividends qualify for the exemption under the EU parent-subsidiary directive.

d) The statutory withholding tax on interest is 15% (reduced from 33% as from January 1 2014), unless the rate is reduced under a tax treaty. If the conditions for application of the EU interest and royalties directive are satisfied, the rate is 0% (the transition rule that allowed Greece to levy a 5% withholding tax expired on June 30 2013).

e) Royalties paid to a foreign entity without a PE in Greece are subject to a 20% withholding tax (reduced from 25% as from January 1 2014), unless the rate is reduced under a tax treaty. If the conditions for application of the EU interest and royalties directive are satisfied, the rate is 0% (the transition rule that allowed Greece to levy a 5% withholding tax expired on June 30 2013).

The firm's main areas of expertise are in litigation and documentation, as well as demonstrating that loss making positions should be attributed to unfavourable market conditions and legitimate business situations and not to a non-arm's length group policy.

The firm has been involved with discussions with the Ministry of Finance on the existing requirements for the tax deductibility of royalties and management fees which persuaded the Ministry to revise previous guidelines.

The firm has worked with clients in almost all industry sectors, but is particularly proficient in manufacturing, energy and resources, consumer goods, financial services, life sciences and healthcare, automotive, heavy industry, consumer business, media and technology.

In one deal, the firm provided technical advice and assistance to support the loss-making position of a major player in the Greek manufacturing industry. After performing an in-depth financial analysis, the firm had to set up transfer pricing defence files and successfully fought a transfer pricing audit with a proposed adjustment of around €3 million ($4 million).

In another, the firm provided technical assistance to a Belgian group in the first request by the tax authority for a competent authority procedure under the EU Arbitration Convention.

EY has one of the largest dedicated transfer pricing groups in Greece. It is made up of one partner and 19 other fee earners, and is led by **Alexandros Karakitis**.

The firm's transfer pricing practice has been established as a centre of excellence in EY's Central and South East region. The practice provides technical support and training practices in other CSE countries including Albania, Bulgaria, Macedonia and Romania, and offers assistance in documentation and controversy projects in these jurisdictions.

As well as providing assistance to other departments in EY, the firm is also able to draw on the expertise of the rest of the network. The firm commonly sends its practitioners on six-month assignments in larger transfer pricing practices abroad to gain practical experience in the field. The firm also runs free transfer pricing education events, presentations on recent developments and works to promote strategies for effective management of transfer pricing affairs.

One of the firm's strengths is APAs, which were introduced in Greece relatively recently. EY is involved in the country's first bilateral APA, a major deal involving an energy firm. The firm is also involved in filing hybrid APA applications, and has negotiated several cases with the tax authorities.

The firm's key industries are life sciences (including pharmaceuticals), consumer products, energy, utilities, telecommunications and financial services including insurance, where the firm is particularly strong.

Deals the firm have been involved in include advising a company in distress on the valuation of a trademark and transforming a company's supply chain.

The transfer pricing team at **KPMG** is led by **Effie Adamidou**. The firm offers a wide range of services to its transfer pricing clients, such as advice on creating efficient transfer pricing structures, documentation and assistance in audits.

The firm employs financial analysts, economists and tax professionals to optimise its transfer pricing advisory services. The firm benefits from KPMG's global experience in transfer pricing and the use of its external databases and integrated transfer pricing tool, Interpreter.

Partner, **Antonis Desipris**, is the leader of the transfer pricing department at **PwC**, as well as heading up compliance services at the firm. He has 20 years' experience in tax.

The firm works with companies to help them gain a tax advantage across borders by offering advice and assistance in devising and implementing transfer pricing policies, offering compliance advice, preparing documentation compatible with Greek or foreign legislation, preparing benchmarking reports and giving assistance during transfer pricing audits.

The firm works across all industries, and is particularly experienced in banking and capital markets, energy, utilities, mining, construction and engineering, financial services, public services, insurance, real estate, retail, shipping, logistics, transportation and telecommunications.

Tier 2

Partner **Sophia Grigoriadou** leads the transfer pricing practice at **Dryllerakis & Associates**, which employs three associates: **Nikolaia Anna Lepida**, **Maria Gkoutsiou** and **Anna Ntionia**.

The firm offers services in all aspects of transfer pricing including advice on compliance and requirements, planning and preparation of TP reports, due diligence, legal assistance during tax audits and transfer pricing litigation assistance.

The firm's key industries are chemicals, health products, airlines, bed and breakfast sales and retail.

The firm offered legal assistance to Herbalife Greece in one of the first transfer pricing audits dating back to 2010. As transfer pricing audits only began in Greece in 2013, original issues such as calculation of costs, were raised for the first time.

The comparability of pharmaceutical and health products was an issue in the deal, which was made even more complex by the fact that transfer pricing legislation has changed almost every year since 2008.

In another deal, the firm worked on the services agreements between Aegean Airlines and Olympic Airlines following the acquisition of the latter by the former. It is the first time a Greek airline has had such a relationship with a subsidiary and entered into such an agreement for which the respect of the arm's-length principle will be reviewed by the tax authorities. The deal also involved other elements such as the transfer of personnel from OA to Aegean.

Zepos & Yannopoulos is the largest tax law firm in Greece, and its transfer pricing department is led by **Elina Filippou**, who has now worked at the firm for 10 years.

The firm offers advice on the implementation of global transfer pricing policies in compliance with local rules, documentation, reporting and helping clients assess, manage and plan for transfer pricing issues. Dispute resolution is another key area for the firm, and the team works with clients in cases that involve both Greek and EU legislation.

The firm's tax team is the largest in Greece, which allows the transfer pricing team to seek assistance on tax issues surrounding intra-group transactions from other areas of the firm to give comprehensive coverage of all relevant issues to clients.

The firm boasts a large portfolio of multinational clients in transfer pricing, including: AkzoNobel, Amadeus, Chevron, CombiTrans, ExxonMobil, Leaseplan, Media Saturn, Oriflame, Pierre Fabre, Remy Cointreau, Tupperware and Universal Music.

Deloitte

Deloitte
3a Fragoklissias & Granikou str. GR
151 25 Maroussi Athens

Country Tax Leader
Maria Trakadi + 30 210 6781 260
mtrakadi@deloitte.gr

Transfer Pricing Leader
Eftichia Piligou + 30 210 6781 294
epiligou@deloitte.gr

Firm profile

The Greek transfer pricing practice combines a multidisciplinary and practical approach in all phases of the project, from gathering facts, examining all available economic data up to making strategic decisions and implementing solutions aiming at efficiently analyzing data and monitoring transfer pricing policy through innovative processes. The transfer pricing team of Deloitte can provide you with different types of transfer pricing services including transfer pricing documentation, audit defense and planning, including assistance throughout the whole phase of Advance Pricing Agreements (APA), which has been recently introduced in Greece. Given the numerous transfer pricing cases in dispute, introduction of APAs is expected to considerably alleviate the uncertainty regarding arm's length pricing of intragroup transactions. Deloitte Greece can help you get on top of these challenges and pursue a proactive strategy to deal with inconsistent rules or disputes. Deloitte Transfer Pricing team offers consulting expertise throughout the APAs lifecycle as well as design and execution of effective defense strategies regarding transfer pricing audit defense and controversy issues.

EY Building a better working world

Ernst & Young Business Advisory Solutions SA
11th Km National Road Athens-Lamia, 144 51, Metamorphosi, Greece

Your TP Contact:
Dr. Alexandros Karakitis, Tax Partner / Central & South East Europe Transfer Pricing Leader at EY
+302102886317
alexandros.karakitis@gr.ey.com
www.ey.com/gr

EY in Greece is the National Tax Firm of the Year ITR Awards 2011, 2014
and the National Transfer Pricing Firm of the Year ITR Awards 2009, 2010, 2011, 2012, 2014

Gulf Cooperation Council

BAHRAIN

Tax authorities

Ministry of Finance
Building 100, Road 1702, Block 317,
P.O. Box 333,
Diplomatic Area
Manama, Kingdom of Bahrain
Tel: +973 17575000
Fax: +973 17532853
Website: www.mof.gov.bh

Tax rates at a glance

(As of January 2014)

Corporate income	0%(a)
Capital gains	0%
Branch tax	0%
Withholding tax	
Dividends	0%
Interest	0%
Royalties	0%
Technical service fees	0%
Branch remittance tax	0%

Net operating losses (years)	
Carryback	0
Carryforwards	Indefinitely

a) There is no corporate tax for most companies in Bahrain, but income tax is levied on the profits of oil and gas companies at a rate of 46%.

KUWAIT

Tax authorities

Ministry of Finance
Ministries Complex, City of Kuwait 13001
P.O. Box 9, Safat
Tel: +965 22480000
Email: webmaster@mof.gov.kw
Website: www.mof.gov.kw

Tax rates at a glance

(As of January 2014)

Corporate income	15%	Net operating losses (years)	
Capital gains	15%	Carryback	0
Branch tax	15%	Carryforwards	3 (a)
Withholding tax			
Dividends	15%		
Interest	0%		
Royalties	0%		
Branch remittance tax	0%		

a) Article 7 of the bylaws provides that losses can be carried forward for a maximum of three years (as opposed to an unlimited period under the previous tax law) if the entity has not ceased its operations in Kuwait.

OMAN

Tax authorities

Ministry of Finance
PO Box 506, Muscat, Oman
Tel: +968 2473 8201
Fax: +968 2329 5888
Email: info@mof.gov.om
Website: www.mof.gov.om

Tax rates at a glance

(As of January 2014)

Corporate income	12% (a)
Capital gains	12%
Branch tax	12%
Withholding tax	10% (b)
Dividends	0%
Interest	0%
Royalties	10% (c)
Branch remittance tax	0%
Net operating losses (years)	
Carryback	0
Carryforwards	5 (d)

a) Regardless of the extent of foreign participation, companies registered in Oman and permanent establishments of foreign companies are subject to tax at 0% on their first OMR30,000 ($78,000) of taxable income, and at a rate of 12% on their taxable income over OMR30,000. Oil exploration and production companies are taxed at a rate of 55%.

b) This tax applies on certain payments to foreign persons that do not have a permanent establishment in Oman. Companies or permanent establishments in Oman that pay these items must deduct tax at source and pay it to the secretary general of taxation.

c) Royalties include payments for the use of or the right to use software, intellectual property rights, patents, trademarks, drawings, equipment rental, consideration for information concerning industrial, commercial or scientific experience, and concessions relating to minerals.

d) Losses can be carried forward for 5 years. The losses of a previous year must be set off first before using losses of a subsequent year. Companies that are exempt from tax because they are carrying on certain specified activities may carry forward net losses incurred during the first 5 years of exemption for an indefinite period.

QATAR

Tax authorities

Ministry of Economy & Finance
PO Box 83, Al Corniche Road, Doha, Qatar
Tel: +974 4446 1444
Fax: +974 4441 3617
Email: info@mof.gov.qa
Website: www.mof.gov.qa

Tax rates at a glance

(As of January 2014)

Corporate income	10% (a)
Capital gains	10%
Branch tax	10%
Withholding tax	
Dividends	0%
Interest	7%
Royalties	5%
Technical service fees	3%/5%/7% (b)(c)(d)
Branch remittance tax	0%
Net operating losses (years)	
Carryback	0
Carryforwards	3

a) The general tax rate is a flat 10%, with a 35% rate applying to oil and gas operations. Income of Qatari and Gulf Cooperation Council (GCC) nationals who are resident in Qatar is exempt from tax.

b) Technical service fees paid to a non-resident are subject to a 5% withholding tax.

c) A 7% withholding tax applies to commissioners, brokerage fees, directors' fees; attendance fees; and, for other services performed in whole or in part in Qatar.

d) A retention tax of 3% of the contract value or the final payment (whichever is higher) is applied to payments made to a branch registered for a particular project (temporary branch).

SAUDI ARABIA

Tax authorities

Ministry of Finance
Al Malaz, Riyadh, 12641, Saudi Arabia
Tel: +966 405 0000
Fax: +966 405 9502
Email: info@mof.gov.sa
Website: www.mof.gov.sa

Tax rates at a glance

(As of January 2014)

Corporate income	20% (a)
Capital gains	20% (b)
Branch tax	20% / 5%
Withholding tax	
Dividends	5%
Interest	5%
Royalties	15%
Technical service fees	5% / 15% (c)
Branch remittance tax	5%
Net operating losses (years)	
Carryback	0
Carryforwards	Indefinite (b)

a) Only foreign enterprises subject to 20% income tax. Saudi-owned enterprises and Saudi-owned portions of joint enterprises incorporated or registered in Saudi Arabia are not subject to tax. Nationals of GCC countries are treated as citizens of Saudi Arabia for purposes of income tax and Zakat provided resident in Saudi Arabia; otherwise, subject to income tax. Corporate tax on natural gas projects ranges is 30%; and tax on oil and other hydrocarbon production is 85%.

b) Capital gains on the disposal of shares traded on the Saudi stock exchange are exempt if the shares were acquired after 2004.

c) A 15% withholding tax is levied on technical service fees paid to a non-resident between related parties.

d) Tax losses may be carried forward indefinitely provided the minimum amount deducted in each tax year does not exceed 25% of the annual profits as per the tax return. The carryforward of losses is not allowed for companies that had a change in ownership or control of 50% or more, except for losses arising following the change in ownership that meet the criteria for loss carryforwards.

UNITED ARAB EMIRATES

Tax authorities

Ministry of Finance and Industry Building
Old Jawazet Street 433
Abu Dhabi UAE
Tel: +971 2-672-6000
Fax: +971 2-676-8414
Email: webmaster@mof.gov.ae
Website: www.mof.gov.ae

Tax rates at a glance

(As of September 2013)

Corporate income	0% (a)
Capital gains	0%
Branch tax	0%
Withholding tax	
Dividends	0%
Interest	0%
Royalties	0%
Technical service fees	0%
Branch remittance tax	0%
Net operating losses (years)	
Carryback	0
Carryforwards	0

a) No taxes are payable on the income of companies, except for oil and gas exploration and production, and branches of foreign banks. Oil and gas exploration and production companies are taxed at flat rates of 50% in Dubai and 55% in Abu Dhabi. Branches of foreign banks are taxed at rates agreed with the ruler of the Emirate in which they operate, generally at a flat rate of 20%.

The CRAGUS Group

The Cragus Group Limited
Head office:
Level 19, H Dubai Office Tower,
No.1 Sheikh Zayed Road,
Dubai 71985, United Arab Emirates
Tel: +971 (0)4 705 0310
Website: www.cragus.com
Email: contact@cragus.com

Contacts:
Dominic Treays (dtreays@cragus.com)
Matthew Moriarty
Reggie Mezu
Dr Robert Peake

Practice description:
Transfer pricing – OECD, Middle East & Africa.
International corporate tax planning, transactional, and controversy; covering Middle East & Africa.

Hong Kong

Tax authorities

Inland Revenue Department
Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong
Tel: +852 2187 8088
Fax: +852 2519 9316
Email: taxinfo@ird.gov.hk
Website: www.ird.gov.hk

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	DLA Piper
	Quantera

As an international centre of investment and gateway into China and the Pacific, Hong Kong's tax laws have traditionally been slow to adapt to global transfer pricing regulations. However, sluggish compliance is coming to an end because the Inland Revenue Department is becoming more aggressive to keep up with international standards. While transfer pricing regulations have yet to be codified, there is an expectation that businesses will be BEPS compliant.

Firms are expecting Hong Kong to introduce more detailed transfer pricing legislation in the near future. "In order to react, frankly, if we took the 15 action plans, the easiest way is to actually implement further something on transfer pricing compliance," said Cecilia Lee of PwC. "That is something being considered with the IRD at this point."

The introduction of basic transfer pricing regulations and exchange of information agreements proved to be a game changer in the Hong Kong market. "We have a high amount of profits here, a low tax rate, and there was no mechanism really to ask for the information here, and now that's all changed," said Martin Richter of EY. The demand for taxation compliance has risen amid taxpayers' concerns that their business structure may be targeted by the IRD.

Traditionally, incorporated businesses, or invoicing centres, established in Hong Kong to book profits for their trading and manufacturing activities in China and greater-Asia enjoyed safe harbour tax regulations. "They were not regarded as taxable activities in Hong Kong. A few years ago, the IR changed the position, and they removed those safe harbour activities in the practice notes," said Elaine Chen of Clifford Chance. "One of the major attacks by the Inland Revenue is to these invoicing centres."

Hong Kong's first successful APA was completed in June of 2014, two years after regulations were introduced to the market. Richter and the team at EY were responsible for the deal, which involved a bi-lateral agreement with the Netherlands. While most details of the deal remain confidential, firms in the Hong Kong market are positive about the opportunity to increase taxpayer certainty in the rapidly evolving market.

Tier 1

Eunice Kuo heads **Deloitte**'s Hong Kong and China transfer pricing practice from Beijing. The practice streamlines its activities through both China and Hong Kong, and practitioners have capabilities in both jurisdictions. **Patrick Cheung** is the regional leader for Southern China, and operates from Hong Kong. He focuses on banking, insurance, and securities in both territories.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	16.5% (a)
Capital gains	0%
Branch tax	16.5% (b)
Withholding tax	
Dividends	0%
Interest	0%
Royalties	4.95%/16.5% (c)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited

a) Profits tax is levied at a rate of 16.5% (15% for unincorporated businesses) where the company is carrying on business in Hong Kong and the relevant income is earned in or derived from Hong Kong.

b) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

c) Royalty payments made to an unaffiliated nonresident for the use of intangibles in Hong Kong are deemed to be taxable in Hong Kong. The amount deemed taxable is 30% of the gross amount of the royalties paid, resulting in an effective rate of 4.95%. If the royalty is paid to an affiliated nonresident for the use of intangibles in Hong Kong, 100% of the royalty amount is deemed to be taxable, resulting in an effective rate of 16.5%.

The firm is doing much in the way of utilising technology to better service its clients. The team has adopted a data analytics tool, specifically using Chinese tax regulations, to quantify and qualify transfer pricing risk. The tool allows clients to analyse their broader business model across international lines and determine how the effective tax rate can be reduced in each country.

Under their Asia-Pacific International Core of Excellence, led by **Lili Zheng** and **Ryan Chang**, Deloitte hosts experts in many of the top industries globally in its Hong Kong practice. The firm brought experts to Hong Kong to provide Asian clients with real time, personalised advice. Key jurisdictions include Japan, India, the UK, and countries in Southeast Asia.

Cross border and international taxation continues to be in demand and Deloitte said Chinese clients are key to their operations. Areas of increased investment are manufacturing, retail, TMT, and financial services.

EY Hong Kong's transfer pricing practice is headed by **Kenny Wei. Martin Richter**, who joined the firm's Hong Kong office two years ago, brings rich experience in transfer pricing across multiple jurisdictions.

Richter and Wei completed Hong Kong's first successful bi-lateral APA for a client between Hong Kong and the Netherlands. The case formally concluded in June this year, after a nine-month process; half the time originally estimated. More clients have expressed interest in the services for APA's to avoid double taxation amid increasingly stringent regulations.

The firm also emphasises the importance of efficient transfer pricing paperwork between subsidiaries in Hong Kong and China because this area is susceptible to audit. EY has a dedicated team for discussions with the State Taxation Bureau in China, and the head of this department operates from Hong Kong. Financial services transfer pricing partners, **Justin Kyte** and **Jonathon Thompson**, engaged with the OECD on TP documentation and worked with the Capital Markets Tax Committee of Asia to review potential changes to global TP documentation.

In a recent case, the firm successfully worked on behalf of a multinational which booked profits in China then moved the value out. The firm determined which profits were attributable to Hong Kong, and proved that the taxpayer had moved its funds effectively. The firm is also doing more work regarding Circular 16 on excess expenditures and Circular 81 on anti-avoidance.

KPMG in Hong Kong and China continues to show its strength in advising on matters of corporate tax and capital markets & financial products for large multinationals. **Khoon Ming Ho** oversees KPMG's operations in both Hong Kong and China.

Kari Pahlman specialises in fields of high growth including logistics & transport, global consumer product manufacturers, technology, and telecomms. Pahlman advised an international commodities manager on modifying its treasury structure into an in-house bank. KPMG suggested a co-location structure that would optimise tax incentives. The strategy also allowed for multiple time zone coverage for the client's 100+ locations, and resulted in an estimated $10 million to $15 million tax saving for the client.

John Kondos heads the financial services transfer pricing team for Hong Kong, China, and Asia-Pacific. Kondos aided a private equity and investment firm to distribute management and performance fees over multiple jurisdictions. He advises financial institutes ranging from multi-national banks, insurance groups, real estate & private equity and other alternative investment funds.

Cecilia Lee, a former CPA with **PwC** in the US, leads the 30-person-strong transfer pricing team in Hong Kong. Lee works frequently on both Hong Kong and China issues, and has been helping an American company on its acquisition of Chinese business, which involves the complicated issues of how to move IP out of China without incurring capital gains tax and involves a holding structure in Hong Kong. Lee is aided by regional leader **Spencer Chong**.

The well rounded and dynamic transfer pricing team offers a range of services including strategic risk assessment, planning, documentation, controversy, APAs, valuation, training, value chain transformation and transfer pricing integration.

The team is one of the first movers in Hong Kong's new APA market, and is awaiting the completion of several cases.

PwC's global transfer pricing framework complies with both OECD and Hong Kong regulations, and provides clients with robust and coordinated transfer pricing documentation.

Tier 2

While small compared to local accounting firms, **Baker & McKenzie** is not compromised on quality. "Their follow up service is quite closely connected to our needs," a client said.

Baker & McKenzie maintains a strong transfer pricing practice, boasting some of the world's largest banks and manufacturers as its clientele. **Richard L. Weisman** leads the team in both China and Hong Kong. Weisman was responsible for advising Hong Kong listed global supply chain business Li & Fung. His advisory to them consisted of international and customs tax, as well as transfer pricing considerations.

Related party transactions between Hong Kong and China continue to be a major source of work for the firm. The rise of tax treaties in Hong Kong is also increasing the demand for transfer pricing related work. **Michael Olesnicky** and three additional professionals round out the practice, with the support of the team in China. The firm also holds seminars on developments in the transfer pricing market.

Daniel Chan oversees the overall tax practice at **DLA Piper**, and **Windson Li** leads the transfer pricing professionals in both Hong Kong and China. Li is a China corporate and tax lawyer who splits his time between the Hong Kong and Chinese markets. The heavily streamlined practices see a great deal of investment from US firms using Hong Kong as a hub to access the Chinese market.

A bulk of the firm's work continues to be inbound from MNCs looking to access the Chinese market. However, the firm recognises a trend in an increasing number of Chinese firms that are looking to invest outwardly.

Tina Xia also splits time between Hong Kong and Beijing to cater to clients in both jurisdictions. In a recent case, the team advised a US manufacturer to align its China pricing policy with its global practice, keeping in mind related customs and tax implications.

The firm has a large base of telecommunications and media clients and foresees e-commerce becoming an area of increasing demand. As China's growth rate plateaus, the firm predicts they will see more M&A and joint ventures.

Doris Ho was promoted to the partnership in May of 2014 following the departure of Stephen Nelson. Ho provides insight on restructuring and corporate acquisitions.

Specialist transfer pricing firm **Quantera** is led by **Steven Carey**, who has 12 years of experience working in transfer pricing design and documentation across Asia. Carey is supported by four additional staff in Hong Kong, as well as operations in China. Quantera's practice revolves largely around design and planning work for companies headquartered in Hong Kong, in addition to benchmarking and documentation.

The firm caters predominantly to European clientele but is seeing a growing number of Asian companies investing in Hong Kong and China. The firm provides audit guidance for clients operating in China, and aids in defending profit allocations. The team is developing a practice for financial transactions.

Hungary

An audit guide by Zoltan Liptak of EY.

Tax authorities

National Tax and Customs Administration
Large Tax Payers' Directorate
1077 Budapest, Dob utca 75-81
Postal Address: 1410 Budapest, Post Box 137
Tel: +36 1 461 3300
Fax: +36 1 322 19 85
Website: www.nav.gov.hu

1. How does the tax authority select transfer pricing cases to audit?

Besides statutory obligations to conduct a comprehensive tax audit (such as liquidation) entities are selected based on the yearly guidelines issued by the head of the Hungarian Tax Authority (HTA). Tax audits are most commonly conducted as comprehensive audits (covering all taxes) and there are no specific guidelines for transfer pricing (TP) audits. However, in our experience, the following factors are likely to trigger a TP focused tax audit: a negative tax base over several years, profit volatility, large one-off transactions (restructuring) and intercompany transactions of very large volume.

2. How will a company find out it is being audited?

The tax audit officially commences when the representative of the tax authority presents a formal letter of mandate either personally or electronically. In our experience, this is generally preceded by a preliminary consultation (usually a phone call from the authority) during which the company may ask for a brief deferral of the starting date of the audit (a postponement of one or two weeks can usually be achieved).

3. When a company has been notified of audit, what is the first thing it should do?

If transfer pricing is in the scope of the audit (it is in all comprehensive audits), the taxpayer should check if all of its related parties are registered at the authority, if its transfer pricing documentation – as required by Hungarian law – is complete and readily available for the years being audited. Self-revision of years under audit is only possible before the official commencement of the audit.

4. Is there any legislation for general procedure for a taxpayer under audit? If not, what is the recommended practice?

Tax audits are regulated by the Act on Tax Procedure, which includes general rules that are also applied for transfer pricing audits. Although the tax authority has an expert team which specialises in transfer pricing, the current mandate of the specialist team covers the largest taxpayers only. Otherwise, transfer pricing audits are conducted by non-experts, but inspectors receive regular training in transfer pricing technical matters.

5. How does Hungary differ in its approach to TP audit to other countries?

The preparation of transfer pricing documentation is bound to a statutory deadline in Hungary, which is the filing date of the respective corporate income tax return. In the event of a subsequent tax audit, the taxpayer should be able to present the documentation promptly (one should not count on a deferral of more than a few days).

6. How does the tax authority compile its information on a taxpayer for an audit?

The tax inspectors can retrieve a comprehensive background file containing all public financial data, tax returns, resolutions of previous tax audits and other past or ongoing tax procedures (for example, APAs or binding rulings) from the tax authority's internal database. This may be supplemented by further research based on publicly available information and data of taxpayers in the relevant peer group, data received from foreign tax authorities or data collected during a related tax audit. More recently, it is standard procedure to ask the taxpayer for a full electronic copy of its general ledger, invoices and other electronically stored data that are relevant for tax assessment purposes.

7. What are the most likely instances that provoke an audit from the tax authorities?

Although the exact selection criteria are not available to the public, in our experience the most common tax audit triggers are significant changes in profit, persistent losses, large one-off transactions (for example, intragroup restructurings) and related party transactions of very large volume. Also, if transfer pricing was scrutinised in previous audits, it is very likely to come up as a focus area in subsequent audits.

8. What documents are required by the taxpayer during TP audit?

The taxpayer is required to have all its related entities (with which it transacts) registered at the tax authority, and it should have a readily available and comprehensive transfer pricing documentation covering each of the financial years under audit. Furthermore, the tax inspector typically requires the taxpayer to present all of the respective contracts and, if necessary, further supporting data (for example, calculation of transfer pricing adjustments or, in the case of a benefit test, a proof of performance documentation).

9. Are there any restrictions on a company's business during audit?

No. The only restriction applicable to the taxpayer during audit is that it cannot initiate a tax return self-revision in respect of the period(s) being audited.

10. Are there any restrictions on the taxpayer's advisers during audit?

No. As a general rule, the tax audit can only involve the taxpayer's adviser if the adviser is specifically engaged to represent its client in the audit process. Without the taxpayer's authorisation, the adviser is bound by law not to disclose any client or case-specific information to the authority (or to any other third party).

11. How long does an audit last?

As a general rule, a comprehensive tax audit lasts 90 days (or in the case of the largest taxpayers: 120 days). This deadline can be extended once by 90 and 120 days, respectively.

12. What happens after an audit has been completed?

The tax auditors, first issue a summary of their findings and outline their prospective decision (only tax assessment but no sanctions). The taxpayer has the right to file observations to the summary, which are then followed by a final resolution that concludes the audit. The taxpayer may file an appeal to the tax authority against this first instance decision which leads to a potential re-assessment and a financially enforceable second instance resolution. At this point, the taxpayer has two options:

Filing an appeal to the court and requesting a supervisory measure (at the head of the tax authority or the Ministry of National Economy, as applicable).

13. Tips on negotiating with the authorities.

During the tax audit, the inspectors usually communicate their standpoint through a consultation with the taxpayer. It is highly recommended to be a cooperative, helpful partner in the discussion and to answer all reasonable questions. If the question appears to be complex or may have an impact on other group companies (TP is typically such an area), it is perfectly acceptable to ask the inspector for time to consult internally before answering or even to ask for a formal information request in writing if the question seems to touch upon a very sensitive issue. If the authority is suspected to make an assessment, it is recommended to involve external advisers in the discussions with the authority as early as possible, in order to prepare and deploy an effective defense strategy. In our experience, it is much easier to mitigate a potential tax assessment during the audit than after the minutes or the first resolution have been issued.

14. How can a company manage its audit risk?

In the past few years the tax authority has been aggressively pursuing transfer pricing assessments, so thorough preparation is highly advisable. Besides meeting the statutory requirements outlined in points 3 and 8, we recommend monitoring transfer pricing risks across the entire business, by reviewing events and issues that are likely to attract the authority's attention. Once risk factors have been identified, the taxpayer is advised to consult transfer pricing experts to prepare the appropriate defence strategy (for example a description of the factors driving profit volatility). In addition to these steps, the taxpayer can minimise the tax audit risk by filing an APA request. In the current environment, we consider unilateral APAs to be the only solution that is both efficient and significantly more secure than what can be achieved by otherwise proper documentation.

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Mazars
	Taxperience Tandax
3	BDO Magarország
	DLA Piper Horváth & Partners Law Firm
	Jalsovszky Law Firm
	Kajtár Takács Hegymegi-Barakonyi Baker & McKenzie
	WTS Klient

Firms to watch

Ryan

Transfer pricing is becoming a bigger issue in Hungary as the tax authorities increase their focus on it and become more experienced.

"There is a central team [within the authorities] which is involved in all significant or complex transactions once local auditors find any large discrepancies," said Tamas Knebel of Taxperience Tandax.

One adviser said the authorities are particularly active in scrutinising inter-company loans and supply-chain transactions.

Pál Jalsovszky of Jalsovszky Law Firm said: "The tax authorities go very deep and are very well educated and very sophisticated."

As well as the increasing sophistication of the authorities, new guidelines on transfer pricing were issued for taxpayers in the last year.

The guidelines have generally been well-received in Hungary. "The amendments make it easier to handle transfer pricing for companies and advisers," said Riszter.

Advisers hope that the guidelines will also prove useful to judges, because the courts are an area that is lagging behind the progress made by the authorities.

"The judges have a formalistic approach," explained Riszter. "They interpret the rules and regulations in a restrictive way."

Another aspect holding back progress is the frequency with which new laws are introduced in Hungary, and the speed at which they are brought in.

In the words of Pál Jalsovszky: "Something come out of the mind of the Prime Minister and then two weeks later it is the law."

One example is the advertising tax, which was brought-in in just two weeks in the summer of 2014. It has since been criticised by the EU commissioner for digital policy, Neelie Kroes, as an attack on media plurality.

It has been a turbulent year in the talent market in Hungarian tax. After several years where most advisers stayed with the same firms, the pack has been shuffled with several high-profile names switching firms.

This turbulence has been accentuated by maternity leave for some key practitioners and the entry into the market of American firm Ryan in February. The firm took the tax team from Wolf Theiss, led by Balázs Békés, as well as hiring lawyers from other firms.

Tier 1

A comprehensive range of transfer pricing services is offered by the team at **Deloitte**. Key areas for the firm are transfer pricing planning and documentation, avoiding disputes by negotiating APAs, avoiding double taxation and business model optimisation.

The firm is also strong in dispute resolution, where it endeavours to be involved from the beginning of the process and provide support through adjustments, APAs, administrative appeals, mutual pricing agreements and litigation.

The transfer pricing department at **EY** offers a full range of services in Hungary, and is led by Zoltán Lipták, who has almost a decade of experience in transfer pricing. The firm's professionals work across strategy and policy development, governance optimisation and decision-making advice, regional and global assistance in adapting to new documentation requirements and controversy risk assessment, management and reduction.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	10%/19% (a)
Capital gains	10%/19% (b)
Branch tax	10%/19% (c)
Withholding tax	
Dividends	0% (d)
Interest	0% (d)
Royalties	0% (d)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited

a) The 10% rate applies to a tax base up to HUF500 million (approximately $2.3 million), with the 19% rate applying to a base exceeding this amount. Municipalities are permitted to impose a business profits tax of no more than 2% of net sales revenue of an enterprise less the cost of goods sold, material costs and the value of intermediated services incurred by the enterprise.

b) The 19% rate is the standard rate of corporate income tax. The 10% rate applies to the first HUF500 million of taxable income. All taxpayers must pay tax on the alternative minimum tax base if this base exceeds taxable income calculated under the general rules

c) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

d) Dividends, interest and royalties paid to a nonresident company are not subject to withholding tax.

The firm's flagship transfer pricing service is multi-disciplinary operating model effectiveness, which brings together business restructuring, systems restructuring, systems implications, customs, HR, finance and accounting.

Key industries for the firm are automotive, cleantech, consumer products, energy, entertainment, financial services, government and public sector, life sciences, media, oil and gas, mining, private equity, real estate, technology, telecommunications and utilities.

Mihály Gódor is the transfer pricing manager at **KPMG**. Another important figure is senior partner **Csaba László**, who led the department until becoming the head of advisory services at the firm in 2012.

The firm offers transfer pricing reviews, assistance in complying with Hungarian documentary requirements, drafting transfer pricing policies, dispute resolution, arm's-length margin support and also offers training workshops for clients' staff. The firm has German, Israeli, Korean and Japanese desks.

Key industries for the firm are financial services, EU and government, industrial markets, energy, utilities, automotive, consumer markets, telecommunications, media, real estate, leisure and tourism, chemicals and pharmaceuticals.

PwC's transfer pricing team is fronted by **Dóra Máthé**, and offers a full range of transfer pricing services to its clients. Other key names at the firm are partners **Zaid Sethi** and **Eszter Tamási**.

The firm's key services are reviewing existing transfer pricing documentation, preparing new documentation, assisting clients with applying for and negotiating APAs, assistance with the administrative and judicial procedures and disputes, including mutual agreement procedures, implementing transfer pricing policy and reducing the possibility of disputes or double taxation.

The firm serves all sectors, but is particularly active in the automotive industry, communications, energy and utilities, entertainment, financial services, industrial products, pharmaceuticals and healthcare, private company services, retail and consumer goods and technology.

Tier 2

Gabriella Nagy is the head of transfer pricing at **Mazars** in Hungary, in addition to coordinating international transfer pricing activities.

The firm works in several areas of transfer pricing. In documentation, the firm is skilled in revising and updating existing documents, preparing country-specific and master files for both Hungary and other jurisdictions, preparing benchmark analyses, negotiating APAs and working on contractual documents.

The firm is also competent in risk management, determining arm's-length prices to satisfy the tax authorities and advising and representing clients concerning court cases.

Other key names in the practice are **Heléna Csizmadia** and **Sándor Szmicsek**, the head of tax advisory services at Mazars. Szmicsek is also a specialist in transfer pricing and international taxation and edited the Hungarian version of the OECD guide on transfer pricing.

Tamás Knébel remains **Taxperience Tandax**'s sole practitioner and leader. He has been involved in transfer pricing advisory for 10 years, since documentation rules were implemented in Hungary.

During his time working for EY's Hungarian branch, Knébel was an important figure in building the transfer pricing practice. He has also worked as the director of tax for Deloitte Hungary, and as European director of transfer pricing for technology company GE.

The one-man boutique is focussed mainly on designing the transfer pricing policy of clients with respect to restructurings and cross-border expansion.

In one deal, the firm reviewed the transfer pricing practice and documentation of a multinational trading company for the past five years, which entailed looking at complex, high-value transactions.

The firm stands out among boutique tax firms in Hungary because of Knébel's experience in assisting Hungarian companies with their cross-border matters and international expansion. Through the firm, he works with foreign tax consultants coordinating multi-country tax projects. The firm's key industries are energy and IT.

Tier 3

Transfer pricing operations at **BDO Magarország** are led by partner **Zsófia Siegler**, who has also worked as a fiscal attaché representing Hungary at the EU and a direct taxation professional at the Hungarian Ministry of Finance.

The firm offers a wide range of transfer pricing services, including providing assistance to clients in preparing transfer pricing documentation, setting up transfer pricing policies, benchmark studies, monitoring of related parties' networks and negotiation of APAs, and is particularly strong at working in the financial industry.

DLA Piper Horváth & Partners Law Firm's transfer pricing team is jointly led by **Ákos Becher** and **Levente Torma**, and employs two other fee-earners including **Péter Király**, a former EY tax manager and transfer pricing expert who was hired in February 2014.

Over the last year, the firm has worked on the tax structuring of complex transactions for both Hungarian and multinational clients. The team has also been engaged in domestic and international tax restructuring projects including transfer pricing projects and dealt with a growing number of litigation cases.

In one such deal, the firm helped a steel industry client restructure its business model, improving the documentation of the client to be compatible with the requirements of the Hungarian tax authorities.

In another deal, the firm prepared transfer pricing reports on all intra-company transactions for several previous financial years for a company in the pharmaceutical and biotechnology industry. Well-established arguments were required to support the arm's-length nature of the client because of their research and development activity as well as loans, cashpooling and management transactions.

The firm's key industries are car and product manufacturing, pharmaceuticals, commodity trading, energy and financial services.

Founder **Pál Jalsovszky** leads the transfer pricing practice at **Jalsovszky Law Firm**, which employs two other fee earners.

The firm works primarily in representing clients in court against the tax authorities and preparing transfer pricing documentation, but has been involved in applying for an increasing amount APA requests for clients, where Jalsovszky said the firm is "gaining more and more routine".

The firm's key industries are automotive, petrochemical, medical, private equity and intellectual property.

In one deal, **István Csővári** led the preparation of transfer pricing documentation for Freeway Entertainment Kft. The company is engaged in film licensing to distributors and a substantial part of the licensed film rights flow through two Freeway affiliates.

The firm used the transactional net margin method, in conjunction with the Amadeus database, and the cost-plus method, using internal comparable margins, to determine arm's-length prices. The deal was particularly complex because the company acted as both a licensor and a licensee, necessitating a position-neutral approach.

Petrina Makakova, managing director of professional services group TMF, said: "Jalsovszky has been a reliable and highly professional partner of ours for a number of years already. Their support has always been prompt, pro-active, comprehensive and to the point."

The transfer pricing team at **Kajtár Takács Hegymegi-Barakonyi Baker & McKenzie**, is led by partner **Gergely Riszter** and employs one other fee earner.

The firm advises on a wide range of transfer pricing issues, and is able to cooperate with transfer pricing economists from other Baker & McKenzie offices if this is made necessary by the nature of clients' requests.

In one deal, the firm represented consumer electrical products company Helen of Troy in a transfer pricing litigation with the Hungarian tax authority. This case required comprehensive economic knowledge of transfer pricing methodology because the subject matter of the litigation is the appropriate arm's-length mark-up applicable to the client's intra-group transactions.

Zóltan Bodolai of real estate and investment company, Freedompalace, said the company had used the firm's services since 2007, and had "always had good experiences and received high level services".

"I emphasise their legal skills and advice regarding the financial and real estate sector, as well as their ability to gather positive and negative consequences of legal business issues towards their clients," he added.

WTS Klient offers a range of transfer pricing services, including mapping transactions between affiliated companies, preparing and updating transfer pricing records, preparing and reviewing documentation, assisting with regulatory matters and benchmark analyses.

Firms to watch

Ryan is a new entry to the Hungarian market, having arrived in February 2014. The firm is made up of the skeleton of the old Wolf Theiss tax team including its leader, **Balázs Békés**, and has also taken on practitioners from other firms, including senior associate **Mihály Harcos** from Jalsovszky.

The Budapest office is the third American firm Ryan has set up in Europe, with others in London and Amsterdam, and the first in central Europe. Its presence is part of the network's efforts to expand into the European market. The firm is likely to open more offices in other parts of Central Europe relatively soon.

The firm is making strides in transfer pricing, and hired founding partner of transfer pricing networks Altus Alliance and Transfer Pricing Associates **Michel Sijmonsbergen** in June 2014.

He said: "Generally speaking we are competing with the Big 4. We hope to get a significant part of the market both in Hungary and in Europe."

The firm is not ranked in this year's edition of *World Transfer Pricing* due to only recently setting up in the market, with the first few months heavy on administrative work, although the amount of work the firm is getting is growing.

India

Tax authorities

Department of Revenue, Ministry of Finance
Room No 46, North Block
New Delhi, 110001
Tel: +91 11 2309 4595
Email: jsrev@nic.in
Website: dor.gov.in

LEADING FIRMS

1
- Deloitte
- EY
- KPMG
- PwC

2
- BMR Advisors – Taxand
- Grant Thornton
- Sudit K Parekh
- TP Ostwal & Associates

3
- BDO India
- Economic Laws Practice
- GM Kapadia & Co
- K C Mehta & Co
- Khaitan & Co
- Luthra & Luthra
- Nangia & Co

Firms to watch
- Advaita
- Lakshmikumaran & Sridharan

The transfer pricing market has been changing rapidly in India and tax professionals must keep abreast of new regulations, a new administration, a new budget, and an increasingly aggressive tax authority. Practitioners mention that businesses can expect the market to continue to change and develop for some time.

An increase in dispute work and uncertainty over the retrospective nature of audits in recent years has created a demand for APAs in the Indian market. With the first round of agreements being completed, firms are hopeful that taxpayer confidence will go up and demand will increase. Of the 146 applicants, only five taxpayers were granted the agreements, but demand has not slowed; an additional 232 companies have submitted paperwork in the programme's second year.

Increasing sophistication of auditors at the Department of Revenue furthers the demand for APAs. "They [taxpayers] need stability in the tax outflows and thereby there has been a positive response in relation to budget amendments which provide that APA's can now be entered for previous years," says Amit Agarwal of Nangia & Co.

The ITA has also extended the definition of transfer pricing to apply not only to international transactions but to domestic ones as well. The result is that Indian companies are subject to these regulations. The Companies Act, 2013, codified that arm's-length would be used for related party transactions between domestic entities.

"Companies are demerging," says Ramandeep Narula of Amarchand about the effects of new regulations. "Some of the market's largest companies, including telecom giant Vodafone have been undergoing internal restructuring to differentiate between its various businesses – some of which return higher profits than others and are thus more at risk for audits."

The result of such policies is that transfer pricing is an increased area of focus for the tax authorities because it appears to be an easy route to raise rev-

Tax rates at a glance

(As of August 2014)

Corporate income	30%-40% (a)
Capital gains	10%-20% (b)
Branch tax	40%
Withholding tax (c)	
Dividends	0% (d)
Interest	5% - 20% (e)
Royalties	25%
Technical service fees	25%
Branch remittance tax	0%
Net operating losses (years)	
Carryback	0
Carryforwards	8 (f)

These tax rates are as per the relevant provisions of the domestic law. Tax rates prescribed in the tax treaties have not been mentioned above.

a) Corporate income tax rate is 30% for domestic companies and 40% for foreign companies and branches of foreign companies. Taking into account surcharge (applied on slab basis) and cess, the highest rate is 33.99% for domestic companies and 43.26% for foreign companies.

b) For financial year 2014-2015, the applicable tax rate on long-term capital gains derived by a non-resident from the sale of unlisted securities is 10% (plus applicable surcharge and cess). Gains on other long-term assets are taxed at 20% (plus applicable surcharge and cess) with benefit of an inflation adjustment. Short-term gains on listed shares and specified securities, which are subject to the securities transaction tax, are taxed at 15% (plus applicable surcharge and cess), and gains from other short-term assets are taxed at the applicable normal tax rates.

c) If the non-resident does not have a Permanent Account Number, that is, a tax registration number, tax must be withheld at the applicable rate or 20%, whichever is higher.

d) Dividends are not subject to withholding tax. Dividends paid by a domestic company are subject to dividend distribution tax at the effective rate of 19.994%.

e) Interest paid to a non-resident on debt incurred under a loan agreement or by way of issue of long-term infrastructure bonds or by way of issue of long term bonds, by an Indian company or business trust, in foreign currency is subject to a 5% withholding tax (plus applicable surcharge and cess) provided the borrowing is made during the prescribed period, subject to other conditions. The prescribed period for borrowings under a loan agreement and by way of issue of long term infrastructure bonds is July 1 2012 to June 30 2017; in case of borrowings by way of issue of other long term bonds, the prescribed period is October 1 2014 to June 30 2017.

f) Business losses and capital losses may be carried forward for eight years, with short-term capital losses offsetting capital gains on both long and short-term assets, and long term losses offsetting only long-term gains. Other than unabsorbed depreciation (which may be carried forward indefinitely), losses (except losses pertaining to house property) may be carried forward only if the tax return is filed by the due date. Unabsorbed depreciation may be offset against any income whereas business losses may be offset only against business profits.

Source: *Tax advisers from BMR Legal, Taxand India*

enues. Many cases before the review board concern transfer pricing adjustments. "This has been a place of contention the last year," says Neeru Ahuja from Deloitte.

General Anti-Avoidance rules are making their way to India in 2015. However, not all firms feel positive about their implementation. A large number of suggestions have been made, but many practitioners feel that to introduce these rules all at once would make compliance difficult for businesses – and for the tax administration, who would be required to handle the influx of work. The administration is still working to find their feet on the matter.

Alternatively, many firms look forward to having more specific definitions codified so that regulations become clear. "I think they [GAAR definitions] will only be positive… because we have no definition, we see a lot of irrational interpretation," said Rohan Shah of Economic Laws Practice.

Tier 1

Samir Gandhi leads the transfer pricing practice at **Deloitte**, and has seen the practice expand under his leadership. While safe harbour rules were once the main area of focus, the team is seeing a trend in APA applications from firms concerned about the threat of litigation. The firm has developed an APA specialist team, led by **S. Singh** and **Vineet Chhabra**. With the help of Gandhi, the leaders devised one of the first successful APAs in the financial sector on behalf of a private equity firm.

Tarun Arora joined 10 other partners and over 300 professionals in Deloitte's transfer pricing practice and has already made a significant impact on the trade. Arora took on a case for a mining and metals company designing a profit model split regarding tax holidays. The deal involved determining the arm's-length profit attributable to various aspects of the company.

The firm also offers a Global Transfer Pricing Centre under **Parikshit Datta**. Operating in Kolkata and Bangalore, the team specialises in global documentation for financial transactions and the valuation of intangibles.

EY's transfer pricing practice is led by **Vijay Iyer**, who has 18 years of experience in the field, and comes highly regarded by the market for his abilities in TP documentation. The team is one of the largest in the Indian market, and added four new partners over the past year to form a team of 15 fully dedicated to transfer pricing.

In a significant case, the team advised one of the fastest growing telecommunications companies on supply chain structuring and intangible assets kept both in India and overseas. The case involved recognising alternative tax effective remuneration policies and valuation of intangibles such as brand and personnel.

EY's TP capabilities include advisory on governance and decision making, as well as risk assessment and mediation. Their Operating Model Effectiveness programme engages clients to design efficient business structuring taking into account transfer pricing, tax, customs, and financial implications.

At **KPMG**, **Rohan Phatarphekar** leads one of India's largest transfer pricing groups. Phatarphekar has been working in transfer pricing since 1997, several years before TP legislation was even introduced in India, and is highly regarded in the field. He now heads KPMG's practice in seven offices across the country.

Phatarphekar led one of the first APA deals in India for a private equity investment group – one of the first five successful applications. KPMG estimates it has advised over 100 APA cases to date and frequently gets requests from multinationals who have heard of the firm's expertise in this area.

The firm further helps clients to be arm's-length compliant and defends tax structures against the tax authorities. The TP practice estimates that it has advised 1200 clients to date.

New additions to the firm's practice are **Karishma Phatarphekar**, with 17 years of experience in Indian transfer pricing and **Munjal Almoula**, previously with PwC.

Sanjay Tolia has taken over as head of the TP practice at **PwC** after the departure of Rahul Mitra. The firm offers comprehensive services including end-to-end advisory, which provides a holistic approach to business planning and helps customers on projects from beginning stages of determining transfer strategy to actual implementation.

The firm provides general transfer pricing services, including documentation and defence, value chain transformation, risk assessment, and APA strategies. The firm hosts webcasts and publishes thought leadership in various areas of transfer pricing.

Tier 2

Of counsel, **Mukesh Butani**, leads the TP practice at **BMR Advisors – Taxand**. The firm boasts some of the world's largest organisations as clientele. The firm is geographically diverse, with practices across India. **Sanjiv Malhotra** leads the Northern operations from Gurgaon and the western region is covered by **Amod Khare** in Mumbai.

Gokul Chaudhri, Butani, and Malhotra are advising Shell on a TP dispute before the High Court. The case brings up novel questions, including whether adjustments can be made in respect of transactions on capital account, valuation issues for determining price of shares and whether the issuing of shares should be characterised as domestic or international transactions. Other clients include General Motors, Canon, Fujifilm and AirLiquide.

The firm welcomed **Ajit Jain** to its Mumbai office. Jain brings international tax and TP experience and focuses on dispute resolution and the new APA market. **Suchint Majmudar** joined the team in Bangalore and has knowledge of value chain structuring.

Arun Chhabra leads **Grant Thornton**'s team of 56 transfer pricing professionals. The firm offers a range of services including policy making, implementation, documentation, and compliance. It also has litigious capabilities and has successfully defended many cases before the revenue appellate authorities. The team can also advise on APAs.

Fatema Hunaid took on a significant deal on behalf of Aris Global Holdings, a software and life sciences company. In addition to Indian considerations, the deal involved transfer pricing structuring across its entities in the US, UK, Germany, Italy, France and Japan. The project goal was to establish an arm's-length transfer pricing policy consistent with various domestic regulations in each country, while simultaneously remaining compliant from an international perspective.

Rajiv Jain joined the practice in 2014 following the departure of Karishma Phatarphekar.

Sudit K Parekh & Co's transfer pricing practice is headed by **Maulik Doshi**, who has more than 11 years of experience in transfer pricing advisory and strategy. The firm estimates it takes on 225 transfer pricing assignments annually and has defended 70 transfer pricing assessments to date.

The team offers a broad range of services, including assisting in implementation of TP policy, providing benchmarking support, maintaining documentation, issuing of CA certificates, and compliance work including dispute resolution.

In a recent transaction, Doshi and partner **Sudhir Nayak** advised a taxpayer that had used the transactional net margin method (TNMM) to export its products. The authorities rejected the method and proposed additions to the account of overdue receivables. The firm was successfully able to counter the argument and prove that no interest had been accrued.

T.P. Ostwal is the fittingly-named lead transfer pricing partner of his namesake firm **TP Ostwal & Associates**. Ostwal comes recommended by the market for his abilities in disputes. Due to his involvement in several government committees, Ostwal has good rapport with local tax authorities. He is also the author of two chapters for India in the UN Practical Manual on Transfer Pricing for Developing Countries.

The firm pinpoints transfer pricing as a key area of growth, not just in their own practice, but in India as a whole. To boost its abilities, TP Ostwal added an additional transfer pricing professional to his practice, bringing the total number of team members up to 21.

Tier 3

BDO India was previously known by the name MZSK & Associates. The firm joined BDO's global network in April of 2013. Since then, the firm has seen significant growth in both general tax and transfer pricing with the hiring of personnel at both partner and associate level.

Led by **Milind Kothari**, BDO India's transfer pricing practice has enjoyed its new global network and since joining, has expanded its international clientele and expertise base. Kothari has over 31 years of experience in the tax market, and also has expertise in direct transfers. The firm has four key offices in

Mumbai, Delhi, Pune and Hyderabad, and small operations in Auranagabad.

The team recently advised a German private equity group with subsidiaries operating in India. Although they were originally requested to provide general transfer pricing risk assessment, the firm pinpointed a more optimal business structure for the client and the deal developed into a full-fledged due diligence assessment of risks within all of the taxpayer's Indian subsidiaries.

New additions to the firm, both from Haribhakti & Co, are **Pradeep Kasthala** and **Partho Dasgupta** with 10 and 20 years of transfer pricing experience respectively.

Rohan Shah leads the transfer pricing practice at **Economic Laws Practice**, with the help of additional partner **Rohit Jain**. Many of the firm's experts are internationally trained to provide a broad perspective on transfer pricing issues. Economic Laws Practice's strategic value is its ability to advise on international trade and customs. It also desires to be a one-stop firm where clients can get all the transfer pricing work they require, from advisory to litigation. The team works with many of India's most important industries, including technology, automotive, and manufacturing.

Under the new Companies Act, Shah and Jain advised JSW Steel Limited on transactions occurring after is acquisition of a cement company from Heidelberg Cement India Limited. Transfer issues arose between it and its group company, requiring arm's-length and structuring considerations.

Hitesh Trivedi, **Harsh Shah**, and tax leader **Ashwin Damania** are the key partners in **GM Kapadia & Co**'s transfer pricing practice. While the firm services clients across multiple sectors, it sees growth in demand from financial clients such as venture funds, and also from clients in the real estate industry.

The team advised a multinational manufacturing company on its start-up operations supplying goods into India. The taxpayer needed an efficient TP model to align pricing across its international operations. The firm guided them with proper transfer mechanisms between their associated enterprises.

In addition to general tax, **Milin Mehta** also leads the transfer pricing service line of **K C Mehta & Co**. The firm has an office in Mumbai and two in Gujarat state in the cities of Vadodara and Ahmedabad.

The firm formulated global transfer pricing policies across multiple countries for an Indian-headquartered manufacturing company. The taxpayer had subsidiaries across Europe and in the US, thus Mehta had to take into account the tax regulations and documentation requirements in each jurisdiction.

The firm also works in transfer pricing documentation in areas including royalties and fees, capital goods transactions, software development, marketing support, distribution, and personnel transfers.

The transfer pricing practice at **Khaitan & Co** is led by direct tax expert **Sanjay Sanghvi**. The firm's unique business model provides high-end advisory and litigation services for tax and transfer pricing clients. The firm caters to clients in engineering, pharmaceuticals, private equity, and venture capital. The firm has good relationships with domestic Indian clientele, but also gets referrals from global law firms with clients wanting to structure investments into India.

Many clients come from India's dynamic information technology sector, and the firm also has experience working in financial services, pharmaceuticals, and infrastructure. Khaitan & Co advised on the determination of arm's-length prices to be charged to Gujarat Fluorochemicals for a sale made to subsidiaries. The deal involved business model analysis to benchmark international transactions and potential adjustments.

Vikas Srivastava takes the lead of transfer pricing services at **Luthra & Luthra Law Offices**. The team combines lawyers, accountants, and tax specialists to provide holistic services to clients. The firm conducts transfer pricing transactions, represents clients during proceedings, and assists in creating arm's-length compliant documentation.

The firm acted in one of the first transfer pricing rulings in front of the High Court of Delhi. The firm represented client, Global Vantedge, on a transfer pricing audit. After the court ruled in favour of the taxpayer, the Income Tax Department filed an appeal, which was subsequently dismissed by the Supreme Court.

The firm also advised a large Indian media company regarding the classification of its services in accordance with the service tax legislation on the transfer of intellectual property during a demerger.

The transfer pricing practice at **Nangia & Co** has grown to 14 professionals under the leadership of partner **Amit Agarwal**, who joined the firm in early 2014.

The team caters to Nangia & Co's many clients in the oil and gas industry, and takes on complex transfer pricing deals on their behalf. In a notable deal this year, the team helped a major oil and gas rig operator to demonstrate that it had a unique interest adjustment that was warranted because of its debt-equity ratio. The resulting decision decreased taxes from $50 million to $2 million annually.

The firm is also prepared to help in other areas of transfer pricing, including compliance work and documentation, advisory, structuring, litigation, mutual agreements, and APAs.

Firms to watch

Although **Sunil Moti Lala** is the sole partner at the transfer pricing practice of **Advaita**, the firm has made many hires at the associate level in its first year of practice. Lala is a former KPMG partner and is also supported by **Sujit Ghosh**, a founder of BMR Legal. The team has already provided TP services to big names including Maersk Global and Alstom Projects.

The firm of **Lakshmikumaran & Sridharan (L&S)** is a newcomer to *World Transfer Pricing*, but has been working in the Indian tax market for nearly 30 years. 24 tax partners work on various issues within tax across nine offices in India. **Lakshmi Kumaran** is one half of the founding team and the other half is **V Sridharan**, who focuses on customs, excise and service tax, and VAT.

The firm has previously served well-known clientele, including large players in the Chinese market. In a recent deal, the firm did paperwork and litigation on behalf of an aviation company, and has provided TP studies on behalf of various clients. The firm also submitted an APA application for a US-based liquor manufacturer.

BMR Advisors

BMR's Transfer Pricing practice has consistently been rated amongst leading firms.

With the confidence of several Fortune 500 companies, BMR offers on a range of advisory and documentation services and has represented clients on most high profile transfer pricing litigation matters. Our versatility comes from the fact that we deal with a gamut of matters ranging from planning and documentation, restructuring and litigation, APAs and MAPs.

Our senior professionals are thought-leaders in the area of transfer pricing and have been part of numerous in-country and global initiatives.

Key contacts

Mukesh Butani, Of Counsel
mukesh.butani@bmrlegal.in
Amod Khare, Mumbai
Amod.khare@bmradvisors.com
Sanjiv Malhotra, Gurgaon & NCR
Sanjiv.malhotra@bmradvisors.com
Ajit Kumar Jain, Mumbai
Ajit.jain@bmradvisors.com
Suchint Majmudar, Bangalore
suchint.majmudar@bmradvisors.com

Locations: Delhi NCR, Mumbai, Bangalore, Chennai, Pune

BMR Advisors is, exclusively, Taxand India.

Quality tax advice, globally

Taxand

www.taxand.com

KPMG

cutting through complexity

KPMG's Global Transfer Pricing Services practice in India has been consistently ranked Tier 1 Transfer Pricing Firm in India by the International Tax Review. KPMG has a dedicated and diversified team consisting of over 300 transfer pricing professionals including senior ex-Indian Revenue officers which provide integrated advisory, compliance, and litigation support services to over 1,200 clients. KPMG has a strong Advance Pricing Agreement practice handling around 100 cases in the first two years of introduction of the program.

Key Contact:

Rohan K Phatarphekar
Partner and National Leader – Transfer Pricing
KPMG in India
Direct +91 (22) 30902000
Mobile +91 9820036156
Email rohankp@kpmg.com

Nangia & Co has emerged as one of the largest tax and transfer pricing firms in India, with over 170 fee earners and a strong client base comprising of Indian and multi-national clients. In terms of service offerings, the firm offers the entire gamut of corporate tax, transfer pricing, transaction tax, indirect tax and regulatory services to its clients.

The firm has a dedicated transfer pricing practice team comprising of Chartered Accountants, MBAs, CFAs, Economists, and Legal Experts who focus on delivering quality work and sound transfer pricing solutions to a wide range of industries including oil and gas, e-commerce, hospitality, automotive, technology, media and communications, industrials and manufacturing etc.

The transfer pricing division assists many MNCs and Indian Corporations in addressing transfer pricing issues ranging from annual transfer pricing compliance to the development and implementation of economically justifiable transfer pricing policies apart from assisting in defending their transfer pricing policies before revenue authorities.

The transfer pricing service offerings of the firm is as below:

- Transfer Pricing Documentation;
- Transfer Pricing Planning
- Business model optimization
- Audit Defense and Litigation Support
- Advance Pricing Agreement
- Mutual Agreement Procedure

Key Contacts:

Rakesh Nangia, Managing Partner
Nangia@nangia.com

Amit Agarwal – Partner, Transfer Pricing
amit.agarwal@nangia.com

Nangia & Co
Suite – 4A, Plaza M-6, Jasola, New Delhi-110 025. INDIA. **Ph.:** +91-11-4737 1000,
Fax: +91-11-4737 1010
Website: www.nangia.com
New Delhi | Mumbai | Dehradun | Singapore

PwC
PwC House, Plot 18/A
Guru Nanak Road
Bandra (W)
Mumbai 400050, India
Tel: +91 22 66891000
Fax: +91 22 66891881

Contact: Sanjay Tolia
Transfer Pricing Leader
Email: sanjay.tolia@in.pwc.com

Your agenda is our Agenda

In globalised environment, cross-border transactions are increasing and transfer pricing outcomes need to be aligned with business objectives. Significant increase in transfer pricing disputes and a global focus on base erosion and profit shifting has ensured transfer pricing is a focus area for all stakeholders. It is our view that strategic dispute management (such as through APAs or alternative dispute resolution techniques) on a global basis will become increasingly crucial in companies' efforts to sustain their global transfer pricing strategies. Our team of 375 specialists can help you manage your transfer pricing risks and identify opportunities for sustainably improving the tax efficiency of your business.

Indonesia

Tax authorities

Directorate General of Taxes
Gedung Utama, Lantai 16, Jalan Gatot Subroto, Kavling 40-42,
Jakarta 12190 P.O. Box 124
Tel: +62 21 5250208, +62 21 5251509
Fax: +62 21 584792
Email: pengaduan@pajak.go.id
Website: www.pajak.go.id

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Danny Darussalam
	Hadiputranto Hadinoto & Partners
	MUC Consulting
	SF Consulting
3	PB Taxand
Firms to watch	
	VDB Loi

Financial management has traditionally been difficult in Indonesia, particularly given a tradition of low tax compliance. The country often has trouble reaching its tax revenue target, and fell short of this target in eight years out of the past 10. The 2014 State Budget decreased its tax revenue target earlier this year from $94.9 billion to $91.6 billion.

Despite this, the government sees transfer pricing as a legitimate way to improve the tax base and collect much needed revenue. The authorities are working to educate themselves on the rapidly changing tax environment. "They are not yet fully equipped to deal with transfer pricing, in fact they only started training up dedicated tax auditors for transfer pricing," says Awan Hoo of KPMG.

The election in July of 2014 also injected speculation into the tax market. With Joko Widodo emerging victorious as President, the future investment climate will rely on what policies his administration puts into place.

Transfer pricing audit guidelines were most recently amended in 2013 and came into effect in July of that year. Indonesia is not an OECD member, but the new guidelines largely align with OECD prescribed techniques. These regulations have played a part in the surge in demand for transfer pricing advisory in Indonesia.

Advance pricing agreements and mutual agreement procedures were codified into law four years ago, and the market is reflecting development in this area. However, many clients are still sceptical of the process and believe it exposes them to risk. Although law stipulates that tax authorities cannot use information they learn during the APA application process to apply future taxes, some taxpayers believe this will not be strictly adhered to. "They are wanting an APA but are still afraid if the APAs fail, they will have bigger issues," explains Imam Subekti of MUC consulting.

Businesses dealing with royalties and other intangibles, as well as those using debt structures are at risk for a transfer pricing audit. Tax authorities are also looking carefully at high-volume manufacturers. Professionals are hopeful that increased sophistication of the tax authorities will improve the situation. "The tax office is trying to impose additional income tax revenue from the TP issues. On the other hand, they are more negotiable," Subekti explains.

Tax rates at a glance

(As of August 2014)

Corporate income	
Revenue >IDR4.8 billion ($409,000) per annum	25% (a)
Capital gains	25%
Branch tax	25%
Withholding tax	
Dividends	10%/20% (b)
- Individual	10%/20%
- Corporate (with share ownership of <25%)	15%/20%
Interest	15%/20% (c)
Royalties	15%/20% (d)
Technical service fees	2%/20% (e)
Branch remittance tax	20%
Net operating losses	
Carryback	0
Carryforward	5 years

a) Resident corporate taxpayers with gross revenue up to IDR50 billion receive a 50% reduction in the corporate tax rate imposed on taxable income with annual gross revenue of up to IDR 4.8 billion.
Individual taxpayers and companies that are not yet operating commercially whose gross turnover is more than IDR4.8 billion are imposed with the regular tax rates (5% to 30% for individual taxpayers and 25% for corporate).

b) The dividend paid by a domestic corporate taxpayer to a nonresident taxpayer is subject to a 20% withholding tax (which is considered a final tax) unless the rate is reduced under a tax treaty. A 10% withholding tax is imposed on dividends paid to a resident individual taxpayer; the withholding tax is final.

c) The interest paid to a nonresident taxpayer is subject to a 20% withholding tax, unless the rate is reduced under the tax treaty. The interest paid by a domestic taxpayer to a resident taxpayer is subject to a 15% withholding tax, which represents an advance payment of tax liability.

d) A 20% withholding tax is imposed on royalties remitted abroad, unless the rate is reduced under a tax treaty. For tax purposes, royalties refer to any charge for the use of property or know-how in Indonesia, as well as the transfer of a right to use a property or know-how in Indonesia. Royalties paid by a domestic taxpayer to a resident taxpayer are subject to a 15% withholding tax, with the payment representing an advance payment of tax liability.

e) A 2% withholding tax applies on gross payments made by a domestic taxpayer to a resident taxpayer for technical, management and consulting services and rentals (except for land and building rentals). Under domestic tax law, a 20% withholding tax is imposed on technical service fees remitted abroad. The rate may be reduced or exempted under a tax treaty, subject to standard rules.

f) A 5% lower rate will be imposed on domestic publicly listed corporate taxpayers with a minimum of 40% of the total shares traded in the Indonesian capital market.

Source: Tax advisers from PB Taxand, Taxand Indonesia.

Hoo said "predictions are very dangerous things in Indonesia because things don't usually go as you expect them to go".

Tier 1

Deloitte maintains a reputable transfer pricing practice and continues to service multinational clientele amid the transition of **Carlo Nivarro** into his role as head of the transfer pricing practice. The firm credits the surge in its revenue to growing demand for its TP services from clients who are eager to proactively comply with new paperwork requirements.

Nivarro is leading the firm on a deal to develop the first bi-lateral APA agreement between Indonesia and

Japan on behalf of a global Japanese distribution company.

Roy Kiantiong is Deloitte's second transfer pricing partner. Kiantiong advised one of Indonesia's largest producers of methanol on the taxation of profits obtained outside of Indonesia. The deal involved assessing the profitability of the foreign branch for the purposes of determining arm's-length profitability.

Jonathon McCarthey completed his first year as transfer pricing head for **EY**'s Indonesia affiliate. He manages the team of nearly 30 partners which comprises one of the largest TP teams in Indonesia. McCarthey brings a wealth of international experience, and helps with the heavy load of transfer pricing adjustment work. The firm also assists taxpayers in paperwork for MAPs and APAs.

Rahmanto Surahmat is recommended by the market for transfer pricing dispute work and cross border structuring. The team won a TP case on behalf of a client that had previously used another consultant with an unsuccessful result. The team came into the deal rather late and argued against an assessment of $45 million. The assessment was entirely dropped.

Iwan Hoo heads **KPMG**'s developing transfer pricing practice. While the firm's primary deals concern documentation issues, dispute resolution is becoming an increasingly important area of practice. The firm aids clients with rejection and appeal processes and helps them to understand the new stringent Indonesian transfer pricing regulations. KPMG pinpoints resources, financial and consumer markets as major industries of growth.

In addition to Hoo, 12 professionals are fully dedicated to KPMG's TP practice. Indonesian regulations were only issued in 2010, and although the laws leave room for interpretation, KPMG saw a potential area of growth and began offering services to the market including TP documentation, planning, supply chain restructuring, and dispute resolution.

The firm's bread and butter has been documentation but it is seeing more work in rejection and appeal cases, and well as APAs. They are advising large multinational clientele through APA applications.

The transfer pricing team at **PwC** offers a range of transfer pricing services. The firm can help clients develop a TP strategy and prepare documentation; provide supports in audits, objections, and appeals; and recommend rearrangement of related party transactions to mitigate the change of an audit. **Ay Tjhing Phan** is the head of both general tax and transfer pricing services.

Tier 2

Romi Irawan and partner **Danny Septriadi** lead the transfer pricing division of **Danny Darussalam**. The two are the primary contributors of two transfer pricing books written and published in Bahasa in 2008 and 2013. The English language versions are set to be released in November of 2014 and cover transfer pricing ideas and strategy in Indonesia.

The group is chosen by both local and international clientele. The firm estimates they have produced 221 transfer pricing reports and about 90% of their cases end in the audit stage, saving their clients the time and expense of litigation.

The firm has seen several deals in which they were able to successfully reverse the requirement of the tax authority that the taxpayer bear the burden of proof in tax cases. The group also holds informational seminars and courses for both private and public transfer pricing personnel.

Hadiputranto Hadinoto & Partners is the name of the partner firm of Baker & McKenzie in Indonesia.

Wimbanu Widyatmoko leads both the general tax and transfer pricing operations. Widyatmoko provides tax planning for both inbound and outbound investors, and has argued cases before the tax authority. He also focuses on trade matters including competition and consumer protection laws.

Ponti Partogi provides services in the area of corporate tax including new operation establishment, M&As, spin-offs, and takeovers. Rounding out the team of three is **Mochamad Farchi**, who works in tax and trade practice.

The firm is involved in several ongoing deals on behalf of Indonesian clients concerning reviews and appeals relating to transfer pricing audits with the tax authorities.

Wahyu Nuryanto runs the transfer pricing operations at **MUC Consulting**. Nuryanto is recognised by the market as an expert in TP documentation and disputes. Over the past year, the firm has aided more than 100 clients in multiple transfer pricing service lines including TP documentation, tax audit, and TP appeals.

Top industries for the firm include automotive, chemicals, trade, and financial services. The firm undertook work for a large automotive company operating in Indonesia that found itself under a transfer pricing audit because of new regulations that required supplementary paperwork. The difficult matter resulted in MUC obtaining a refund of 95% of the audit amount; a $15 million saving for the client.

The firm has also obtained favourable rulings in other deals involving audit defence and appeals within the Tax Court.

The past year has brought significant growth to **SF Consulting**. The firm became a member firm of global tax network Crowe Horwath in November 2013. The tax practice remains under the leadership of **Sri Wahyuni Sujono**, a tax attorney and Chartered Financial Consultant. Sujono is supported by second partner **Ratna Febrina**, a professional with more than 10 years of experience.

The firms' niche is the palm oil industry – a key area of Indonesia's economy. The firm provided TP documentation for six subsidiary companies of Pacific Group, a producer of oil and bar soap. Because of the unique nature of the business, Pacific Group's supply chain activities, such as refinery, packaging, and distribution, are all undertaken by different entities. SF Consulting analysed the unique business model and advised on foreign exchange, export taxes, and risk of incurring irregular expenses.

Tier 3

Now in its fifth year, **PB Taxand**'s transfer pricing practice saw an influx of business because of the new audit guidelines. Since 2009, the firm has produced over 300 transfer pricing reports for local and international clients. The firm boasts 25 transfer pricing specialists with experience in consultation, verification, audit, objection and appeals.

Sole transfer pricing partner **Permana Adi Saputra** continues to standout. He led a team that aided a large infrastructure company in determining whether their payments used the correct application of the arm's-length principle.

Tax leader **Prijohandojo Kristanto** formed advisory teams for providing new regulation guidance to the tax authorities. The first team was led by Saputra and guided the authorities through common TP issues, the second team involved BEPS advisory.

Firms to watch

The namesake of partners **Jean Loi** and **Edwin Vanderbruggen**, **VDB Loi** entered the market in 2012 with partners located in several Southeast Asian countries. Their Indonesian office is headed by **Graham Garven**. Garven has more than 20 years of tax experience, 16 of which were earned practicing Indonesian tax.

Along with two additional professionals, Garven primarily takes on TP planning and documentation. This past year he has assisted in the defence of inter-company transactions for a client that had no formal TP documentation.

DANNY DARUSSALAM
Tax Center

DANNY DARUSSALAM Tax Center
Menara Satu Sentra Kelapa Gading
5th Floor (Unit #0501) & 6th Floor
(Unit #0601 – #0602)
Jl. Bulevar Kelapa Gading LA3 No. 1
Summarecon – Kelapa Gading
Jakarta 14240 – Indonesia
Tel: +62 21 2938 5758
Fax: +62 21 2938 5759
Email: service@dannydarussalam.com
www.dannydarussalam.com

Transfer Pricing Services
Romi Irawan
Tel: +62 21 2938 5758 Ext. 136
Email: romi@dannydarusalam.com

Tax Compliance and Litigation Services
David Hamzah Damian
Tel: +62 21 2938 5758 Ext. 161
Email: david@dannydarussalam.com

Tax Research and Training Services
B. Bawono Kristiaji
Tel: +62 21 2938 5758 Ext. 150
Email: kristiaji@dannydarussalam.com

DANNY DARUSSALAM Tax Center (DDTC) is an Indonesian tax firm, specializing in transfer pricing services, international taxation, general tax compliance & litigation services, and tax research & training services. Supported by qualified professionals with multidiscipline background, we delivers broad range of transfer pricing services, including: transfer pricing documentation, advisory, setting transfer price, transfer pricing risk management and planning, public advocacy, policy considerations, APA, MAP, audit defense, litigation, and intercompany agreements drafting. Up to date, we serve more than 160 multinational companies and most of them are leading companies in major industries such as Automotive, Oil and Gas, Mining, Plantation and Chemicals.

SF Consulting
Tax & Business Solutions

Menara Karya 21st Floor
Jl. HR. Rasuna Said Block X-5 Kav. 1-2
Jakarta 12950
Indonesia
Phone: +62 21 57944548
Fax: +62 21 57944549
Website: www.sfconsulting.co.id
www.crowehorwath.co.id
Contact:
Sri Wahyuni Sujono
sri.wahyuni@sfconsulting.co.id

Member of Crowe Horwath International

Ireland

While Ireland has a Code of Practice for Revenue Audit, it does not yet have any specific legislation or guidance to deal with transfer pricing audits. However, in November 2012, Revenue announced details of a new Transfer Pricing Compliance Review (TPCR) programme, under which Revenue will monitor the degree of compliance with Ireland's new transfer pricing rules (introduced in 2010). A TPCR is not a Revenue audit or investigation. By Martin Phelan and Aoife Garry of William Fry Taxand.

Tax authorities

Collector-General's Division
Sarsfield House, Francis Street, Limerick
International callers: +353 61 488000
Email: cgcustserv@revenue.ie
Website: www.revenue.ie

1. How does the tax authority select TPCR / audit cases?

Revenue uses a random selection process for TPCR and guidance provides that the initial focus will be on "a number of cases selected across the range of large companies".

Audits can be risk-selected or random. REAP (risk evaluation analysis and profiling) is Revenue's risk analysis system and is designed to analyse a vast amount of data that Revenue has on tax and duty cases and to attribute scores based on the level of risk they pose. It prioritises cases based on risk and focuses on a taxpayer's track record rather than just single returns. Revenue also periodically examines cases from specific economic sectors.

2. How will a company find out it has been selected for TPCR? What is the official notification?

Where a company is chosen for a TPCR, it will receive a letter from an authorised officer of Revenue requesting that the company/group undertake a self-review of their transfer pricing compliance. The letter of notification will relate to a specific accounting period and a copy of the letter will also be issued to the company's tax agent.

3. When a company has been notified of a TPCR, what is the first thing it should do?

On receipt of a notification letter, the company has a period of three months within which to conduct the self review of its transfer pricing compliance and to provide a report to Revenue. Therefore, if the company does not already have a transfer pricing report or study, it should contact its tax adviser as soon as possible to arrange for the work to be completed.

4. Is there any legislation for general procedure for a taxpayer subject to a TPCR / audit? If not, what is the recommended practice?

There is no legislation in relation to the procedure for a taxpayer to follow on its selection for TPCR. According to Revenue guidance, the information which should be contained in the report provided to Revenue in response to a TPCR is as follows:

- The group structure;
- Details of related party transactions entered into by the Irish entity, specifying the type of

the transaction(s) and the associated companies involved;
- The pricing policy and the transfer pricing methodology for each type of related party dealing;
- The functions, assets and risks of the parties to the transactions;
- A listing of the documentation available and reviewed in the context of the self review; and
- The basis for establishing that the arm's-length standard has been satisfied.

5. How does Ireland differ in its approach to TP audit to other countries?

Ireland differs from other countries by virtue of the fact that it adopted an incremental approach to transfer pricing compliance consisting of an initial self-review with escalation to full audit or investigation (which is generally costly and time-consuming) only where necessary.

6. How does the tax authority compile its information on a taxpayer for a TPCR / audit?

Revenue gathers intelligence from a number of sources including the REAP system, results from other enquiries and audits in a specific sector, and through screening corporate tax returns.

7. What are the most likely instances that provoke a TPCR / audit from the authorities?

Items in corporate tax returns which might provoke a TPCR / audit include management charges, licence fees and business restructurings.

8. What documents are required by the taxpayer during TPCR / audit?

Companies that come within the scope of the Irish transfer pricing legislation are required to have "such documentation available as may reasonably be required to demonstrate compliance with the legislation". Although not intended to be a prescriptive list of the documentation required to show compliance, Revenue guidance states that the minimum documentation should clearly identify:

- Associated persons for the purposes of the legislation;
- The nature and terms of transactions within the scope of the legislation;
- The method or methods by which the pricing of transactions was arrived at, including any benchmarking study of comparable data and any functional analysis performed;
- How that method has resulted in arm's-length pricing or, where it has not, what adjustments were made and how the adjustment has been calculated;
- Any budgets, forecasts or other papers containing information relied on in arriving at arm's-length terms etcetera or in calculating any adjustment; and
- The terms of relevant transactions with both third parties and associates.

The actual documentation required will be dictated by the facts and circumstances of the transaction and Revenue accepts that the manner of meeting the requirement for documentation may take account of the cost and administrative burden involved. Revenue will accept documentation that has been prepared in accordance with either the OECD Transfer Pricing Guidelines or the code of conduct adopted by the European Council under the title EU Transfer Pricing Documentation. Revenue will also accept documentation prepared in another jurisdiction which supports the Irish arrangement provided such documentation is in English.

9. Are there any restrictions on a company's business during TPCR / audit?

No.

10. Are there any restrictions on the tax payers advisers during TPCR / audit?

No.

11. How long does a TPCR / audit last?

A company has three months from the date of a TPCR notification to conduct its self-review and provide the report to Revenue. Revenue has not stated a time within which companies should expect to receive the post-review letter (see below). If the matter is escalated to audit, it could run for several months, depending on the extent of the audit and the capacity level within Revenue.

12. What happens after a TPCR has been completed?

Once the TPCR report has been submitted to Revenue, a post review letter will issue from Revenue to the company. This letter will either:

- State that Revenue has no further enquiries on the self review performed; or
- List issues for consideration or discussion that will also be addressed within the TPCR process.

In some instances other options may be considered, including a transfer pricing audit. Where a case escalates from TPCR to a transfer pricing audit, an authorised officer will issue an audit notification letter. As the TPCR does not constitute a Revenue audit or investigation, the company/group has the opportunity to make an Unprompted Qualifying Disclosure at any time during the TPCR process and before the issue of an audit notification letter.

13. How can a company manage its audit risk?

To avoid detection under the REAP system, companies should ensure they are fully compliant, file tax returns within the prescribed time limits and pay tax on time. Companies should also review their transfer pricing policies and monitor certain key indices such as industry margin profiles on an on-going basis.

Martin Phelan (martin.phelan@williamfry.ie) and
Aoife Garry (aoife.garry@williamfry.ie)

LEADING FIRMS

1	Deloitte
	KPMG
	PwC
2	EY
	Matheson
	William Fry – Taxand
3	A&L Goodbody
	Grant Thornton
	Mason Hayes & Curran

The Irish economy was hit particularly hard by the financial crisis and has embarked on the road towards recovery, by engaging the international market while domestic business continues to struggle. Although transfer pricing regulation remains nascent in Ireland, it has become the focus of attention due to the rise of US inversions. Such tax avoidance schemes have attracted negative press from a variety of parties, including a committee from the German Bundestag reporting on the Irish recovery plan. Advisers were keen to note that this was not the only type of business in Ireland.

"The domestic market is still stagnated, banks are still not lending. However, the international market is operating as if there was no recession growth," said Martin Phelan of William Fry. "The tech, gaming, application development, and aircraft leasing industries are all very busy outside of reverse mergers."

The trend of US-led inversions also presents the opportunity for Ireland to step out of the shadow of its largest trading partner – the UK – and position itself as a vital link in the international structuring network. Ireland's exit from "recession, is linked to its status as an acceptable location to base business, though I expect there will be pressure arising from BEPS on other jurisdictions", said John Gulliver of Mason Hayes and Curran.

Particularly, Ireland has the advantage of being rules-based as a jurisdiction and advance rulings are unobtainable. This is very transparent from a tax perspective, and aims to prevent individual businesses being able to establish preferential rates in the economy. Advisers were keen to rebuke the notion of being a tax haven and were keen to establish that there is great diversity within the companies that choose to base themselves within Ireland.

"There is a difference between the perception of the situation and the reality," said Dan McSwiney, head of transfer pricing at EY. "There is lots of substance, Google and Apple have thousands of employees in Ireland."

It is possible that companies with substance will choose to remain in Ireland as BEPS loopholes are gradually closed elsewhere. This year some digital companies with operations in Luxembourg chose to relocate to Ireland following changes to VAT legislation in Luxembourg. Notably, these companies already had substance in the Irish jurisdiction, which made the move relatively simple. There is hope that entities currently paying low effective tax in Ireland will choose to continue to base themselves in Ireland and attract others going forward.

Regarding aggressive tax avoidance, advisers do not believe there is an open appetite for this anymore and find themselves incorporating strict ethical guidelines into their strategies.

In terms of future legislation, advisers are currently awaiting the draft chapter on intangibles. "This will be a directional change in intangibles," said McSwiney. "Clearly BEPS will have an impact, given the nature of the market. There is more of an emphasis on having the right substance in the right places to be able to support profits."

Tier 1

Conor Hynes is the new head of transfer pricing at Deloitte Ireland following the retirement of Paul Reck. The core team leverages the knowledge of industry and former-revenue experts, and includes one director, two senior managers and two assistant managers. In response to the growing transfer pricing market created by initiatives such as BEPS, the firm has sought to develop bespoke transfer pricing services, including global documentation, debt pricing

Tax rates at a glance

(As of September 2014)

Corporate tax rate	12.5%/25% (a)
Capital gains	33% (b)
Branch tax	12.5%/25% (c)
Withholding tax	
Dividends	0%/20% (d)
Interest	0%/20% (e)
Royalties	20% (f)
Net operating losses (years)	
Carryback	1
Carryforward	Unlimited

a) The standard corporation tax rate on trading income is 12.5% and on non-trading income 25%.
b) A 40% rate applies to disposals of certain life insurance policies.
c) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.
d) Dividends and other profit distributions made by a resident company to a nonresident generally are subject to a 20% withholding tax. However, the rate can be reduced to 0% if certain formalities are met and (1) the recipient is an individual resident is a treaty country or an EU member state; or (2) the recipient is a company and the following requirements are met: (i) the company is resident in a treaty country or an EU member state and is not under the control of a person or persons who are Irish tax residents; or (ii) the principal class of shares of the company or of another company of which it is a 75% subsidiary or is regularly traded on the stock exchange in a treaty country or an EU member state.
e) Interest paid to a nonresident company is subject to a 20% withholding tax unless a lower rate applies under a tax treaty. A number of domestic exemptions operate to exempt interest from withholding tax where it is paid to an EU/tax treaty resident recipient.
f) A 20% withholding tax applies to patent royalties or "pure income profit" paid to a nonresident entity. This tax may be reduced or eliminated by an applicable tax treaty or where the payments qualify for application of the EU interest and royalties directive.

and tax audit services. These complement the existing liaison with consulting and legal services which delivers broader structuring and optimisation advice. The practice lists pharmaceutics, technology, media, financial services, consumer business and real estate amongst its specialities, and has been active in these areas during the last year. Work has included a documentation review for a pharmaceutical manufacturer, and a review of the implications of changes to BEPS and OECD guidelines on the IP of an Irish holding company. Reck also led on the preparation of transfer pricing documentation for an international private equity real estate investment group, with operations in Ireland and Europe.

KPMG's transfer pricing practice rivals that of PwC and Deloitte in competing for the largest tax practice in Ireland. The team is led by **Eoghan Quigley**, whose transfer pricing experience has evolved from his M&A focus and **Juergan Raab** who joined from the German firm, NERA, in August 2013. In total, the team consists of five partners who can draw upon the wider tax team and KPMG network for support in their transfer pricing work. As is the nascent nature of the market in Ireland, much of the transfer pricing work also has other tax aspects requiring expert knowledge from around the firm. KPMG can provide the full spectrum of transfer pricing services, including the design and implementation of policy, compliance services and dispute resolution.

Gavan Ryle heads the transfer pricing team at **PwC** Ireland, which also includes directors **Barbara Dooley** and **Ronan Finn**. Ryle has been with PwC since

1993, including a spell in the Sydney office. As this suggests, Ryle has built his transfer pricing practice on his wider tax experience which helps the team work with other service providers in PwC to deliver their solutions. Solutions include business modelling, transfer pricing audits and transfer pricing documentation.

Tier 2

Newly appointed partner **Dan McSwiney** is part of the new generation of dedicated Irish transfer pricing partners, and brings 17 years of experience to the role. **EY**'s transfer pricing practice has grown significantly in recent years and is now eight-people-strong. "Whilst we have only had a formal transfer pricing market for a few years, it has been an exceptionally busy time and we have performed disproportionately well compared to other service lines," said McSwiney. Anticipating the impact of BEPS, the team seems prepared to respond to the increasing demands for their services. In terms of workload, the practice is aligned with the market in its focus on planning, but anticipates the rise of documentation services in future years.

Matheson has been involved frequently with transfer pricing, before and after the introduction of transfer pricing legislation in Ireland. The first clients in transfer pricing came from Japan, and as such Matheson's transfer pricing practice is unusually large and experienced in the Irish context. Matheson's work reflects the Irish market's reliance on international finance and continues "to build the practice on international investment", said head of tax, **Turlough Galvin**. The team consists of two partners, and four specialists in transfer pricing. The firm is distinctive; it is one of the few firms in Ireland with dedicated transfer pricing partners. In the past 12 months the practice has seen a global rise in transfer pricing audits. The firm has advised a number of clients on seeking correlative relief for transfer pricing adjustments, and increasingly advising clients on their obligations in relation to providing information, which Irish Revenue is seeking to exchange at a treaty partner's request. With more companies choosing to locate elements of their supply chain in Ireland, Matheson has advised a number of clients on the structuring of this. Specific deals this year have included the work of **Joe Duffy** on the centralisation of treasury activity as part of a $5 billion debt issuance; an exchange of information deal between a number of EU jurisdictions involving **Catherine O'Meara**, requiring analysis of OECD commentary; and, an APA for a large pharmaceutical multinational.

As a member of the Taxand network **William Fry – Taxand** has access to the global transfer pricing and business restructuring service line that provides dedicated transfer pricing specialists. As part of this network, the team regularly works with Taxand USA, UK and France on cross-border projects and bids for work on a global basis. The transfer pricing team is headed by **Martin Phelan**, who was joined by partner **Shane Wallace** this year. Wallace brings more than 10 years of experience from Deloitte, through which he will contribute to the transfer pricing practice. The team grew further with the addition of **Padhraic Mulpete** in April 2014, who joins as an associate and brings the team to five fee earners this year. Transfer pricing work has been strategically important to the firm in recent years, as "although the domestic market has been slow to pick up, the international market is operating as if there was no recession", said Phelan. The practice has been involved in a variety of transfer pricing work in the past year, including share valuations and supply chain restructuring, which is becoming an increasingly common type of work. The firm provides economic benchmarking in relation to transfer pricing and lists its industry specialities as technology; pharmaceutics; financial services and media.

Tier 3

Peter Maher heads the transfer pricing department of **A&L Goodbody**. Although the transfer pricing market is still relatively nascent, the four partners and their team of seven have been engaged in several deals of note this year. This includes the opening of US operation in Ireland, and advising a European pharmaceutical company in relation to a MAP. "This year has been busier for us," said Maher. "There is a continuing improvement in both domestic and international markets, and we have advised on a broad range of transactions, including much-publicised US inversions."

The transfer pricing practice of **Grant Thornton** is led by **Peter Vale**. Vale has significant structuring and reorganisation experience from his time spent with a Big 4 firm. The single partner team has grown this year, with two industry specialists joining from the airline and telecoms industries. This is especially significant because of the volume of aircraft finance work in the jurisdiction. Furthermore, the firm has also recruited a former KPMG manager. This year the team has assisted in setting up a management services company to be headquartered in Ireland to result in a lower effective tax rate for the group in addition to a transfer pricing review and benchmarking study.

Mason Hayes and Curran operates a boutique transfer pricing practice headed by partners **John Gulliver** and **Robert Henson**, following the departure of **Amelia O'Beirne** to A&L Goodbody. While this was unfortunate, the departure reflects the emerging stature of Mason Hayes and Curran in the Irish transfer pricing market. O'Beirne was replaced by **Jean Scally**, and Gulliver suggested that this had not affected the growth of their practice. Henson and Gulliver have advised on a number of deals in the past year which collectively value hundreds of millions of dollars. The firm is increasingly involved in group reorganisations, wishing to exploit Ireland as a global intellectual property hub, often working in conjunction with global US and UK firms.

Quality tax advice, globally

Taxand provides high quality, integrated tax advice globally. Our tax professionals grasp both the fine points of tax and the broader strategic implications, helping you mitigate risk, manage your tax burden and drive the performance of your business.

William Fry Tax Advisors is, exclusively, Taxand Ireland. William Fry is one of Ireland's "Top 5" law firms. The firm was awarded European Transfer Pricing Firm of the year at the International Tax Review European Tax Awards 2014 and is consistently ranked as one of Ireland's leading tax firms.

Taxand Ireland brings together tax lawyers, accountants and consultants in one highly innovative team, providing a conflict free seamless solution to our international clients who require transfer pricing services.

Our transfer pricing teams works in conjunction with our global Taxand colleagues to provide high quality transfer pricing advice to our clients.

Our transfer pricing services include:

- Transfer pricing design and planning
- Transfer pricing reviews and documentation
- Mutual Agreement Procedures
- Transfer pricing audit defence

Taxand Ireland:

- Dedicated to tax
- Local knowledge, global view
- Partner led from start to finish
- Complex problems, customised advice
- Conflict free & un-bureaucratic
- Passionate about working together

For further details of our Transfer Pricing tax services contact:

Martin Phelan
E: martin.phelan@williamfry.ie

Sonya Manzor
E: sonya.manzor@williamfry.ie

Shane Wallace
E: shane.wallace@williamfry.ie

Aoife Garry
E: aoife.garry@williamfry.ie

www.williamfry.ie/practice-area/tax.aspx
Tel: +353 1 63 95 000

Israel

Tax authorities

Department of Customs and VAT	**Income Tax Office**
5 Bank of Israel St	66 Kanfei Nesharim Street,
Government Complex POB 320	Jerusalem
Jerusalem 91002	**Tel:** +972 2 654 5111; +972 2 654 5415
Tel: +972 2 666 4000	**Fax:** +972 2 654 5183; +972 2 654 5413
Fax: +972 2 666 4011	
Email: taxes@mof.gov.il	
Website: taxes.gov.il; ozar.mof.gov.il	

LEADING FIRMS

1	Deloitte
	EY
	PwC
2	Bar Zvi & Ben Dov
	BDO Israel
	Fahn Kanne & Co – Grant Thornton
	Gornitzky & Co.
	KPMG

The Israel Tax Authority had a budget of $1.6 billion in 2014. However, a chunk of this money is being allotted to property damage claims as a result of the recent military conflict. Further tax incentives will likely be provided to businesses in the affected regions, but the full impact of the conflict and subsequent rehabilitation programmes on the overall economy remain to be seen.

Much of the transfer pricing work continues to come inbound from multinational taxpayers investing in Israel's high technology industry. However, firms see an increase in outbound work, especially from individuals and private family trusts who wish to move investments abroad.

Tax authorities retain their traditionally strong stance on tax evasion, and practitioners joke that the rest of the world, under the BEPS initiative, is now catching up with the tax policies that Israel has applied for years. The tax authorities have traditionally been aggressive in attacking areas that they deem non-compliant. Areas of increased focus include permanent establishment, headquarters relocation, and IP transfers.

The strong position of the tax authorities makes compliance more difficult for taxpayers. "The magnitude of the audits is growing, but it's under the radar because most of the companies prefer to close it directly with the Israeli tax authorities and not take it into court," said Eyal Bar-Zvi of Bar-Zvi & Ben-Dov.

This problem also hinders successful resolution of tax disputes. While opinions on Moshe Asher, the new Director General of the Tax Authority, have been generally positive, some practitioners have complained about the slow rate at which ITA officials make decisions. "They [the ITA] are very reluctant to compromise because they fear one case will affect the others," said Sharon Shulman of EY.

MAPs and APA's continue to be available for international businesses, however the long wait period is a deterrent for both taxpayers and firms. Firms recommend them for taxpayers with complex transactions and a real need for certainty in tax payments.

Tier 1

Jacob Houlie leads the transfer pricing practice at Deloitte. He comes recommended by peers for his knowledge in APA applications and transfer pricing documentation. He also has experience in cross border planning for intellectual property and TP implementation services. Houlie is supported by a team of nine additional professionals, and is looking at making lateral hires domestically and from foreign firms. Deloitte has ambitious growth plans, largely fuelled by expectations for additional compliance work under BEPS.

The firm caters to clients in manufacturing, pharmaceuticals and the large tech industry in Israel. Over the past year, Deloitte's deals have involved aligning global supply chain strategies, application of tax incentives, and considerations in the oil and gas industry. The firm has an additional four professionals dedicated to its business model optimisation offering.

Lior Harary Nitzan leads **EY**'s transfer pricing practice with the support of an additional twenty professionals – comprising the largest TP practice in Israel. The practice was established in 2000 and falls under the international tax practice to provide clients with comprehensive international services.

Because of global regulations under BEPS, EY's TP professionals are seeing more international clients needing TP planning, documentation, and controversy services. The firm is also able to advise on APAs and recently undertook advisory for a large pharmaceutical company.

While many of the firm's clients are Israeli outbound investors, the firm notes the high number of foreign investors interested in the tech market in Israel. EY estimates that it has acted on behalf of either the buyer or seller in over 50% of M&A tax cases involving a technology company over the past year. In addition to high-tech expertise, EY focuses on real estate, and has practitioners who are solely dedicated to the practice of oil and gas taxation.

Gerry Seligman is a partner from **PwC** US residing in Tel Aviv to lead the international tax and transfer pricing practice, along with the help of tax leader, **Doron Sadan**. The well rounded transfer pricing team offers services including benchmarking, documentation, strategy planning, negotiation of pre-rulings, and also boasts having completed the first successful APA in the country.

Sadan and Seligman took on one of Israel's largest court disputes involving TP issues for one of Israel's largest public companies. The firm prepared documentation using OECD guidelines regarding royalty payments at arm's-length.

PwC's top industries for TP advisory include technology, pharmaceuticals, and financial services. The team provides custom TP services to taxpayers in the field of oil and gas. It also has worked several projects involving software licensing to overcome royalty withholding issues.

Tier 2

The partnership of **Eyal Bar Zvi** and **Yariv Ben-Dov** formed the boutique transfer pricing practice of **Bar Zvi & Ben Dov** in 2006. The team is dedicated solely to transfer pricing matters and boasts a 100% success rate for tax audits – noting that none of their assessments have been outright rejected by the tax authorities.

The firm caters to large foreign exchange companies and trading platforms, including international banks. They also deal with the pharmaceutical, water, and high-tech industries.

In a recent deal, the firm helped a domestic company that had been given grants by the Israeli government to develop products. Problems occurred when the company merged with an Australian publicly traded company and there was confusion over what contributions had to be made to the Israeli tax authority for use of the IP. The firm supported the client by calculating the revenues and royalties payable to the government for use of the grant.

Amit Shalit established the transfer pricing practice of **BDO Israel** in 2007 and leads the team of four economists. The firm insists on taking proactive measures to address potential issues before they become a problem. BDO is able to advise on specific US & Israeli TP deals and global transfer pricing policies to a variety of local and international clients.

In a noteworthy deal over the past year, the firm helped a large public drilling company to export

Tax rates at a glance

(As of September 2014)

Corporate tax rate	26.5% (a)
Capital gains	26.5%
Branch tax	26.5% (b)
Withholding tax	
Dividends	4%/15%/20%/25%/30% (c)
Interest	0%/15%/25% (d)
Royalties	25% (e)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited

a) Special rates apply to companies classified as preferred, approved or benefited enterprises. The corporate income tax rate increased from 25% to 26.5% as from January 1 2014.

b) Branches are taxed at the same rates as domestic companies. There is no specific tax on the remittance of profits; however, in the case of an approved enterprise, a branch may be subject to a 15% tax, in addition to the corporate income tax.

c) Dividends paid to a noncontrolling foreign resident (i.e. one that holds less than 10% of the shares of the Israeli payer) are subject to a 25% withholding tax; otherwise, the rate is 30%. These rates may be reduced under a tax treaty or an incentives regime. As from January 1 2014, dividends distributed by a preferred enterprise are taxed at a 20% rate. Dividends distributed by an approved/benefited enterprise generally are taxed at a 15% rate if the distribution is made from profits attributable to the approved enterprise, or at a reduced rate of 4% on the alternative incentive track ("Ireland Track").

d) A 15% or 25% withholding tax is levied depending, inter alia, on the type of loan and whether the recipient is an individual or a "body of persons." These rates may be reduced under an applicable tax treaty. A 0% withholding tax may apply to foreign residents who receive interest from bonds publicly traded on the Israeli stock exchange.

e) Royalties paid to a nonresident entity are subject to a 25% withholding tax unless the rate is reduced under an applicable tax treaty.

gas abroad. TP regulations came into play regarding the export. The firm advocated for the taxpayer in front of the tax authorities to maintain their stance on international gas and oil transactions.

The firm has a unique new product offering called Build, Operate, and Transfer, in which they build and operate efficient tax structures, then gradually transfer leadership back over to the taxpayer.

Yigal Rofhe leads the transfer pricing practice at Grant Thornton's partner in Israel by the name of **Fahn Kanne & Co**. The practice offers well rounded services including development of TP strategy at arm's-length, TP policy & studies, APAs, and strategy for audits. The team focuses on many of Israel's top industries, including real estate, capital markets, industry, and high-tech.

Rofhe and additional team members **Benjamin Gandz** – who joined the firm from EY in early 2013 as a specialised TP accountant – and **Shay Moyal** took on a deal on behalf of an Israeli-held engineering and construction company regarding intercompany loans between holding companies. The complex deal involved financial expertise on hybrid debt instruments, credit rating and regression analysis, and adjusting of loan interest rates to reflect country risk.

Daniel Paserman leads the transfer pricing capabilities at leading tax firm **Gornitzky & Co**. The firm is new to World Transfer Pricing this year and has gained its position because of successful transactions and a growing dedication to the practice. Paserman comes recommended by peers for his knowledge in corporate tax. **Pinhas Rubin** is the firm and practice chairman, and participates actively in many transfer pricing deals.

Over the past year, the firm has advised on deals involving cross-border IP relocation, income tax assessment appeals, and global restructurings.

David Ravia leads the transfer pricing practice at **KPMG** with the support of an additional eight professionals. Ravia spent many years working in the US and was the architect of KPMG's transfer pricing department. Most deals do not escalate to litigation and the partners work hard to ensure smooth operations and good relationships with both clients and tax authorities.

The firm's top industries are industrial markets, technology, real estate and financial services. While many of KPMG's clients are large Israeli-based multinationals, it also caters to some mid-sized listed companies based out of the US and UK. The firm sees a great deal of its transfer pricing work arising out of M&A and IPO deals.

Italy

An audit guide by Domenico Fava of Fava & Partners.

Tax authorities

Agenzia Entrate
Cristoforo Colombo n. 426 C/D, 00145 Rome
Tel: +3906-96668933
Email: cop.pescara@agenziaentrate.it
Website: www.agenziaentrate.gov.it
Website in English: www1.agenziaentrate.it/inglese/

1. How does the tax authority select transfer pricing cases to audit?

Italian Revenue Agency (IRA) issues public guidelines each year that aim to disclose strategies and actions to monitor tax compliance and to challenge tax aggressive behaviours.

The selection of the target companies to be audited is based on the taxpayer's risk profile, a key internal valuation of each taxpayer aimed to classify each taxpayer as low to medium or medium to high risk.

The key facts, which should influence such ranking (and thereby the likelihood of being audited), are:

- aggressive tax planning schemes addressed by OECD report;
- low profitability in the last years (or tax losses situation);
- tax base erosion schemes as addressed by OECD;
- transactions with black list countries; and
- elusive structures characterised by deemed PE and deemed tax residence of foreign entities.

The above taxpayer's risk profile record is updated for each large business taxpayer (LBT), in that the turnover is higher than €100 million ($131 million). Also medium business taxpayers (MBT), with a turnover higher than € 25 million, being consolidated by multinational groups, are subject to such preliminary selecting scrutiny.

With regard to transfer pricing, it has been outlined that taxpayers, having fully complied with the Italian TP protection penalties regime (in that they have flagged the tax return box which attests that TP documentation is fully consistent and available according to the IRA guidelines) should be qualified as a cooperative taxpayer. Thereby it upgrades the ranking, reducing the risk of being audited (although it cannot be excluded).

2. How will a company find out it is being audited? What is the official notification?

There can be two different ways:

- External audit/inspection (at the premise of the taxpayer): this audit is not usually notified in advance. Both IRA and GDF (Italian tax police) are authorised to start audit activities, by a physical access to the taxpayers' premise (official notification is handed by the tax authorities); and
- In-house audit (at the IRA premise): tax questionnaires are delivered to the taxpayer, which is requested to return specific documentation (TP documentation): following the in-house examination of the documents, IRA will decide whether to formally start a tax assessment procedure.

3. When a company has been notified of audit, what is the first thing it should do?

It is recommended taxpayers ask for the immediate involvement of a tax adviser, for proper assistance in the course of the tax audit.

Usually the assistance of the tax adviser might help to properly address any request of IRA and to better protect the taxpayers' position.

4. Is there any legislation for general procedure for a taxpayer under audit? If not, what is the recommended practice?

The Taxpayers' Rights Statute establishes the general principles that shall be met/observed during any tax audit.

In addition, there is a set of provisions detailing the rules/procedures to be met in the course of a tax audit.

Tax advisers' assistance should aim to raise any procedural issue and/or breach by tax authorities in real time.

5. How does Italy differ in its approach to TP audit to other countries?

As mentioned above, Italy has enforced a special (optional) TP penalty protection regime, according to which, up to the extent the taxpayer delivers the whole set of TP documentation consistently and in compliance with detailed IRA guidelines (and flags the box in the tax return accordingly), in principle any TP challenge should not generate any related administrative penalty (potentially up to 200% of the assessed taxes).

This regime is aimed at reinforcing the cooperative and transparent approach between the taxpayer and IRA, by awarding it.

The additional award, according to the recent guidelines issued in 2013 (Circular letter n. 25), should also be that the risk of being audited should be lower versus the taxpayers having not opted for such regime.

Having said that, in Italy there are quite often "spy" cross-audits on taxpayers' clients, aimed to verify, by independent interviews, whether the TP model adopted by the taxpayer is effectively consistent with the real facts: these cross-audits might raise the challenge of a "deemed" PE of the foreign entity (principal).

Deemed PE analysis, coupled with a substantial functional analysis approach, is becoming the key approach, by which IRA challenges aggressive TP model (for example, cost plus structure, agency / commissionaire structure, risks shifting models, etcetera).

The "substance over the form approach" is increasingly assuming a pivotal role for any tax authorities' investigation.

6. How does the tax authority compile its information on a taxpayer for an audit?

Please make reference to the above taxpayers' risk profile record (Q1).

7. What are the most likely instances that provoke an audit from the authorities?

Please make reference to the above taxpayers' risk profile record (Q1).

8. What documents are required by the taxpayer during TP audit?

It is highly recommended (although not compulsory) that taxpayers build evidence and make available transfer pricing documentation, as recommended by OECD guidelines (master file, country file and benchmark analysis, etcetera).

Should the taxpayer have voluntarily adopted the Italian TP penalty protection, the whole set of TP documentation, fully compliant with the detailed IRA guidelines, shall be promptly available for delivery.

9. Are there any restrictions on a company's business during audit?

No. Business should continue as usual.

10. Are there any restrictions on the taxpayer's advisers during audit?

No.

11. How long does an audit last?

It cannot last more than 30 working days, which might be doubled (up to 60 days overall) in cases of specific and extraordinary circumstances.

In fact, 60 days is the standard period and in cases where the audit is complex the IRA strategy is counting only the effective days run at the taxpayers' premises, thus stretching the period.

12. What happens after an audit has been completed?

The taxpayer has the right to draw up and file its defensive note in 60 days.

The binding tax assessment might be issued only after the above 60 days period is elapsed, to allow the taxpayer to better explain and defend its position.

13. Tips on negotiating with the authorities?

It is key to have a cooperative approach.

Transparency and disclosure attitudes are usually well rewarded in the contest of an audit.

These prerequisites should give comfort to IRA, allowing them to be more open and to understand the TP Model and the position of the taxpayer.

It is also key to maximise all the efforts in this phase, asking for strong cooperation both from the internal tax group department and the tax advisers even: if the tax audit is well managed, any challenge would better be faced in the course of a tax controversy; vice versa, non-cooperative approach (for example, TP documentation not delivered, incomplete answers, etcetera) tends to generate high tax assessment bill and might jeopardise the future tax litigation outcome.

14. How can a company manage its audit risk?

TP model should be properly fine-tuned and updated on a recurring basis.

Functional analysis should be internally performed to verify whether the group-selected TP model is still consistent with the reality.

Consistency of the TP policy inside the group, although it is desirable, shall not prevent changes and proper fine-tuning at a local level, if requested/suggested.

Substance over the form approach should be the key parameter to be addressed by each internal taxdepartment.

LEADING FIRMS

1	KStudio Associato (KPMG)
	Maisto e Associato
	Studio Legale e Tributario (EY)
	Studio Tributario e Societario (Deloitte)
	Valente Associati GEB Partners
2	Belluzzo & Partners
	Bernoni Grant Thornton
	Bonelli Erede Pappalardo
	Fantozzi e Associati – Taxand
	Hager & Partners
3	Allen & Overy
	Baker & McKenzie
	Chiomenti Studio Legale
	Di Tanno e Associati
	DLA Piper
	Legance – Avocati Associati
	McDermott, Will & Emery
	NCTM Studio Legale Associato
	Studio Musselli
	Transfer Pricing Associates
	Valdani Vicari & Associati
	WTS R&A Studio Tributario Associato
Firms to watch	
	Fava & Partners
	Studio Uckmar

Aggression from the tax authorities in regards to transfer pricing is a defining feature of the Italian tax market. The authorities are concentrating on large taxpayers and are working hard to increase their knowledge, with a focus on inter-company services and deductibility.

According to Heinz Peter Hager of Hager & Partners, "in the minds of the tax authorities, transfer pricing is a tool to not pay tax".

Audits are regular, extremely challenging, and carry the threat of prison sentences for taxpayers caught infringing regulations. Having a strong transfer pricing policy and watertight documentation is crucial because companies that are not prepared for audits invariably end up with "very large" adjustments, according to Gianni De Robertis of KStudio Associato.

"Nearly all of our clients have had a tax audit, or even two, in the last two to three years," he added.

Such is the situation that some Italian advisers welcoming BEPS. "Most of the BEPS (base erosion and profit shifting) action points on TP are already areas of attention of the Italian tax authorities," said De Robertis. "The establishment of clearer and shared principles at an international level may help improve clearness and consistency in the application of TP rules and thus reduce the risk of disputes."

Working through the courts

Italian courts, however, are not keeping pace with the rapid increase in the sophistication of the tax authorities.

"There is still a big gap between [tax] inspectors [and tax police] and the courts," said Hager. "There are no well-prepared judges. This is a reason why we try to reach an agreement and settle, because judges are not familiar with this."

Even looking for a settlement has disadvantages though, as Antonio Tomassini of DLA Piper explained: "If you settle domestically then you have very few chances to make back the money in another jurisdiction."

As a rule, only larger firms have the clout to regularly gain positive rulings in audits.

Positives

A key change to legislation is in advance pricing agreements. The maximum length an APA can run for has been increased from three to five years in a move that will increase stability for taxpayers, particularly as the amount of the agreements granted each year is growing.

It is also now possible to apply for an APA assessing the existence of a permanent establishment of a foreign entity in Italy.

The 2014 stability law contained a piece of transfer pricing legislation. Under it, entities involved in collecting online advertising and auxiliary services in

Italy must determine their taxable income by profit methods other than cost-plus, unless cost-plus has been authorised in APA negotiations.

"This provision aims at limiting the phenomenon of Italian entities that formally act as service providers, and determine their taxable income by simply recharging their costs, plus a small mark up, but in fact operate as selling entities," said De Robertis.

The market

The tempestuous environment has brought about changes in the talent market. "The market is changing," said Tomassini. "Italy has been, in the past, a real tax boutique jurisdiction. All of the tax boutiques are imploding."

"Big firms can take partners from boutique firms, which five years ago would not have been possible," he explained.

"Being international today is very important. Boutiques don't have the funding to act internationally," he added. "Big firms can take partners from boutique firms, which five years ago would not have been possible."

Tier 1

Gianni De Robertis leads the transfer pricing team at **KStudio Associato**, the Italian branch of KPMG, which employs four partners and 42 other fee earners.

The team spans several areas of expertise and is made up of tax experts, economists, financial experts and lawyers. This enables the firm to work on the economic, fiscal and operational features of intra-group pricing.

The expertise of the team enables them to work effectively on documentation, APAs, mutual agreement procedures, dispute avoidance and resolution and analysis of financial, management and operational aspects of deals. De Robertis described transfer pricing as "one of the key areas of business" for the firm.

The firm specialises in clients in the financial services, fashion, luxury, pharmaceutical, industrial markets, automotive and food and drink industries.

Tax rates at a glance (As of July 2014)

Corporate income tax	27.5% (a)
Capital gains	0% to 27.5%
Branch tax	27.5%
Withholding tax	
Dividends	0% to 26% (b)
Interest	0% to 12.5% to 26% (c)
Royalties from patents and licences	0% to 22.5% to 30% (d)
Branch remittance tax	n/a
Net operating losses (Years)	
Carryback	n/a
Carryforwards	

a) In addition to this rate, a 3.9% regional tax is applicable on productive activities (IRAP).
b) Dividends paid to a non-resident corporation are subject to a 26% withholding tax, unless the rate is reduced under a tax treaty or dividends qualify for exemption under the EU parent-subsidiary directive.
c) Interest on loans is taxable at 26%. Non-exempt interest on current accounts and bonds is subject to the 26% rate. The rates may be reduced under an applicable tax treaty.
d) The rate may be reduced under an applicable tax treaty.

Source: *Tax advisers from Fantozzi & Associati, Taxand Italy*

In one deal, the firm advised a group in the consumer product sector in reorganising its supply chain to centralise functions in its head office. This required the firm to design a new transfer pricing policy which complied with OECD guidelines, evaluate the impact of the changes to the business and negotiate a bilateral APA.

In another deal, the firm conducted a transfer pricing analysis of intra-group services provided by foreign affiliates to a taxpayer's head office, which involved defining the company's service model to identify services to be recharged. The analysis also tied in other skills, including providing documentary evidence of the service provided.

Manuela Belloni, tax director at healthcare multinational Bracco Spa, said: "I had a positive experience with KPMG Italy tax department and I will continue to… recommend services rendered by KPMG to New York colleagues."

Maisto e Associato is an independent law firm with a specialisation in tax. The transfer pricing team is led by **Guglielmo Maisto**, the founding partner of the firm.

Maisto is a professor of international and comparative tax law at an Italian university; the president of the Italian branch of the International Fiscal Association, a member of the Board of Trustees of the International Bureau of Fiscal Documentation (IBFD) in Amsterdam, a representative of the Italian Association of Industries (Confindustria) at the OECD Business Industry Advisory Committee in Paris and a member of the EU Joint Transfer Pricing Forum.

The firm works with large multinational corporations on transfer pricing policy, APAs and the drafting of transfer pricing documentation, both domestic and foreign. As well as this the firm is active in transfer pricing litigation, with Maisto and partner **Pietro Piccone** recommended by advisers at other firms as being particularly competent. **Aurelio Massimiano**, who was made a partner in 2014, is also admired by the market for his work in APA negotiation.

Studio Legale e Tributario is EY's Italian branch and has offices in Milan, Rome, Padua, Venice and Munich. **Davide Bergami** leads the transfer pricing practice.

The firm offers a full range of transfer pricing services including planning, documentation, risk and dispute management, supply-chain optimisation and more.

The firm's key industries are automotive, aviation, real estate, private equity, power and utilities, oil and gas, life sciences, media and entertainment, telecommunications, mining, metals, public sector work, automotive, consumer products and financial services including wealth and asset management, banking, capital markets and insurance.

Studio Tributario e Societario is the tax wing of Deloitte's Italian operations and employs more than 300 professionals. Transfer pricing has a dedicated team made up of professionals who specialise in tax and business management.

The team offers a full range of transfer pricing services including planning of efficient group policies; devising, modifying and implementing transfer pricing documentation both domestically and internationally; preparing clients for tax audits; defending them during court cases and more.

Partner **Aldo Castoldi** is held in high regard by other practitioners in the market and has been recommended for his work in transfer pricing documentation project management.

The transfer pricing team at Valente Associati GEB Partners is led by **Piergiorgio Valente**, founding and managing partner of the firm. He heads 10 partners and 40 other fee earners.

The firm has stepped-up its international presence by formalising a transfer pricing-focussed alliance with Transfer Pricing Associates Global. This strategic partnership gives them access to the network's expertise in transfer pricing, valuation, accounting, law and customs.

The firm has expanded over the last year, so much so that it has been necessary to purchase additional office space, which has allowed them to re-organise their work into different areas, situating management, analysis, research and development and client relations on four different floors.

They have been investing in junior staff to supplement their experienced team.

The firm is capable of advising clients in all sectors, but much of the firm's work comes in the automotive, banking, financial, fashion, energy and packaging industries.

A key adviser at the firm is **Piergiorgio Valente**, who has been appointed to an astonishing number of international and supranational bodies. To name two, he is chairman of the *Confédération Fiscale Européenne* Fiscal Committee, an umbrella organisation embracing 33 organisations in 25 European states, employing over 180,000 tax advisers and he is vice chairman of the Business and Industry Advisory Committe's (BIAC) Taxation and Fiscal Policy Committee.

Through his work with the BIAC, he has made important contributions to the OECD's BEPS action plan, giving the firm influence and foresight on the initiative.

The firm was involved in several deals in transfer pricing finance in the last year which involved the reorganisation of multinationals' business and operating models. During this process, the firm analysed existing documentation and contracts before preparing and integrating transfer pricing policy and preparing economic and benchmarking financial analyses. The deals were conducted in over 12 countries and were worth over €1 billion ($1.3 billion).

Tier 2

Partner, **Ettore De Pace**, leads the transfer pricing team at **Belluzzo & Partners**. The transfer pricing department employs one other partner, **Emiliano Lenti**, and two additional fee earners, **Stefano Casartelli** and **Alice Casarotti**, both of whom were hired in the last 12 months.

De Pace has previously worked as a certified public accountant and auditor, and has gained experience working at the Fiat Group and EY. He advises on extraordinary operations and international tax issues, with a focus on transfer pricing.

The department provides transfer pricing advice and assistance to multinationals of all sizes, and specialises in the mechanical components, engineering, hydro-health, agribusiness, logistics and wholesale distribution industries.

The firm's professionals have several years' experience designing, implementing and documenting transfer pricing solutions. The team is also capable of assisting clients during tax assessments and tax litigation.

Bernoni Grant Thornton offers a wide range of transfer pricing services. In audit support, the firm's practitioners have access to databases to help defend clients' transfer pricing policies against the tax authorities, and engage in sophisticated economic arguments.

The firm also works in transfer pricing documentation, preparing country-specific documentation, planning – including restructuring – as well as reviewing transfer pricing policy and supply-chain optimisation.

Bonelli Erede Pappalardo has offices in Milan, Genoa, Rome, Brussels and London and is led by Stefano Simontacchi. The firm is part of the Best Friends network, which has affiliate firms such as Bredin Prat in France, Uría Menéndez in Spain, De Brauw Blackstone Westbrook in the Netherlands and Slaughter & May in the UK. The firm also has a strategic alliance to utilise the economists at Valdani Vicari & Associati.

The firm offers a range of transfer pricing services including APAs, litigation, and the preparation of transfer pricing documentation. Adviser **Marco Adda** was noted by another firm in the market to be particularly strong in transfer pricing disputes.

Fantozzi e Associati – Taxand's transfer pricing operations are led by **Alfredo Fossati** and **Stefano Bognandi**. The firm employs one partner (Fossati) and four other fee earners. The team is quite young, having been set up in 2012, and has seen a significant increase in the amount of work it deals with over the last year.

The firm specialises in serving clients in the pharmaceutical, gas trading, financial and manufacturing industries. A wide range of services are offered, including global design and value chain optimisation, local, regional and global documentation services, economic analysis and benchmarking studies, dispute resolution and tax-optimised valuation services such as the valuation of intangibles and assessment of arm's-length royalty rates.

In a €50 million ($66.9 million) deal concluding in May 2014, the firm advised winter sports multinational, Tecnica Group Spa, on the creation of a master file and country file for its transfer pricing documentation. Shortly after completing the documentation Tecnica underwent a tax audit, and after lengthy analysis the tax authorities closed proceedings without any transfer pricing adjustments.

One client said their company "had a very positive experience over several years" with the firm, saying they would certainly use the firm again and recommend it to others. "Fantozzi e Associati proved to be very strong both from a technical standpoint and from a political standpoint, resulting in a clever and pragmatic way to address complex issues."

Founding partner **Heinz-Peter Hager** and newly-hired senior manager **Gian Luca Nieddu** lead the transfer pricing and supply chain practice at **Hager & Partners**. Including the above, the team consists of two partners and four other fee earners, and provides a comprehensive range of transfer pricing services, with a particular focus on supply-chain optimisation.

The firm advises a large range of multinationals as well as various smaller enterprises in a multitude of industries including fashion, pharmaceuticals, energy, automotive, food and drink, banking, finance, manufacturing, animal health, real estate, white goods, water technologies, IT infrastructure and software, power distribution, climate control and mechanical equipment.

A unique aspect of the firm is the amount of practitioners who are native German speakers. Over half of the firm's work is conducted for foreign firms, and a lot of this comes from Germany. The team's professionals regularly speak at conferences on transfer pricing and international taxation.

The firm received particularly strong client feedback. Michael Meyer of Hypo Vorarlberg Leasing said: "We've collaborated with Hager & Partners for more than 15 years and have a very positive experience working with them. It is our strong intention to continue this successful and professional partnership and we would also highly recommend their services to other companies. The main strengths… are their international, cross-border focus as well as their long experience in the Italian leasing sector."

Another client said: "I am in contact at least once a week with the partner for special issues of the most various kinds… The answers are always complete and very professional. The partner knows our business and gives us the operational approach to the solution and answer." Other clients praised the firm's "realism" and "two-language approach".

Tier 3

Allen & Overy's Italian branch is led by **Francesco** Bonichi and **Francesco** Guelfi. The firm specialises in the legal aspects of transfer pricing, working in areas such as reviewing and re-writing intra-group transfer pricing agreements and restructuring. The firm is actively involved in various discussions and debates with the tax authorities regarding legislation, which has helped them to build up a level of trust.

Massimo Giaconia leads a transfer pricing team of eight economists and two lawyers at **Baker & McKenzie**. The firm has hired two former Big 4 advisers in the last year as it seeks to grow: **Luca Purpura** from KPMG and **Rossana Pieringer** from EY.

The firm has become better-known in the transfer pricing market and has taken on more work, expanding its staffing levels from just four practitioners in 2010.

The firm divides its workload between Italian headquartered multinationals with operations abroad and Italian subsidiaries of foreign multinationals.

In light of the increasing attention from the Italian tax authoritieson the firm's clients, Baker & McKenzie focuses on providing transfer pricing advice to those clients interested in entering into a Ruling Procedure with the Tax Authorities for the formal release of unilateral and bilateral APAs

Susana Eleni of the Zambon Group, which operates in the pharmaceutical industry, said: "We had a great experience [with the firm]. They supported us in structuring the transfer pricing policy, filing the transfer pricing documentation and successfully assisted us during a tax audit. In that crucial situation we became an absolute priority."

Another client said: "The topic of transfer pricing is very complex and since we have many subsidiaries worldwide, it is not always easy to follow all the different peculiarities. In any case, Baker & McKenzie, and especially the manager, always showed experience and skills in this field supporting us."

Chiomenti Studio Legale has a specialist transfer pricing unit in its tax team. The firm is proficient in negotiating APAs and in litigation.

Di Tanno e Associati is led by **Tommaso Di Tanno**, the firm's founder. The firm has offices in Rome and Milan and employs more than 50 people in its tax-focused practice.

The firm advises on the tax implications of transfer pricing issues, and its key industries are insurance, banking, private equity, real estate, automotive, large-scale retail distribution, utilities, telecommunications and fashion.

The transfer pricing team at DLA Piper is led by **Antonio Tomassini** and employs two other fee earners.

The firm has an experienced team of transfer pricing experts that helps multinational companies to deal effectively with the complexity of the Italian market. The team work with the more intricate parts of transfer pricing in the context of international tax law. The firm works on compliance with local legislation, planning new transfer pricing policies, valuation of transfer prices and also provides support with dispute resolution and litigation.

Marina Coscia, general manager of translation technology firm SDL, said: "My company has been working with DLA Piper Italy since 2012 and we are more than satisfied of their services."

"What I most appreciate is their fast response times and their innovative solutions that repeatedly have allowed my company to save time and money. I would definitely recommend DLA Piper to others," she added.

Transfer pricing has been a growth area for Legance – Avocati Associati's transfer pricing department, which is led by **Claudia Gregori** and **Marco Graziani**. The team is made up of two partners and three other fee earners. The firm specialises in working in the financial, investment, luxury, trading and energy industries.

In one deal, the firm assisted ING Real Estate Finance S.A.'s Milan branch in updating their transfer pricing policy relating to intra-group transactions. The advice involved complex tax issues relating to intra-group transactions, and IAS adopter entities, and also involved analysing the relationships the Milan branch had with ING's Spanish and Dutch parent companies.

Client Fabrizio Vettosi, of shipping and logistics company VSLSPA, said: "We appreciate their flexibility and the opportunity to have an operating partner, Claudia Gregori, available anytime for us. They flank us 24 hours a day, seven days a week."

Another client said: "I was extremely happy with the service received and I would certainly recommend Legance for transfer pricing."

McDermott, Will & Emery is led by **Carlo Maria Paolella**, who also heads the transfer pricing team. Another key name in transfer pricing is **Mario Martinelli**.

The firm is active in the drafting of cost sharing agreements, commissionaire agreements and IP licensing agreements. It also advises clients on projects aimed at reviewing intercompany prices and at seeking rulings or APA clearance from the tax authorities.

The firm is also active in transfer pricing controversies from tax audit to litigation, and uses its transfer pricing know-how in business restructuring to optimise tax operations for clients, which include major household names.

In one deal, the team prepared transfer pricing documentation for an Italian multinational in preparation for its planned expansion in China, the Middle East and the UK.

NCTM Studio Legale Associato operates a policy of rotating its head of department on an annual basis. **Federico Trutalli** is the current co-ordinator of the department, which employs eight partners and 30 other fee earners.

The firm regularly assists both Italian and foreign multinationals in managing their transfer pricing issues. The firm offers a broad range of services, including drawing up and implementing transfer pricing policies, filing for and negotiating APAs and working with clients through litigation disputes with the tax authorities.

Piermauro Carabellese has been very active in the past year, advising on several complex tax deals connected to restructuring and working extensively on major litigation matters against the Italian tax authority. He is also Chairman of the International Taxation Committee of the Association of Chartered Accountants of Milan.

The firm's key industries are manufacturing, automotive and engineering, energy, oil and gas, telecommunications and media technology and services.

Transfer pricing is a large part of Studio Musselli's business, and it offers a full range of services. The firm is jointly led by managing partners Andrea and Alberto Muselli, and practitioners operate in Italian, English, French and Spanish.

Transfer Pricing Associates works in transfer pricing, valuation and customs. The firm's key industries are automotive, chemicals, financial services, FMCG, luxury and apparel, mining, oil and gas, pharmaceuticals, technology, media and telecommunications.

In 2010 Valdani Vicari & Associati created a specialist team of transfer pricing experts to respond to the growing necessity for transfer pricing advice in the Italian market.

The team provides a wide range of services including assistance with documentation, negotiation of APAs and help during audits.

The firm has a strategic alliance with Bonelli Erede Pappalardo (BEP), through which its economists do work for BEP, and in return BEP's tax advisers assist in transfer pricing matters for the firm.

The partnership of the firms has allowed the two firms to provide clients with all the relevant economic, managerial, fiscal and procedural expertise to deal with the problems clients are facing in the Italian market.

WTS R&A Studio Tributario Associato is a tax consulting firm specialising in transactional and transnational taxation. The firm predominantly serves clients in the electronics, pharmaceutical and commodities sectors.

The firm has offices in Turin and Milan. The international tax department, which encompasses transfer pricing, is led by partner Giovanni Rolle.

There are three other fee earners at the firm, including Filippo Federico Miotto, who joined from a position as senior associate at PwC at the beginning of 2014.

The firm has an integrated approach which includes design, documentation and defence of transfer pricing policies. The TP practice is also integrated to include VAT, excise taxes and customs.

In one deal, the firm advised an Asian multinational firm involved in the production of electronic components to optimise its supply chain. This involved economic analysis and methodology.

Firms to watch

The transfer pricing department at Fava & Partners is led by Domenico Fava and employs two partners and four other fee earners.

The firm offers a full range of transfer pricing services, and works with clients predominantly in the air freight industry, logistics, real estate, media and broadcasting, pharmaceuticals, consumer goods and entertainment.

The firm employs a proactive approach when dealing with the tax authorities, aiming to enter into technical discussions by setting up a respectful and positive mood between parties.

In a $600million deal, the firm drew up local transfer pricing documentation for an international transportation company, which involved the application of transactional net margin methodology combined with internal comparable uncontrolled price comparisons.

Studio Uckmar carries out some transfer pricing activities as part of its international taxation department, which employs two partners and five other fee earners and is led by Paulo de Capitani.

The firm's key industries are insurance, banking, luxury and fashion, oil and gas, energy and pharmaceuticals.

Belluzzo & Partners
Forward thinking since 1982

ITALY
Milan via Cordusio 2
tel. +39 02 36569657
Verona stradone San Fermo 14
tel. +39 045 8005353
UK
London 38 Craven Street
tel. +44 (0)20 7004 2660
www.belluzzo.net

Contacts:
Luigi Belluzzo *Managing Partner, Milan, luigi.belluzzo@belluzzo.net*
Ettore De Pace *Partner / Transfer Pricing Specialist, Milan, ettore.depace@belluzzo.net*

FAVA & Partners

FAVA & Partners
Piazza della Repubblica n. 24
20124 Milan
Tel. +39 02 87069700
www.favapartners.com

Firm profile:
Fava & Partners is an independent Tax firm of International Tax and Economists experts, providing independent Transfer pricing advice and assistance.
In the context of International Tax and Transfer Pricing , Fava & Partners is the qualified advisor to in-house tax departments, law firms and supervising bodies, for advice/support on:

- Field tax audits and tax settlement procedure
- Mutual Agreement Procedures
- Advance Pricing Agreements
- Design and implementation of TP Policy
- Independent review of TP policy

Your contacts:

Domenico Fava
Partner
Tel: +39 02 87069700
domenico.fava@st-fava.com
domenico.fava@favapartners.com

HAGER & PARTNERS
WIRTSCHAFTSPRÜFER UND STEUERBERATER
DOTTORI COMMERCIALISTI

Hager & Partners
Via Borgogna 2 20122 Milan (Italy)
Tel: + 39 02-7780711
Fax: + 39 02-778071233
Email: info@hager-partners.it
Website: www.hager-partners.it

Contact:
Heinz Peter Hager(Managing Partner)
Email: heinzpeter.hager@hager-partners.it
Gian Luca Nieddu (Head of Transfer Pricing & Supply Chain)
Email: gianluca.nieddu@hager-partners.it

Firm profile:
Hager & Partners was founded in 1995 and today has offices in Bolzano, Milan and Rome. The Firm is composed of approximately 100 staff members, of which 60 professionals and is member of NEXIA International network. Hager & Partners counts on a fully-dedicated transfer pricing & supply chain department:

team members positively couple strong knowledge and widespread experience on transfer pricing, business economics and international taxation. The practice assists large multinationals as well as small-medium enterprises in industries such as energy, oil&gas, constructions, mechanics, automotive, real estate, pharmaceutical, food&beverage, fashion, IT & ICT, house appliances, banking, financial and investment services. The department advises on: design of TP policies; preparation of TP documentation; benchmarking analyses (including financial transactions); business (re)structuring; enterprise internationalization; tax controversy; MAPs, EU Arbitration Convention, APAs.

KPMG
cutting through complexity

KStudio Associato
Consulenza legale e tributaria
Head office:
Via Vittor Pisani, 27
20124 Milan (MI) Italy
Tel: +39 02 676441
Fax: +39 02 67644758
Email: it-fmksa@kstudioassociato.it
Website: www.kstudioassociato.it

Contact: Gianni De Robertis
Email:
gianniderobertis@kstudioassociato.it

GEB Partners
Valente Associati GEB Partners

Head Office:
Viale Bianca Maria, 45
20122 Milano
Tel: +39 02 7626131
Fax: +39 02 76001091
Email: info@gebnetwork.it
Website: www.gebpartners.it

Partners:
Piergiorgio Valente
(p.valente@gebnetwork.it)
Ivo Caraccioli
Alessandro Cotto
Gianpaolo Valente
Maurizio Meoli
Salvatore Mattia
Antonella Della Rovere
Pietro Schipani
Caterina Alagna
Antonio De Luca

Of Counsel:
Raffaele Rizzardi
Emanuela Fusa

Japan

Michael Tabart and Timothy O'Brien of Deloitte Tohmatsu Tax, provides a guide about how the Japanese tax authorities approach transfer pricing audits and how taxpayers should respond.

Tax authorities

National Tax Agency

Tokyo Regional Taxation Bureau

Otemachi Godo Chosha #3, Otemachi 1-3-3, Chiyoda-ku, Tokyo

Tel: +81 3 3821 9070

Website: www.nta.go.jp

Japan continues to see increased scrutiny of transfer pricing for both large and small companies. One reason for this is the introduction of combined audit for corporate tax issues and transfer pricing, which came into effect from January 1 2013 as a result of changes to the Act on General Rules for National Taxes, the legislation governing audit procedures.

Unless a separate review of transfer pricing is agreed upon before the commencement of an audit – generally at the request of the tax authorities – transfer pricing issues are reviewed in conjunction with all other issues subject to a corporate tax audit. Thus all companies are now subject to at least some review of their overseas related party transactions.

Taxpayers are notified before the commencement of tax audit. The notification states the purpose and subject of the audit. If the tax authorities want to separate transfer pricing, they present a letter of consent for separation of general corporate tax and transfer pricing audits. This implies that the authorities want to perform a detailed transfer pricing audit. The main reason cited for such separation is that auditors believe transfer pricing issues will be more time-consuming to resolve than the rest of the corporate tax audit.

Under the revised rules, once an audit is closed it cannot be revisited except in cases where it is clear that key information was withheld from the tax authorities (such as fraud). If a transfer pricing investigation is not separated, all issues related to the tax return remain open until all issues related to the audit are settled. Given that complicated transfer pricing cases sometimes remain open for up to two years or more, there is little incentive for a taxpayer to refuse a proposed separation except in cases where companies truly believe their transfer pricing is highly transparent and detailed information requests could be quickly answered. On the other hand, the case of a taxpayer proposing to separate transfer pricing from corporate tax, a technical possibility under the new rules, would likely be seen as an admission that their transfer pricing arrangements are complex.

Companies targeted for transfer pricing audits are chosen based on multiple factors, such as the volume of transactions reported in schedule 17(4) of the tax return and the overall profitability. Other reasons include recent fluctuations in annual profitability, belonging to an industry that is the focus of recent negative attention with regard to transfer pricing, and/or not having been subject to an audit for a long period of time. Large corporations are more likely to be regularly audited for transfer pricing, although those that have had historical success in getting through audits are less likely to be identified for a transfer pricing audit separate from the corporate tax audit. Most large Japanese multinationals, and some subsidiaries of foreign multinationals, have been asked to complete a "checklist on efforts related to transfer pricing".

Regardless of the type of audit, combined or separate, a basic minimum level of due diligence will be performed by the tax examiners and their efforts will need to be signed-off as adequate by supervisors experienced in transfer pricing. To be prepared for an audit, companies should at least prepare documents listed in the Enforcement Ordinance of the Special Taxation Measures Law, article 22-10, for example:

- Documents containing details of foreign related party transactions such as services provided/received, inventories bought/sold, functions, risks, and intangible assets used, agreements, contracts, pricing policies, evidence of negotiations, segmented profit/loss data (both the Japanese entity and overseas related parties), market analysis, business strategies of Japanese entities and information on any other transactions (if any) closely related to foreign-related party transactions; and
- Documents used for the calculation of arm's-length prices in foreign-related party transactions such as the transfer pricing methodology selected and the reasons why, comparable transactions (including details on selection process and results used), in the case of a profit split, details on the contribution factors, details on each transaction and reasons for aggregation (if applicable), and reasons and methods of adjustments (if performed).

Note that these are only the primary documents likely to be requested in a transfer pricing audit and requests can become more detailed and may include invoices, board minutes and all manner of internal company documents, as well as interviews with key members of various departments, to better understand the functions performed and risks assumed by the Japanese taxpayer.

Once a company has been informed about the commencement of an audit, it should reconfirm that it is able to submit the above described documents "upon request and without delay". Failure to do so may give the tax examiners the right to make an assessment by presumption (assessment by secret comparable). While these may be prepared in-house, it would be prudent to have them reviewed by an experienced Japanese adviser.

Advisers are allowed to assist and/or represent taxpayers in an audit. In such cases they need to submit a completed tax representative authorisation form. Advisory teams are legally required to have a certified tax accountant present in all meetings with the tax authorities.

Japanese transfer pricing audits are somewhat unique in that transfer pricing assessments are made on a year-by-year basis. Thus, even if the three-year average results are consistent with a three-year average arm's-length benchmark, individual years inconsistent with the benchmark could be adjusted unless compelling business reasons can be given for the deviation. Additionally, Japanese tax authorities are very much interested in evidence related to what a company was thinking before the period being evaluated. For example, were appropriate contracts in place? Have the transactions been discussed? Were forecasts made? While taxpayers may see this as a heavy burden, such evidence can be useful in explaining deviations from arm's-length benchmarks.

Upon conclusion of an audit, tax authorities are required to notify the taxpayer even if the company's transfer prices are found to be satisfactory. If the tax authorities believe there are problems, they will explain the issues and ask the taxpayer to voluntarily file amended tax returns. If the taxpayer is not successful in rebutting the tax authorities' position, and refuses to file an amended return, a formal notice of assessment is issued.

LEADING FIRMS

1	Deloitte Tohmatsu Tax
	EY Shinnihon Tax
	KPMG
	Zeirishi-Hojin PwC
2	Baker & McKenzie
	White & Case
3	Grant Thornton
	Kojima Law – Taxand
	Nagashima Ohno & Tsunematsu
	Tokyo Kyodo Accounting Office

After several years suffering from the fallout of the Asian financial crisis and global recession, Japanese businesses are reasserting themselves as major players in the global marketplace. Limited by Japan's geography, firms are diversifying their investment portfolios overseas to include a broad range of industries and jurisdictions. Popular destinations for outbound investment are China and ASEAN countries.

Other countries are once again recognising the value of investing in Japan and increasing inbound investment activity, principally in real estate and technology. This inbound investment has been partially spurred by an increase in free trade agreements (FTA). FTA's have recently been concluded with Australia and ASEAN.

Japan has a very broad anti-tax avoidance article that it applies in varied ways. Taxpayers continue to experience aggressive audits by the tax authorities. While the tax authorities have historically been more aggressive on foreign companies, the contrast is now true as foreign countries clamp down on Japanese companies abroad.

The APA process in Japan began long ago and has now streamlined, making the application process less cumbersome and attractive to taxpayers. Thus, MAP and APA applications have become a significant area of work for Japan's large tax firms. "As the process becomes smoother and more widespread, companies see benefit in using them more broadly," said Ryann Thomas of PwC.

Globally, taxpayers are readying themselves for changes to international regulations. However, many of Japan's transfer pricing regulations are already in line with international standards. This could give taxpayers a false sense of security. "Japanese companies should think about how to respond to the various kinds of requirements under BEPS," says Hiroaki Sasaki of KPMG. Other practitioners mention that it is important to keep up on regulations yearly so that documentation doesn't become outdated.

Japan continues to be a supporter of the BEPS initiative. However Japanese businesses can likely expect a waiting period before the country takes any steps to further codify OECD guidelines. "It's not a culture that is going to anticipate those changes and rush into things before the OECD has finished its work," said Thomas.

Tier 1

Deloitte Tohmatsu Tax Co has witnessed a surge in personnel growth over the past year in what rival firms call an aggressive growth strategy. The transfer pricing practice has added three partners and 40 professionals over the past year alone under the leadership of **Michael Tabart**.

The team now totals 11 partners and 110 fee earners operating in Tokyo, Nagoya, and Osaka. The firm pinpoints pharmaceutical, financial services, automotive, and energy & resources as some of its top industries, but notes that it also has industry specialists

Alan Shapiro joined the firm from Deloitte in the US and is assisting with the firm's largest domestic and international clients in broad transfer pricing issues. Shapiro is also a leading BEPS specialist and is expected to help taxpayers navigate the new initiatives. The firm also welcomed transfer pricing specialists **Samuel Gordon** from EY and **Jun Sawada** from White & Case.

EY Shinnihon Tax's transfer pricing practice is under the leadership of Head of Global Tax for Japanese clients, **Kai Hielscher**. The firm is making strides to increase its impact on the local market and has added two new transfer pricing partners over the past year. The firm said transfer pricing comes into play during a substantial proportion of its international work.

Much of the firms work caters to Japanese outbound clients who require thorough advice on transfer pricing documentation and effective structuring of global investments. The energy sector is an area of growth and many Japanese-based energy providers require tax advice for their investments into China and ASEAN.

APAs are a major source of work and the firm undertakes several dozen annually. The firm also utilises the services of its namesake law firm, EY Law, for advice on complex and litigious matters.

KPMG Japan offers one of the largest transfer pricing teams in the market in terms of personnel, and has offices in Tokyo, Osaka, and Nagoya. **Jun Tanaka** leads the practice of 10 dedicated partners and an additional 74 professionals.

In 2013 the firm welcomed the addition of **Nobuhiro Tsunoda**, who comes from a background at the National Tax Agency in the international tax division. Tsunoda has adds value to the team with his wealth of experience in negotiations from working with the NTA. His services have been high in demand and it is hoped that he can help smooth over a pending bi-lateral APA with China.

Koichiro Fujimori also joined the transfer pricing team along with several members from his previous team at Deloitte.

The firm is involved in a number of dispute resolutions and APAs for other Japanese clients, and has successfully made tax reclaims on behalf of clients facing audits by the tax authorities. The team is ramping up its abilities on BEPS compliance and expects growth in this market.

Zeirishi-Hojin PwC's transfer pricing offerings are led by **Daisuke Miyajima.** The team has undertaken a great deal of bilateral and unilateral APA work since the market demand has increased for the agreements. While Japan has traditionally attacked foreign enterprises for audits, practitioners find that the tables have turned and Japanese taxpayers are increasingly facing audits overseas. The team at PwC helps prepare clients for such audits.

The firm also encourages clients to maintain compliance over the long term – too often taxpayers have correct TP documentation but fail to implement TP processes efficiently. PwC offers an end-to-end TP programme to tackle the problem, offering holistic transfer pricing solutions to remain compliant over the long term.

Ryann Thomas, who worked as a solicitor in New Zealand before working with PwC to tackle transfer pricing, now aids PwC's clients on cross-border audit defence. The team welcomed new partner **Naoki Hayakawa** to the practice, who brings previous experience in transfer pricing, M&A, and cross-border issues between Japan and the US.

Tier 2

Baker & McKenzie's transfer pricing practice in Japan incorporates lawyers, accountants and economists in one practice. The firm has three transfer pricing economists that focus solely on TP analysis. The firm also has a litigation lawyer and eight tax attorneys.

Lead partner, **Ken Okawara**, focuses on transfer pricing audits, disputes, and APAs. The firm's unique network allows clients to have access to a wide range of expertise in multiple jurisdictions.

Yukiko Komori, director of transfer pricing and economic analysis, along with Okawara, are advising a Japanese electric lighting company on a project involving transfer pricing analysis between Japan and some of the world's largest economies including China, Indonesia, India, the US, and the UK.

The firm has access to its global network and utilises this position to better assist clients in the Japanese market. **Hideyuki Yamomoto** specialises in transfer pricing litigation. "They've been especially reliable. We appreciate that they are quick and they get straight to the point," said a client.

Gary Thomas is the global tax leader at the firm of White & Case. Thomas has practiced tax in Japan for over 30 years and is fluent in Japanese.

Akira Akamatsu is acknowledged by peers for experience in cross border structuring and is an excellent source for transfer pricing advisory. Akamatsu spent 15 years working with the Tokyo Regional Taxation Bureau, and also worked for the NTA. He focuses on taxation issues including permanent establishment, cross border M&A, anti-tax haven regulations, and foreign tax credits.

Associate **Yoko Ueda** further aids the team in transfer pricing issues.

Tier 3

Manager Yoichi Ishizuka leads **Grant Thornton**'s transfer pricing practice. The firm recognises that auditing authorities are no longer only going after large multinationals. GT is increasingly seeing demand from medium sized enterprises requiring help with their transfer pricing documentation.

Taisuke Nakamura joined the firm's China desk to help clients navigate China's detailed transfer pricing regulations. **Katsuhiko Asakura** also joined to help the firm with a supplementary M&A assignment. While transfer pricing documentation is required in Japan, there are not many penalties for not having it. Despite this, clients are inquiring about proper documentation structures.

The firm is able to support in global and local documentation, which makes up the bulk of its transfer pricing practice. The team also provides tax audit support and guidance on APA applications.

Kazuhiro Uehara, who previously worked with the NTA and advised on transfer pricing regulations in several Asian countries, is aiding the firm as a specialist TP adviser.

Eiki Kawakami leads **Kojima Law – Taxand**'s tax and transfer pricing teams. Key industries for the firm include financial services, real estate, consumer products, and IT.

Mark Campbell joined the team from the US in 2012. Campbell and Kawakami advised a US product manufacturer with a new Japanese subsidiary regarding its exportation of products to a third party distributor in Japan. The arrangement involved a transfer of the exclusive distribution contract from the third party to the new subsidiary for a settlement fee. The deal had corporate and indirect tax, as well as transfer pricing implications.

Nagashima Ohno & Tsunematsu's transfer pricing head **Yuko Miyazaki** comes recommended by peers for her expertise in financial products and capital markets.

The market also recommends **Yushi Hegawa** for his expertise in tax litigation. Hegawa secured a favourable transfer pricing assessment valued at $100 million on behalf of a Japanese manufacturer.

The firm sees growing interest in its litigation and transfer pricing practices and believes that with the increasing pressure from auditing authorities, the demand for tax dispute litigation will grow. Large clientele from various industries including financial, automotive, manufacturing, and information technology seek the firms' legal advice.

The firm has additional offices in Ho Chi Minh City and Singapore, which they hope to expand to offer services to their Japanese clients. The firm also helps Japanese clients invest outbound into areas including Africa and Australia.

The three transfer pricing partners at **Tokyo Kyodo Accounting Office** (TKAO) focus in the technology, electronics, and entertainment sectors, which is reflected in the deals the team undertook during 2014.

Partner **Tetsuji Ueda** commandeered many of the major transfer pricing deals for the practice over the year. Ueda is working to obtain a withholding tax refund based on a TP adjustment on behalf of a client in the high-tech distribution industry.

On par with the rest of the market, the firm undertakes a good number of advance pricing agreements, and Ueda is advising a bi-lateral deal concerning digital transactions – a focus area under BEPS.

Ryutaro Uchiyama is the head tax and transfer pricing partner. **Keigo Hirano** is capable in transfer pricing documentation.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	25.5% (a)
Effective	38% (b)
Capital gains	25.5 (c)
Branch tax	25.5% (d)
Withholding tax	
Dividends	20.42% (e)
Interest	15.315%/20.45% (f)
Royalties	20.42% (g)
Net operating losses (years)	
Carryback	1 (temporarily suspended)
Carryforward	9

a) The national standard corporation tax rate of 25.5% applies to ordinary corporations with share capital exceeding JPY 100 million. A 10% surtax is imposed for three years for fiscal years beginning on or after April 1 2012. Therefore, the national corporate tax rate will be 28.05% for the first three years, and 25.5% thereafter. The 18% special tax rate available to small- and medium-sized enterprises (SMEs) for the first JPY 8 million of taxable income is reduced to 15% (also subject to the 10% surtax) for fiscal periods starting between April 1 2012 and March 31 2015. Thus, the national corporate tax rate for SMEs will be 16.5% for the above periods for the first JPY 8 million of income. Companies must pay a local inhabitants tax, which varies depending on the location and size of the firm. The inhabitants tax, charged by both prefectures and municipalities, is comprised of the corporation tax levy (levied as a percentage of national corporation tax) and a per capita levy (determined based on capital and the number of employees). The local enterprise tax, another tax imposed by the prefectures, has three components: progressive rates of up to 7.2% of taxable profits, 0.48% of a "value-added" factor and 0.2% of share capital and capital surplus. In light of the surtax, the effective tax rate for corporations (inclusive of the inhabitants and local enterprise taxes) is approximately 38% for the first three years beginning on or after April 1 2012, and 35.64% thereafter.

b) The effective corporate tax rate is comprised of the national corporate income tax of 25.5%, the local inhabitants tax of approximately 6.2% and the local enterprise tax of approximately 7.56%. In light of the surtax, the effective tax rate for corporations (inclusive of the inhabitants and local enterprise taxes) is approximately 38% for the first three years beginning on or after April 1 2012 (unless shortened to two years), and 35.64% thereafter.

c) Local income taxes are also imposed. The resulting effective corporate income tax rate is approximately 37%. In addition, under the special law to secure funds for reconstruction from the March 11 2011 disasters, a special additional national corporation tax (10% of the normal corporation tax due) is imposed for two tax years beginning on or after April 1 2012.

d) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

e) Dividends paid to a nonresident are subject to a 20% withholding tax unless the rate is reduced under an applicable tax treaty. A 2.1% surtax effectively increases the rate to 20.42%.

f) Interest paid to a nonresident is subject to a 20% withholding tax (15% on deposits and bonds) unless the rate is reduced under an applicable tax treaty. A 2.1% surtax effectively increases the rates to 20.42% and 15.315%.

g) Royalties paid to a nonresident are subject to a 20% withholding tax unless the rate is reduced under an applicable tax treaty. A 2.1% surtax effectively increases the rate to 20.42%.

Contact: Katsuhiko Asakura
Transfer pricing manager
Email: katsuhiko.asakura@jp.gt.com
Tel: +81 (3) 5770 8831

Aoyama Bldg. 9F
1-2-3 Kitaaoyama, Minato-ku
Tokyo 107-0061 Japan

cutting through complexity

KPMG Tax Corporation
Advisory Services/Global Transactions

Izumi Garden Tower
1-6-1, Roppongi, Minato-ku,
Tokyo 106-6012 Japan
Tel: +81-3-6229-8000
Fax: +81-3-5575-0761
Email: info-tax@jp.kpmg.com
Website:
www.kpmg.com/jp/en/about/tax/

Contact: Jun Tanaka (Managing Partner)
Email: jun.a.tanaka@jp.kpmg.com

Firm profile:
KPMG Tax Corporation (hereinafter, "KPMG") is the largest advisory service provider in Japan for transfer pricing area in terms of number of cases involved and number of partners and employees solely dedicating to transfer pricing advisory service. KPMG currently has ten partners in transfer pricing practice in Tokyo/Osaka/Nagoya who all have extensive knowledge and experiences. KPMG offers wide variety of transfer pricing services including bilateral/unilateral APA negotiation, transfer pricing documentation, transfer pricing audit defence, MAP procedure, domestic appeal and litigation procedure, transfer pricing policy planning etc. for Japanese clients as well as foreign-based multinational companies in wide range of industries such as manufacturing, pharmaceutical industry, software, trading, finance, natural resources and so forth. KPMG offers total solutions not

only to mitigate transfer pricing risk itself, but also to formulate and maintain strategies for global tax planning closely coordinating with member firm professionals in corporate tax and customs/VAT group.

In addition, Mr. Nobuhiro Tsunoda, who used to serve as a top senior official of National Tax Agency ("NTA"), participated in our group in 2013. Mr. Tsunoda has extensive experience in presiding over and supervising tax audits at the Tokyo Regional Taxation Bureau and other primary Regional Taxation Bureaus. On top of that, he also conducted the Competent Authorities ("CA") meetings between Japan and foreign countries as the Director of Office of Mutual Agreement Procedures as well as fulfilled his duties as the Director of International Operations Division at NTA, the top senior official of tax administration related to international taxation. Further, in addition to the CA meetings with foreign countries, Mr. Tsunoda also has considerable experience in involving in OECD and United Nations conferences on international taxation as a representative of Japanese tax authorities for many years, which has given him close communication channels with key persons of the tax authorities in respective countries. As such, Mr. Tsunoda's participation in our group is expected to significantly contribute to the progress of the CA meeting with China which is currently proceeding with difficulty, and the CA meetings with other Asian countries including India which tend to face serious challenges.

Tokyo Kyodo Accounting Office

Kokusai Bldg. 9F 1-1 Marunouchi
3-chome, Chiyoda-ku
Tokyo Japan 100-0005
Tel: +81 (0)3-5219-8777
Fax: +81 (0)3-5219-8778
Email: info@tkao.com
Website: www.tkao.com

Since 1993, Tokyo Kyodo Accounting Office (TKAO) has provided top class accounting and taxation services. Its highly trained certified accountants, licensed tax attorneys, consultants and experts from a number of fields provide services tailored to corporate and individual client needs. One area of our business that has seen significant growth, in both demand and the expert resources made available to meet that demand, is international taxation and transfer pricing.

TKAO provides a wide range of international trade related accounting and tax consulting services. This includes but is not limited to inbound and outbound international tax planning. TKAO also provides specialized transfer pricing documentation and APA services. Such services, mandatory since the introduction of the 2010 Japanese tax reform, are also increasingly being used to hedge taxation risk of our corporate clients.

Luxembourg

An audit guide by Philippe Neefs and Sophie Boulanger of KPMG Luxembourg.

Tax authorities

Administration des Contributions Directes
45, Boulevard Roosevelt, L-2982, Luxembourg
Tel: +352 40 800-1
Fax: +352 40 800-2022
Website: www.impotsdirects.public.lu

Following the international trend, transfer pricing is a hot topic in Luxembourg. The Luxembourg tax administration is indeed putting more and more scrutiny on transfer pricing matters. Transfer pricing should normally be reviewed by the Luxembourg tax authorities as part of a general tax audit. There is no dedicated procedure for transfer pricing. Generally, the Luxembourg tax authorities randomly select taxpayers to be submitted to a tax audit. The tax authorities are entitled to perform an audit during the statute of limitations period until final income tax assessments are issued. The general rule is a five-year period unless the corporate tax returns are incomplete, or even not filed, or in case of suspicion of fraud where the period is extended to 10 years.

However, before getting to a formal transfer pricing audit, which is not the most common on the Luxembourg market, the tax administration is generally open to discussion with the taxpayer, as it is encouraged by the OECD Forum on Tax administration and forecasted in the Luxembourg law stating that a taxpayer has the right to confirm its understanding of the tax law with the tax administration. Indeed, the Luxembourg practice promotes constructive engagements with the taxpayers instead of confrontational dialogue. Both the taxpayer and the tax administration give priority to both security and transparency. As a result, the market practice often consists of open discussions before and during the implementation of specific transactions, and unilateral advance pricing agreements (APA) between the Luxembourg tax administration and the taxpayer are concluded on a regular basis.

For the time being, there is one specific regulation dedicated to transfer pricing documentation which addresses financial transactions: the Circular L.I.R.(*Loi de l'Impôt sur le Revenu*) n° 164/2 of January 28 2011 issued by the Luxembourg tax administration (the Circular). The Circular specifically targets group entities whose principal activity consists of intermediary financing transactions (granting funds to related entities refinanced by financial means or instruments, no matter whether refinanced with related entities' funds or not). In particular, this regulation provides for three cumulative requirements to be met by any Luxembourg entity falling within the scope of the Circular:

- To have sufficient organisational substance in Luxembourg;
- To have an appropriate equity to cover the risk assumed while on-lending funds; and
- To evidence that it is in line with the arm's-length principle, having due consideration of the functions performed and the risks assumed in the controlled transaction under review.

The Circular specifically refers to the OECD guidelines to set the application of the arm's-length principle and the methods to be followed when analysing financing transactions.

Notwithstanding the fact that the Circular is the only regulation that gives clear guidance on the transfer pricing documentation of controlled transactions (which obviously helps in conducting a transfer pricing audit), the Luxembourg tax authorities can obviously ask questions for any type of controlled transaction on which there are doubts that the arm's-length principle has been correctly applied. Accordingly, taxpayers can request an APA covering any type of transaction on which they need security from the tax authorities, to avoid costly and burdensome transfer pricing audits. Indeed, the signature of an APA will typically ensure security for the taxpayer with respect to any transfer pricing audit during a five-year period (as long as the facts and circumstances described in the request and in the transfer pricing documentation do not materially change). The APA requests are presented and discussed with a dedicated team in the tax administration.

Once specific transactions have been disclosed by the taxpayer or upon assessment of the corporate tax return, the tax administration may disagree or need more in-depth analysis with regard to the pricing of a transaction or, more generally, the arm's-length nature of a transaction. In these cases, the tax administration does not directly launch a transfer pricing audit but rather asks for a proper transfer pricing documentation to be reviewed first, such as contracts outlining the transaction, functional and economic analysis sustaining the arm's-length character of a transfer price and/or explanation on the methodology used to establish an arm's-length remuneration. The timeframe of the discussions is generally not fixed and there are no restrictions for the taxpayer in being assisted by a transfer pricing adviser.

However, while a formal transfer pricing audit is not the preferred or systematic approach, the Luxembourg tax administration is increasingly challenging the pricing of certain transactions, particularly when it comes to financial transactions. As a consequence, when a price is not considered in line with the arm's-length principle, the Luxembourg tax authorities adjust the taxable basis of the company as provided by article 56 of the Luxembourg Income Tax Law when the counterparty is not a Luxembourg resident.

It is expected that the Luxembourg tax authorities will increase the volume of transfer pricing audits carried out in the coming years. Also, in terms of increased exchange of information between tax authorities and considering the limited resources of the tax administration, this will most probably develop the Luxembourg market towards more transfer pricing documentation prepared in advance by taxpayers, for any significant intra-group transaction to be used as a first line of defense in case the Luxembourg tax authorities would launch a transfer pricing audit.

Philippe Neefs (philippe.neefs@kpmg.lu), Partner, Transfer Pricing Leader

Sophie Boulanger (sophie.boulanger@kpmg.lu), Senior Manager, Transfer Pricing

LEADING FIRMS

1	Deloitte
	KPMG
	PwC
2	Atoz – Taxand
	EY
	Loyens & Loeff
3	NautaDutilh

Although Luxembourg did not see any major transfer pricing changes in 2013, the political coalition programme released by the government in December 2013 stated that: "The government will take measures to attract headquarters of international groups, notably through the introduction of a general transfer pricing legislation fully in line with international rules and principles, the modernisation of the intellectual property and participation exemption regimes, the formalisation of the functional currency regime for tax purposes."

This was positive news for Luxembourg-based tax personnel, who were uncertain about what the new government's agenda would be. "The overall drive of the government to attract business headquarters to Luxembourg is an extremely optimistic development," said Peter Adriaansen of Loyens & Loeff.

Many advisers did not expect December's change of government, which came as a surprise. The departure of Jean-Claude Juncker from Luxembourg's political arena, when he became president of the European Commission, has the potential to impact upon tax and transfer pricing policy, with many practitioners noting the leftward leanings of the new government. Furthermore, practitioners were confident that Juncker's presidency of the EC will benefit the overall goals of the OECD, and help protect the rights of smaller states. "We want to avoid a situation where there is no level playing field," said Thierry Lesage of Arendt & Medernach. "Unilateral integration in Europe is viewed as a danger."

The new government has announced a substantial tax reform due into effect in 2017. Advisers are unsure of the direction of the new government's reforms, especially regarding BEPS.

"BEPS is a…prominent issue, but we don't see the political will to implement everything," observed Adriaansen.

Moreover, BEPS is a "political intention", said Marc Schmitz of EY. "To what extent, and how they will do it remains to be seen." On April 4 2014 the Finance Minister announced that, beginning in 2017, the Luxembourg tax system will begin a global reform programme. The notional interest deduction regime (such as in Belgium) will be removed, and steps will be taken towards compliance with OECD initiatives such as BEPS. Beginning in 2015, there will be increases in the VAT rates.

Some advisers are concerned that the changes will create problems. One adviser said that, due to VAT residency rule alterations "residents in other countries will take a portion of VAT until 2018, and all of the tax income post-2018. This creates a large budget hole, the VAT rate rise will help to fill it but cannot do so alone".

Moreover, an Irish firm said the arrival of some digital businesses in Ireland from Luxembourg was the result of VAT changes. This represents a marginal loss of competitive advantage for Luxembourg. "It is true that there are some big players transferring to Ireland because of changes in VAT margins," said Phillipe Neefs of KPMG. "This is mainly because they have established functions in Ireland, and they are specifically e-commerce firms. This may change in the future, and could be affected by the State Aid investigation."

It is generally expected that the coming changes will require a degree of tax advice from professionals and advisers are confident the changes will generate increased workflow in both tax advice and in the transfer pricing audit field. The latter is already visible, as the Luxembourg tax authorities have begun to specialise their audit practices in response to the rise of the discipline. This has resulted in an increase in litigation work for tax advisers on the back of transfer pricing appeals.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	21 (a)
Effective	29.22 (b)
Capital gains	21
Branch tax	21 (c)
Withholding tax	
Dividends	0/15 (d)
Interest	0 (e)
Net operating losses (years)	
Carryback	1
Carryforward	Unlimited

a) The 21% rate applies to companies whose taxable income exceeds €15,000; otherwise, the rate is 20%. The corporate income tax is increased by a contribution of 7% to the employment fund. A municipal business tax also may be imposed at rates ranging from 6% to 12%, depending on where the undertaking is located. In addition, Luxembourg collective entities that own qualifying holding and financing assets exceeding 90% of their total balance sheet are subject to a minimum income tax of €3,000. Other Luxembourg companies are subject to a progressive minimum income tax depending on the total assets on their balance sheet. The tax will range from €500 (for a total balance sheet up to €350,000) to €20,000 (for a total balance sheet exceeding €20 million).

b) Taking into account the employment fund contribution and the municipal tax, the aggregate effective rate for Luxembourg City is 29.22%.

c) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

d) Dividends paid to a nonresident company generally are subject to a 15% withholding tax, unless the rate is reduced under an applicable tax treaty. No withholding tax is levied on dividends distributed by a Luxembourg company to a parent company located in a treaty country if conditions similar to those in the Luxembourg participation exemption regime are satisfied, i.e. that the parent company (i) holds at least 10% of the payer company or a participation acquired for at least €1.2 million; (ii) holds or commits to hold the shares for an uninterrupted period of at least one year; (iii) has a legal form similar to the one of the forms listed in the Luxembourg corporate income tax code; and (iv) is subject to a tax similar to the Luxembourg corporate income tax.

e) Luxembourg does not levy withholding tax on interest. However, profit-sharing bonds and debt instruments with remuneration linked to issuer profits are taxed as dividends at a rate of 15%.

Currently in Luxembourg, there are no formal documentation requirements, however the jurisdiction endorses the EU Code of Conduct in this regard.

Tier 1

Raymond Krawczykoski heads the tax practice of **Deloitte**, which contains a full service transfer pricing team led by **Stephan Tilquin**. The team is made up of the two partners and 16 practitioners, this includes two managers employed in 2014. Specialities of the team include financial services, private equity, real estate, oil and gas, manufacturing, and healthcare. Tilquin has led on a number of transactions this year including the delivery of a transfer pricing approach for a double tier acquisition and financing structure, coupled with a swap issued by the lender. This involved the development of a pragmatic approach to deal with the specifics of a double tier Luxembourg financing structure, including combining a loan financing with a swap instrument issued by the lender. Tilquan led on a debt pricing M&A transaction, requiring a debt pricing analysis to ascertain an arm's-length interest rate for a debt instrument. The practice was able to draw on the wider Deloitte team in using corporate finance specialists to process the information, in addition to colleagues from another Deloitte member firm who were used to contact a credit agency for analysis. To respond to its clients, Deloitte has created the VP Tax Club, which gathers directors from the European headquarters of multinationals based in Luxembourg with the objective of identifying and discussing the issues and challenges that are common to such companies. The firm is deeply involved in policy making on tax, and the previous head of tax, **Georges Deitz**, has been seconded to the Ministry Finance to review and analyse the major tax challenges the country is facing.

"We anticipate that the market will grow dramatically in the next year for transfer pricing services," noted **Phillipe Neefs** head of transfer pricing for **KPMG**. This will add another strong year for the practice, and for Neefs who founded the practice in 2011. The team continues to respond to market demand for the developing discipline, and has developed a new approach to the benchmarking of a new agreement in a deal this year. The scope of capability of the firm is demonstrated in Neefs' involvement in the preparation of an EU Masterfile which covers all intra-group transactions within the Ferrero Group this year. This is used to prepare EU-specific files in each country. The firm lists its speciality sectors as energy, TMT, consumer goods, real estate, infrastructure and financial services. One partner, and six practitioners make up the team which is led by Neefs.

PwC has two fully dedicated transfer pricing partners in Luxembourg – **Caroline Goemaere** and **Marc Rasch** – as well as over 20 fully dedicated professionals. Between them the team has gained transfer pricing experience in over 10 different jurisdictions. The firm provides documentation, APA, dispute resolution, and value chain transformation amongst other services, often cooperating with the PwC network to serve clients.

Tier 2

Atoz, Taxand Luxembourg is a tax specialist firm which draws on transfer pricing work to facilitate its business, which is focused on international tax generally. As such, the firm undertakes work such as tax planning to deliver a wider optimisation service. This includes holding structures, IP and royalty planning, substance requirements, real estate investment and M&A. The practice consists of nine partners and 80 practitioners. **Keith O'Donnell** oversees the firm in Luxembourg, and lends his clout as a board member and global real estate service line leader to the practice. O'Donnell and the partners of Atoz regularly contribute to thought leadership and reporting through publications on tax, both inside and outside the jurisdiction.

EY operates a respected transfer pricing practice headed by **Nicolas Gillet**, the team is one of the largest in Luxembourg and has been further bolstered by the addition of **Arthur Gobel**, an experienced transfer pricing professional. Gillet's portfolio for the past year reflects the wide capacity of the team to deliver a range of transfer pricing services, frequently working alongside head of tax **Marc Schmitz**. This included the first bilateral advance pricing agreement applied in Luxembourg, which successfully established the local entity as the principal entrepreneur following the significant internal restructuring of a large multinational. Gillet has also been involved in IP restructurings through Luxembourg, and the relocation of a bank's fund distribution activities to Luxembourg. Due to the nature of the jurisdiction, the team frequently works in conjunction with EY offices around the globe to leverage the best structures for its clients.

The transfer pricing team at **Loyens & Loeff** is fully integrated into the various tax practices, as the practitioners see it as interconnected across tax issues. As such, the practice draws upon professionals from Loyens & Loeff's tax disciplines both inside and outside of Luxembourg to deliver a comprehensive transfer pricing service. Loyens & Loeff has offices across the Benelux region to provide a full structuring service and predominantly deals with multinationals, listed, and privately owned, businesses in the financial services sector. In the jurisdiction, the practice mainly focuses on documenting and benchmarking financial transactions and provides reviews of legal documents from a transfer pricing perspective. The tax department is led jointly by **Peeter Adriaansen** and **Pieter Stalman**, and the transfer pricing practice is led by **Peter Moons** and **Anna Sergiel**. The team has recruited at the associate level to bring its total capacity to seven practitioners, including partners. The team has been involved in several cooperative deals with the wider practice this year. This includes several Luxembourg financing companies, from construction and financial services industries. In the past, the firm has had in depth litigation experience, including representing cases before the Benelux tax courts and the European Court of Justice.

Tier 3

Christophe Joosen replaced **Jean-Nicolas Bourtembourg** as head of **NautaDutilh**'s transfer pricing department in April 2014. Bourtembourg departs to a directorship position at Grant Thornton. Joosen is respected for his expertise, and works alongside associate **Jacques-Yves Ligier**. Joosen has been active in the market already and has already completed an engagement advising a joint venture vehicle constituted by York Capital and Marathon Asset Management on the transfer pricing aspects of the acquisition of a non-performing debt portfolio financed with internal debt. The estimated value of the deal is around $70 million. Currently, Joosen is engaged in advising a major Russian tour operator in structuring a holding company in Luxembourg to facilitate their Middle East operations. In addition to these deals, transfer pricing aspects make up an increasing part of the wider firm's work on international transactions and the partners have been liaising regularly with transfer pricing authorities. Joosen lists advising investment funds, financial and professional services, real estate, infrastructure, and telecoms amongst his specialities.

Deloitte.

Stephan Tilquin
Partner | Cross-Border Tax and Transfer Pricing
Tel/Direct: +352 45145 2592
stilquin@deloitte.lu | **www.deloitte.lu**

Balazs Majoros
Director | Cross-Border Tax and Transfer Pricing
Tel/Direct: +352 45145 3047
bmajoros@deloitte.lu | www.deloitte.lu

Firm Profile:
Deloitte was one of the pioneers in Luxembourg when establishing the first TP practice back in 2009.

Currently the practice is led by Stephan Tilquin assisted by a strong team of professionals that encompasses not only fully dedicated TP professionals but also international tax specialists, economists and financial industry specialists in line with the firm's multidisciplinary approach.

The practice is particularly recognised for its business model optimisation work, tailor-made transfer pricing models for financing structures especially in the field of real-estate investments. Echoing the growing focus on transfer pricing both in Luxembourg and abroad, the TP practice assisted the tax department with corporate structuring projects for multinational corporations including but not limited to pricing complex financial instruments.

KPMG

KPMG Luxembourg Sàrl
9 allée Scheffer
L-2520 Luxembourg
Tel: +352 22 51 51 1
Email: tax@kpmg.lu
Website: www.kpmg.lu

Contact:
Philippe NEEFS
Partner, *Transfer Pricing Leader*
Tel: +352 22 51 51 – 5531
Email: philippe.neefs@kpmg.lu

Sophie BOULANGER
Senior Manager
Tel: +352 22 51 51 – 5423
Email: sophie.boulanger@kpmg.lu

Laureen TARDY
Manager
Tel: +352 22 51 51 – 5593
Email: laureen.tardy@kpmg.lu

Malaysia

Tax authorities

Royal Malaysian Customs Department	Department of International Taxation
Ministry Of Finance	Headquarters Inland Revenue Board of Malaysia
No. 3 Persiaran Perdana,	12th Floor Menara Hasil, Persiaran Rimba Permai,
Precinct 2, Federal Government Administrative	Cyber 8, 63000 Cyberjaya Selangor
Centre, 62596 Putrajaya	**Tel:** +60 3 8313 8888
Tel: +60 3 8882 2100/2300/2500	**Fax:** +60 3 8313 7848 / +60 3 8313 7849
Fax: +60 3 8889 5899/5901	**Email:** mansor@hasil.gov.my
Website: www.customs.gov.my	**Website:** www.hasil.gov.my

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Lee Hishammuddin Allen & Gledhill
	Shearn Delamore & Co.
	Taxand Malaysia
	Wong & Partners
3	Raja, Darryl, & Loh

Although several years have passed since transfer pricing was legislated in 2003, an element of uncertainty remains on the specific applications of the law. New regulations provide a financial benchmark indicating that all firms over a certain threshold must provide documentation, but the legislation is unclear on the obligations of smaller firms.

Transfer pricing documentation rules were released in 2012, and businesses considered high risk are being selected for audits under the new rules. Tax return filings now have a box in which taxpayers must indicate whether or not they have transfer pricing documentation. This new box gives tax authorities an idea about which taxpayers are independently producing TP documentation. Such increased transparency has kept advisory firms busy, looking to hire experienced personnel.

A transfer pricing audit framework was introduced in 2013, and includes additional measures for taxpayers. Theresa Goh of Deloitte said the "audit framework provides for voluntary disclosure by tax payers". Taxpayers with high quality TP documentation could face limited and even no penalties under the voluntary disclosure agreement.

The regime for advance pricing agreements has opened up in the past several years, with the first being completed in 2011. Practitioners report that the tax authorities have around 20 agreements in the pipeline. Although still infrequent, such arrangements are valid for five years and have a rollback of an additional five.

A peculiarity of the transfer pricing system is that, unlike many countries who accept TP audits within the benchmarking range, tax authorities in Malaysia will make adjustments even when the audit falls within the acceptable range. If the audit is below the median, an adjustment will be made up to the median. Authorities also do not accept multiple year averages and instead compare results to a year-on-year basis, which can cause compliance difficulties.

Veerinderjeet Singh from Taxand recommends his clients keep all documents, regardless of their size or structure. "Everyone with intra-company transactions should keep paperwork to ensure that transactions are completed at arm's-length."

Tier 1

Deloitte's transfer pricing practice under **Theresa Goh** continues be a leader in the market. Goh is

Tax rates at a glance

(As of September 2014)

Goods and services tax	6% from April 1 2015
Corporate income	25% (a)
Capital gains	0% to 30% (b)
Branch tax	25%
Withholding tax	
Dividends	0%
Interest	15%
Royalties	10%
Technical service fees	10%
Branch remittance tax	0%
Net operating losses	
Carryback	0 (b)
Carryforward	Indefinitely

a) In line with the implementation of Goods and Services Tax (GST), the income tax rate for corporate entities will be reduced to 24% with effect from the year of assessment 2016 (that is, for corporate entities with financial years ending in 2016). Similarly, for small corporate entities with a paid-up share capital of up to RM2.5 million ($793,000), the tax rates will be lowered by one percentage point to

- 19% on chargeable income up to RM500,000; and
- 24% on the remaining chargeable income.

b) The tax rates are as follows for disposal of real property and shares in real property companies from January 1 2014:

Date of Disposal	Companies	Individual (Citizen & Permanent Resident)	Individual (Non-Citizen)
Within three years from date of acquisition	30%	30%	30%
In the fourth year	20%	20%	30%
In the fifth year	15%	15%	30%
In the sixth year and subsequent years	5%	0%	5%

Source: Tax advisers from Taxand Malaysia

recommended by peers for her abilities in APA documentation and dispute work. To supplement the firm's 2011 success in completing the first APA in Malaysia, the firm successfully completed two APAs in 2013. The deals were on behalf of a global pharmaceuticals conglomerate and a manufacturer of office machinery.

Joining Goh is **Ian Clarke** from his previous post in the Deloitte office in Mumbai, and before that, London. Clarke has 14 years transfer pricing experience and was a key part of the development of the UK's financial transactions transfer pricing practice. About one-fourth of Deloitte's team are foreign experts from Japan and India.

The transfer pricing team estimates that about 80% of its clientele are multinationals and emphasises that it is able to win clients and retain them because of the high quality of paperwork they provide. Key industries are pharmaceuticals, chemicals, and energy.

Goh worked on behalf of the Malaysian subsidiary of a global oil and gas conglomerate on the appropriate application of the arm's-length principle for royalty rates on intangibles including patent, trademark, and copyright. The revenue authorities proposed the use of the 75:25 rule as a benchmark, which was contested by the firm. The team successfully utilised an international precedent to suggest a more appropriate hybrid benchmarking analysis.

Sockalingam Murugesan is the star practitioner and lead partner of the transfer pricing department at **EY**. Murugesan has more than 16 years of experience as a tax adviser and has previously worked on a mutual agreement procedure between Malaysia and Japan. The practice has grown rapidly over the past year, adding a second partner, **Vinay Nichani**, and new personnel to bring the total practice up to 30 fee earners.

The firm offers a broad range of transfer pricing advisory services. The firm can help develop TP strategy and policy, coordinate strategies across organisation affiliates, support transitions through new TP requirements, and aid in controversy risk assessment and mediation. The team additionally maintains a good relationship with its global affiliates and gets referrals through the network.

The firm is helping clients put together APA applications and pinpoints controversy and support as areas of growing demand.

The transfer pricing team at **KPMG** is making strides to grow their breadth and capabilities. **Mei Seen Chang** leads the group of 15 professionals, and is recommended by the market for her expertise in the field. Personnel are frequently sent out on secondments to Australia, Singapore, and China to develop transfer pricing capabilities in more developed regimes.

The firm also boasts experience in **Bob Kee**, a transfer pricing professional and the only practitioner in Malaysia to have acted as an expert witness before the Special Commissioners of Income Tax. Chang and Kee undertook supply chain structuring on behalf of a commodity distributor. The structuring involved consideration of transfer pricing regulations in several jurisdictions as well as local risk factors.

The team provides transfer pricing studies and documentation, and is expanding its transfer pricing offerings to keep pace with the market. This year, the firm submitted paperwork for the first bi-lateral APA under the new guidelines.

S Thannermalai leads the largest transfer pricing team in Malaysia at **PwC**, incorporating five additional partners and 31 professionals. Thannermalai is recommended by peers for his skills in tax controversy. National tax leader, **Jagdev Singh**, is recommended by the market for his abilities in APAs and tax disputes.

The firm utilises good relationships with relevant government authorities to help multinationals organise and develop efficient investment structures in Malaysia. In a recent case, the firm assisted in the development of a treasury management model the client could use as the borrowing function of its business. The deal required a feasibility study of two TP models, both of which had to consider operational and cash flow requirements and the tax efficiencies of each.

Another pertinent case included an arm's-length analysis of intellectual property and royalty rates. Clients range from emerging Malaysian enterprises to multinational corporations.

Tier 2

The team at **Lee Hishammuddin Allen & Gledhill** pinpoints transfer pricing as one of the key areas of growth in its practice. **D.P. Naban** leads the team of eight professionals. Naban is a well-known litigator in the Malaysian market who has published a book titled "Malaysia and Singapore Tax Cases Digest".

Naban and fellow partner **Saravana Kumar** won Malaysia's first ever transfer pricing litigation on behalf of Maersk Malaysia, a subsidiary of the Fortune 500 Scandinavian shipping company. The case, *MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*, concerned commission payments treated as business income. Upon audit, the IRB made adjustments to the income, which were challenged by the taxpayer. The case went to appeal before the High Court, but the IRB conceded before the hearing commenced.

The successful argument and general uncertainty about transfer pricing has boosted the firm's business. "They have good, relevant experience in this area," said one client. The firm has several more litigious cases waiting to be heard before the courts. The firm has also secured settlements on transfer pricing audits for several large multinational clients out of court. Transfer pricing documentation and business restructuring continue to be key areas of work.

Goh Ka Im dually leads the tax and transfer pricing offerings of **Shearn Delamore & Co**. Im joined the team in 1997 and is fluent in taxation issues with a niche expertise in tax requirements and incentives for companies involved in energy, natural resources and green technology. In addition to ENRGT industries, the firm caters for clients in oil & gas, financial services and retail.

In 2014, the firm welcomed an additional partner, **Cynthia Lian**. The team is supplemented by **Anand Raj** and **Irene Yong**, both of whom have appeared as Counsel before the Special Commissioners of Income Tax as well as the superior courts of Malaysia.

In a recent case, the team is acting for a Malaysian consumer goods company during a tax appeal before the Special Commissioners of Income Tax. The firm is opposing transfer pricing adjustments made by the tax authorities under Income Tax Act 1967. The case has potential to be precedent-setting as it will further determine application and understanding of what constitutes arm's-length price.

Taxand Malaysia's lead transfer pricing partner, **Leow Mui Lee**, has 14 years of experience and comes recommend by both clients and rival firms for her understanding of transfer pricing. While the firm has utilised many of its personnel resources to aid clients with GST implementation before 2015, it expects transfer pricing will be in high demand next year. The team takes on many cross-border assignments, liaising with partner Taxand firms abroad.

Lee aided in the implementation of a delegation model for a global IT services company to resolve issues emerging from the sharing of personnel cross border. The model developed a sharing mechanism in terms of costs and salaries of personnel who may work in multiple jurisdictions. The result was efficiency and a better allocation of resources.

Taxand is the only Malaysian firm to have published a book explicitly on transfer pricing. The book provides insight to MNE's on transfer pricing audit procedures across Malaysia, Singapore, Thailand, and Indonesia.

Adeline Wong leads **Wong & Partners**' team of three transfer pricing professionals. While the members do not work solely in transfer pricing, the firm is able to cover a range of transfer pricing topics including litigation and controversy, documentation, planning for inter-company transactions, and defence of TP methodology and structures.

Standing out is **Mei Chel Tan, who** recently returned from a six-month secondment to the Netherlands. Tan and Wong advised a young distribution company through its first transfer pricing documentation. Because the company was only a year old, the documentation provided a foundation for future years. The TP structuring also had to take into account the financing of the company in light of unsure financial success, as well as arm's-length considerations with its German parent company.

Tier 3

Raja, Darryl, & Loh's sole tax partner, **Vijey Krishnan**, also undertakes transfer pricing work for the firm. Krishnan has been with the firm for more than 15 years and focuses his practice on tax planning and advisory, income tax appeals, charitable tax exempt status, double taxation treaties, indirect tax, and service taxes.

Krishnan and **Chang Ee Leen** negotiated on behalf of Canon Marketing to reach a settlement before the case was heard before the Special Commissioners of Income Tax. In the settlement, the IRB agreed to drop a majority of the TP adjustments.

Mexico

Tax authorities

Servicio de Administración Tributaria (SAT)
Av. Hidalgo 77, col. Guerrero
cp 06300 Mexico, DF
Tel: +52 1 800 4636 728; +1 877 4488 728 (from US and Canada)
Website: www.sat.gob.mx

LEADING FIRMS

1	Baker & McKenzie
	Deloitte
	Mancera (EY)
	PwC
2	BaseFirma
	KPMG
	SKATT International

January 2014 brought about several updates to Mexico's transfer pricing rules within the tax reform initiated by President Nieto, who had sworn to increase what was previously the lowest tax revenue in the entire OECD. The changes affecting transfer pricing are widespread; interest, royalty or technical assistance payments from a Mexican company to a foreign entity controlling or controlled by the paying company are non-deductible if the payments are made to entities unrecognised abroad, are considered untaxable abroad or are sent to a flow-through entity (FTE). Excepted from this final point are transactions made at arm's-length where stockholders and related parties are subject to income tax on the received payment.

The standard hierarchy of pricing comparables, which had previously been an area of weakness in Mexico's tax code, has been amended to appoint the CUP (comparable uncontrolled price) method to satisfy the arm's-length evaluation. If the taxpayer does not believe CUP applies to a specific transaction, he/she must provide a detailed reasoning within the documentation proving other methods are required.

The amount of detailed transfer pricing documentation will increase, likely flowing to large accounting firms and law firms with deep benches in their transfer pricing groups. However some professionals disagree as regards the level of aggressiveness anticipated in the tax authority's auditing practices.

"They don't have the infrastructure to do transfer pricing audits," said Manuel Tamez of Mijares, "but they're placing energy into modelling risk scenarios to see which taxpayers are risker, in order to focus audits more directly."

A major focus of the tax reform, however, was the treatment and definition of maquilas. The effective tax rate on profits derived from maquilas operations is from 17.5% to 30%. Among further precision of VAT and tax exemption rules surrounding maquiladora operations are transfer pricing related rules concerning the more thorough description of revenues associated with maquiladora services rendered to related parties resident abroad.

Included as well is the reformulating of labour related exemptions for social welfare and worker benefits such as vacation and overtime to 53% of the incurred expenses. Social security fees paid by workers to the companies will also be non-deductible.

Within the tax reform are recommendations relating to the negotiations of APAs between companies and the tax authority, which is an option most tax professionals view as a sound decision to avoid unnecessary audits.

"That's the best option to deal with the authorities, if they're very aggressive about transfer pricing, said

Tax rates at a glance

(As of August 2014)

Corporate income tax rate	30%
Capital gains tax	30% (a)
Branch tax	30% (b)
Withholding tax	
Dividends	10% (c)
Interest	4.9% 10% 15% 35% (d)
Royalties	25% 35% (e)
Branch remittance tax	10% (b)
Net operating losses (years)	
Carryback	0
Carryforwards	10

a) For Mexican corporations. Mexican individuals could be taxed from 10%-35% on capital gains. Non-Mexican residents may be taxed at 10%-35% on gains or 25% on gross income.

b) Branches are taxed at the same rates as domestic companies. Remittances to branches that are considered dividends have a 10% withholding on dividends.

c) On after-tax profits (CUFIN) generated as from January 1 2014. In addition to the withholding tax, corporate tax will be paid by Mexican companies when such dividends are more than CUFIN balance with an equalisation mechanism, equal to the general corporate tax rate on the gross amount of the dividend that is more than CUFIN.

d) Various rates of withholding tax are imposed on interest payments. A 4.9% or 10% rate applies to interest paid to non-resident financial entities and banks. A 15% rate applies to interest paid to reinsurance companies. The rate is 21% if the interest is paid to foreign suppliers of machinery and equipment. In all other cases, the withholding tax rate is 35%.

e) The 35% rate applies to royalties paid for the use of patents and trade marks; the 25% rate applies to all other royalties and technical assistance.

Source: Tax advisers from Mijares, Angoitia, Cortes y Fuentes, Taxand Mexico

Juan Becceril of BaseFirma. This rings true for companies operating under the thin capitalisation regime enacted in 2005, which aimed to reduce companies' debt to equity ratios over time.

Tier 1

Baker & McKenzie's transfer pricing team comprises four partners and 16 fee-earners based at the firm's transfer pricing analysis centre in their Mexico City office. Litigation on the administrative, as well as the judicial, level accounts for the majority of the team's practice, but practitioners operate in many areas including documentation, consulting, APAs, and valuations.

Practice leader **Moisés Curiel**, known for his role in crafting and implementing some of Mexico's transfer pricing rules, has in this past year assisted GE in the submission and negotiation of an APA regarding thin capitalisation rules. **Carlos Linares** also implemented the post-restructuring of a client's transfer pricing structure and policies after the company's acquisition of a Colombian based company with multiple subsidiaries throughout the Latin American region.

Other clients of Baker & McKenzie include Grupo Offshore, Herbalife, Nestle, Deacero, and Grupo Serral.

Deloitte's Mexico transfer pricing practice, or Galaz, Yamazaki, Ruiz Urquiza, comprises 11 partners and directors across its six offices throughout the country. In addition to advising clients on transfer pricing planning and documentation, the practice assists in APAs and mutual agreement procedure, business model optimisation, risk assessment and audit defense. **Simon Somohano** leads the Deloitte network transfer pricing practice in Latin America and the Caribbean, and works alongside **Arturo Vela**, **Jorge Mesta**, and **Ricardo González Orta**.

Mancera, an EY member firm, comprises more than 80 professionals, including eight partners trained in transfer pricing economics and intercompany finance. Practice leader **Jorge Castellon**, in addition to **Enrique Gonzalez** and **Jaime Heredia**, are widely respected by peers for their transfer pricing expertise. The practice negotiates APAs and represents clients in litigation, but focuses on compliance, with documentation accounting for roughly half its workload.

PwC's more than 60 transfer pricing specialists are spread across nine offices in Mexico, making up one of the largest transfer pricing practices in the country. The firm offers a wide range of services including providing transfer pricing studies and documentation, corporate restructuring, valuations, value-chain management and mutual agreement procedures and APAs. The practice is led by **Fred Barrett**. **Gabriel Macias** is highly regarded by peers as a "great practitioner".

Tier 2

Juan Carlos Becerril leads **BaseFirma**'s transfer pricing practice, providing a range of services from documentation management, dispute resolution, and APA negotiations and advice. Clients include several large multinational corporations with operations in Mexico, including Novus, Anixter International, Dow Chemical, and inventory services company RGIS. Regional clients include Meliá Hotels International, a major hotelier found throughout the Spanish-speaking world. The firm recently advised América Móvil on their acquisition of 30% of Grupo Pachuca, valuating intangible assets such as trademarks and player agreements using an arm's-length and fair market value approach.

KPMG's transfer pricing practice, led by **Maria Teresa Quinones**, provides assistance with a wide range of transfer pricing issues, including compliance, transfer pricing studies and documentation, transfer pricing planning, APAs, audit support and dispute resolution, including competent authority relief.

Emilio Ángeles leads **SKATT International**'s transfer pricing practice, which has recently added a partner, two seniors, and a manager to the team in the past year and a half. The group provides a full range of services including transfer pricing planning, documentation, APAs, litigation and analysis of intangible assets. Clients include multinationals and regional companies alike, in the maquiladora (IMMEX programme), automotive, media, food products, and communication sectors. The firm recently advised Johnson Control Group on a business appraisal in the sale of the company's automotive consoles business.

Netherlands

Tax authorities

Ministry of Finance
Korte Voorhout 7, P.O. Box 20201, 2500 EE, The Hague
Tel: +31 70 342 8000
Fax: +31 70 342 7900
Website: www.minfin.nl

LEADING FIRMS

1	Baker & McKenzie
	Deloitte
	EY
	KPMG Meijburg
	PwC
2	Abel Advisory
	Ryan (formerly Altus)
	DLA Piper
3	BDO
	Taxand NL
	Taxperience

Tax rates at a glance

(As of August 2014)

Corporate income tax	20/25% (a)
Capital gains	0%
Branch tax	20/25%
Withholding tax (b)	
Dividends	15%
Interest	0%
Royalties from patents and licenses	0%
Net operating losses (Years)	
Carryback	1
Carryforwards	9

a) If taxable profits are less than €200,000, the lower 20% rate applies
b) The 15% domestic dividend withholding tax rate may be decreased under application of bilateral tax treaties and the EU Parent Subsidiary Directive

Source: Taxand Netherlands

Contrary to recent years, there has not been a large number of large transfer pricing changes to the Netherlands' regime. Partially, this is because it has an advanced tax regime that functions and competes with jurisdictions such as the UK.

"Our system is sound, and the APA agreements system is known for this," said Marc Temme of KPMG. "In the view of finance ministry, it is fool-proof. The Dutch system is well known for being thorough."

With this acknowledged, the Dutch government published a new transfer pricing decree in November 2013, which has become effective. The decree clarifies previously existing legislation and retires decrees from 2001 and 2004. The document has shored up the applicability of the arm's-length principle, the acceptability of transfer pricing methods in relation to OECD guidelines, shareholders' activities, corporate governance issues, transaction financing and documentation issues, amongst other topics. Notably, this does not indicate that transfer pricing rules will follow a strict interpretation in the jurisdiction – transfer pricing remains a complex matter, and is still subject to the tides of the BEPS initiative.

"They're not calling it an update," said Frank Schwarte of Abel Advisory. "It didn't actually do anything. The Dutch government is well ahead when it comes to BEPS and country-by-country reporting, so

I would not expect liabilities for Dutch taxpayers to significantly increase."

Although there has been a lack of profound changes, BEPS is clearly on the Dutch political agenda, including the minds of advisers and clients. This has created an uptake in advisory work performed. "It has not been a year of direct change," mused Rogier Vanhorick of Deloitte. "But the way we advise has changed as a result."

Advisers have said there was clearly a diminishing appetite for aggressive tax avoidance in the jurisdiction, and have instead been queried on compliance-related issues.

"Tax is almost sexy, it's a political agenda, much more interesting than a few years ago," said Vanhorick. "It's become boardroom material rather than purely finance. Previously it wouldn't have had an impact on share price, whereas in the contemporary setting, Starbucks has left the Netherlands due to tax, which would have been unheard of."

Concomitantly, advisers have noted an uptake in litigation work as a result of transfer pricing authorities tightening over tax liabilities. Particularly, one adviser observed that the authorities were critical of large multinationals. This is expected to plateau following the implementation of BEPS – and to some extent is caused by BEPS uncertainty – as advisers generally regard their clients to have more than adequate substance to meet requirements.

Recovery has been steady in the Netherlands but somewhat sluggish in 2013. Roelof Gerritsen of Atlas noticed "a big growth in structured finance and in M&A". In particular there have been more cases of large multinationals playing the role of the banker, as banks remain relatively unwilling to lend.

Tier 1

Antonio Russo heads the transfer pricing group in **Baker & McKenzie**, and lends his experience as part of the firm's in-house economist team to the transfer pricing services. Russo specialises in design, implementation, valuations, supply chain restructuring and APA negotiations. Russo make regular publications and is a respected speaker at transfer pricing workshops around the world. The other member of the two partner team is **Margreet Nijhof**, who focuses on international tax planning for multinationals, and emphasises corporate reorganisations and restructurings. The team employs 10 other transfer pricing professionals, who have developed from documentation services into a sophisticated systems-based practice over the last 10 years. The composition of the team is a blend of economists and financial analysts mixed with tax, VAT and customs lawyers who rely on the wider Baker & McKenzie firm to provide their services. Baker & McKenzie were involved this year with several projects, including an IP centralisation, and a European supply restructuring project.

Thijs Heijenrath leads **Deloitte**'s transfer pricing practice in the Netherlands, which consists of two partners and 33 other fee earners. The wider tax data analytics that the tax service line provides are complementary to the solutions provided by the transfer pricing practitioners. Deloitte can draw upon the wider network of firms and service lines to deliver transfer pricing services, as transfer pricing issues are linked to other factors. Specifically, this includes business model optimisation, which utilises the knowledge of tax and consulting colleagues. The team prides itself on market-leading APA and MAP knowledge. The firm's practitioners have been involved in deals across their specialities this year, which include manufacturing, TMT, financial services, energy & resources and consumer business. This has included business model optimisation services for a major Dutch multinational, including the design and implementation of a revised tax model, aligned with ongoing business changes. The team also provided support for the setup of a complex financing structure for a leading consumer business, in relation to a high profile acquisition. This included extensive negotiations with the Dutch tax authorities and the conclusion of an APA.

EY's transfer pricing practice provides planning, documentation and dispute resolution services. Working with the wider tax service line in addition to in-house economists, EY can provide a full transfer pricing service. **Willem Van Beekhoff** is one of the key tax personnel on the team, as a dedicated partner to transfer pricing and business model optimisation.

Jeroen Dijkman leads the transfer pricing practice in **KPMG Meijburg** which comprises four partners and 28 further practitioners. The firm offers the full range of transfer pricing services including value chain optimisation and APA services, and was this year involved in a quick-resolution EU arbitration between Germany and the Netherlands, after a German tax audit. KPMG is very technologically adept, and was able to provide value chain management, and IP exploitation services to a high-tech multinational this year. The team includes pharmaceuticals, shipping, chemicals, retail, and financial services amongst their specialities.

Michel van der Breggen is at the core of **PwC**'s transfer pricing practice in the Netherlands, he is widely recommended in the jurisdiction. The firm offers transfer pricing documentation, planning, value chain transformation, financial transaction aid, dispute resolution and transfer pricing implementation.

Tier 2

Abel Advisory is led by **Frank Schwarte** in the Netherlands. The firm is a transfer pricing boutique, differentiating it substantially from most other firms, as it leads its transactions from this perspective as opposed to having the service driven by another service, such as M&A. Abel Advisory can provide in-house assistance in addition to the full range of advisory services by the three partners and six associates. This year the practice launched a free-to-use global transfer pricing information service, Transfer Pricing Wiki (www.transferpricing.wiki), this has been designed as an alternative to the Big 4 transfer pricing guides. The firm has been involved in a range of deals across its specialities this year, which include energy, financials, FMCG, transportation, and pharmaceuticals. These include developing a transfer pricing documentation system for one of the largest FMCG companies, and development of a software tool to determine the compensation for Dutch intermediary financing and licensing companies.

Ryan (formerly Altus) acquired Altus International this year, and the American firm continues to expand its European operation this year. **Michel Sijmonsbergen** has joined from Altus and brings more than 15 years of transfer pricing experience with him. Sijmonsbergen is now principal at Ryan. Joining him is **Roderick Veldhuizen**, who takes on a director position. This takes the firm from a transfer pricing focus into a full service tax firm, and significantly expands the scope of work which can be undertaken by the transfer pricing team.

DLA Piper is led by **Ágata Uceda** in the Netherlands. Uceda leads four practitioners. The team was bolstered this year with two hires, including **Yannick Schuerman** from Taxand. The practice has been involved with the worldwide network this year in advising Tesla motors in its worldwide expansion plan. Assistance was provided through advice on the unique product and business model of the technology company, which involved selling directly to customers, without the involvement of dealerships. In financial services, the firm completed a deal in December 2013, advising Lehman Brothers on their European restructuring, following the largest bankruptcy in US history. The firm also demonstrated its cross-border capabilities through advising ServiceNow, which required APA, restructuring and valuation advice. The client is now listed on the New York Stock Exchange. Furthermore, the firm has been active across its other core specialities of life sciences, market-entry, and B2B.

Tier 3

BDO in the Netherlands is a full service firm that provides international tax services with an integrated transfer pricing function. The practice is headed by **Hans Noordermeer** and has a specialist transfer pricing partner in **Sjoerd Haringman** who was hired in 2013. The firm has extensive experience in global outsourcing, international estate planning and expatriate tax planning.

Taxand NL has established a transfer pricing team consisting of one partner, **Arthur Pleijier**. This follows the breakup of VMW Taxand, which has resulted in the creation of the new firm. The new practice is led by **Marc Sanders** and Pleijier joins a wider tax team of six partners and 16 other practitioners which he will be able to rely on to support the transfer pricing business. Pleijier brings experience from Lombard Odier – from which he joined in February 2014 – Andersen and Deloitte. His specialities include the pharmaceutical industry, and information technology.

Head of tax **Ruben Van Aarle** has extensive experience in transfer pricing, and Big 4 experience, which his team have set at the core of **Taxperience**'s values. The firm has offices in Hertogenbosch, Amsterdam, Rotterdam, Budapest, Moscow, Prague, Warsaw and Zug, which facilitate its international work and specifically its transfer pricing engagements.

New Zealand

Tax authorities

Inland Revenue
Private Bag 39984
Wellington Mail Centre
Lower Hutt 5045
Tel: +64 4 978 0779
Email: nonres@ird.govt.nz (non-residents)
Website: www.ird.govt.nz

LEADING FIRMS

1	Bell Gully
	Deloitte
	EY
	KPMG
	PwC
	TP Equilibrium
2	Grant Thornton
	Russell McVeagh
3	Chapman Tripp

Transfer pricing regulations in New Zealand have remained steady since their introduction in 2000. However, as the economy grows there is a need for high quality tax and audit advice. BEPS requirements and stringent global and domestic anti-avoidance policies have resulted in a heightened need for knowledgeable accountants, advisers, and lawyers.

In 2013's Multinational Enterprises Compliance Focus document, Inland Revenue named transfer pricing as a key focus area for the coming 18 months. Practitioners do note, however, that while the authorities remain aggressive in their approach, audit intensity has plateaued over the past several years. Rather, the authorities are focusing on areas where they could reinterpret the application of the law. "The revenue is looking to challenge previous interpretations of the law, the long accepted practices," said Geoff Blaikie of EY.

Documentation reviews are quite common, and large corporations can expect to get a risk review every year. Dispute work is on the rise, and litigation is not uncommon.

APAs continue to be popular and the government advertises that it is open to accepting applications for the agreements and they work hard to complete them in a reasonable timeline. "In comparison to other jurisdictions, it is a smooth process," said Blaikie. APA renewals are also a source of work for many firms.

"I think the IR is comfortable that our rules are quite robust and they have appropriate measures to counter against unwanted tax outcomes and BEPS type transactions," mentions Peter Boyce of PwC. New Zealand tax authorities are quite heavily involved in BEPS and global transfer pricing developments. Thus, practitioners do not foresee any major changes in the near future. "New Zealand has a good global network of double tax agreements. We are likely to adopt the BEPS policies and agreements," explains Andrew Ryan from Minter Elison Rudd Watts. "Whether it means any substantive changes to our domestic law, we won't know."

Tier 1

Bell Gully maintains its status as one of the leading law firms with capability in transfer pricing matters. The firm notes that it is now quite common for cross-border cases to have transfer pricing elements. Recent work includes advisory on business restructurings, transfer of intellectual property, and cross

Tax rates at a glance

(As of September 2014)

Corporate tax rate	28%
Capital gains	0
Branch tax	28% (a)
Withholding tax	
Dividends	0%/15%/30% (b)
Interest	15% (c)
Royalties	15% (d)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited

a) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

b) The 0% rate applies to a fully imputed dividend where the nonresident has a 10% or greater voting interest in the company. The dividend withholding rate is 30% to the extent the dividends are unimputed. In all other cases, dividends are subject to 15% withholding tax rate. These rates may be further reduced by a tax treaty.

c) Interest paid to a nonresident is subject to a 15% withholding tax unless the rate is reduced under a tax treaty. New Zealand has an approved issuer levy (AIL)regime that permits approved issuers to pay a 2% levy instead of nonresident withholding tax on registered securities where the parties are not associated.

d) Royalties paid to nonresidents are subject to a 15% withholding tax unless the rate is reduced under a tax treaty.

border organisation of trusts. Clients range from individuals' trusts to multinational businesses.

The team is also capable in undertaking transfer pricing dispute work. Tax and transfer pricing leader, **Mathew McKay**, focuses on disputes and litigation on behalf of clients who are being audited under anti-avoidance regulations, especially in the area of cross-border finances. Fellow corporate partners, **Joanne Hodge** and **Jarrod Walker**, strengthen the firm's experience in international advisory and negotiations.

The firm notes an increase in demand for transfer pricing advisory related to cross border mergers, business restructuring, and licensing arrangements to move goods into other jurisdictions.

Having focused her practice solely on transfer pricing when the New Zealand industry started in 1996, **Diana Maitland** heads **Deloitte**'s transfer pricing practice. Maitland is one of the few professionals with 18 years solely dedicated to the industry.

Maitland has been working on behalf of a client regarding a permanent establishment challenge from Inland Revenue, who asserted that, based on the length of time of the company's operations in New Zealand, they had established a permanent base there. Deloitte was able to minimise the amount of applicable tax by proving that the clients' intangible property and unique assets meant that it could not reach an arm's-length result.

Melanie Meyer joined the practice 10 years ago from Inland Revenue. Her strategic expertise gives clients insight on the operations and goals of the tax authority.

The firm caters to New Zealand's primary sector but is seeing increased interest in software and technology development compared to previous years. Deloitte also takes a proactive approach to BEPS planning and feels secure in their clients' compliance with international standards.

The firm has many of New Zealand's large businesses as clientele including Shell NZ, Westland Dairy, Nike, British American Tobacco, Moffat, PGGW, and Harcourts.

EY pinpoints transfer pricing as one of the key growth areas in its tax practice. The team, under department head, **Mark Loveday**, is working to keep up with growing market demand, spurred by an uptick in the New Zealand economy. Loveday has been practicing international tax for 23 years, of which he's dedicated much of his time to TP. An additional 14 practitioners work on transfer pricing.

Core offerings include advisory on advance pricing agreements. The team also utilises good rapport with authorities at the IRD to undertake negotiations. Technology and agriculture continue to be key industries to the firm's work. The firm is also the biggest patron of its namesake law practice, EY Law, and will refer clients in need of transfer pricing controversy and dispute work.

Transfer pricing at **KPMG** covers both the North and South island with six offices across the country in Auckland, Wellington, Christchurch, Hamilton, Tauranga, and the newest office in Timaru. Industries of expertise include FMCG, agriculture, and real estate. **Kim Jarrett** out of Auckland leads the national transfer pricing team.

Jarrett advised a New Zealand based group on its offshore expansion in the US and Australia. Because of the firm's hardware and software product offerings, it needed a sophisticated transfer pricing policy. The firm has to consider options for outright sales, leases, and potential withholding tax liabilities. To further complicate the deal, the taxpayer was intending to list on the NZ stock exchange and required TP policies to support the necessary financial model during the IPO.

In addition to corporate TP advisory, the team can aid in the negotiation of unilateral and bilateral APAs, and the completion of transfer pricing questionnaires distributed by the tax authorities.

Director **Erin Venter** leads the transfer pricing offerings at **PwC** New Zealand. The team works heavily with its counterparts in Australia because many deals involve advisory in both jurisdictions.

The firm undertook a variety of APA deals including renewals. Clients range from large multinationals to small and medium enterprises who are beginning transfer pricing compliance. The firm emphasises clarity of TP documentation to ensure that misunderstandings do not result in a formal tax audit.

Mike Bignell, who has spent two decades with the firm, is a part time partner advising the team in transfer pricing. Bignell is one of the leaders in the industry and comes regarded for his commercial perspective on international tax.

TP Equilibrium is the updated business name of the transfer pricing business in cooperation with Duff & Phelps after its acquisition of Ceteris in 2013. Many of the leading economists and transfer pricing professionals moved with Ceteris into Duff and Phelps. **Leslie Prescott-Haar** leads the independent transfer pricing services from New Zealand. The firm has several more senior partners operating in both New Zealand and Australia focusing on both jurisdictions.

The firm emphasises a customer focused approach. To date, no client has ever received an adjustment. Clients include some of the top New Zealand and Australian based companies, and the firm also caters to some of the world's largest global corporations on transfer pricing issues in the Pacific. The firm has a close relationship with the revenue authorities and can gauge their tolerance levels on various issues.

For 20 years, Prescott-Haar has been helping clients with APA applications and renewals in New Zealand and has completed more than any other transfer pricing professional. The firm expects continued interest for their services, especially in the areas of IP and financial transactions.

Tier 2

Greg Thompson is the partner in charge at **Grant Thornton**'s transfer pricing and tax practices. Thompson's career has led him through a stint with a Big 4 firm and also with the New Zealand Inland Revenue Department. Thompson pinpoints several areas in which taxpayers might be vulnerable for an audit, including discrepancies in royalties, losses, thin capitalisation and guarantee fees.

A significant chunk of the practice involves marrying business strategies and goals to define company direction to propose the optimal transfer pricing documentation. The firm additionally handles tax controversy matters with the IRD. Leading industries are manufacturing and distribution and information technology.

The tax practice at law firm **Russell McVeagh** has knowledge on transfer pricing transactions and is adept at representing clients before the IRD on transfer pricing matters. The firm has seen an influx of work in the area over the past year and has worked with experts in the field of transfer pricing domestically and abroad.

While classic international tax disputes involve anti-avoidance and cross border funding, many of the firm's recent tax dispute cases have included transfer pricing elements. The firm advised a multinational client on a transfer pricing matter that was settled just before the substantive hearing, saving the client the publicity of litigation.

The firm has transfer pricing experience in the financial services industry, including pricing of financing arrangements, guarantees, and management fees. The firm also provides advice on documentation to ensure that their legal documentation is consistent with clients' relevant transfer pricing strategy.

Tier 3

The robust team of attorneys at **Chapman Tripp** retain a dominant practice in the New Zealand market. The firm is capable in counselling on international and transfer pricing matters. Partners at Chapman Tripp have advised clients on negotiations and disputes with IR regarding cross border financing and transfer pricing.

The firm notes that tax authorities quite often attack businesses using anti-avoidance as an argument. The team has a number of substantial disputes in the pipeline with transfer pricing elements, one of which is on the cusp of elevating to litigation. Most of the firm's cases are settled before the litigation stage.

Casey Plunket is lauded by rival firms for his knowledge of M&A transactions and cross border structuring. "They're very professional," said one client.

Norway

Tax authorities

Ministry of Finance
PO Box 8008 Dep, NO - 0030 - Oslo
Tel: +47 22 24 90 90
Email: postmottak@finans.dep.no
Website: www.regjeringen.no

LEADING FIRMS

1	Deloitte
	EY
	PwC
2	BA-HR
	KPMG
3	Arntzen de Besche
	Wiersholm

Norway was relatively sheltered from the financial crisis, in large part due to its relative independence and strong extractive industries. "The Norwegian market is picking up, and banks are beginning to finance acquisitions again," said Bard Christian Braathen of DLA Piper. "This is reflected in the uptake in M&A work across all sectors, including structuring deals orchestrated through jurisdictions such as Mauritius."

Generally speaking, Norway's developed transfer pricing market is somewhat of an anomaly, driven by its oil and shipping industries. As a result, firms in the jurisdiction are very capable in handling transfer pricing work and the legislature has been active in developing transfer pricing regulations somewhat ahead of the global pace. Consequently, the local authorities consider transfer pricing a priority and have been endowed with substantial resources for investigation, with few obstacles to a case ending up in the courts. Audits are increasingly likely to end in a settlement.

"Over the last five years we have experienced an increasing amount of work, particularly in disputes with the government," said Joachim Bjerke of BA HR. "This has mainly been due to increased focus from the government."

On the other hand, the tax authorities recently ruled in favour of a company (Transocean) in a major case, and advisers have noted that there is scope for a change in the attitude of authorities.

"We represent several tax authorities in litigation," said Espen Nordbø of Haavind. "Particularly, since the tax authorities lost a very important case against Transocean. This involved a tax fraud case against the company and their advisers, in which everyone was acquitted. The tax authorities have been criticised for being overly aggressive. However, this will not stop the authorities from scrutinising the transfer pricing aspects of oil and gas companies; transfer pricing is subject to ever-increasing focus."

Accordingly, the Ministry of Finance has introduced thin capitalisation rules to the jurisdiction which are effective from the 2014 financial year. This affects multinationals using intra-group financing in relation to their Norwegian entities. EY have produced an analysis of the rules which surmises that interest should be fully deducted if the net interest expense is not in excess of 5 million krone ($810,000). This is also possible if interest is not paid to a related party. In other cases, where the net interest paid to a related party is not more than 30% of taxable EBITDA, it is deductible. These rules apply to external loans guaranteed by a related party.

In April 2014, these rules were slightly relaxed, and certain exemptions were granted, including circumstances where an external loan is secured by a pledge in the shares of the borrower held by

Tax rates at a glance

(As of August 2014)

Corporate income tax	27% (a)	
Capital gains	27%	
Branch tax	27%	
Withholding tax (b)		
Dividends	0/25%	
Interest	0%	
Royalties	0%	
Branch remittance tax	Not applicable	
Net operating losses (Years)		
Carryback	Two years provided the business ceases to exist	
Carryforwards	No limit	

a) Companies engaged in exploration, production and pipeline transportation of petroleum pay special national income tax at 51% in addition to the ordinary corporate tax of 27%, that is a marginal tax rate of 78%.

b) No tax withheld on dividends to corporate shareholders resident in the European Economic Area if the shareholder fulfils certain substance requirements.

Source: *Tax advisers from Selmer – Taxand, Taxand Norway*

another company, or secured by a receivable on the borrower held by another company. Additionally, where a parent company obtains a loan that is secured by its subsidiary, the loan is exempt provided that the parent company owns at least 50% of the shares in the subsidiary.

"The purpose was to encourage companies not to transfer profit out of Norway," said Braathen. "However, this applies to domestic companies, and will hit them hard. Through exemptions, the new government has slightly relaxed the rules but has maintained the overall purpose."

Following the elections in September 2013, a right-wing cabinet replaces the outgoing government of Labour minister, Jens Stoltenberg. As such, the tax industry is aware that further relaxation of regulation is possible.

"The most important in the coming period is what will happen with the tax committee established last March to consider changes to the corporate tax system," said Bjerke. "The report is due in October, and will respond to the lowering of the tax rate in jurisdictions like the UK."

Tier 1

Hans Martin Jørgensen leads the transfer pricing practice of **Deloitte** in Norway, which is four partners and 12 practitioners strong. The team is market-leading in many aspects, and regularly publishes articles and news pieces as part of its effort to remain at the top. The firm has added to its talent pool through the hire of transfer pricing consultant **Camilla Astrand** this year. Deloitte's growth in transfer pricing over the past few years is reflective of the increase in the complexity of volume of transfer pricing audits and demonstrates how the firm continues to respond to market changes. In this regard, the practice has been focused on the OECD BEPS initiative and has been tracking the development of tax from a compliance to a business issue in order to sculpt its services to it. Deloitte is achieving this through tailoring its services to its key industries of financial services, energy and resources, the public sector, real estate and consumer business. In terms of deals, Jørgensen has led on a number of prestigious engagements this year, including restructuring and the design and implementation of a transfer pricing policy. This required a wider team from Deloiite, including the coordination of VAT and customs specialists. **EY**'s transfer pricing practice is well regarded in the jurisdiction and is headed by deputy head of tax, **Marius Leivestad**, who has been working with the firm since his graduation in 1999. The services provided include planning, documentation, pricing and customs – with a focus on financial services –

and controversy and risk management. EY regards transfer pricing services as integrated into the wider tax practice, and includes tax effective supply chain management under its transfer pricing umbrella. Traditionally, the firm's team has included experts in shipping, financial services, consumer goods, pharmaceuticals, and telecommunications.

PwC Norway's transfer pricing department is led by **Morten Beck**, who commands an experienced team of four partners and 14 other fee earners. **Georg Smidt Børresen**, a senior tax lawyer, has joined from the Norwegian Oil Taxation Office and brings added depth to the firm's understanding of Norway's complex energy tax network. The practice is the only Norwegian transfer pricing practice with dedicated specialists in more than one office location – Oslo, Bergen and Stavanger. The firm is particularly proud of its M&A practice, which is highly regarded by peers in Norway. The practice has been involved with the majority of the largest Norwegian M&A transactions in the past year. PwC Norway has a substantial law practice in a market where accounting firms usually provide compliance services separately to law firms. In the last year, the practice has been involved with dispute resolutions, global restructurings and tax audits, which have all required transfer pricing expertise. Clients have included large multinationals and Norwegian groups, in addition to the traditional Norwegian specialties of the oil and gas sectors.

Tier 2

"In addition to strengths in the oil business, litigation and transfer-pricing form the key strengths of our firm," said **Joachim Bjerke** who heads the transfer pricing practice of **BA-HR** in Oslo. BA-HR also has specialities in the shipping and industrial markets, with a significant presence in the real estate market. Norwegian law firms typically handle litigation in Norway, whereas large accounting firms deal with compliance work. The complex Norwegian petroleum tax system is the focus of the firm's transfer pricing work, and this the industry in which BA-HR specialise. This has involved dealing with the Norwegian Oil Taxation authority, which has been challenging the interest margins agreed between related parties in response to the recent financial crisis. Elsewhere, the firm has represented clients in the pricing of gas deliveries and solvency requirements. In addition to Bjerke – who wrote the reference book for transfer pricing in this area – the firm has one of the acknowledged leading authorities on energy tax and tax disputes, **Jan Jansen**. "Over the last five years we have seen an increasing amount of transfer pricing work, particularly in disputes with the government. This has mainly been because of increased focus from the government," said Bjerke. "In the past year, business has strengthened within litigation." Statoil, ExxonMobil and A/S Norske Shell are amongst the prestigious clients the firm has advised recently.

Marius Basteviken leads the transfer pricing service line of **KPMG** in Norway, which sits within a large and diversified tax practice. The firm has expertise in preparing and planning transfer pricing policy, documentation, economic surveys, due diligence for pricing, MAPs and APAs. The Norwegian group is comprised of lawyers and economists, to ensure coverage of all areas of transfer pricing.

Tier 3

The boutique transfer pricing practice of **Arntzen de Besche** regularly contributes to the Norwegian debate on the subject, and last year jointly hosted a transfer pricing seminar with the American Chamber of Commerce, the Norwegian Ministry of Finance and Baker & McKenzie. The firm regularly contributes to Baker & McKenzie's annual analysis of transfer pricing, in addition to using their wider network to assist Norwegian clients. Arntzen de Besche is a relatively new firm in the transfer pricing arena, but is well-equipped to deal with the challenges and aims to grow in this increasingly important area. Head of tax, **Anders Heieren**, said the firm has "built up a very strong tax department in the past three years, this has taken a great deal of time and care". This culminated in May 2014 as the firm concluded the first ever global transfer pricing deal with a listed

Norwegian company, in cooperation with Baker & McKenzie's experts.

Wiersholm's tax practice is well-established in Norway and focuses energy and private equity. Traditionally **Arvid Skaar** has been the primary partner in the energy sector and **Harald Willumsen** has dealt with the private equity sector. The firm has developed its transfer pricing services in such a way as to complement these existing services, and has built a service that is reputable in the process.

Deloitte.

Hans Martin Jørgensen
Partner / Lawyer
Head of Transfer Pricing, Norway

Deloitte Advokatfirma AS
Dronning Eufemias gate 14
Postboks 221 Sentrum
0103 Oslo
Norway

Tel: +47 99 44 60 61
Email: hjorgensen@deloitte.no

Peru

An audit guide by Rafael Urbaneja of PwC.

Tax authorities

Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT)	Ministry of Finance
Av. Garcilaso de la Vega 1472, Lima	Jr. Junin 319, Cercado de Lima, Lima
Tel: +511 315 3303	**Tel:** +511 311 5930
Website: www.sunat.gob.pe	**Email:** investor@mef.gob.pe
	Website: www.mef.gob.pe/investor

1. How does the tax authority select transfer pricing cases to audit?

There is no publicly available information or guidelines followed by the Peruvian Tax Administration (PTA) to select transfer pricing cases to audit. However, the chief of the PTA is a former transfer pricing partner at one of the local Big 4 firms, and has stated that TP would be a focus for audits, which has resulted in more information being provided to taxpayers through several large campaigns. The focus in each campaign has so far been specific industries, companies with persistent losses and big taxpayers (the PTA operates a database where some taxpayers are more closely watched than others, so called "Pricos").

2. How will a company find out it is being audited?

The tax audit officially starts when a formal requirement is presented. Whereas from 2012, the PTA has made it mandatory to file the TP report attached to the TP return, information is available to the PTA before the starting the audit. However, to respond to the requirement, the taxpayer may ask for a brief deferral for presenting information (a postponement of one or two weeks can usually be achieved).

3. When a company has been notified of audit, what is the first thing it should do?

If transfer pricing is in the scope of the audit, the taxpayer should check that its TP documentation is complete and readily available for the years being audited and comply with the regulations. Self-revision of years under audit is advisable.

3. Is there any legislation for general procedure for a taxpayer under audit? If not, what is the recommended practice?

All legislation regulating tax audits is contained in the Tax Code, however, there are no specific provisions for TP audits except for the duration, while an audit on income tax can last up to one year, a TP audit, may last up to 18 months.

4. How does Peru differ in its approach to TP audit to other countries?

Transfer pricing documentation is bound to a statutory deadline in June. It is important to mention that documentation does not only consist of the TP report and TP return but also, all documents related to the related party and tax haven transactions. Also, if TP documentation requested by the PTA was not presented during the audit, it may not be presented during an appeal unless the full amount of taxes assessed is either paid in advance or the debt is bonded.

5. How does the tax authority compile its information on a taxpayer for an audit?

As mentioned before, information on intercompany transactions is available since taxpayers must file the TP report along with the TP return. However, the PTA has been issuing formal letters requesting the TP report for previous years that included periods from 2008 to 2011. Along with this campaign of verification, tax audits have been conducted, and the PTA has been checking the information relayed by taxpayers with custom's data and other tax data. Also publicly available information and data of taxpayers in the relevant peer group or data collected during a related tax audit is used.

6. What are the most likely instances that provoke an audit from the tax authorities?

Although the exact selection criteria are not available to the public, risk factors include: having major fluctuations of profits from one year to the other, inconsistencies between the TP return and other returns, a ratio of related party transactions to other high levels of income, an effective tax rate too low in comparison to peers in the industrial sector, not presenting a TP return, in spite having presented one in previous years.

7. What documents are required by the taxpayer during TP audit?

All supporting data of transactions must be kept by the taxpayer, including agreements, invoices, mails and supporting data of the transfer prices, among others.

8. Are there any restrictions on a company's business during audit?

There is no restrictions on a company's business during an audit since all audits are made on previous year's tax assessments.

9. Are there any restrictions on the taxpayer's advisers during audit?

There is no statutory restrictions for the taxpayer's advisers in the course of an audit, because no penalties or responsibilities are placed on them.

10. How long does an audit last?

A transfer pricing audit can last up to 18 months. However, it is important to mention that the law stipulates the form of partial audits to the Income Tax, which can extend this deadline since other issues in the Income Tax can be reviewed and information may be collected for transfer pricing purposes.

11. What happens after an audit has been completed?

After an audit is complete, the PTA may, or may not, issue an assessment. If it does, the taxpayer may file an appeal if it does not agree with the assessment. In Peru, the PTA deals with administrative appeals, and its rulings can be further appealed to the Tax Court. Also, as mentioned before, if TP documentation requested by the PTA was not presented during the tax audit, it may not be presented during an appeal unless the full amount of taxes assessed is either paid in advance or the debt is bonded.

12. Tips on negotiating with the authorities.

It is recommended taxpayers are cooperative and helpful during an audit and answer all reasonable questions. However, if possible, it is important to try to understand the point of contention that the tax inspector is after, to clarify doubts and be prepared in case of a controversy.

13. How can a company manage its audit risk?

Recently, the tax authority has been aggressively pursuing transfer pricing assessments and compiling information on related parties and with tax haven transactions, so thorough preparation is highly advisable. Besides meeting the statutory requirements of TP returns and TP reports, we recommend monitoring transfer pricing risks across the entire business, which includes maintaining a transfer pricing policy that complies with the regulations and try to comply even before transactions are realised.

LEADING FIRMS

1	Deloitte
	EY
	PwC
2	Estudio Olaechea
	Grant Thornton
	KPMG
	Rodrigo, Elias & Medrano

The broadening of the general anti-avoidance rules enacted in Peru in 2013 have led to, as predicted, a spat of audits and their ensuing controversies in the amendments' inaugural year. The tax authority's (SUNAT) emphasis on data collection and increased documentation in transfer pricing have created a culture of disclosure, according to professionals, which is unfamiliar relative to past practices.

BaseFirma's Claudia Cabada and David Medina describe this shift summarily: "In some cases reports weren't finished because if the clients didn't have time – it didn't matter – transfer pricing wasn't an important part [of the filing]. But now every client has to send in information, and we are trying to manage that in a tiny period of time."

With the rise in disclosure requirements also comes a furthered sophistication of tax authorities, who have set up within their ranks a special team that was assembled to handle larger taxpayers and multinationals.

One particularly controversial addition to the tax regime has been the incorporation of special tax judges charged with managing tax controversies – who happen to be on the Peruvian tax administration's payroll. "What's happening," said Rocio Liu of Taxand, "is that it's very difficult to obtain a favourable outcome in the judiciary because of this."

Transfer pricing professionals have responded to this administrative glitch by moving to file lawsuits sustained before constitutional courts in order to ensure a more independent judiciary. Multiple cases in front of the administrative and judicial arms are furthering the discussions surrounding last year's tax reform, giving transfer pricing professionals in Peru a great potential to affect their tax code moving forward.

In one such case, Rodrigo, Elias & Medrano is in the process of providing advice to Atlas Trading & Shipping in a claim before SUNAT and an appeal before the Tax Court on the application of the "sixth method" for determining transfer prices of commodities and the validity of comparables. Included in the case is a discussion on the legal basis of sustaining transfer pricing audits, as well as the application of the statute of limitations.

Tier 1

Led by **Gloria Guevara**, Deloitte's transfer pricing group comprises two partners and 39 other fee earners, and has been strengthened recently in its takeover of Estudio Galvez & Rizzo. Its core businesses are planning and documentation, although it also advises on APAs. Clients include Peruvian and foreign companies in a variety of business sectors, including mining, pharmaceuticals, financial services, retail and telecommunications. The group recently provided transfer pricing planning for the business restructuring of an economic group involved in the telecommunication services industry.

EY's transfer pricing practice advises some of Peru's most prominent companies on transfer pricing studies and documentation. The practice is led by **Marcial Garcia**, who is known for his deep knowledge of transfer pricing matters specific to the mining and oil and gas industries.

PwC's transfer pricing practice, one of the largest in Peru, advises clients on a number of matters, including transfer pricing studies and supporting documentation, transfer pricing planning, transfer pricing in corporate restructuring and audit defense. The practice is led by **Miguel Puga**.

Tier 2

Led by **Gustavo Lazo**, Estudio Olaechea's transfer pricing group specialises in transfer pricing advisory and consulting services for foreign companies with operations in Peru. The practice analyses transfer

Tax rates at a glance

(As of September 2014)

Corporate tax rate	30% (a)
Capital gains	5/30
Branch tax	30%/4.1% (b)
Withholding tax	
Dividends	4.1%
Interest	4.99%/30% (c)
Royalties	30%
Net operating losses (years)	
Carryback	0
Carryforward	4/Unlimited (d)

a) The standard corporate income tax rate is 30%. Resident enterprises engaged in manufacturing, extractive or trading activities may opt for a special regime if income does not exceed a specified amount – the tax rate is 2.5% of monthly net receipts.

b) Branches are subject to the normal corporate income tax. Additionally, dividends and other profit distributions, as well as branch remittances of net profits abroad, are subject to a 4.1% withholding tax when paid to resident and nonresident individuals, and to nonresident entities.

c) The 4.99% rate applies to certain cash loans between unrelated parties, and where the interest rate, commissions, costs and bonuses is up to LIBOR+7 for US and European loans; in the case of other sources, the tax authorities will determine the applicable rate based on the documentation provided by the borrower and the technical information reported by the Peruvian Central Bank of Reserve. Any excess is subject to a withholding tax of 30%.

d) Mining companies are subject to an additional Special Mining Tax or to "voluntary" payments.

pricing reports, and recommends modifications as necessary. Clients include leading logistics, oil and gas and life science companies.

Grant Thornton's transfer pricing group, led by **Juan Carlos Basurco**, focuses on mixing tax planning and transfer pricing services in its work with clients. Transfer pricing professional **Carlos Chirinos** recently conducted a transfer pricing study for a large mining company involving a valuation of concessions, pre-operational expenses and shares. The firm assists clients in a variety of industries including mining, oil and gas, real estate and construction, hospitality and tourism.

Led by **Juan Carlos Vidal**, KPMG's transfer pricing group serves companies in a number of key sectors, including mining, telecommunications, banking, insurance, energy, infrastructure and technology. The group assists with transfer pricing planning and related party documentation, and represents clients before the tax authority and in court.

The transfer pricing practice of Rodrigo, Elias & Medrano supports clients in legal matters related to transfer pricing, including both administrative and judicial litigation. The practice is led by **Silvia Munoz**, who designed some of Peru's first transfer pricing regulations. The group recently advised Telefónica International Wholesale Services on a dispute before the tax administration concerning tax objections related to cost-sharing arrangements.

Av. Santo Toribio 143, Piso 8, San Isidro, Lima.

Tel: +511 211 6500
Website: www.pwc.pe

Transfer Pricing
Contact: Miguel Puga
Email: miguel.puga@pe.pwc.com

International Tax
Contact: Rudolf Röeder
Email: rudolf.roeder@pe.pwc.com

Contact: Orlando Marchesi
Email: orlando.marchesi@pe.pwc.com

Contact: Arturo Tuesta
Email: arturo.tuesta@pe.pwc.com

PwC has been present in Peru for 90 years rendering professional services to the most prestigious local and global companies doing business in Peru and abroad. Our clients include important businesses, individuals and organizations, both national and international. We have the experience to address matters arising from diverse industry sectors and from different economic arenas, such as mining, communication, retail, manufacturing, fishing, public and private concessions, information technology, among others.
PwC Peru is able to support its clients over various service areas, including, Legal and Tax Advisory Services; Domestic and International Corporate Tax Planning; M&A; Transfer Pricing; Tax Compliance; Legal and Corporate Counseling; Labor Consultancy Services; Individual Consultancy Services and Expatriate Global Solutions; Tax Risk Minimization; Tax Accounting; Tax Proceeding, Defense and Dispute Resolutions and Outsourcing.

Philippines

Tax authorities

Bureau of Internal Revenue
BIR National Office Bldg, BIR Road, Diliman, Quezon City, Philippines
Tel: +63 981 8888; +63 981 7000
Email: contact_us@cctr.bir.gov.ph
Website: www.bir.gov.ph

LEADING FIRMS

1	Isla Lipana
	Sycip Gorres Velayo
2	R.G. Manabat & Co.
	Du-Baladad and Associates
	Navarro Amper

After years of revisions, transfer pricing regulations were codified in the Philippines on 23 January 2013. Revenue Regulation RR No. 2-2012 under Section 50 of the tax code specified guidelines for conducting intra-business transactions. The regulations are largely compliant with OECD regulations and stipulate that taxpayers must maintain specific transfer pricing documents to demonstrate that their transfers are made at arm's length.

"The tax administration is looking at transfer pricing as a means of improving the revenue collection," says Martin Mijares of Salvador & Associates of the new regulations. Authorities are training themselves in the area, and firms note that clients, especially multinationals with large potential tax liabilities, are eager to be one step ahead of IR.

Since regulations were introduced, firms have been expanding their knowledge and hiring knowledgeable personnel in order to incorporate transfer pricing services in their offerings. Clients have already begun requesting more information on transfer pricing best practices and are taking steps to ensure compliance. "Clients are taking a more proactive approach to taxes and want to know risks and exposure before an audit comes around," said Emmanuel Bonoan of R.G. Manabat & Co.

Transfer pricing audits have yet to be conducted under Internal Revenue, but the market is anticipating that these will begin in late 2014. Once these audits kick off, firms expect much higher demand for benchmarking and feasibility analysis, and eventually TP defense work. Although several years away, such cases will determine how new transfer pricing policies will be applied on a practical level.

The Tax Bureau is applying stricter penalties for non-compliance, creating uncertainty in the market. Taxpayers and tax professionals are hoping this can be partially solved by the release of detailed guidelines on MAPs and APAs. It is possible that Circular will be released on the topic as early as 2014.

However, with much to do, the Tax Bureau will have to prioritise whether APA or TP audit and documentation guidelines take precedence, likely leaving the other to be specified in the coming years. What the market can expect is an increase in the scope and depth of transfer pricing work, as well as the number of tax firms who offer it.

Tier 1

Carlos Carado II leads the transfer pricing services at Isla Lipana, PwC's affiliate in the Philippines. Carado is supported by a director and several managers, and many of the firms general tax practitioners can also handle transfer pricing work.

A majority of the firm's clients are international corporations, with the remainder being local firms. The firm also boasts good rapport with the Bureau of

Tax rates at a glance

(As of September 2014)

Corporate income	30%
Capital gains	30% (b)
Branch tax	30% (a)(d)
Withholding tax	
Dividends	15%/30% (e)
Interest	20%
Royalties	20%/30% (f)
Technical services fee	30%
Branch remittance fee	15%
Net operating losses (Years)	
Carryback	0
Carryforwards	3 (c)

a) Philippine corporations are taxed on worldwide income; nonresident companies are taxed only on Philippine-sourced income. A foreign corporation with a branch in the Philippines is taxed on Philippine-sourced income.

b) Capital gains are generally taxed as income. However, gains on the sale of shares not traded on the stock exchange are subject to a 5% withholding tax on the first PHP100,000 ($2,300) and 10% thereafter. Gains on the sale of shares listed and traded on the stock exchange are taxed at one-half of 1% of the gross selling price. Gains derived from the sale of real property not used in a business are subject to a 6% final withholding tax based on the sales price or fair market value, whichever is higher.

c) Losses may be carried forward for three years unless the taxpayer benefits from a tax incentive or exemption. Losses may not be carried forward where the business undergoes a substantial change in ownership.

d) The corporate income tax rate for regional operating headquarters is 10%.

e) Dividends distributed by a Philippine company to a nonresident are taxed at 15%, provided the country of the nonresident foreign corporation allows a tax credit of 15%. Otherwise, the dividends are taxed at 30%.

f) Royalty payments made to a nonresident are subject to a 30% withholding tax, unless the rate is reduced under a tax treaty, subject to a confirmatory ruling from the BIR. A 20% final withholding tax is levied on royalty payments made to a domestic or resident foreign corporation.

Source: Tax advisers from Salvador & Associates, Taxand Philippines

Internal Revenue and has acted on behalf of clients in the cases of auditing and investigations.

Because transfer pricing regulations are new to the country, the firms main transfer pricing services are consultation and documentation. However, it pinpoints a number of key areas for expansion in the coming year. Value chain transformation and restructuring are areas of increasing demand. The firm is also one of the few in the Philippines working on an Advance Pricing Agreement with the BIR, and is hopeful the result will be favourable to the taxpayer.

Sycip Gorres Velayo has been involved in transfer pricing long before it was codified in the Philippines last year. **Wilfredo Villanueva** leads the team of twenty fully dedicated transfer pricing professionals. Peers note that Villanueva's fellow partner **Romulo Danao** has strong experience in transfer pricing.

The practice offers benchmarking, policy implementation, advisory and audit services, APA assistance, and tax efficient supply chain management services. Many clients have approached the firm with concern over their transfer pricing set up. The practice has solid double digit growth and expects to sustain this growth with the help of the markets increasing interest in TP structuring.

Tier 2

Maria Peralta is head and sole partner of the transfer pricing team at **R.G. Manabat & Co**. Although the team is small, clients report that they explicitly sought Maria for her expertise, mentioning, "We found that the tax principle in charge is very well versed in preparation of transfer pricing."

The firm directly engages with tax authorities to weigh in on new transfer pricing legislation. Clients are now requesting information on basic cost sharing agreements and the firm is planning to expand in this area over the next year.

Peralta and other team members acted on behalf of Dole Food Company to search for a local partner to engage in the production of fresh and packaged foods. The thorough assessment involved creating financial valuations of potential entities in addition to their own reports to ensure quality, reliability, and application of the arm's length principal. Another deal assumed by the firm involved the large acquisition of a Philippines-based agricultural business by a Japanese company.

The team is self-described as "more conservative" in their TP approach. The transfer pricing team aims to implement an international perspective to their services, rather than rely solely on local expertise and comparables, which they describe as "the KPMG way of doing things".

Benedicta Du-Baladad is the leading partner of her namesake firm **Du-Baladad and Associates**. Du-Baladad is recommended by peers for notable litigation skills. Du-Baladad is also a former official, and spent 17 years working at the Bureau of Internal Revenue. The firm is part of the World Tax Services Alliance, which gives it access to independent tax firms in 90 other countries.

The firm has undertaken a number of transfer pricing studies. In a challenging case, the firm had to analyse potential comparables for an insurance and re-insurance business. The unique business model made comparables difficult considering the variations in ascertaining risk on the products. The team also did a TP study for a bank utilising a mix of methods to address both front-end and back-end support services.

Fredieric B. Landicho heads **Navarro Amper**'s transfer pricing practice of six dedicated professionals. Before transfer pricing legislation was formalised in 2013, the firm sent two managers to Deloitte Kuala Lumpur to receive six months of transfer pricing training. The firm has since sent additional professionals for this training. To date, the firm estimates they have completed twelve transfer pricing engagements consisting of benchmarking studies and globalization of TP documents.

Landicho and team members took on a $25 million deal on behalf of a semiconductor company to localise the taxpayers documentation so it would be acceptable to the tax authorities.

Poland

Tax authorities

Ministry of Finance
12 Swietokrzyska St, 00-916 Warsaw, Poland
Tel: +48 22 694 55 55
Email: kancelaria@mofnet.gov.pl
Website: www.mf.gov.pl

LEADING FIRMS

1	Deloitte Doradztwo Podatkowe
	EY
	KPMG
	PwC
2	Crido – Taxand
	DLA Piper Wiater
	Grant Thornton
	MDDP
	Taxonity
	Taxplan – Taxperience
3	Arena Tax
	Dentons
	Linklaters

Tax rates at a glance (As of July 2014)

Corporate income tax	19%
Capital gains (taxable according to general CIT rules)	19%
Branch tax	19%
Withholding tax	
Dividends	0% to 19% (a)
Interest	20% (b)
Royalties from patents and licences	20% (b)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	n/a
Carryforwards	5

a) Dividends paid by a Polish company to a non-resident company are taxable at 19% unless reduced under a tax treaty. Full exemption under EU Parent-Subsidiary Directive available.
b) Full exemption based on EU Interest and Royalties Directive available. Reduced rates possible under tax treaties.

Source: Tax advisers from Crido Taxand

While transfer pricing is not the most pressing tax concern in Poland, the country's tax authorities have begun to focus on it more closely over the last year. They have become both more aggressive and more sophisticated, whilst being backed up by legislative changes.

There was a guideline introduced in the summer of 2013 on how to treat inter-group transactions. "It is not the word of law," said Paweł Toński of Crido Taxand. "It is kind of a guideline and the authorities try to use it like a law."

"It gives a broader perspective," he continued. "It is one of the signals that the Polish authorities are trying to make Polish transfer pricing work. Because at the moment it doesn't. You hardly have TP cases in Poland as you know them in the West."

The authorities have created a special, central, think-tank intended to give guidelines to local tax authorities. "They don't have the cash to hire experienced people in every city, but found the money to create this hub," said Toński. "Together with the change of guidelines it shows that transfer pricing will be an issue in Poland."

One area the tax authorities are pressing ahead in is the requirements for documentation, particularly for companies dealing with intangible assets.

"They are slightly more tough and detailed," said Tomasz Michalik of MDDP. "In transfer pricing they have had a lot of training."

Robert Nogacki of Skarbiec said: "The authorities are much more aggressive. They have had the instruments for years but have not known how to use them."

While the authorities have generally become more user-friendly in other areas of tax, particularly in large cities, this is not something which has happened in transfer pricing. "It is quite literal, the way they work, and formalistic," said Toński.

An expected development in legislation which will have an effect on transfer pricing is the introduction of a new anti-abuse clause, similar to the ones seen in other parts of Europe.

"The Polish tax authorities are initiating changes in the law", said Robert Nogacki of Skarbiec. "While common across Europe, it is quite new in Poland. We see it as inevitable. Tax evasion is going to become a crime."

Tomasz Michalik of MDDP, agreed, and said: "It is most likely that it will be introduced. This is something that the government is focussing on. We had a similar clause but it was overturned by a Polish tribunal as it was considered to violate the constitution."

The Polish constitution provides an opportunity for such a law to be confronted, and as such the government is taking time to ensure that the law is robust enough to stand up to such a challenge. No draft for the clause has yet appeared, but it is likely to be put through parliament in late 2014 or early 2015.

Tier 1

Iwona Georgijew leads the transfer pricing department at **Deloitte Doradztwo Podatkowe**, which employs two partners and 29 other fee earners. The firm has a strong hub in Warsaw and practitioners in eight regional offices across Poland.

Georgijew is a respected name in transfer pricing, and leads Deloitte's transfer pricing practices across central Europe, comprising offices in the Czech Republic, Hungary, the Slovak Republic, Romania and Bulgaria.

The team is particularly proud of the 100% effectiveness of its transfer pricing documentation – to date, not one of the thousands of documents compiled by the firm has been successfully challenged by the tax authorities.

The firm has also been involved in the issuance of over a third of the total number of APAs issued by the Polish Minister of Finance, including negotiating the first five-year APA and the first of only two bilateral APAs in Poland.

The firm is confident working across all industries, but is particularly strong in fast-moving consumer goods, the financial industry, pharmaceuticals, energy – encompassing oil, gas, coal, renewables and electricity – and telecommunications.

In one deal, the firm produced an analysis relating to the reshaping of the debt structure of a wireless telecommunication company's group. The main goal of the group was to acquire funds through bonds issuance on the European High Yield market. The funds were then distributed among entities of the group in a form of intercompany bonds to refinance the existing debts. Several transactions were then subject to analysis, including the acquisition and distribution of the bonds and the issuance of the collaterals in the form of guarantees and pledges on assets to secure the bonds.

The transaction was unique from the point of view of the European market because it was the first issuance of the bonds denominated not only in euros but also in Polish złoty.

Partner **Aneta Błażejewska-Gaczyńska** leads the transfer pricing department at **EY** (Ernst & Young Doradztwo Podatkowe), which employs 18 other fee earners including six certified tax advisers.

The majority of the firm's experience is in dealing with intangible assets, and it carries out a number of services in this area, such as: Valuation of intangibles using non-standard methods; allocation costs that relate to development of intangibles; discussion with the Ministry of Finance and tax authorities on the impact of the local operations on the development of intangibles and their influence on transfer pricing; preparation of taxpayers to defend the assumptions behind intangible valuations; and identification of the necessity to introduce payments for intangible transfers.

Besides this highly specialised work, the firm offers a wide range of transfer pricing services, including the valuation of intercompany guarantees using different methodologies such as the yield approach and CUP method, allocations of profits and capital to the permanent establishments of foreign companies, financial structuring, the preparation of financial models, cost allocation models and benchmarking tools to facilitate transfer pricing implementation and support during transfer pricing audits.

The firm is particularly adept at serving clients that operate in fast-moving consumer goods, pharmaceuticals, the automotive industry, energy and resources and real estate.

In one deal, the firm created a complex transfer pricing model for valuation of financial transactions for one of the largest energy groups in Poland.

In another, the firm justified and valued a leading European packaging company's value-adding procurement and supply-chain services.

The head of transfer pricing at **KPMG** is **Jacek Bajger**. The firm offers a comprehensive suite of transfer pricing services, including APAs, planning of transfer pricing policy and intra-group settlements, benchmarking studies, analysis of transfer pricing risks, training and assistance during tax audits.

The firm serves all industries but is particularly adept at working with clients in the automotive, building, construction and real estate, chemicals, consumer markets, diversified industrials, energy and natural resources, financial services, banking, fund management, insurance, technology, media and telecommunications, pharmaceuticals, private equity, public sector and healthcare, transport, shipping and logistics industries.

PwC's transfer pricing team consists of more than 20 professionals and is led by director **Piotr Wiewiórka**, who has also recently taken up a role at PwC in neighbouring Ukraine. Another key name at the firm is **Sebastian Lebda**.

The team offers a diverse range of services, including transfer pricing planning, implementation of appropriate transfer pricing policy for domestic and international transactions, review and preparation of transfer pricing documentation, benchmarking studies, transfer pricing reviews and assistance during tax audits.

Tier 2

Partner **Evelina Stamblewska-Urbaniak** leads the transfer pricing department at **Crido – Taxand**, having recently joined from EY. She is one of a series of practitioners to move to Crido from the Big 4 firm, with respected indirect tax practitioner, **Roman Namysłowski**, also joining.

The firm provides a wide range of transfer pricing services, including assessing the nature and scale of intra-group cooperation with regard to the possible tax-optimisation of settlements used, assistance in preparing and implementing transfer pricing policies and internal restructures and analysis of intra-group flows to determine effective price levels.

The firm also supports clients in the preparation of price strategies in relation to intangible assets, assists clients with the preparation of transfer pricing documentation and provides assistance during tax and legal proceedings.

The transfer pricing practice at **DLA Piper Wiater** is made up of one partner and three other fee earners, and is led by transfer pricing expert **Monika Poteraj**. The firm offers a wide range of transfer pricing services and primarily works with clients in the pharmaceutical, oil and goods, consumer goods and manufacturing industries.

In one deal, the firm conducted a tax optimisation through a business conversion for Petrodom, a Polish group of companies and partnerships owned by an individual involved in trade in petroleum and oil products.

The project included advice on the transfer of certain functions to a newly set up entity, support in finding business justification for the conversion, drafting an agreement on the intermediary in the acquisition of oil products by the newly set up entity and preparing transfer pricing documentation on business conversion and agreement.

In another deal, the firm conducted a pan-European benchmarking analysis for chemicals company, Basell Orlen Polyolefins. The analysis looked at the distribution structure of chemical products and was aimed at the verification of an arm's-length level of commission collected by a related party distributor of chemical products in both Polish and European markets.

Dariusz Bednarski leads the transfer pricing team at **Grant Thornton Frąckowiak**, which is made up of two partners and four additional fee earners.

The firm provides a number of services for clients, such as analysis of tax risks related to transactions with related entities, drawing up transfer pricing documentation, developing transfer pricing policy and principles of accounting between related entities and benchmarking.

Other services include analysis and drawing up agreements between related entities, including cost sharing agreements; assistance in applying for APAs; advisory services in tax proceedings concerning transfer pricing, including preparation of the argumentation and documents supporting the taxpayer's position, and transfer pricing training and workshops.

The firm works across all industries but is particularly proficient at dealing with clients in the automotive, agricultural, food and drink, chemical, real estate and construction industries.

The transfer pricing team at **MDDP** (Michalik, Dluska, Dziedzic & Partners) is led by **Arkadiusz Żurawicki** and consists of two partners and four other fee earners.

The firm's work mainly involves redesigning and reorganising core business activities, restructuring of intragroup financing, including international market bond issues, valuation of royalty rates and creating IP/client service centres. The firm works both locally and internationally to advise Polish and foreign companies on the international transfer pricing strategies.

Key sectors the firm operates in are retail, telecommunications, pharmaceuticals, finance, insurance and real estate.

In a $65 million deal, Żurawicki advised a client (a limited-risk distributor (LRD)) on selling cars produced by its Asian parent company. According to the existing transfer pricing policy the client's target operating margin was positive, because the parent company acted as a principal. However, in 2013, disturbances in supply caused a shortage of cars for sale and the LRD experienced a net loss.

The firm then advised the LRD to demand compensation from its supplier, given the LRD-principal relationship. An interesting aspect of the engagement was assessing how to structure the settlements for the group to be in line with what unrelated parties would have done, despite the fact that such situations are extremely rare between independent parties.

Taxonity is a transfer pricing boutique led by **Jaroslaw Mika**, a qualified tax adviser who has eight years of full-time experience in transfer pricing. He published a book on transfer pricing in Poland in 2007 and specialises in transactions between related entities, international tax optimisation schemes for multinationals and the tax aspects of M&A.

The firm is adept at creating transfer pricing policies for transactions between related companies, preparing benchmark analyses, offering services related to customs valuation and preparing transfer pricing documentation for clients.

Transfer pricing is one of the key services offered at **Taxplan – Taxperience**. The team is led by **Matthew O'Shaughnessy**, who has more than 25 years' experience in Polish tax law.

The firm's transfer pricing services include economic analysis to verify the pricing of a given transaction, benchmarking studies drawing on publicly available specialist databases including the Amadeus database, transfer pricing documentation, risk assessment for transactions between related entities, APA negotiation and support with tax proceedings and litigation.

Tier 3

Michał Musielak is the head of transfer pricing at **Arena Tax**, which employs eight other fee earners. The firm has grown in the last year, adding three former Big 4 employees including **Helena Bogdanowska-Kulesza**, and is working to develop its transfer pricing practice.

The firm's transfer pricing operations mainly entail restructuring work and the preparation of transfer pricing documentation for clients, both Polish and foreign, in the financial industry.

In a $40 million deal, the firm developed transfer pricing methodology, including documentation, for the restructuring of a client's bad debts. In another deal, the firm worked on transfer pricing methodology for restructuring of activities for a client operating on the financial market, including benchmarking concerning the core services of the company.

The transfer pricing team at **Dentons** is led by **Karina Furga-Dąbrowska** and employs two partners and two other fee earners. Key sectors for the firm are life sciences, real estate, financial institutions, manufacturing and leisure and hospitality.

The practice is developing but at the moment most of its projects come in the preparation of transfer pricing documentation. In one case, the firm prepared documentation for Ipsen Poland as well as providing advice on the restructuring of a loan position.

Other projects have included advice on structuring intra-group transactions for a UK real estate investor, which included work on documentation and benchmarking studies.

Mikołaj Bieniasz leads the transfer pricing practice at **Linklaters**, which consists of four other fee earners. The firm is best known for its advice on transactions, including M&A, as well as cross-border and domestic restructuring, capital markets, lease and project financing, investment funds, structured finance, tax litigation, transfer pricing, VAT and international tax optimisation.

Portugal

Tax authorities

Directorate General for Taxation
Rui da Prata 10 2nd Floor, 1149-027 Lisbon
Tel: +351 21 882 3093
Fax: +351 21 881 2938
Email: dsirs@at.gov.pt
Website: www.portaldasfinancas.gov.pt

LEADING FIRMS

1	Deloitte
	EY
	KPMG & Associados – S.R.O.C.
	PwC
2	Garrigues – Taxand
	Grant Thornton
	Transfer Pricing Associates Global
	Uría Menéndez – Proença de Carvalho
3	Abreu Avogados
	Baker Tilly
	Ricardo da Palma Borges & Associados

The plethora of changes to tax legislation in Portugal has not been felt nearly as heavily in transfer pricing, which has generally moved in step with the OECD. Issues for taxpayers and advisers come instead from the tax authorities, which are extremely aggressive, and becoming more sophisticated in transfer pricing matters.

"Portugal introduced transfer pricing 12 to 13 years ago," said Rui Camacho Palma of Linklaters. "The cases brought by the tax authorities are becoming more grounded and well developed."

The tax authorities, which desperately need to increase revenue because of Portugal's perilous public finances, began to view transfer pricing as a major potential source of income in 2013 and have been investing in training and equipping teams.

The authorities are especially focussing on scrutinising related-party transactions and restructuring.

The authorities' aggression is such that they take positions against the courts, which are generally considered to be more reasonable, and government guidance has been necessary to discourage this. They are deploying the Portuguese anti-tax avoidance more commonly, although Camacho Palma said they are using it "like a blunt instrument". One area they are particularly focussing on is scrutinising related-party transactions and restructuring.

"The tax authorities for the first time in many years are getting more wins than losses in courts whereas three to four years ago they were losing 75% of cases," Camacho Palma continued. "But they more often win on procedural matters. Provided that you pay attention to procedure and compliance you are unlikely to lose."

The statistics on the authorities' success rates, however, are skewed by the tendency for taxpayers to go in to small tax cases expecting to lose just to defer payment, because the fees are insignificant. Camacho Palma confirmed that this practice still exists: "It is misleading as it makes the statistics look better than they are."

Another feature of the Portuguese market in recent years has been the emigration of talent to the rest of the Portuguese-speaking world, particularly Angola. The country gained independence from Portugal in 1975, which triggered a 27-year civil war and exodus of Europeans.

Since 2002, however, the country has boomed as a result of oil and diamond exports, as well as significant Chinese investment and firms are now sending more advisers there. Transfer pricing rules setting out the requirement for documentation were introduced in January 2014.

International firms in particular are sensitive to this, and "are facing difficulties as they are not generating enough work for their tax teams in Portugal", claimed one adviser. "Several partners and consultants were allocated to projects outside Portugal, mostly in Angola, leaving them out of the most relevant transactions taking place in the Portuguese market."

Tier 1

The transfer pricing team at **Deloitte** is led by partners **Patrícia Matos** and **Rosa Soares**, and employs 21 dedicated transfer pricing professionals, making it one of the largest transfer pricing teams in Portugal. The firm has two offices, located in Lisbon and Oporto.

The firm's practitioners are each specialised in a field such as tax, economics or law, and the combination of perspectives allows a wide range of transfer pricing services to be offered to a number of large Portuguese-based multinational companies.

The firm offers services in documentation projects, litigation, mutual agreement procedures, arbitration and transfer pricing planning and structuring, and has been involved in the setup of the only two APAs approved in Portugal.

The firm specialises in serving clients in the manufacturing, financial services, construction, real estate, tourism, leisure and telecommunications industries.

In addition to their work with taxpayers, Deloitte has worked closely with the Portuguese Tax Authorities' transfer pricing team on several technical issues and has been involved in the critical analysis of updates to the Portuguese transfer pricing legislation.

The transfer pricing team at **EY** is made up of 15 professionals dedicated to the field, based in Lisbon and Oporto and led by **Paulo Mendonça**. Practitioners in the team are mainly economists and lawyers, and have on average six years of experience. The firm has offices in Lisbon, Oporto and Luanda, Angola.

The firm's services are split in to three main technical segments: documentation, planning and controversy. In controversy, the firm is negotiating three separate APAs and one mutual agreement procedure.

The firm offers services to clients in all industries, but is particularly proficient in serving customers in the automotive, banking and capital markets, cleantech, construction, consumer products, financial services, government and public sector, insurance, life sciences, media and entertainment, mining, oil and gas, power, private equity, real estate, technology, telecommunications, utilities and wealth and asset management. The firm serves around 150 clients, two thirds of which are MNEs.

The director of transfer pricing at **KPMG & Associados – S.R.O.C.** is **Susana Pinto**, who moved to the firm from KPMG's Irish branch in March. The practice consists of one partner and 14 other fee earners.

Pinto has previously worked for Deloitte and EY, and has experience in a wide range of industries, including financial services, construction, automotive, consumer products, renewable energy, oil and gas, aviation, logistics and transports, media and communication, utilities, trading, food and beverage, tourism industries, pharmaceuticals and technology.

The firm offers a full range of transfer pricing services, and focuses on consultancy services, integrating tax and advisory services to work on value management chain methodology.

In one deal, conducted by Pinto and fellow practitioners, **Américo Coelho**, **Fabiane Valente** and **Pedro Alves**, the firm conducted a transfer pricing cost-benefit analysis of IP centralisation for a client. The analysis focussed on alternative tax-efficient business models for centralising the new brand development, enhancement, maintenance and protection activities.

In another deal, Pinto and **Catarina Breia** assisted a client in determining arm's-length terms and conditions for intra-group loans. The work aimed to optimise financial flows considering the transfer pricing regimes in both the creditor and the debtors' jurisdictions. The deal included determining a loan

Tax rates at a glance

(As of July 2014)

Corporate income tax - standard rate	23% (a)
Municipal surcharge	1.5% (b)
Corporate income tax - state surcharge	3% / 5% / 7% (c)
Capital gains	0% / 23% (d)
Branch tax	23% (a) (b) (c)
Withholding tax	
Dividends	0% to 35% (e)
Interest	0% to 35% (f)
Royalties from patents and licences	0% to 35% (g)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	0
Carryforwards	12 (h)

a) Corporate income tax (CIT) applies to resident companies and non-resident companies with permanent establishments in Portugal. Small and medium-sized companies can benefit from a 17% reduced rate for the first €15,000 ($20,000) of taxable profit.

b) A municipal surcharge of up to 1.5% is generally imposed on the taxable profit determined for CIT purposes. Certain municipalities do not levy the surcharge.

c) A state surcharge of 3% is imposed on the taxable profit determined for CIT purposes between €1.5 million and €7.5 million. If the taxable profit for CIT purposes exceeds €7.5 million, the state surcharge is levied at a rate of 5% on the excess up to €35 million. If the taxable profit for CIT purposes exceeds € 35 million, the state surcharge is levied at a rate of 7% on the excess.

d) Gains on the disposal of shares may be exempt from tax, provided certain requirements are met.

e) Dividends paid to non-resident companies are taxed at 25%. The rate of 35% applies if dividends are paid to a resident of a listed tax haven, or in cases where the beneficial owner of the income is not properly disclosed. The rate may be reduced under a tax treaty or exempt under the participation exemption regime (if the beneficiary is resident in EU/EEA, a tax treaty country and if certain other conditions are met).

f) The rate for interest paid by companies is 25%. The rate of 35% applies if interest is paid to a listed tax haven or in cases where the beneficial owner of the income is not properly disclosed. The rate may be reduced under a tax treaty or exempt under the EU Interest & Royalties Directive.

g) Royalties paid to a non-resident are taxed at 25%. The rate of 35% applies if royalties are paid to a listed tax haven or in cases where the beneficial owner of the income is not properly disclosed. The rate may be reduced under a tax treaty or exempt under the EU Interest & Royalties Directive.

h) For tax losses computed before 2010, the prior six-year carry-forward period applies. For tax losses computed in 2010, a four-year carry-forward period applies. For tax losses computed in 2012 or 2013, a five-year carry-forward period applies. For tax losses used from January 1 2014, the amount deductible each year is capped by 70% of the taxable profit for the year.

Source: Garrigues, Taxand Portugal

management fee for the creditor's on-lending activities and arm's-length interest rates for the loans, also taking into account the earning stripping rule in the debtors' jurisdiction.

The firm has also been active in Angola, for which it is responsible, and has been supporting clients in adjusting to the jurisdiction's new transfer pricing regime.

PwC's transfer pricing team employs 21 people, which is coordinated by transfer pricing partner Leendert Verschoor, tax lead partner, Jaime Carvalho Esteves, and transfer pricing senior managers, Clara Dithmer and Diogo Castro.

The largest portion of the firm's work comes from the manufacturing industry, with other key sectors being finance and insurance, pharmaceuticals, wholesale and retail trade and automotive.

The firm offers a wide range of transfer pricing services, including the design and implementation of tax-efficient strategies, conducting health checks to improve priorities and best practice, identifying and analysing risks, documentation, compliance work and assistance during tax audits.

It has been a strong year for the firm, which has increased its presence in the market in areas such as tax effective supply management, advance pricing agreement negotiations with the Portuguese Transfer Pricing Unit and projects for cross-border adjustments of taxes assessed abroad.

In addition to its transfer pricing work with clients, the firm offers internal and external conferences on transfer pricing, runs a tax summer school, and Verschoor and Carvalha Esteves also lecture transfer pricing modules in post-graduate taxation courses at Universidade Católica Portuguesa in Lisbon.

Tier 2

The transfer pricing and business restructuring team at Garrigues – Taxand offers an extensive range of transfer pricing services, and is led by Fernando Castro Silva.

The firm is particularly proficient in restructuring issues and offers value chain optimisation services including risk management, intellectual property tax planning, structuring and management and other restructuring services such as global restructuring, tax leakage minimisation, design, feasibility assessment and implementation of full-scale tax reorganisations, corporate tax compliance assistance and hands-on project management.

Other important areas are: Valuation services, which include intangible asset valuation and assessment of arm's-length royalty rates; dispute resolution services, which include audit support, expert testimony and negotiation of mutual agreements and arbitration procedures; negotiating unilateral, bilateral and multilateral APAs with the tax authorities; and documentation services, which includes global, regional and local transfer pricing documentation relating to goods, services and intangibles, economic analyses, benchmark studies and reconciling actual transfer pricing positions and defensive policies.

Grant Thornton & Associados offers a wide range of tax services, including transfer pricing, and has offices in Oporto, Lisbon and Funchal. Head of the transfer pricing team is Pedro Santos, who works with one other practitioner, as well as head of tax Joaquim Mendes.

The firm offers specialised services in the following areas: Navigation, building, real estate, tourism, education and teaching, the public sector, consumer products and industrial sector, leisure, technology and concessions and public partnerships.

Transfer Pricing Associates Global works in transfer pricing, valuation and customs. The firm is comfortable working across all industries, but is especially competent in the automotive, chemicals, financial services, FMCG, luxury and apparel, mining, oil and gas, pharmaceuticals, technology, media and telecommunications sectors.

The firm offers services in transfer pricing system design, control framework, global benchmarking, year-end adjustment, controversy management and risk management.

Uría Menéndez – Proença de Carvalho's transfer pricing practice has been experiencing growth because of the increased interest in transfer pricing by the tax authorities and increasing market awareness of transfer pricing risks. The practice is led by Filipe Romão.

The firm's transfer pricing related work consists mainly of transfer pricing planning and structuring, including designing transfer pricing compliant business models and transactions, transfer pricing litigation and preparation of transfer pricing documentation.

In one deal, the firm advised Apollo Management Global regarding the acquisition structure of a €1 billion ($1.34 billion) bid for Fidelidade, Portugal's largest insurance company. The firm's work involved significant work and analysis of multiple complex transactions with several indirect tax issues. The impact of transfer pricing rules on the VAT issues had a particularly significant effect on the envisaged transactions.

In another deal, the firm assessed the transfer pricing structuring of Conforama's activities in Portugal. The specific activity of Conforama in Portugal and the structure of the group meant that extensive analysis and structuring was required to ascertain the most advantageous transfer pricing procedures.

Tier 3

Transfer pricing is one of six working groups at **Abreu Avogados**, which is led by **Miguel Castro Pereira** and **Miguel Teixera de Abreu**.

The transfer pricing group assists clients in preparing and reviewing transfer pricing files and analysing and reviewing tax implications for all transactions carried out by tax-related entities. The group has also participated in the legislative process of the Portuguese government, and was part of discussions, which allow the execution of APAs.

The firm has offices in Lisbon, Oporto and Madeira in Portugal, as well as overseas in Angola, Brazil, China, Mozambique and Timor-Leste.

João Aranha leads the transfer pricing department at **Baker Tilly**, which employs one partner and five other fee earners. The department is highly specialised, but remains closely linked to the tax department.

Key industries for the department are IT, media, pharmaceuticals, hospitality and textiles. A key project for the firm over the last year was supporting the WeDo Group in the implementation of the profit split method in a royalty rate from an IT development project, which was worked on by Aranha, senior associate **Francisca Carvalheira**, experienced assistant **Claudia Henriques** and assistant **André Pinho**.

Another important deal for the department was supporting a client in a transfer pricing analysis of a trade finance-related transaction. The client was a reseller in Portugal, owned by a Swiss company, which purchases goods on behalf of a non-related Chinese company. The Portuguese entity entered into a trade finance agreement with its parent company to support the cash-flow required for the transaction. The transaction was complex because benchmark factoring and credit default swap rates had to be adjusted for country risk and exchange rate risk.

Ricardo da Palma Borges & Associados, Sociedade de Advogados (RPBA) is a tax law boutique led by founding partner **Ricardo da Palma Borges**, which employs eight other fee earners.

Da Palma Borges lectures at several post-graduation courses in Portugal, and counsel **Gustavo Lopes Courinha** is a professor at the Lisbon University School of Law, as well as having a tax LL.M. and a strong portfolio of published work. These academic connections allow the firm to refer clients to the best tax and transfer pricing experts in other jurisdictions when necessary.

In one deal, the firm conducted a comparative study of informal supplementary capital contributions according to Belgian and Portuguese commercial companies' laws. RPBA concluded that the Portuguese regime described in the commercial companies code meant that informal supplementary capital contributions made by the Belgian company to the Portuguese company should be considered as equity, not debt, from the Belgian perspective.

This meant that the hybrid instrument did not trigger any consequences, such as interest, related to transfer pricing in Belgium. The case was interesting because there was no existing case law comparing the Portuguese and Belgian concepts of informal supplementary capital contributions from a company and tax law perspective.

The firm's key industries are pulp and paper, real estate development, holding companies, cement and agriculture and forestry.

Romania

Tax authorities

The Ministry of Public Finance
Strada Apolodor nr. 17, sector 5, Bucharest 050741
Tel: +40 21 3199759
Fax: +40 21 3122509
Email: presa.mfp@mfinante.gov.ro
Website: www.mfinante.ro

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Mazars
	Taxhouse – Taxand
	TPA Horwath
	Transfer Pricing Services
3	Baker Tilly Klitou & Partners
	BDO Consulting
	Viboal FindEx

Transfer pricing is an area the Romanian government and tax authorities have identified as an effective source of revenue. New Minister of Finance, Ioanna Petrescu, holds a PhD in economics from Harvard University and is well-versed in transfer pricing matters. She has indicated her government's aim to increase both stability and revenue by increasing the amount of advance pricing agreements (APAs) in Romania.

Transfer pricing laws were last amended in 2010 to clarify legislation applied to domestic intra-group transactions, as well as to those made internationally. It is now likely that the country will see more legislation on the issue before the end of the year.

"There is a transfer pricing focus and there are now plans to make documentation mandatory," said Marius Ionescu, co-head of NNDKP's tax advisory services. There are elections scheduled for November, so politics could play a role, but Ionescu expects the present government to remain in power and the plans to be implemented within four to six months.

As well as legislative changes, the tax authorities have stepped up their efforts to increase revenue collection from transfer pricing in an effort to decrease Romania's national deficit.

According to EY, "Romanian tax authorities are increasingly sophisticated in the way they operate, and are focusing more closely on companies' business, supply chain and transfer pricing activities".

This leads to an increase in the amount of transfer pricing audits, which causes more problems when the cases reach the courts. "Dealing with the courts is a difficult matter as in Romania we don't have a specialist tax court," said Adrian Rus, partner at EY. "When you come to transfer pricing it gets even worse. It requires presentation skills as well as legal skills."

This means that tax advisers must be skilled not only in tax law, but in communicating the intricacies of transfer pricing cases to the courts, especially in very complicated cases and to less experienced judges.

Criminalisation of tax matters is an increasing phenomenon in Romania, and one which shows no signs of abating. "They were aggressive last year but this year we see more criminal aspects," said Marius Ionescu.

This is particularly pronounced in transfer pricing. "Lots of the tax and TP has been more litigious," said

Adrian Rus, head of transfer pricing at EY. "Criminalisation happens quite often. I would say in TP it is one of the key topics."

The tax authorities will advise the police to initiate criminal offence procedures if they suspect any wrongdoing. "The tax authorities have to notify every time they think there is a criminal offence," said Ionescu. "Especially for potentially fictitious transactions."

These criminal investigations usually take between six months and two years, and then often carry heavy punishments of between seven and 12 years in prison.

Tier 1

Ciprian Gavrilu leads the transfer pricing department at **Deloitte**. The firm offers a wide range of services, including transfer pricing planning and documentation, dispute avoidance and APAs, defence during examinations by the tax authorities and business model optimisation.

In one deal, the firm assisted in a business restructuring of an international group acting in the retail and consumer industry, which involved simplifying its main activities and the transfer of several responsibilities to the group's entities outside of Romania.

In another matter, the firm prepared a transfer pricing policy for a group of companies acting in real estate business. This deal helped the firm develop its own expertise in establishing the cost base, allocation keys and the level of the mark-ups to be applied.

Deloitte Romania has a variety of local partnerships with organisations such as AmCham Romania, the Netherlands Romania Chamber of Commerce, the French Chamber of Commerce, the Foreign Investors Council, and more.

The firm is also web-savvy, and offers innovative virtual meetings with experts in the form of webcasts, which comprise a lecture and presentation, during which participants may ask questions. The firm logs its references in the press and publishes weekly newsflashes.

The transfer pricing team at **EY** is led by partner **Adrian Rus**, and employs 11 other fee earners, with a good mix of tax lawyers and professionals with experience in different areas. The firm has four offices in Romania, situated in Bucharest, Cluj-Napoca, Iasi and Timisoara.

The tax department is divided into six main lines of service, with international tax and transfer pricing being one. Transfer pricing has been a growth area for the firm because the team has become involved in increasingly complex projects for its multinational and domestic clients, as well as collaborating with the Romanian tax authorities on various aspects of interest for the business environment.

The firm's practitioners are also active in their contribution to the regulatory environment, contributing to initiatives and participating in dialogue with the Ministry of Finance, the Chamber of Tax Advisors and the Romanian Banking Association. The firm also runs annual tax conferences and transfer pricing surveys for clients.

One of the firm's stand-out initiatives is that its practitioners work on methods of presentation to courts to help judges understand transfer pricing issues during legal proceedings.

Teodora Alecu leads the transfer pricing team at **KPMG**. The firm's staff include economists, analysts and tax practitioners.

The firm serves all industries, but is specialised in working with clients in building, construction and real estate, energy, utilities, financial services, technology, media, telecommunications and public sector and European funding.

The transfer pricing department at **PwC** is led by partner **Ionut Simion** and employs a total of 10 other fee earners. The firm offers a full range of transfer pricing services.

The firm has a strong reputation in transfer pricing and, in addition to its client work, organises conferences on transfer pricing with the participation of companies and representatives from the Romanian tax authorities. The aim of the conferences is to raise awareness both among companies and the tax authorities about the practical difficulties in documenting inter-company transactions and successfully handling the transfer pricing audit procedures.

PwC Romania is also the first and, at the time of writing, only consultancy firm in Romania that has

Tax rates at a glance

(As at July 29 2014 – ref. legislation applicable as of January 1 2015)

Corporate income tax rate	16%
Capital gains tax rate	16% (a)
Branch tax rate	16%
Withholding tax	
Dividends	0%/16% (b)
Interest	0%/16% (c)
Royalties from patents and licences	0%/16% (c)
Branch remittance tax	Nil
Net operating losses (years)	
Carryback	Not allowed
Carryforward	7 years (d)

a) Capital gains obtained by corporate entities are included in their regular profits subject to corporate income tax at 16%; as of January 1 2014, capital gains obtained by resident legal entities from the disposal of Romanian entities or entities resident in a treaty-country are exempt from corporate income tax as long as two conditions are simultaneously observed, namely: there is a minimum holding of at least 10% of the share capital of the investee, held for a minimum uninterrupted one-year period at the time of the disposal; capital gains obtained by individuals are taxed at 16% as investment income irrespective of the holding period and type of securities traded.

b) The 0% rate applies for payments qualifying under the conditions of the European Commission Parent-Subsidiary Directive for EU tax resident legal entities; 0% also applies to dividends paid under the agreement between the European Community and the Swiss Confederation to Swiss tax resident parent companies holding at least 25% of the share capital of the Romanian dividend payer for a minimum two-year period at the time of dividend payment; otherwise,16% applies to dividends paid to all other non-residents and resident legal entities or individuals (unless a more beneficial rate is applicable under a double tax treaty).

c) The 0% rate applies starting January 1 2011 for payments qualifying under the European Commission Interest & Royalties Directive to beneficial owners being EU tax resident legal entities which are affiliated with the Romanian payer by a direct minimum holding of at least 25% maintained for two uninterrupted years at the time of payment (the exemption applies also in cases where both the Romanian payer and the EU-qualifying beneficial owner are held by a third company, which at the same time has a minimum direct holding of 25% both in the capital of the first company and that of the second company for at least two uninterrupted years at the time of payment); 0% also applies to payments made under the agreement between the European Community and the Swiss Confederation to Swiss tax resident companies qualifying under specified conditions. **Note:** the domestic law increases the withholding tax rate to 50% in case of *inter-alia* dividends, interest and royalties paid towards accounts in countries with which Romania does not have in place exchange of information mechanisms and if those payments are made within transactions qualified as 'artificial' under the Romanian tax legislation.

d). The seven-year period applies starting with the loss related to fiscal year 2009 (losses incurred prior to 2009 can only be carried forward for five years).

***Source:** Taxhouse, Taxand Romania*

successfully assisted several clients in applying for and negotiating APAs with the Romanian tax authorities.

The firm has dedicated teams to serve clients in different sectors, and is particularly adept at working in industrial products, energy, utilities, mining, fast-moving consumer goods (FMCG), technology and the automotive industry.

In one deal, the firm assisted multinational FMCG MNE Proctor & Gamble in preparing the relevant documentation for extending prior-approved APAs and an extension to a bilateral framework with Switzerland. These were the first bilateral APA submissions in Romania.

In another deal, the firm prepared Enel's transfer pricing model for the acquisition of smart meters for electricity in a transaction worth around €200 million ($267 million). The deal was innovative because of the complex nature of the client's business, which incurred significant financial and regulatory risks before the firm's assistance in transfer pricing planning, which helped the company to align operational and financial tax strategies for the medium and long term.

Tier 2

Transfer pricing is part of the tax advisory services department at **Mazars**, and is led by **René Schöb**. The transfer pricing team is made up of one partner and three other fee earners.

The firm has a strong portfolio of international clients, and is particularly strong when advising clients in the retail, automotive, energy, financial services and manufacturing sectors.

The firm offers a range of services, from providing general information about Romanian transfer pricing regulations to assessment of tax risks of transfer prices, assistance during tax inspections with regard to transfer pricing aspects and APA negotiation.

A key service for the firm is working with transfer pricing documentation. In one such instance, senior manager, **Ioana Gheorghe**, led a deal to prepare transfer pricing documentation and provide local tax advisory support on TP issues for an international group with an approximate turnover of €1 million annually in Romania.

In another deal, Gheorghe collaborated with fellow senior manager **Bogdan Gheorghiu** to prepare transfer pricing documentation for a European retail group present in more than 30 countries worldwide.

Transfer pricing operations are part of the tax department at **Taxhouse – Taxand**, and are spearheaded by managing partner **Angela Rosca**, who works with three other fee earners.

Rosca has 19 years of experience in tax through working at Taxhouse, Anderson and EY, as well as gaining industry experience in finance and accounting at Proctor & Gamble. She is a member of the advisory team to the Romanian Ministry of Finance regarding the introduction and amendment of the fiscal code, and an active member of the taxation tax forces of the Foreign Investment Council and the Romanian Business Leaders.

The firm offers services to clients in all sectors, but specialises in working in the manufacturing, telecommunications, financial services, trading and construction industries.

In one deal, the firm conducted a comprehensive transfer pricing study covering various transactions during an update of transfer pricing documentation for the Romanian subsidiary of a large multinational in the telecommunications industry.

In another case, the firm provided assistance during an administrative appeal and subsequent litigation for the Romanian subsidiary of a large European manufacturer. The firm's assistance consisted of advice and representation during all stages of the appeal, with respect to several disputes related to transfer pricing aspects.

The transfer pricing team at **TPA Horwath** is led by **Claudia Stanciu-Stănciulescu** and offers a wide range of transfer pricing services including business model reviews, functional analyses, market analyses, transfer pricing model design, preparation and modification of documentation, benchmarking using the Amadeus business database, defence during transfer pricing audits and advanced ruling requests.

Stanciu-Stănciulescu joined the firm in 2006 and became a partner in 2010. As well as her worth for TPA, she is a lecturer, author, and a member of the Chamber of Fiscal Consultants in Romania, the Romanian Association of Chartered and Certified Accountants, the National Union of Insolvency

Practitioners and the National Association of Romanian Appraisals.

Adrian Luca leads **Transfer Pricing Services**, an independent firm that provides a range of transfer pricing services for its clients.

Its core services are transfer pricing reviews, assistance with documentation, benchmarking studies, transfer pricing planning, APAs, audit defence, due diligence and transfer pricing training. Luca was recommended by other practitioners in the market for his work in documentation project management.

Tier 3

Transfer pricing operations at **Baker Tilly Klitou & Partners** are led by **Nadia Oanea**, who has more than 14 years' experience in tax, eight of which were spent as a state tax inspector, and is also responsible for Baker Tilly Klitou's tax practice in Moldova.

She regularly participates in meetings of the tax committee of AmCham with the Ministry of Finance in terms of developing legislation and also attends European tax committees hosted by the Baker Tilly network on transfer pricing.

In one deal, the firm carried out transfer pricing services for a Romanian entity, owned by a Greek group, operating in the production and distribution of personal hygiene products. The firm advised the client on the tax and transfer pricing implications of a planned business restructuring.

Transfer pricing is one of several services offered by **BDO Consulting** as part of their international tax planning division. One of the firm's key strengths is the preparation of transfer pricing documentation.

Vigi Radu leads the transfer pricing practice at tax and transfer pricing boutique **Viboal FindEx**, which consists of two partners and three other fee earners. The firm is the Romanian member of transfer pricing network Altus Alliance, an international network of independent transfer pricing companies recently acquired by American firm Ryan.

In 2013, Radu co-authored the second edition of the only book dealing with transfer pricing in Romania – *Transfer Pricing and Tax Evasion*. The firm's partners are also regular speakers on transfer pricing and tax topics organised by Business Review, Acocat.Net, LexNavigator and the Body of Licensed Accountants in Romania.

In a $1.36 million deal, the firm worked with chemical distributor Azelis Romania SRL to update transfer pricing documentation. A good understanding of the company and of its operations and IT systems allowed the firm to apply a transactional approach and test transfer pricing for all categories of transactions, even when the tested parties were foreign entities.

Russia

Tax authorities

Federal Tax Service
23 Nerlinnaya Street, Moscow, 127381
Tel: +7 495 913 00 09
Fax: +7 495 913 00 05
Website: www.nalog.ru

LEADING FIRMS

1	EY
	Deloitte
	KPMG
	Pepeliaev Group – Taxand
	PwC
2	Baker & McKenzie
	CMS Russia
	Goltsblat BLP
3	Taxperience

Transfer pricing legislation introduced into Russian law in 2012 is now beginning to take effect in the country and, combined with other initiatives, is increasing demands on taxpayers.

Sergey Gerasimov of Althaus said the tax authorities are "gradually learning in the application of new techniques in transfer pricing and challenges to complex international structures".

The regulations are more stringent and sophisticated than Russia is used to, and are broadly in line with the OECD. "While not 100% in line with the OECD guidelines, the regulations are pretty close," said Evgeny Timofeev of Goltsblat.

Some practitioners, however, feel the tax authorities are not adjusting to the new regulations quickly enough. "It appears the new tax administration concepts, such as horizontal monitoring, settlement agreements for tax disputes and preliminary agreements regarding transfer pricing matters are only available to a narrow circle of large state-owned companies or those which are close to the government," said Sergey Pepeliaev of Pepeliaev.

"Local tax authorities are dragging their feet in reforming their work. Tax authorities are auditing transfer pricing not only in the transactions which are classified as controlled under the Tax Code, but also in all other transactions which give cause for suspicion," he added.

New legislation expected to make an impact in Russia comes in the form of a package of changes to the law aimed at combatting tax avoidance.

"The new hot topic is the so called "de-offshorisation" package, which aims to introduce whole new concepts into the Russian tax law," said Evgeny Timofeev of Goltsblat.

The package contains three key elements. The first, a set of rules on controlled foreign companies (CFCs), were described by Gerasimov as "overkill", and are designed to prevent companies from escaping domestic taxation. These rules will be effective from January 1 2015, according to KPMG's Graham Povey.

Secondly, a management and control test will be introduced to determine the tax residency of a company, which will go further than the incorporation test. Finally, a test for the individual tax residency determination is expected to appear, in an upgrade from the current physical presence test.

"These laws will change the tax landscape drastically aiming to destroy the common practices where Russian beneficiaries hold their personal business assets through BVI sham companies entering the Russian economy through Cyprus, based on the Russia-Cyprus double tax treaty," Timofeev said.

Tier 1

The transfer pricing department at **EY** is led by **Evgenia Veter**, and consists of three partners and 32 other fee earners working exclusively in transfer pricing, as well as others who combine transfer pricing work with other expertise, making it one of the largest in Russia. Veter has more than 20 years' experience in tax and transfer pricing, and was previously the director of transfer pricing at PwC.

The TP team also has six full-time managers and senior managers, including experienced specialists brought in from other countries with more developed transfer pricing regimes than Russia.

The team offers a comprehensive range of services, but is particularly experienced in transfer pricing documentation, both for companies investing in Russia and companies expanding out of the country, designing transfer pricing policies, implementing complex transfer pricing models, advising on operational aspects of transfer pricing, focusing on internal transfer pricing-related business and tax-effective supply chain management.

The firm also possesses strong individual sector knowledge and is particularly adept at working with clients in the energy, industrial products, financial services, telecommunications, technology, and food and beverage sectors.

The firm is active in the legislative process, and was a key adviser to the Ministry of Finance during the drafting of major changes to transfer pricing regulations in 2012. Additionally, the firm runs transfer pricing courses at three different levels of experience for clients, dubbed the "TP University", and hosts a range of seminars on transfer pricing issues including the BEPS initiative.

Dmitry Kulakov leads the transfer pricing team at **Deloitte**. The firm offers a comprehensive range of services including transfer pricing planning and documentation, business model optimisation, dispute avoidance and APA negotiation and dispute resolution.

Key industries for the firm are technology, media and communications, government and infrastructure, real estate, consumer business and transportation, health care and life sciences, financial services and energy and resources.

Natasha Valkovskaya leads the transfer pricing team at **KPMG**, which consists of two partners and 62 other fee earners. Transfer pricing is an important part of the firm's operations. Another key name in the team is **Graham Povey**, head of the tax and legal department.

The team has professionals in Moscow, Saint-Petersburg, Nizhniy Novgorod and Yekaterinburg, which allows for regional diversity and expertise to best serve clients' needs.

Tax rates at a glance (As of September 2014)

Corporate income tax	20% (a)
Capital gains	
Branch tax	20%
Withholding tax	
Dividends	9 to 15% (b)
Interest	20% (c)
Royalties from patents and licences	20% (c)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	
Carryforwards	10

a) The corporate tax rate combines a federal and regional rate; 2% is payable to the federal budget and 18% to the regional budget. The regional rate may be reduced by the authorities by a maximum of 4.5%.

b) Dividends paid to another Russian entity or to a Russian resident individual are subject to withholding tax at a rate of 9%. Dividends paid to non-resident companies are subject to a 15% final withholding tax unless the rate is reduced under an applicable tax treaty.

c) This rate applies unless reduced under an applicable tax treaty

Source: Pepeliaev Group – Taxand

The firm offers a full suite of transfer pricing services, including consulting Russian clients and multinational firms on compliance with Russian TP law, obtaining APAs, preparing or modifying TP documentation and supply chain optimisation.

The firm also works hard to educate clients on transfer pricing developments, and held 10 conferences for over 150 clients in 2013, often with speakers from other jurisdictions' branches of KPMG. In one initiative, the UK and Russian TP teams jointly presented tax efficient supply chain management structures to Russian IT and resource companies.

The firm is also involved in the legislative process and advises the Ministry of Finance and Federal Tax Service on international tax principles, often with the assistance of the KPMG network. For example, the German KPMG TP team moderated a round-table discussion on financial transactions with the Russian tax authorities. The German team also created a tool for preparing transfer pricing notifications and managing data to optimise documentation of controlled transactions, which has been modified to fit with Russian requirements.

In one deal, the firm prepared a transfer pricing analysis and preparation of transfer pricing documentation for controlled transactions in oil exports and purchases conducted in 2012. The combined value of all intra-group transactions exceeded $12.5 billion.

Sergey Pepeliaev leads the tax advice and tax litigation practice, which encompasses transfer pricing, at **Pepeliaev Group – Taxand**. The firm offers a comprehensive range of transfer pricing services.

In one deal, the firm acted on behalf of a major international telecommunications company to conduct an analysis of the Russian telecommunications market and develop, from scratch, a transfer pricing policy for the client.

The firm also represented a large oil and gas company in a dispute on the additional accrual of taxes on the basis of transfer pricing rules; advised a bank and its Russian subsidiary acquiring services from a parent foreign bank on methods to reduce transfer pricing risks associated with adaptation of international bank experience to the activities of the Russian bank and professionals analysed the possible customs and tax consequences of reducing the intercompany prices on behalf of a pharmaceutical company.

Svetlana Stroykova is the director of **PwC**'s international tax services and transfer pricing group. Another key name at the firm is **Andrey Kolcin**.

The firm provides a wide range of transfer pricing services, including assistance in adjusting to 2012's new transfer pricing rules, improving existing policies, justifying methodology and proving the arm's-length nature of intra-company transactions, advising on inter-company transactions, advising multinationals entering Russia, designing and implementing trading and procurement structures, preparing transfer pricing documentation, advising on the development of transfer pricing methodology and cost allocation models, developing business processes and assisting in resolving transfer pricing-related disputes during tax audits.

Key sectors for the firm are automotive, banking and capital markets, communications, energy, utilities, mining, entertainment and media, factoring, forestry, paper and packaging, industrial manufacturing, insurance, metals, pharmaceuticals, private equity, real estate, retail and consumer, sports, transportation and logistics and technology.

Tier 2

Alex Chmelev leads the transfer pricing team at **Baker & McKenzie**, which consists of two partners and three other fee earners in Moscow and St. Petersburg.

During 2013, the transfer pricing practice was engaged in a diverse portfolio of transfer pricing projects involving Russian and international clients from various industries. The firm is especially confident when providing assistance in dispute resolution, employment, intellectual property and on real estate issues.

In one deal, Chmelev and **Maria Kostenko** advised a large international oil and gas company on Russian transfer pricing issues related to oil and gas exploration and development joint venture projects in Russia. The project was challenging because it involved a transfer pricing analysis of the unique types of services related to geological study, environmental safety, drilling, oil and gas project management, and auxiliary business support services.

In another deal, Kostenko advised one of the largest Russian-based international transportation groups on the development of a transfer pricing policy for its five subsidiaries. The diverse nature of the group's business, which included various types of controlled transactions, intercompany financing and guarantees, meant the project involved demanding functional and economic analyses, including benchmarking studies.

Dominique Tissot leads the transfer pricing team at **CMS Russia**. The team provides a wide range of services such as the preparation of local and global transfer pricing documentation, financial and economic studies, the creation and modification of transfer pricing policies for intellectual property, APAs and assistance during tax audits and litigation.

Evgeny Timofeev leads the transfer pricing practice at **Goltsblat BLP**, which employs two partners and seven other fee earners.

Transfer pricing is one of the firm's strongest areas, and it offers a wide range of services. These include: full-scope transfer pricing analysis of Russian companies, studies and preparation of the documentation compliant with the Russian requirements; economic analysis including benchmarks to be included into Russian transfer pricing documentation; transfer pricing-based analysis for customs valuation purposes; consulting and addressing transfer pricing matters as a part of complex structuring advice and transfer pricing litigation.

The firm has a wide client base of multinationals and large Russian companies, including a host of household names. Goltsblat serves all industries but has a specific emphasis on the consumer goods market including food, beverage, luxury, other personal and household goods, real estate, automotive, pharmaceutical and the oil and gas sectors.

In one deal, the firm performed a transfer pricing study and prepared TP documentation under the Russian rules, for 2013, for the Russian entities of international pharmaceutical group Sanofi. Specific pharmaceutical industry pricing regulations in Russia have some implications which can lead to negative tax consequences. Overcoming such issues required an innovative approach.

Tier 3

Taxperience's transfer pricing team is led by **Ernstjan Rutten** and provides niche transfer pricing services, working mainly in aligning international companies with Russian transfer pricing regulations.

Serbia

Transfer pricing legislation is a new development in Serbia but Anastasia Sagianni, of Eurofast, believes development of the legislation will move quickly and taxpayers should be aware of the penalties and requirements already in place.

Tax authorities

Ministry of Finance of the Republic of Serbia, Tax Administration / Ministry of Finance and Economy - Customs Administration
Save Maškovića 3-5,
11000 Belgrade
Tel: (381) 11 3950 555
Fax: (381) 11 3950 599
Email: kabinet@poreskauprava.gov.rs

The introduction of transfer pricing in the domestic legislation of Serbia is a very recent development. In 2012 the transfer pricing provisions were introduced in the Serbian Corporate Income Tax Law (thereafter CITL) and were later expanded in the transfer pricing rulebook. This rulebook was published on July 12 2013 in the Official Gazette of the Republic of Serbia (RS no. 61/2013) by the Ministry of Finance.

Taxpayers should have the appropriate TP documentation in place to defend their transfer pricing policy.

According to the Serbian legislative framework, an entity is considered a related party if there is a possibility of exercising control over, or exerting considerable influence on, business decisions made. The direct or indirect possession of 25% or more of the shares in capital shall mean that control over the taxpayer is possible.

Direct or indirect possession of at least 25% of the voting rights is considered as having an influence on business decisions.

In addition, companies that directly or indirectly have the same persons in the management, ownership or control, as already described, are also considered related parties. No matter the percentage of ownership or voting rights in a Serbian Company, any company which is a resident of a jurisdiction with a preferential tax system is deemed to be a related party.

Tax rates at a glance

(As of June 2014)

Corporate income tax rate	15%
Capital gains tax rate	15%
Branch tax rate	15%
Withholding tax	
Dividends	20% (a)
Interest	20% (a)
Royalties from Patents and licenses	20% (a)
Branch remittance tax	No
Net operating losses (Years)	
Carryback	No
Carryforwards	5 (b)

a) 25% if the recipient is a resident of a jurisdiction with a preferential tax regime.
b) Losses incurred before 2010 may be carried forward for 10 years. No restrictions apply on carry forward due to ownership changes.

***Source:** Professionals from Eurofast Global, Belgrade Office/Serbia*

Amendments were adapted to the Rulebook by the Ministry of Finance of the Republic of Serbia on January 2014. The amendments were published in the Official Gazette of the Republic of Serbia No 8/2014 on January 29 2014 and were basically aimed at the reduction of the transfer pricing documentation requirements of taxpayers in the cases of transactions that do not have a material impact on the tax liability of the taxpayer. Therefore, taxpayers may submit an abbreviated report that does not have to include a detailed analysis identifying whether the transfer prices set abide by the provisions of the arm's-length principle.

To fall within the new provisions the threshold amount was set at 8 million RSD ($94,000).

It should also be noted that the above provisions for the submission of a simplified report are not applicable to loans and credits.

Transfer pricing documentation and choice of the appropriate method

A full transfer pricing study must include the following parts:

- Analysis of the associated enterprises and the group of the taxpayer;
- Taxpayer's industry analysis;
- Functional analysis;
- Selection of the most appropriate Transfer Pricing method;
- Conclusion – Summary of the amounts that should be added to the tax base of the company according to the results of the study; and
- Appendixes.

The taxpayer should choose one or a combination of the methods described in the OECD guidelines:

- Comparable uncontrolled price (CUP) method;
- Resale price method;
- Cost plus method;
- Transactional net margin method (TNMM); and
- Profit split method.

The taxpayers should also describe the decisive reasons for the determination regarding the method used for the reconciliation of the transfer prices with "the arm's-length" principle of the transactions carried out with the associate enterprises.

Transfer pricing audits

The Serbian tax authorities have increased their attention on transfer pricing audits even though practical experience is still limited. This is evident from the recent developments in the Serbian CITL legislation and the publication of the rulebook for the purposes of providing clear guidance on transfer pricing issues. In line with the above, the rulebook sets out all the relevant information for the documentation requested on inter-company transactions and the methods that may be used to determine appropriate transfer prices. In addition, the Serbian authorities will continue to issue guidance so as to clarify any ambiguities in the rulebook or even enact simplified approaches to ensure that all transactions captured by the transfer pricing legislation are appropriately documented.

Transfer pricing is at the top of the Serbian Tax Authorities' agenda and it is therefore expected to become one of the most important issues for multinationals operating in Serbia.

In more practical terms, the tax authorities in Serbia are more thorough in cases of large deductible expenses, where the taxpayer makes large deductible payments to related parties (interest payments, royalties, services, etcetera). Moreover when the profitability of the local entity is inconsistent with what might be expected from a similar taxpayer then there is a high level indication for a potential tax audit.

Transactions among a company based in Serbia or a permanent establishment in Serbia with entities operating in jurisdictions with a preferential tax system, also constitute a critical area.

Penalties

According to article 112 of the CITL in the Republic of Serbia, any taxpayer shall be fined from 100,000 to 2 million dinars for breach of regulations in the following cases:

- Failure to declare separately in the tax account the value of the transactions conducted with associated persons in accordance with the arm's-length principle (Article 60 of the CITL);
- Failure to submit or fulfil documentation from the Article 60 (paragraph 3 of the CITL) within timeframe defined by the notice prescribed by article 112a of the CITL(30 to 90 days period).

More specifically, penalties for failure to submit the required transfer pricing documentation within the period stated by the tax authorities are as follows:

- Legal entity will be penalised between 100 and 2,000 (amounts in thousands RSD);
- Responsible person within the legal entity will be penalised between RSD 10 and 100 (amounts in thousands RSD);
- 15% of corporate income tax will become due on the difference between the arm's-length principle prices and the prices used in respective related parties transactions;
- Penalty interest is to be charged on the amount of the understated corporate income tax, equal to the annual reference rate of the National Bank of Serbia increased by 10 percentage points; and
- From a period between three months and one year, the taxpayer may be prohibited to carry out a specific business activity in case of a proven indicator that a taxpayer understates on purpose the taxable base.

Future outlook

Transfer pricing worldwide is probably the most important tax issue multinational enterprises face. Companies, through transfer prices, attempt to reduce their worldwide tax liabilities by transferring their profits from countries with higher tax rates to countries with relatively lower tax rates either by under-charging or over-charging the associated entity for intra-group trade.

The OECD's work on tax base erosion aims to create new international tax rules with defined paths for income and new standards and guidelines may soon be expected. More and more countries have to tackle cross-border tax evasion. In the line with the above, taking a great step towards tax transparency, the OECD released a full version of a global standard for the automatic exchange of information between jurisdictions in July 2014.

The first time of general implementation of the new transfer pricing rules in Serbia within 2014 has certainly generated interest on the topic and naturally an adjustment period for the implementation of the new regulations should be expected from both the taxpayers and the tax authorities.

Based on the comments that were published relating to the "Discussion Draft on Transfer Pricing Documentation and CbC Reporting" one change for the Serbian jurisdiction should be the language of the transfer pricing documentation. Companies are suffering because of the significant translation costs in every jurisdiction they operate. Moreover, a commonly used language such as English would simplify compliance.

Another change that should be adopted in Serbia is the necessity of submitting the file to the local tax authorities. The transfer pricing documentation includes highly confidential information about the overall policy and the strategic plan of the whole group. Therefore the whole TP study should be provided to the tax authorities either upon request or as a part of a regular tax audit and always on the business's headquarters. This will limit the risk related to information leakage of commercially sensitive information.

Eurofast

- Mergers & Acquisitions
- Accounting & Payroll
- International Tax
- Cross Border Transactions
- Citizenships & Residency

Eurofast
31/4 Beogradska
Belgrade 11000
Serbia
T: +381 11 3241 484
F: +381 11 3038 848
E: anastasia.sagianni@eurofast.eu
E: info@eurofast.eu
W: www.eurofast.eu

Singapore

Tax authorities

Inland Revenue Authority
55 Newton Road, Revenue House, Singapore 307987
Tel: +65 6356 8622
Fax: +65 6351 4360
Website: www.iras.gov.sg

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie, Wong & Leow

Firms to watch

RSM Chio Lim

As a low tax jurisdiction, Singapore continues to be vigilant about its tax responsibilities and the IRAS is working hard to ensure compliance. Singapore's transfer pricing policies continue to expand to fit into the international environment.

Firms are seeing their transfer pricing practices impacted by the development of BEPS and the desire of clients to remain compliant across their international investments. "A lot of the work we've seen is MNCs concerned on the tightened requirements and expanded requirements as OECD and G20 sponsorship pushed it along," said Geoffrey Soh of KPMG.

The ASEAN community recently announced it expected a 5.4% growth rate annually over the next five years. Singapore's position as a launch point into ASEAN will require it to continue to develop transfer pricing regulations and strategies. Firms note that many clients are interested in expanding into India and Indonesia.

Singapore-based tax firms express hope that ASEAN initiatives will attract investors into the region and they will chose Singapore as an operational base. However, this common structure can potentially pose increased risk for taxpayers. If tax authorities notice that a taxpayer accrues income in Singapore, it may initiate an audit and challenge the taxpayer under permanent establishment regulations.

Singapore introduced MAP and APA regulations in 2006 and since has seen healthy demand for these deals. Firms estimate that 15 have been completed to date, and the SAT remains open to accepting more applications.

Tier 1

The transfer pricing team at **Deloitte** offers a complete range of transfer pricing solutions including planning and documentation, APA advisory, dispute resolution, and business model optimisation. The team also has a diverse range of human capital, including economists, tax and business professionals.

Team leader, **Jee Chang See**, has experience as a tax director at the Policy and International Tax Division of the IRAS. While business and manufacturing remain an integral part of Deloitte's client base, it also has expanded into TMT and energy & resources. In a recent deal, See aided a Singapore-based global manufacturing client on the restructuring of its existing supply chain structure and helped implement the more efficient model.

The team also has APA capabilities. The team has successfully negotiated and concluded several APA cases with the Singapore revenue authorities in a variety of industries including mining, IT, electronics, and pharmaceuticals. Bi-lateral agreements have

Tax rates at a glance

(As of September 2014)

Corporate tax rate	17% (a)
Capital gains	0
Branch tax	17% (b)
Withholding tax	
Dividends	0%
Interest	15% (c)
Royalties	10% (d)
Net operating losses (years)	
Carryback	1
Carryforward	Unlimited

a) The corporate tax rate is 17%. However, 75% of the first SD 10,000 of chargeable income and 50% of the next SD 290,000 of chargeable income are exempt from tax.

b) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

c) A 15% rate applies, provided the income is not derived by the nonresident through its operations carried out in or from Singapore. Where operations are carried out in or from Singapore, interest will be taxed at the prevailing corporate tax rate.

d) A 10% rate applies, provided the income is not derived by the non-resident through its operations carried out in or from Singapore. Where operations are carried out in or from Singapore, royalty income will be taxed at the prevailing corporate tax rate.

been concluded with Australia, Japan, and France. The firm also has specialists in mutual agreement procedure/competent authority and assists clients in their MAP filing process.

Luis Coronado has over 15 years of transfer pricing experience in Asia and is the partner in charge of the growing TP department at **EY**. Singapore also serves as the regional transfer pricing headquarters and is thus furnished with experienced personnel to handle complex TP issues around the region.

Real estate & hospitality, technology, life sciences, and pharmaceuticals are industries in which the firm has a high level of experience. The firm offers country desks for investments between Singapore and India, Japan, the UK, and the US, which help facilitate bilateral APAs. The firm said there is a strong flow of investment between Singapore and Japan. Australian and Korean desks were added over the past year to address growing demand in these countries.

Transfer pricing leader **Geoffrey Soh** brings his 16 years of experience to the 20-person strong transfer pricing team at **KPMG**. Soh cites experience in over 900 transfer pricing transactions in diverse jurisdictions including China, Canada, the US, Sweden, and Japan. "He goes beyond the service standard in delivering advice to clients," a client said of Soh.

Soh and his team of 20 professionals aid clients on transfer pricing documentation, restructuring and tax efficient supply chain management. High demand from the Singaporean market comes from clients who are tightening their existing structures to ward off future potential audits under BEPS.

In one deal, Soh and his team provided planning and supply chain optimisation for a client over several years. The project included reorganisation of offshore operations, implementation of new global TP policy, and assessment of permanent establishment risk.

Specialists within the team focus on financial services, energy and natural resources, real estate investment trusts, and high tech industries; all areas in which KPMG sees high demand and growth.

For the past decade, **PwC**'s transfer pricing practice has been led by **Nicole Fung**, who boasts 23 years of experience in TP and corporate tax planning. Fung has been involved with many of Singapore's preliminary bi-lateral APAs. Fung also has experience in dispute resolution between Singapore and countries such as Japan and Indonesia.

Chai Sui Fun joined the practice last year after a career at the IRAS. Fun served a valuable role in developing many of Singapore's tax policies and resolving cross-border disputes while at the IRAS. Fun's insight and reputation are valued by fellow practitioners and have strengthened PwC's transfer pricing and dispute resolution competence.

The team focuses on advisory work with regards to supply chains and intellectual property. Clients are reaching out to them with ideas for strategic chances to become more BEPS compliant. The team also has strength in dispute resolution and can negotiate with the competent authorities on the legitimacy of clients' TP claims.

Tier 2

Baker & McKenzie, Wong & Leow is working to increase its transfer pricing service offerings with the help of its global network and partner firms in Malaysia and Indonesia. **Eugene Lim** has stepped in as head of tax since **Edmund Leow** left to join the Supreme Court of Singapore. The team blends the expertise of tax consultants, economists, and lawyers to provide well rounded solutions for its clients.

Michael Nixon joined the firm as a transfer pricing consultant to increase TP advisory capabilities. The firm offers TP compliance and planning, dispute resolution during audits, and restructuring/valuation services.

A recent deal led by **Peter Tan** involves the entire restructuring of a taxpayer's Asia Pacific supply chain, including arm's-length considerations and providing justification for the business model to prove commercial substance in its principal entity in Singapore.

Firms to watch

RSM Chio Lim is developing transfer pricing capabilities under lead partner **Paul Lee**. Head of international tax services, **Cindy Lim** takes on much of the firms transfer pricing work. Over the past year, the team worked on behalf of a US food retailer that wanted to establish a regional office in Singapore. The deal involved a complete transfer pricing restructure of the taxpayer's Asian operations.

South Africa

Tax authorities

South African Revenue Service
Visiting address: Lehae La Sars, 299 Bronkhorst Street, Nieuw Muckleneuk, 0181 Pretoria
Postal address: Private Bag X923, Pretoria 0001
Tel: +27 12 422 4000
Fax: +27 12 422 6820
Website: www.sars.gov.za

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	ENS, Taxand Africa
3	Bow Gilfillan
	DLA Cliffe Dekker Hofmeyr
	Webber Wentzel

The tax market in South Africa remained largely unchanged throughout 2014 but the economy remains marked by labour unrest. The tax market is expected to change this year, however, as the economy improves and the low value of the rand helps exports. Crucial to this is South Africa's mining industry, which attracts significant foreign direct investment.

"Foreign investments have slowed down this year, and have been negatively affected by strikes," said Anne Bennett of Webber Wentzel. "However, this is not fundamentally different from last year."

In addition to strikes, there has been speculation that the Southern Africa regional foreign direct investment flow may be surpassed by investment through Mauritius. In particular for the mining sector, unless South Africa further reduces tax liabilities and optimises regulation.

"There is a great deal of truth that Mauritius is a favourite kick-off point for investors trying to avoid the frustrations of the South African gateway," said Ernest Mazansky of Werksmans Attorneys. "However, our infrastructure in banking, legal and accounting is better and we are a global flight hub. On the tax and exchange control side, they currently have an advantage."

South Africa's 2014 budget was presented on February 26 2014, and contained several transfer pricing and cross-border tax provisions. From January 1 2015 the secondary adjustment rules will be changed. As explained by KPMG, secondary adjustments have been in the form of a deemed loan by the South African resident in respect of which the taxpayer is deemed to have accrued arm's-length interest, subject to South African tax.

The deemed loan has caused a degree of uncertainty. To address this, from January 1 2015, the secondary adjustment would be categorised as a deemed dividend paid by the resident and consisting of a distribution in specie. This also solves significant accounting problems.

In other changes, where a resident individual holds shares in a controlled foreign company, dividends are taxed at an effective rate of 21%. It was proposed that the ratio should be changed to reflect the taxation of an individual as opposed to a company.

Tax exemptions for controlled foreign companies are highlighted for changes, it is proposed that an option be provided to deem the net income of a CFC to be zero if either the high foreign tax or the foreign business establishment test is met.

For firms in the jurisdiction, the M&A market has been sluggish but there has been an uptake in transfer pricing. "Dispute revenue has picked up as part of

Tax rates at a glance

(As of September 2014)

Corporate tax rate	28% (a)
Capital gains	18.648% (b)
Branch tax	28% (c)
Withholding tax	
Dividends	15% (d)
Interest	0% (e)
Royalties	12% (f)
Net operating losses (years)	
Carryback	0
Carryforward	Unlimited

a) The basic corporate tax rate of 28% applies to the worldwide income of South African companies, including subsidiaries of foreign companies. Small business corporations (those that comply with various requirements and have a gross income of less than ZAR 14 million) pay tax at rates between 0% and 28%. Gold-mining companies are taxed according to a special formula.

b) Effective rate.

c) Branches are taxed at the same rate as companies.

d) Dividends paid by a South African company to a nonresident are subject to a 15% withholding tax (subject to the provisions of an applicable tax treaty).

e) South Africa currently does not impose withholding tax on interest. However, a 15% withholding tax on interest paid to nonresidents is slated to be introduced as from January 1 2015.

f) The withholding tax on royalties paid to a nonresident is 12%, unless the rate is reduced under a tax treaty. The rate is proposed to be increased to 15% as from January 1 2015, to be in line with the withholding taxes on dividends and interest.

BRICS-related investment and due to the use of South Africa as a gateway to Africa," said Bernard du Plessis of ENS, Taxand Africa. "South Africa has seen quite a lot of aggressive transfer pricing challenges from international bodies."

"From a general perspective, there have been a lot of restructurings and companies exiting due to South African risk. In particular, the mining industry is ring-fencing itself and investors are repositioning their investments, partially due to the devaluation of the rand."

Relations with the tax authorities over transfer pricing are mixed in South Africa, because of the nascent nature of transfer pricing. While negotiations and settlements are achievable due to the need of the authorities to secure funds, where the authorities wish to establish a precedent, taxpayers can expect lengthy proceedings.

There is a degree of uncertainty surrounding the revenue service this year with the departure of several treasury personnel, including the departure of the policy chief to EY. As a result there are fewer policy changes than normal.

Tier 1

Billy Joubert leads the transfer pricing practice of **Deloitte** which has become one of the largest and most varied in South Africa with a sleuth of new hires this year. This includes partner **Karen Miller** from EY, EY Israel manager **Dan Zaidman**, and a Deloitte transfer pricing consultant from France, **Alix Aoust**. Joubert is known for his travel around the African continent, which the South African office leads. This year the firm has worked with clients and revenue authorities all over the continent, including in Botswana, Malawi, Zambia, and Kenya. The firm is capable of delivering on a range of services and the transfer pricing team is integrated into the wider tax department, reflecting its integral part in the tax service. Fittingly, Joubert also leads the tax practice. The firm has specialities in consumer products, banking, telecommunications, oil and gas and mining.

EY's transfer pricing practice recently lost its sub-area leader **Karen Miller** to Deloitte, but the practice is still respected in the jurisdiction. The team employs an operating model effectiveness approach to transfer pricing and can assist with strategy and policy development, governance optimisation, accounting services, and controversy and risk management.

International tax leader, **Robyn Nathan**, and tax and legal chairman, **Alan Field**, are significant names within international tax for **KPMG**. The transfer pricing function sits within a well-established international tax practice and can provide guidance on South Africa's thin capitalisation regulations, planning and compliance services, in addition to the wider structuring services expected of a Big 4 tax practice.

David Lermer leads both the international tax and transfer pricing practices within **PwC**'s South African practice. Through his extensive experience in structuring and reorganisations, Lermer provides a full range of transfer pricing services. These include business transformation, compliance, document management services, audit defence and two technological solutions. TP3 is a transfer pricing platform for collating documents and information which is web-based, PKN is a knowledge sharing electronic network engineered to provide members with up-to-date information. PwC can rely on its global network to provide a full transfer pricing service in a cross-border landscape. The global network spans 149 countries, of which around 50 are African. This is reflective of PwC's commitment to the African market.

Tier 2

Bernard du Plessis and **Peter Dachs**, lead the tax and transfer pricing practice of **ENS, Taxand Africa** which is comprised of two dedicated partners – **Jens Brodbeck** and **Okkie Kellerman** – and five further transfer pricing specialists. The team has grown this year with two internal transfers, reflecting the topical nature of transfer pricing in the current market. The practice specialises in retail, automotive, oil and gas, FMCG and IT services. The team is constantly involved in deals in this area and uses the link with Taxand to deliver services on an international scale. As the lead of the Taxand network in Africa, ENS is well-positioned to benefit from the increase in global transfer pricing market which is reflected in FDI interest towards the continent. The main focus of the year has been dispute resolution, though the firm can provide a wide array of services. This included a transfer pricing settlement reached with the authorities for an amount of multiple billions of rand. In other work, the practice has been involved in the development of transfer pricing policy in the mining and engineering services industry.

Tier 3

Bowman Gilfillan has a small but respected transfer pricing practice, which **Wally Horak** is involved with. The firm's services are integrated into the wider tax practice which is led by managing partner **Alan Keep**.

Emil Brincker leads the tax and transfer pricing practice of **DLA Cliffe Dekker Hofmeyr** which represents the DLA network in South Africa. The practice comprises five partners and five other practitioners. This year the team has been involved in automotive, retail, and confidential settlements worth millions of rand. The firm specialises in the financial, mining, and retail industries.

Anne Bennett leads the overall tax practice of **Webber Wentzel** but **Michael Honiball** heads the international tax department, and has extensive experience in the realm of transfer pricing. Prior to joining the firm, Honiball was a partner in KPMG, where he led the International Tax Department, and then the Transfer Pricing Department. Honiball has extensive experience in cross-border M&A, exchange control and the setup of offshore financial entities. Clients of the firm include some of the largest in South Africa, such as Anglo American, Sappi, Sasol and Macsteel. The firm has clients all over the African continent and makes use of in-house Portuguese and French language specialists to fulfil clients' needs. This includes designing and implementing appropriate investment vehicles, minimising tax leakage from cross-border cash flows, and managing the tax implications of exiting a particular investment. Webber Wentzel lists its specialities as mining & energy, financial services, pharmaceuticals, industrial and manufacturing and the transport industry.

ENSAfrica is, exclusively, Taxand South Africa and heads up its Sub-Saharan hub

Key contacts:

ENSafrica.com
info@ENSafrica.com
+27 11 269 7600

Bernard du Plessis
bduplessis@ENSafrica.com
+27 83 458 2161

Peter Dachs
pdachs@ENSafrica.com
+27 83 450 7039

South Korea

Tax authorities

National Tax Service
86, Jongno 5-gil, Jongno-gu Seoul, 110-705
Tel: +82 2 397 1200
Email: service@mail.nts.go.kr
Website: www.nts.go.kr

LEADING FIRMS

1	Deloitte Anjin
	Kim & Chang
	Samil PwC
	Samjong KPMG
	Yulchon
2	EY
3	Lee & Ko
	Shin & Kim

South Korea's new president, Geun-hye Park, entered the presidency with aims to increase social spending to expand the breadth of welfare programmes. In order to fund such programmes, the Park regime has put pressure on the National Tax Service to boost revenues through tax. The NTS reported that it expected to collect $13.8 billion more in taxes in 2014 compared with the previous year- an increase of 7.7%.

Korea is a supporter of the BEPS initiative and is working to encourage a very compliance-oriented environment. Korea parallels global trends such as transparency. A key area of collection pinpointed by the NTS is on transfer pricing transactions. Contentious transfer pricing cases are the rise, with perhaps a dozen or so landmark rulings over the past 18 months. A handful were decided in favour of the taxpayers, however such transactions are quite commonly decided in favour of the tax authorities. Businesses exposed to risk are those involved in beneficial ownership and those structured through holding companies.

The market anticipates that outcomes of future litigation will provide clarity on transfer pricing rules. "We'll have more development on rules and specific issues that have not been previously addressed," says Soo-Jeong Ahn of Yulchon. Local government elections occurred in April, and the NTS did a wave of elections just before this date.

The most recent wave of audits began on July 17, and generally last around 70 days. The aggressive audits have caused headaches for both businesses and tax advisers. The NTS is targeting high risk businesses involving any sort of off shore payments, management fees, and will even levy criminal tax evasion charges on companies and directors if the structures lack substance. Practitioners also notice that while inbound structures were commonly attacked for TP audits, there is an increasing focus on Korean outbound companies – including some of the biggest names in the market.

"Auditors don't get penalised for the refund given to the taxpayer, so there is no disincentive for the auditors to assess more than they should reasonably," said Jeremy Everett of Kim & Chang.

One of the most notable changes in transfer pricing regulation concerns domestic transfers. As of January 1 2014, all intra-company transfers between domestic Korean companies must be completed at arm's-length. In 2013, the National Assembly also approved new guidelines for determining arm's-length for guarantee fees.

The APA programme has had some success, although few have been completed to date. The market reports that the NTS is friendly to applicants. However, the bottleneck associated with successful

Tax rates at a glance

(As of September 2014)

Corporate tax rate	22 (a)	Net operating losses (years)	
Capital gains	22 (b)	Carryback	1
Branch tax	22 (b)	Carryforward	10
Withholding tax			
Dividends	0		
Interest	14		
Royalties	0		

a) Local income surtax (formerly referred to as resident surtax) at a rate of 10% is also imposed

b) Capital gains are included in ordinary taxable income for corporate tax purposes

completion of the deals is a deterrent for many companies. Corporations are settling for unilateral deals that require less time.

Practitioners pinpoint that, rather than targeting legitimate business for transfer pricing audit, more tax could be levied by reducing incentives or even increasing the tax rates, creating less problems for businesses operating in Korea. However, increased pressure on tax collection will likely maintain these policies in the future. "It remains to be seen how aggressive the next wave of audits will be. I don't know that they will significantly change their approach," says Everett.

Tier 1

Deloitte Anjin offers a complete range of transfer pricing services to Korean and global clients. Over the past six years, the firm's revenue has grown in double digits annually, and it reported 15% revenue growth again last fiscal year under team leader, **Tae Hyung Kim**. The team has noticed a shift in work from multinationals to more Korean multinationals needing outbound investment advisory.

Transfer pricing head, Kim, holds a PhD in economics and has focused on transfer pricing for the past 18 years, working in both Korea and at Deloitte in the US. **Yong Chan Lee** is the second partner in the duo, and spent 15 years working at the National Tax Service. He is particularly capable in APA and MAP applications, as well as audit defence.

The firm established a new transfer pricing policy for a global auto parts manufacturer in Korea. The new policy required considerations between the company's Korean headquarters and subsidiaries in the US, China, Russia, Czech Republic and Slovakia. The firm completed an economic analysis to determine arm's-length pricing. The deal was so complex and required an increase in Deloitte's participation to help solve bilateral APA issues between Korea and the Czech Republic.

The firm is fully capable to advise clients from beginning to end on APA application, and has cases in the pipeline for the agreements.

The law practice of **Kim & Chang** indicates that the growing interest in dispute resolution and transfer pricing in its firm is representative of the overall tax sentiment in Korea. The country is witnessing some of the first landmark cases and Kim & Chang was involved in many. The firm continues to be the go-to firm for multinationals needing advice on tax audits and dispute resolution in Korea. Clientele include some of Korea's largest companies, as well as some of the biggest names globally.

Tax attorney and qualified CPA **Dong Jun Yeo** leads the transfer pricing operations. Yeo is supported by five additional partners and 28 fee earners. Yeo has been with Kim & Chang for more than two decades, and has previous transfer pricing experience working in the US.

Tae-yeon Nam led an innovative restructuring deal on behalf of a client whose main revenue source stems from publishing search advertisements and media online. Current tax legislation has no regulations for cases within the digital industry. The restructuring removed intra-group royalties, but caused the business to pay fees for purchasing online inventories. The tax authorities pinpointed this structure as a hollow business to avoid withholding tax and challenged it. Kim & Chang's advisory involved explanation to the tax authorities on the substance of the new structure, resulting in them completely dropping the case.

The firm is fully capable in advising APA applications, and was the adviser on Korea's first successful APA.

Partners at **Samil PwC** make up the largest transfer pricing practice in Korea with four partners and a total of 60 dedicated transfer pricing professionals. The practice is jointly led by **Henry An**, who focuses primarily on inbound work, and **Heui-Tae Lee**, who focuses on outbound clients. The diverse team has specialists for different service lines and industries, focusing on Korea's top industries including motor vehicles, pharmaceuticals, and technology.

Since the introduction of APAs into the Korean market, the firm estimates it has conducted more than 150 agreements on behalf of its clients – a figure they estimate to be about 50% of the overall Korean APA market. Many of these are foreign investors wanting assurance over their tax regimes amid the auditing crackdown by Korean authorities.

Under the direction of **Jung-Hwan Cho**, the firm helped a leading Korean auto parts company streamline its global tax practice by creating a global transfer pricing management system. Functions of the system involved establishing, implementing, executing and monitoring the transfer pricing strategy. The system aims to increase efficiency and transparency by monitoring data and transfer pricing risks on a global scale. The system further gives its clients access to the OECD country-by-country report drafted under the BEPS action plan.

In cooperation with their international network, the firm has ambitions for the technology model to be offered to other large clients with multinational operations in many jurisdictions. PwC aims to be the first mover in introducing technology in the Korean tax market.

In-depth technical knowledge is the factor that the transfer pricing team at **Samjong KPMG** says differentiates it from competitors. The firm encourages partners to specialise in both service line and industry. The firm has a special focus on financial services and offers expertise in financial guarantees, intra-group charges, and revenue splits. Other industries of knowledge are luxury brands, electronics, semiconductors, and chemicals.

Gil Won Kang leads the team and is recognised by the market for his APA experience. Kang secured several APA deals on behalf of clients including Kia Motors and Samsung C&T. The deals involved function review and risk profile analysis of each organisation to mitigate risk and ensure global transfer pricing compliance.

Kang has also reviewed a Korean multinational's royalty structure for compliance with the global group to defend against an initial tax assessment in Korea.

Eight of the team's transfer pricing specialists work jointly in the Japanese practice group, offering advisory to Japanese clients interested in investing in Korea. The firm also recently opened operations in Mongolia.

The first successful transfer pricing litigation in Korea concluded in January of 2014. The law firm of **Yulchon** was behind the first case in which the Tax Tribunal accepted the taxpayer's arguments in their entirety. **Dong Soo Kim** and **Seok Hoon Kang** led the deal on behalf of LG Chemical. The tax authorities noted a disparity between accounts receivable from the taxpayer's foreign subsidiary and an unrelated third party. The authorities viewed this as an unfair benefit and imposed tax on the transaction. Yulchon successfully advocated the position of the client, resulting in the complete reversal of taxes on the transaction.

Kyung Geun Lee works in the international taxation practice, and frequently advises on transfer pricing issues. Lee was formerly a director at the National Tax Tribunal, and played a leading role in developing Korea's transfer pricing policies. He is well regarded in the market and is able to assist Yulchon through difficult APAs and competent authority negotiations.

In addition to the team's inbound work for multinationals, the firm provides advisory for Korean companies on relevant transfer pricing issues in foreign countries. Previous experience includes TP regulations in the EU, US, China, India, Japan, and Malaysia.

Kim has successfully obtained a unilateral APA on behalf of a healthcare client, as well as a bi-lateral APA between entities operating in Korea and China. Sug In Shim was recruited this year from KPMG. Shim is a senior associate with a strong transfer pricing background.

Tier 2

"Professionalism" is the word that **EY Han Young**'s transfer pricing team acknowledges as befitting of its practice. Team leader Sang Min Ahn joined the firm a year ago to enhance transfer pricing capabilities and expand the practice. Ahn has worked in transfer pricing for the past 15 years, previously with another Big 4 firm in Korea. He has advised on international deals covering China, the US, Singapore, Taiwan, Belgium, France, and Germany.

Over the past year, the firm has added an additional partner and operates with more than 30 staff members. The firm has members with specialised knowledge in finance, energy, technology, and construction. EY also utilises its global network to advise international clients and share knowledge on industry best practices. The firm was hired as the primary transfer pricing adviser by some of Korea's top 10 companies.

Tier 3

The transfer pricing team at **Lee & Ko** aims to differentiate itself from the rest of the transfer pricing market. The firm provides holistic transfer pricing services that aim to incorporate each client's individual business. This is done by recruiting a mature team of litigators, economists, industry exports, and former officials.

Practice leader Jay Shim is capable in a number of areas including energy and mining, project finance, FDI, and offshore structuring. The firm has made significant investments in personnel since Shim came onto the team in 2012. While it is well known in the Korean market, the law firm is developing its international strengths to become even more of an international player.

The firm is working a deal on behalf of LG Electronics against the NTS for tax assessments levied on receipts of guarantee fees from the taxpayer's foreign counterparts. The deal was novel in that it utilised new methodology from 2012 for calculating arm's-length of guarantee fees. The NTS also utilised a controversial fee calculation model that was not disclosed to the public. Lee & Ko was able to provide clarity on the model and is undertaking court proceedings.

The transfer pricing team at **Shin & Kim** has two partners with deep knowledge on transfer pricing and international tax. Team lead, In-Hwa Jung, comes well-regarded for knowledge on the taxation of financial products. Duck-Yeul Jang supplements the practice with his 30 years of experience working for the National Tax Service in international tax

The duo has tackled a number of financial transactions and is experienced in difficult areas of law including taxation of intangibles such as royalties and fees. The firm prepared a TP report on behalf of a Korean company affiliated with a foreign enterprise. The report took care to examine the management fees and royalties payable to the foreign affiliate. Transfer pricing policy, justification for the strategy, and APA documentation are all areas of capability.

Deloitte Anjin LLC
9 Fl., One IFC
10 Gukjegeumyung-ro
Youngdeungpo-gu, Seoul
150-945, Korea

Contact: Tae Hyung Kim
Email: taehyungkim@deloitte.com

Dr. Tae Hyung Kim leads the Deloitte transfer pricing group in Korea. The group has over 35 specialists and has been consistently recognized as a tier-1 transfer pricing service firm in Korea.

The group has advised multinational companies in automotive, electronics, IT, chemical industries, providing balanced solutions that fit MNCs' business goals and transfer pricing objectives at the same time. Our expertise and experiences have helped MNCs to resolve complex issues in APA, MAP, and audit defence situations.

We received recognition as one of the World's Leading Transfer Pricing Advisors by Legal Media Group for several years in a row and Tax Controversy Leaders by International Tax Review (2013, 2014).

Yulchon LLC
Textile Center 12F, 518 Teheran-ro,
Daechi-dong, Gangnam-gu, Seoul, Korea
Tel: +82 2 528 5200
Website: www.yulchon.com

Contacts
Kyung Geun Lee
Tel: +82 2 528 5238
Email: kygelee@yulchon.com

Soo-Jeong Ahn
Tel: +82 2 528 5552
Email: sjahn@yulchon.com

Spain

Tax authorities

Taxation Agency
Paseo de la Castellana, 106, Madrid 28046
Tel: +34 915 908 000
Fax: +34 91 568 08 80
Email: delegacioncentral@correo.aeat.es
Website: www.agenciatributaria.es

LEADING FIRMS

1	Deloitte Abogados
	EY
	Garrigues – Taxand
	KPMG
	Landwell (PwC)
2	Baker & McKenzie
	Cuatrecasas, Gonçalves Pereira
	Freshfields Bruckhaus Deringer
	Grant Thornton
	Transfer Pricing Services
3	BDO
	GTA Villamagna
	Mazars
	Ramón y Cajal Abogados

While transfer pricing was not a headline issue in the Spanish reforms of summer 2014, there were several elements of the package that did have an impact on the discipline.

For instance, the deduction of interest on some hybrid instruments, which lead to deferred tax or non-taxation, have been banned; losses from the intra-group transfers of some assets cannot be deducted and impairment losses on several types of assets, including intangibles, will not be tax-deductible.

Taxpayers' transfer pricing activities are also coming under more and more pressure from the tax authorities as they gain more experience.

During the last two years, the allocation of profits is something that is now prosecuted," said Alejandro Escoda, head of tax at Cuatrecasas. "Clearly, during this year, authorities have been aggressive."

"Commissionary structures are carefully analysed by the authorities, and arm's-length is scrutinised," he continued. "Transfer pricing is much more important than it was."

The extra pressure from the tax authorities does not automatically translate into more work for advisers in all areas, however. Transfer Pricing Services said foreign multinational groups tend to centralise and prepare the TP Local documentation internally.

One area that is generating more work for firms is advanced pricing arrangement (APA) negotiation. The government is keen to increase the amount of APAs that are agreed to bring more stability to the country and to counteract uncertainty brought about by the stuttering economy and tax changes. Companies are also very keen to work towards the arrangements to avoid reputational damage.

Transfer pricing has also been hit by the trend towards the criminalisation of tax evasion and fraud. "The legislation here makes it easy to put taxpayers in criminal proceedings, even when they've hidden nothing," said Escoda.

However, Lourdes Perez-Luque, head of tax at Dentons, said: "To be accused of crime it has to be thought that you were guilty, that you knew what you were doing."

The threshold at which criminal proceedings are instigated is relatively low, at €120,000 ($160,000), there are raids by the tax authorities on the premises of companies suspected of wrongdoing, and the national media is hounding companies and individuals who avoid paying tax.

Prison sentences can be as long as five years or, for infringements over €600,000 ($800,000), as long as 10 years. "To advise on tax in Spain without having a criminal law department is an irresponsibility," said Escoda.

Tier 1

Juan Ignacio de Molina is the head of the transfer pricing department at **Deloitte Abogados**, which employs one other partner, **Ramón López de Haro**, and around 55 other professionals.

The firm offers a full range of transfer pricing services, focussing on three key areas: Business model optimisation, technology and its Latin American centre of excellence.

In business model optimisation, the firm works with companies to increase their profits by redefining operating strategies, centralising strategic functions and linking supply chains to provide specific tax advantages and avoid tax exposures.

The firm has developed software to support multinational clients' control and manage their international tax and transfer pricing positions. The technology is targeted at Spanish multinationals, and has allowed the firm to target new clients that already have their recurrent transfer pricing advisers.

The firm's Latin American centre of excellence ensures that the firm's team is multinational and multicultural, increasing the firm's attractiveness to clients in five key markets: Brazil, Mexico, Argentina, Venezuela and Peru.

Key industries for the firm include financial services, insurance, infrastructure, consumer products and tourism.

In one deal, the firm advised one of the world's leading testing, inspection and certification companies on aligning the transfer pricing policies of recently-acquired companies to fit their global transfer pricing strategy.

This involved transfer pricing diagnosis on specific transactions and review of possible risks for all the companies within the group across Europe, the Middle East, North America, Asia-Pacific and Africa.

EY's transfer pricing department is led by **Ramón Palacín Sotillos**, who has been a partner at the firm since 2006.

The firm provides a full range of services from documentation and APA negotiation to assistance during transfer pricing audits and litigation.

A key part of the business is to work on operating model effectiveness, by developing strategies and policies; optimisation of governance and the decision-making process; monitoring transfer pricing; global and regional assistance to assist in transition to new documentation requirements; assessment and management of risks and dispute management.

Garrigues – Taxand, has one of the largest and most experienced transfer pricing teams in Spain, which is co-headed by the highly-respected **Ángel Calleja** and **Mario Ortega Calle** and employs more than 40 transfer pricing practitioners across its 27 offices in Spain.

The firm provides a wide range of services, including the design, definition and implementation of transfer pricing policies; assistance in the preparation and negotiation of mutual agreement procedures and APAs; design and implementation of transfer pricing strategy; analysis of tax and transfer pricing planning structures involving intangibles; advice on transfer pricing litigation; valuations and appraisals of intangible assets and economic analyses for the definition of sophisticated intra-group financial instruments.

The firm has a distinctive style in transfer pricing, combining legal and economic skills to best tackle the challenging Spanish market.

The large, multidisciplinary transfer pricing team at **KPMG Avogados** comprises economists and lawyers and is led by **Vicente Durán** and **Montserrat Trapé**.

The firm offers a wide range of services, including: Design and modelling of transfer pricing policy; valuation of transactions; analysis, implementation and monitoring of production and distribution services; management of intangibles; advice on compliance with documentation requirements;

Tax rates at a glance

(As of July 2014)

Corporate income tax	30% (a)
Capital gains	0% to 21% (b)
Branch tax	30% (c)
Withholding tax (d)	
Dividends	0% to 21% (e)
Interest	0% to 21%
Royalties from patents and licences	0% to 24.75%
Branch remittance tax	0% to 21%
Net operating losses (years)	
Carryback	Not permitted
Carryforward	18 (f)

a) A new tax reform is being discussed in the Spanish parliament. It is expected that the corporate income tax rate will be reduced to 28% for 2015 and to 25% thereafter.

b) Under the reform mentioned above, capital gains will be taxed up to 20% for 2015 and at 19% thereafter, and may be exempted under certain conditions.

c) The general branch tax rate applies to non-residents with a permanent establishment in Spain. Permanent establishments are taxed at the same rate as domestic companies, thus tax rates will be reduced as mentioned in point a. above.
A 21% branch profit tax is also imposed on after-tax profits remitted to a foreign head office (under the tax reform, this tax rate will be reduced to 20% in 2015 and 19% thereafter). The branch profit tax does not apply to branches of EU entities or entities resident in a country that has signed a tax treaty to avoid double taxation with Spain.

d) The higher rate applies unless it is reduced under a tax treaty or exempt under the EU directives for interest, dividends and royalties. Under the reform, tax rates are reduced from 21% to 20% for 2015 and to 19% thereafter, and the general tax rate drops from 24.75% to 24%. In the case of companies resident in an EU country the general tax rate is reduced to 20% for 2015 and to 19% thereafter.

e) Dividend distributions to residents of other EU member states are subject to an exemption if the foreign parent company has continuously held a minimum of 10% of the share capital of the Spanish company for one year before the dividends are declared.

f) Under the reform, tax losses may be used without any time limit.

Source: Garrigues, Taxand Spain

assistance during audits and court appearances; unilateral, bilateral and multilateral APA negotiation and conflict resolution.

Key sectors for the firm are consumer and industry, energy and natural resources, financial, infrastructure, transport, tourism, leisure, government, healthcare, private equity, telecommunications, media and technology.

Landwell is the Spanish affiliate of PwC, and has 20 offices across the country. The firm offers a wide range of transfer pricing services, including the design and implementation of transfer pricing policies, economic and functional analyses, advice and preparation of transfer pricing documentation and assistance in negotiating APAs with the tax authorities.

Key industries for the firm are finance, insurance, energy, telecommunications, pharmaceuticals, retail and consumer, technology, industrial products, automotive, construction and real estate, transport, tourism, public sector and private equity.

Tier 2

Transfer pricing operations at **Baker & McKenzie** are led by partners **Raúl Salas** in Madrid and **Pedro Aguarón** in Barcelona. There is one more partner active in transfer pricing, **Bruno Domínguez**, who was promoted to the position this year, as well as six additional fee earners including economists, attorneys and accountants.

The firm has a strong reputation in transfer pricing and is backed-up by the Baker & McKenzie network, with over 720 tax lawyers and economists worldwide. It offers a wide range of services, including developing cost-sharing arrangements and providing transfer pricing advice regarding intellectual property structures.

Other services include conducting transfer pricing and benchmarking studies in many different industries, structuring terms and determining transfer prices for financing acquisitions, support on the negotiation of unilateral, bilateral and multilateral APAs and assistance in managing transfer pricing risks on a worldwide bases.

Key industries for the firm include information technology, insurance, pharmaceuticals and healthcare, construction, food production, and energy.

The 10 partners and 46 other fee earners employed by **Cuatrecasas, Gonçalves Pereira**'s transfer pricing team are led by **Joan Hortalà**. All of the firm's lawyers speak at least one foreign language fluently.

The team specialises in implementing, reviewing, documenting and defending transfer pricing policies, and negotiating bilateral and multilateral APAs, mutual agreement procedures resulting from tax audit reassessments and supporting procedures.

Other key areas of practice pertain to transactional work, including business restructuring, commercial purchases, services, fees, rentals, loans, management fees and royalties.

The firm has a wide range of clients, and has advised, for example, media group Grupo Planeta, water treatment company Grupo Agbar and fashion company Puig on transfer pricing issues and on the negotiation of APAs.

The firm has clients in almost all industries, but is particularly experienced when working in life sciences, telecommunications, media and technology, consumer and retail, energy, professional services, financial services, infrastructure, automotive, equipment and family office.

Freshfields Bruckhaus Deringer offers a wide range of transfer pricing services in three main areas: Transfer pricing planning, dispute resolution and compliance.

In planning, the firm assists in helping to improve tax efficiency of clients, restructuring, structuring of intangibles and profit reporting for permanent establishments. In dispute resolution, the firm advises during transfer pricing investigations, provides litigation support, helps with mutual agreement processes and negotiates APAs.

In transfer pricing compliance, the firm assists clients by drafting transfer pricing agreements, making sure transfer pricing benchmarks are met and making sure transfer pricing risk management arrangements are adequate.

Key sectors for the firm are consumer products, financial institutions, financial investors, government, health, infrastructure and transport, leisure, energy and natural resources, manufacturing and industrial services, media, pro bono, real estate, retail, technology and telecommunications.

Senior tax manager, **Gabriel Yakimovsky**, leads the transfer pricing team at **Grant Thornton**, which offers a full suite of services including preparation of documentation, APAs, assistance during audits and supply-chain optimisation.

Two other important names in transfer pricing at the firm are **Rafael Leal** and **Juan Martinez**, who work in the firm's Valencia office, one of 10 offices the firm has across Spain.

David Cañabate Clau leads **Transfer Pricing Services**, a transfer pricing boutique with three partners and four other fee earners. The firm hired **Cristina Suárez Martínez-Falero** as a senior associate in April 2014.

The firm provides tailor-made transfer pricing advice both nationally and internationally, and specialises in business restructuring, tax audits, the valuation of intangibles and the transfer pricing aspects of patent box structures.

Key areas for the firm include the pharmaceutical, chemicals, food and drink, engineering, industrial components and distribution and logistics industries.

In one deal, the firm assisted a group in the implementation of a new transfer pricing policy, following a model between a cost sharing agreement and a service agreement.

In another, the firm designed a new Brazil-Spain transfer policy for an engineering services company, which used the profit split method, as well as working on documentation.

Tier 3

The transfer pricing team at **BDO** is led by **Richard van der Poel**, who joined from a position of transfer pricing senior manager at PwC in 2006. The firm offers a wide range of services including APAs, assistance during audits and design and implementation of policies.

Key sectors for the firm are agrifood, automotive, financial, chemicals and pharmaceuticals, energy and environment, real estate and construction, hotels, tourism, leisure, public sector, insurance, technology, media and telecommunications and transport and logistics.

The transfer pricing team at **GTA Villamagna Abogados** is led by **Felipe Alonso**, and offers a wide range of transfer pricing services, with transfer pricing policy being one area where the firm is particularly strong.

The transfer pricing department at **Mazars** is led by partners **Jacinto Cana Jiménez** and **Antonio Moreno**. The team focuses on defence strategies, negotiations with revenue authorities and planning for the minimisation of global tax rates for multinationals.

Key industries for the firm are agriculture, banking, construction, public work, real estate, energy and utilities, aeronautics, defence, the space industry, insurance, technology and media and telecommunications.

Partner **Luis Rodríguez-Ramos** leads the transfer pricing team at **Ramón y Cajal Abogados**, which employs two fee earners: **Gonzalo Molina** and **Alberto Penedo**.

The firm works mainly in drafting transfer pricing documentation and restructuring, and mainly serves the pharmaceutical, chemicals, distribution and financial sectors. Two clients the firm has drafted documentation for are Haifa Group and Arkopharma.

Sweden

Tax authorities

Ministry of Finance	Swedish Tax Agency
Jakobsgatan 24	Postal address: 171 94 Solna
SE-103 33 Stockholm	Visiting address: Solna Strand Road 10
Tel: +46 8 405 10 00	**Tel:** 0771-567 567(in Sweden);
Fax: +46 8 21 73 86	+46 8 564 851 60 (abroad)
Website: www.sweden.gov.se/sb/d/2062	**Email:** huvudkontoret@skatteverket.se

LEADING FIRMS

1	EY
	PwC
2	Deloitte
	Grant Thornton
	KPMG
3	Skeppsbronn Skatt, Taxand Sweden

Although the Swedish government tightened regulation around thin capitalisation rules last year, the Swedish market is generally characterised as stable. Additionally, major corporate tax changes have been proposed for introduction on January 1 2016, the first of which entered the government in June 2014. This included a financing allowance of 25% relating to the deduction of interest allowances, which would effectively reduce the corporate tax rate to 16.5%.

"The interest deduction rules have not been in place long and they have given them a reason to be more aggressive," said Tina Zetterlund of KMPG. "The rules are difficult to apply, which has left them open to challenges."

As such, certain clarifications have arisen during the year based on court rulings.

In November 2013, the Swedish Supreme Court denied the tax authorities the right to appeal the rate of interest of loan transactions between related parties, where the interest is paid to non-Swedish lenders. Given the authorities' appeal was based on the assertion that their burden of proof was not satisfied, KPMG observed that the ruling may prompt the authorities may take a more reasonable approach to determining market interest rates on intercompany loans.

Other advisers take a similar stance on the authorities which are becoming more sophisticated in the way in which they approach transfer pricing audits.

"It is a crazy time in Sweden," said Magnus Larsson of Deloitte. "Tax is being hunted down with a political argument rather than a tax argument… we have gone from the most liberal, to one of the most stringent regimes in the world."

"Although there may be more work, it is more annoying because it is hard to give straightforward advice – it is up to the authorities and courts to accept schemes on a discretionary basis."

However, there is some hope that as the BEPS initiatives and transfer pricing practices have precedents set in Sweden that audit and litigation will calm down.

"Due to the relatively new regime the authorities are ready to contest schemes," said Larsson. "They are winning lots of cases, and are full of self-confidence."

Concomitantly, transfer pricing practices in the jurisdictions have been growing rapidly due to the increase of work.

"Whilst there are no major changes in 2014, clients are becoming more and more aware of the difference in interest rate deduction tax rules, and are filing APA agreements," said Daniel Jilkén of Roschier. "We are looking forward to new legislation."

Tax rates at a glance

(As of September 2014)

Corporate tax rate	22%	a) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.
Capital gains	22%	b) No withholding tax is imposed where the requirements for the domestic participation exemption or the conditions for the application of the EU parent-subsidiary directive are satisfied; otherwise, the rate is 30%.
Branch tax	22% (a)	c) Sweden does not impose withholding tax on royalties; however, a royalty payment to a foreign recipient may be deemed to constitute a permanent establishment in Sweden and if so, the net royalty income (gross royalty less related expenses) would be taxed at the Swedish corporate rate.
Withholding tax		
Dividends	0/30% (b)	
Interest	0%	
Royalties	0% (c)	
Net operating losses (years)		
Carryback	0	
Carryforward	Unlimited	

Tier 1

The transfer pricing team of **EY** in Sweden is part of an integrated function in the tax department, containing specialist **Mikael Hall**. This team operates in conjunction with the EY network across the Nordic region to provide transfer pricing services in each country. Hall leads the group from the Swedish practice, which is run as part of tax efficient supply chain management. This service offers pricing planning, documentation services, litigation, risk management, pricing of financial services and customs.

Mika Myllynen leads the transfer pricing practice of **PwC** Sweden in conjunction with four further partners and 29 transfer pricing professionals. There are additional partners and one staff member, who spends part of their time on transfer pricing work as part of its integration into the wider practice. This has been an active year in terms of transfer pricing deals. **Pär Magnus Wiseen** led on a value chain transformation this year, centralising a decentralised transfer pricing model in a deal worth in excess of $750,000. **Magnus Grive** was involved in the introduction of an innovative profit-split arrangement, including a bilateral APA with a low tax jurisdiction, and Myllynen led on an audit defence.

The team specialises in industrial products, the automotive industry, medical technology and pharmaceuticals, telecommunications and financial services. However, as it relies on one of the largest tax practices in Sweden, the transfer pricing practice can provide an integrated supra-national service which goes beyond their own limits.

Tier 2

Elvira Allvin is the sole partner leading the transfer pricing practice of **Deloitte** in Sweden. The practice employs 11 further professionals and is situated in the wider tax practice which has 195 tax professionals. The team has expanded this year with four new hires, which reflects the growth of the transfer pricing market. The firm specialises in technology, manufacturing, financial services, and private equity.

In deals, the team was involved in a defence of a business restructuring. The Swedish entity faced the challenge of defending its central-driven restructuring. Deloitte helped by devising an innovative approach to OECD application, to argue that the Swedish entity did not have bargaining power in the restructuring. The team has been involved in several other audit defences, as well as a cross-border structuring deal requiring cooperation across service lines.

Grant Thornton boasts a well-established transfer pricing practice in Sweden. **Sara Almling** leads the

Swedish practice in conjunction with a mixed team of tax professionals and economists. Almling is reinforced by the wider tax practice which is reputable, and led by **Monica Söderlund**. The firm can assist with documentation services and polices, the planning and implementation of pricing models, restructuring, database searches, tax audits and litigations.

The Swedish transfer pricing practice of **KPMG** is led by **Annika Lindström** in collaboration with thirteen other fee earners. Transfer pricing operates with the expertise of the wider tax practice, which numbers 12 partners and 140 other fee earners. The practice was enhanced this year with the addition of transfer pricing specialist **Karolina Rychtanek** from SEB. The practice has seen steady growth in the past year following record high revenues in the previous year.

In the past year KPMG's work has included the development of a model for pricing the bad debt portfolios of a Swedish financial services group, and a dispute with the tax authority over a tax audit. The firm has been involved with the development of a new transfer pricing model for a Swedish manufacturer of work clothing, which was considered innovative because it was not driven by tax liability, but was conceived as a way of giving group management centralised control of subsidiaries. "Tax authorities have become more aggressive in the past year, and especially in the Nordic market for transfer pricing," said head of tax, **Tina Zetterlund**. "The number of litigations is increasing, and this has brought us growth."

The firm's specialities lie in manufacturing, financial services, forestry, digital and pharmaceutics.

Tier 3

Skeppsbronn Skatt, **Taxand Sweden** can use the wider Taxand network to deliver a global service for clients. The practice is led by **Niklas Bång**, in conjunction with two other partners and four further tax professionals. The team operates as an integrated part of the wider tax practice, and the flagship deal this year involved partner, **Magnus Larrson**, head of tax, **Mac Berlin**, in addition to **Mats Holmlund**, a VAT partner, and the wider Taxand network. This was the worldwide rollout of an online business, requiring the integration of a complex structure to fit with local regulations. The firm specialises in manufacturing, financial services, real estate, construction and public sector work.

SKEPPSBRON
SKATT
Taxand

Contact
Niklas Bång
Deputy Managing Director
Tel: +46 40 10 71 92
Mobile: +46 73 640 91 92
Fax: +46 40 23 98 28
Skeppsbron 5, SE-211 20 Malmö

www.skeppsbronskatt.se

Switzerland

Tax authorities

Federal Tax Administration
Eigerstrasse 65 3003 Berne
Tel: +41 58 462 71 06
Fax: +41 31 58 462 73 49
Email: sd@estv.admin.ch
Website: www.estv.admin.ch

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	TAX EXPERT International
	TP Services GmbH – Altus Alliance

Transfer pricing has moved up the agenda of the tax authorities in Switzerland in the last year because of the OECD's base erosion and profit shifting (BEPS) project.

"They are becoming much more aware of TP issues," said Harun Can, a partner at Schellenberg Wittmer. "BEPS has changed minds. Rules have not changed but opinions have changed."

"The tax authorities quite wrongly tend to criminalise the matters," said Can's colleague Pietro Sansonetti, head of tax in Geneva at Schellenberg Wittmer. "They tend to criminalise the matters, particularly transfer pricing and particularly in Geneva."

One adviser said, however, that "aggressive" is not the correct word to describe the authorities, instead referring to the situation as "more difficult".

Dominating tax discussions in Switzerland at the moment is the news that the country's special tax regimes for holding, mixed, domiciliary and principal companies will be phased out, starting from 2018 to 2020.

"We have abolished the holding company structure," said Can. "People have to acknowledge that this will no longer be a place to hide money and will no longer be a tax haven."

What is certain, however, is that the government will not allow Switzerland to become an unattractive destination for investors, and it is already working on a package of measures to increase corporate competitiveness.

While not many of these new regulations are likely to relate directly to transfer pricing, their effect on Switzerland as a whole will be felt in all areas of tax.

One change of particular interest to transfer pricing advisers will be the introduction of a licence box. Similar to the patent box seen in the UK, the licence box would allow companies to apply a lower rate of corporate tax to profits earned on patented inventions and certain other innovations.

Switzerland has a unique semi-direct democracy, in which changes to legislation may be put to referendum if any citizen sets up a petition challenging it which garners over 100,000 signatures. It is highly likely that such high-profile changes to the tax system will trigger a referendum.

"The process will probably take longer than a year so there is a level of uncertainty over what will happen," said Philip Robinson, head of tax at EY and chairman of EY globally.

"The way the political process works, the content will be known before that. They will have to get feedback, to the extent there are changes in the tax rates, there will be a mandatory referendum."

Another aspect of the tax landscape which makes transfer pricing difficult in Switzerland is the courts,

Tax rates at a glance

(As of January 1 2014)

Corporate income tax rate	11% to 24% (a)	
Capital gains tax rate	11% to 24% (a/b)	
Branch tax rate	11% to 24% (a)	
Personal income tax rate	19% to 48% (c)	
Withholding tax		
Dividends	35% (d)	
Interest	Nil (e)	
Royalties from patents and licences	Nil	
Branch remittance tax	Nil	
Net operating losses (years)		
Carryback	Not allowable	
Carryforward	Seven years	

a) Combined federal/cantonal/municipal corporate income tax rate on profit before tax, depending on domicile, under reservation of privileged tax scheme (mixed companies 6% to 10%).
b) Higher rates may apply to real estate capital gains, depending on location of property.
c) Combined federal/cantonal/municipal personal maximum income tax rate, depending on domicile.
d) Under reservation of treaty tax reduction or full exemption under domestic law.
e) Under reservation of interest paid by banks.

Source: Tax Partner, Taxand Switzerland

which are unsympathetic towards taxpayers in most transfer pricing cases.

"You can't discuss too much with judges. There is almost no pleading and no explaining," said Sansonetti. We advise our clients that it is likely that they will lose transfer pricing cases."

Despite planned changes, aggression from the tax authorities, moderate levels of uncertainty and some companies leaving for more stable jurisdictions such as Ireland and Luxembourg, Switzerland remains an attractive destination in which to do business.

Part of this was the jurisdiction's near-immunity from the financial crisis. "Switzerland is seen as somewhat insulated," explained Chèrie Lehman of Transfer Pricing Services. "We actually saw more work during the financial crisis."

Tier 1

The transfer pricing department at **Deloitte** is led by **Hans Rudolf Habermacher** and employs two partners and 10 other fee earners. The department has expanded this year, bringing in partner **Jeroen Lemmens** from Deloitte Belgium, as well as consultants **Jonathan Belet** and **Lukas Staehli** from DHL and University St. Gall respectively.

Most of the firm's practitioners have specific industry experience and come from a wide variety of backgrounds, such as tax, finance, economics and accounting. This blend of staff gives the firm a range of perspectives, allowing the team to tackle issues from different angles.

Key industries for the firm are life sciences and pharmaceuticals, insurance and reinsurance, manufacturing, energy and trading and the consumer industry. The firm has continued to strengthen its services in financial services, commodity trading, business model optimisation and intellectual property.

In one deal, the firm supported Polaris Sales Europe Sarl in its conversion from a service company into a fully-fledged principal company serving the global markets. The Deloitte Switzerland team provided the client with practical implementation support, and with a clear conversion strategy the client did not face any business disruption as part of the business model conversion.

In another deal, the firm provided post-merger integration support from a transfer pricing perspective for two mid-sized multinational groups. As part of the project the firm had to adapt the transfer pricing models of the two groups, identify solutions to avoid potential withholding tax and exit tax implications and fit new transfer pricing guidelines to the two groups, which had differing business cultures.

Nicholas Ronan leads the transfer pricing practice at **EY**, which offers a full range of transfer pricing services from monitoring taxpayers' transfer pricing footprints, negotiating APAs, preparing and modifying documentation and designing and implementing transfer pricing policies for assistance during transfer pricing audits and litigation.

One of the key areas for transfer pricing practitioners at the firm has been operating model effectiveness and supply-chain optimisation. The multidisciplinary service line, led by **Joost Vreeswjik**, employs four partners and is among the strongest of its kind in the whole of EY.

Professionals in this area work with clients, often in the financial sector, in restructuring, systems implications, HR and all aspects of transfer pricing.

Markus Wyss heads the transfer pricing team at **KPMG** in Switzerland, and is also the head of the firm's global transfer pricing services.

The firm offers a full range of transfer pricing services, including analysis, design and implementation of transfer pricing policies and risk management, as well as offering a systematic approach to documentation processes on corporate and local levels.

The firm has industry-specific knowledge in a range of sectors, including transport and leisure, telecommunications and media, technology and business services, sports, real estate, the public sector, private equity, power and utilities, pharmaceuticals, investment management, insurance, industrial manufacturing, healthcare, consumer goods and retail, commodities and energy trading, chemicals, banking and the automotive industry.

Transfer pricing operations at **PwC** are led by **Norbert Raschle**, and **Nicolas Bonvin** in the western region of Romandie. Another key name at the firm is **Benjamin Koch**. The firm's transfer pricing team is one of the largest in Switzerland.

The firm offers a full range of transfer pricing services, including exploiting optimisation potential and eliminating potential risks; documenting and defending transfer prices; reducing transfer pricing risks; intellectual property, licence structures and fees and defending intellectual property; tax-effective charging of internal management and support services and determining arm's-length transfer prices.

Other services include setting up uniform and transparent value chains; reducing the group tax burden by means of a tax-optimised corporate structure in a global or regional business control centre; meeting national requirements for transfer pricing documentation and creating the optimum basis for restructuring through mergers and acquisitions.

Key industries for the firm are asset management, cleantech, banking, business services, hospitality and leisure, healthcare, commodity trading, energy, utilities, mining, industrial manufacturing, technology, media, telecommunications, infocomm, retail, real estate, the public sector, life sciences and insurance.

Tier 2

TAX EXPERT International's transfer pricing division is made up of five fee earners and led by partner **Richard Wuermli**, and works mainly with companies in industry, food and drink, finance, aviation and insurance.

The firm worked with Olsen Germany to implement transfer pricing in IT, in a deal worth over €50 million ($69 million). They are also working on a similar deal with milk and dairy products company EMMI.

The practice is expanding, and has recently opened a Russian desk, speaking Russian, German and English, and a Hungarian desk, speaking Hungarian, German and English. Both desks are located in Zurich.

The firm recently delivered a presentation at the yearly meeting of the Swiss/Hungarian Chamber of Commerce in Budapest, as part of efforts to tap in to the Hungarian market.

Zürich-based **Transfer Pricing Services** was founded in 2010 and employs one partner and two associates.

The firm works both in Switzerland and abroad, conducting a significant portion of its business in Japan. Founder **Chèrie Lehman**, who has worked in transfer pricing both at KPMG and as an in-house director, regularly travels between the two countries to facilitate this.

The main industries for the practice over the past year have been retail, automotive, industrial manufacturing, IT development services and wholesale electronics.

In one deal, the firm advised a multinational organisation on how to capture relevant information to document restructuring activities globally.

The firm is unusual in Switzerland in that it works exclusively in transfer pricing. Lehman says that this helps give the firm a competitive edge.

All clients have been secured through word of mouth or from references from other clients, and the firm has a very high repeat business rate, while their relationship with Altus Alliance has also helped the firm to grow quickly.

Deloitte AG
General Guisan-Quai 38
P.O. Box 2232
8022 Zurich

Phone: +41 (0)58 279 60 00
Fax: +41 (0)58 279 66 00
www.deloitte.ch

Contact: Hans Rudolf Habermacher
Email: hhabermacher@deloitte.ch

Firm profile:
The Deloitte Transfer Pricing team in Switzerland is led by Hans Rudolf Habermacher and consists of innovative and highly motivated specialists with wide ranging backgrounds in tax, law, economics, accounting, and business as well as experience working in foreign jurisdictions, in industry, and for tax administrations.

The Deloitte Transfer Pricing practice has a presence both in Zurich and Geneva, but is acting as one team. In the light of its expansion in the Swiss market, Deloitte has set-up a dedicated team to serve clients in the Financial Services industry as well.

The Swiss Transfer Pricing practice plays an instrumental role in the Deloitte global TP network and has won the "Swiss Transfer Pricing Firm of the Year award" from ITR in 2012 and 2014.

Taiwan

Tax authorities

Taipei National Tax Administration
No 2, Section 1, Jhonghua Road, Wanhua District, Taipei 10802
Tel: +886 2 2311 3711 ext. 1116
Fax: +866 2 2389 1052
Website: www.ntbt.gov.tw/etwen/

Taxation Agency, Ministry of Finance
2, Aiguo W. Road, Taipei, 10066
Tel: +886 2 2322 8000
Fax: +866 2 2396 9038
Website: www.dot.gov.tw/en/

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Grant Thornton
	Lee and Li

"Formality and substance are important here in Taiwan," said Grant Thornton's Jay Lo about the country's transfer pricing regime. Transfer pricing documentation is a requirement for businesses with global operations and, as Lo said, the clarity and breadth of such documentation is vital. "Taiwan tax authorities are selecting more and more cases to undergo an audit."

Transfer pricing regulations were introduced in Taiwan in 2005, and since that time the market has become progressively more sophisticated. Tax professionals report that the number of transfer pricing audits has doubled in recent years. The result is a shift from transfer pricing report preparation to actual defence during audit and investigations.

While practitioners once lamented the lack of knowledge among authorities in the transfer pricing market, they now note that the tax office is making an effort to increase their understanding of complex transfer pricing issues. From March of 2014, the tax authorities implemented a new transfer pricing team dedicated solely to the field. "Officials now have more and more experience and knowledge, I think, about transfer pricing regulations. They know how to tackle the issues," said Josephine Peng of Lee and Li.

The increasingly stringent audit requirements have intensified market demand for advance pricing agreements and mutual agreement procedures. However, to date only around a dozen APAs have been completed. Rumours of new regulations concerning controlled foreign corporations have been floated, but nothing concrete has yet emerged.

Hotly contested has been the Cross Strait Services Trade Agreement, a free trade agreement with China, that, as this edition goes to press, has not been pursued because of extreme backlash from individuals and businesses who thought the agreement would make the country too dependent on its neighbour. Although China remains one of its top trading partners, Taiwan also does a good deal of cross border transactions with the US, EU, and Singapore.

Taiwanese companies are diversifying their outbound portfolios. Based on proximity and common language, many Taiwanese businesses traditionally expanded into China. With the rising cost of labour in the country, however, Taiwanese businesses are now looking to the greater Asian region for investment opportunities. Korea and Japan are some of the largest inbound investors and this trend continued in 2014.

Despite the increase in audits, tax authorities still prefer to settle the matter rather than escalate to litigation. Only a few cases have been heard, but the Taiwan tax authority has announced that transfer pricing will be an important focus for 2015.

Tax rates at a glance

(As of September 2014)

Corporate tax rate	17% (a)
Capital gains	17
Branch tax	17% (b)
Withholding tax	
Dividends	20% (c)
Interest	15%/20% (d)
Royalties	20% (e)
Net operating losses (years)	
Carryback	0
Carryforward	10

a) The corporate tax rate is 17% for income exceeding NTD 120,000. A profit-seeking enterprise with a fixed place of business or business agent in Taiwan is subject to a separate AMT calculation if it earns certain income that is tax exempt or enjoys certain tax incentives under the Income Tax Act or other laws and the enterprise's basic income exceeds NTD 0.5 million. The AMT rate is 12%. A 10% surtax is imposed on undistributed profits.

b) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.

c) A 20% withholding tax is imposed on dividends paid to a nonresident (regardless of whether the investment has been approved by the Investment Commission), unless the rate is reduced under a tax treaty.

d) A 15% withholding tax applies to interest on short-term bills, interest on securitized certificates, interest on corporate bonds, government bonds or financial debentures, as well as interest derived from repurchase transactions with the above bonds or certificates. The rate in all other cases is 20%, unless the rate is reduced under a tax treaty.

e) Royalties paid to a nonresident company are subject to a 20% withholding tax unless the rate is reduced under a tax treaty. Where an offshore company provides technical services to a Taiwan entity, payments to the company are subject to a 20% withholding tax if considered Taiwan-source income. It may be possible to obtain "apportionment treatment, with only the part of the income deemed to be from a Taiwan source subject to the 20% withholding tax. Alternatively, if the costs associated with the provision of the services are difficult to calculate, an application may be submitted to the National Tax Administration to use an approved profit rate. The Income Tax Law allows the service provider to apply for a hypothetical taxable income of 15% of the total business turnover for services provided (10% for some transport industries). That amount is then taxed at the 20% rate, thus possibly reducing the effective tax rate from the normal 20% to 3% or 2%.

Tier 1

Mike Chang, who specialises in VAT and customs, along with global trade, is the firm leader of transfer pricing services at **Deloitte**. Chang often negotiates on behalf of clients with the tax authorities and helps restructure businesses to be tax optimal.

While much of its practice caters to multinationals in the TMT and financial sectors, Deloitte Taiwan is noticing an influx of manufacturing business, likely based on rising costs of production in China and Taiwan's more robust intellectual property laws compared with other Asian jurisdictions.

The firm's services include planning and consultation, APA advisory, compliance, business model optimisation, and audit defence. As a result of the Taiwanese government auditors becoming more sophisticated and increasing the number of audits, the firm has witnessed increased demand for APAs. The firm has aided in a number of successful restructurings that incorporated transfer risk analysis.

Chang and **Kathy Lin** successfully obtained an APA with the National Taxation Bureau of Taipei involving application of the Berry Ratio and resulting in a savings of $2.7 million for the client over three years. The firm continues to get client referrals based on its knowledge of APAs.

EY's transfer pricing team in Taiwan is led by **George Chou** in Taipei, who celebrates his decade anniversary with the firm this year. Chou comes highly regarded by the market for his abilities in transfer pricing and supply chain structuring.

The firm offers holistic transfer pricing services including strategy and policy development, documentation assessment, controversy risk assessment and global TP controversy management. The team is spread across six different cities in Taiwan, including Kaohsiung and Taipei.

In a recent deal, the firm liaised with EY in the US to advise a client who was interested in changing its pricing policy to migrate IP between jurisdictions. The firm helped analyse the value of IP, researched comparables, justified the changes, and prepared transfer pricing documentation.

Jessie Ho stepped into the leadership role of **KPMG**'s transfer pricing services in January of 2014. Former tax leader **Sherry Chang** remains with the firm in a different role. Ho has been with KPMG for more than two decades, and has more than 30 years of experience in the Taiwanese tax market. As transfer pricing documentation is a requirement in Taiwan, the firm pinpoints this service offering as one of major growth.

Heavy pressure from auditing authorities has increased the demand for transfer pricing services and routine documentation. The firm is heavily involved with its counterpart in China to offer insight into cross-strait tax challenges faced my multinationals in both jurisdictions. The firm also notes that Taiwanese investors are increasingly interested in ASEAN countries – including Thailand & Cambodia, Myanmar and Malaysia.

KPMG maintains good relationships with the Taiwanese tax authorities through participation in meetings and events. The firm sees continued growth in the electronics and computer hardware. In one notable deal, a client was charged royalties from its foreign subsidiary for the use of intangibles and for the provision of services. KPMG utilised cost sharing arrangements and reassessed the arm's-length nature of the royalty rate to mitigate the conflict.

The transfer pricing team at **PwC** focuses heavily on Taiwan's most crucial sector; technology. The firm caters to manufacturers and distributors of electronic parts, forwarders and semiconductors. The firm has made personnel investments, bringing a partner into transfer pricing from general tax and making an internal promotion to partner.

Lily Hsu is in charge of the transfer pricing team. **Ming Chu-Yang** recently engaged a client in the solar energy industry on its transfer pricing policies, investment structure, and European transaction model. The deal became problematic when tax authorities challenged the rationality of an operating loss incurred by a subsidy. The client was double taxed under the adjustment levied by the tax authorities. Successful mitigation by KPMG involved analysis to determine allocation of function and risks, thus establishing a value chain that limited double taxation exposure.

Aside from document preparation, the firm is actively involved in the market for APAs. The firm conducted Taiwan's first bi-lateral APA and estimates that of the dozen successful applications, it has been involved in over 50% of all APA deals to date.

The firm holds seminars and engages in thought leadership. In 2013, the tax authority invited the firm to give a transfer pricing training workshop to tax assessors.

Tier 2

The transfer pricing team at **Grant Thornton** was one of the first movers in Taiwan's transfer pricing market. The practice comprises of team leader **Jay Lo** and four additional fee earners operating out of Taipei and Taichung. The firm offers broad based transfer pricing services across many of Taiwan's top industries including electronics, construction, and biotechnology. The team hired two tax specialists in late 2013.

The firm provides transfer pricing documentation but has noticed a decrease in the amount of TP reports being requested by clients. Taxpayers are shifting their focus more towards audit defence.

In May of this year, Lo, along with **Mike Lai** and **Jacky Liang** closed a deal advising a client who had suffered a loss during an acquisition, creating novel tax issues. Lo and his team produced a pro-forma financial statement to adjust for the atypical event.

The firm serves many of Grant Thornton's global clients, and inbound work far outweighs any outbound transactions. **Michael Cunningham** joined the team in 2012 and helps facilitate cross border arrangements.

The transfer pricing team at **Lee and Li** offers wide reaching transfer pricing services in the areas of analysis and documentation review for compliance with Taiwanese law. The firm gets many referrals from global businesses to help them collect information on the tax situation in Taiwan.

The firm additionally assists clients through the advance pricing agreement application process.

The team is jointly lead by CPAs **Josephine Peng** and **Frank Lin.** Peng is dually certified in Taiwan and the US. The duo advised on a recent deal in which the Taiwanese tax authorities challenged a taxpayer on the interest paid to its foreign company. The interest amount on loans from the offshore affiliates amounted to over $150 million. The Ministry of Finance challenged the deductibility of the interest paid. The firm was able to successfully prove to the tax authority that all transactions were made at arm's-length, resulting in zero assessments being levied against the client.

Turkey

An audit guide by Fırat Yalcın and Onur Çeliker of Pekin & Pekin.

Tax authorities

Revenue Administration, Department of Taxpayer Services
Ilkadim Cad. 06450 Dikmen/Ankara
Tel: +90 312 415 29 00
Fax: +90 312 415 28 21-22
Email: infovimer@gelirler.gov.tr
Website: www.gib.gov.tr

1. How does the tax authority select transfer pricing cases to audit?

- When a tax audit is conducted before a taxpayer, the transfer pricing (TP) issues detected by the tax auditor could be considered in the scope of market practice, and the tax inspections could be widend to whole sector.
- Tax audits could be initiated upon denouncement.
- Certain taxpayers are obliged to comply with TP documentation. Tax audits could be initiated upon the information derived from such documentation.
- Taxpayers could be selected for the audits due to their characteristics (foreign ownership, overseas transactions)
- Tax audits could be initiated for taxpayers who are selected by the central software system based on the information provided on the financial statements.

2. How will a company find out it is being audited? What is the official notification?

Taxpayers may understand that they are being audited by receiving the information request letter (IRL) from the tax inspector. When requested information and documents are prepared, the Tax Audit Commencement Minute (TACM), a copy of which is delivered to the taxpayer, is signed and the tax audit officially starts pursuant to Article 140 of the Tax Procedural Code (TPC). The signing date of the TACM is the commencement date of the tax audit.

3. When a company has been notified of audit, what is the first thing it should do?

Since the tax audit procedure should be well managed, taxpayers should take advantage of tax professionals. The documents to be presented, the meetings to be held should be made in cooperation with and under the assistance of tax professionals.

Taxpayers should also pay special attention to the TACM to ensure it includes all the necessary information, such as date, issuance place of the minute; title, tax identification number; and signature of the taxpayer, etcetera.

4. Is there any legislation for general procedure for a taxpayer under audit? If not, what is the recommended practice?

The general procedure of the tax audit is regulated under Article 140 of the TPC, and the Regulation Regarding the Procedures and the Principals to be required during the Tax Audits.

5. How does Turkey differ in its approach to TP audit to other countries?

TP is regulated under Article 13 of the Corporate Income Tax Code (CITC). Since Turkey has adopted the OECD TP Guidelines for Multinational Enterprises and Tax Administrations, basic concepts, such as arm's-length principle and TP methods are similar to the those of other OECD member countries.

On the other hand, the related party concept is comprehensively defined in a way to cover even distributor relationships. Therefore, such provisions allow tax inspectors to criticise a very broad range of transactions under the TP regulation. Also, despite the fact that the application of secret precedent has been forbidden under the OECD Model Guidelines, secret precedent is used in tax audits in Turkey.

6. How does the tax authority compile its information on a taxpayer for an audit?

The tax authority compiles the information from the below stated sources;

- Tax assessment file of the taxpayer kept by the related Tax Office, including the tax returns, TP report etcetera;
- Commercial books of the taxpayer;
- Data compiled through the cross audits; and
- Information requested from the taxpayers and public institutions.

7. What are the most likely instances that provoke an audit from the authorities?

The following issues would trigger tax audits if the taxpayers:

- have related party transactions with the foreign group companies;
- charge high-rate interests to its related parties; and
- do not prepare, or annually update, the TP report.

8. What documents are required by the taxpayer during TP audit?

The documents, examples of which are provided below, regarding the determination of the arm's-length prices shall be kept to substantiate the TP application of the taxpayers.

- The list of product costs and prices in relation to the relevant years.
- The invoices regarding the questioned transactions.
- Agreements executed between related parties.
- Financial statements of the related parties.
- Intragroup pricing policy.
- The precedents and benchmarking analysis.

9. Are there any restrictions on a company's business during audit?

There are no restrictions on a company's business during a tax audit. The tax auditor will perform the tax audit within the working hours of the taxpayer or after working hours with the permission of the taxpayer. The tax auditors will also take all precautions so as not to prevent the work-flow of the taxpayers.

10. Are there any restrictions on the taxpayer's advisers during audit?

No

11. How long does an audit last?

According to Article 140 of the TPC; full-scale and limited tax audits should be completed within one year and six months respectively, from the beginning date of the tax audit. If a tax auditor is not able to complete a tax audit, he can request additional time from the tax authority at least 10 days before the completion of the tax audit. The tax authority may provide additional time to the tax auditor of up to six months.

12. What happens after an audit has been completed?

The tax inspection report (report) is delivered to the Evaluation Commission (Commission). If the report is approved by the Commission, it is sent to the relevant tax office. Then the relevant tax office will impose and notify the tax principal and tax loss penalty to the taxpayer through the tax/penalty notification. The taxpayer has a right to apply for a reconciliation or to file a lawsuit for the cancellation of the tax assessment before the tax court within 30 days after he received the tax/penalty notification.

13. Tips on negotiating with the authorities.

Taxpayers have the below options to negotiate the TP issues with the tax authorities.

- According to Article 13/5 of the CITC, taxpayers are allowed to make an Advanced Price Agreement (APA) with the tax authority, under which methods to be used for the prices of the goods or services that are purchased from, or sold to, the related parties could be determined in the agreement with the Ministry of Finance upon taxpayer's request. The term and conditions of such method that would have been so decided shall be final, not exceeding three years.
- Taxpayers could attend the meeting held with the Commission and try to convince the Committee that its TP application is in accordance with the law.
- Taxpayers would have the application right to the reconciliation procedure under which the taxpayer and the tax authority reach a settlement by reducing the taxes and tax penalties assessed by the tax authority.

14. How can a company manage its audit risk?

Taxpayers shall place emphasis on complying with the TP regulation which would be the best way to manage the audit risk. For example, the interest rates and payment periods should be within the range of market prices in addition to the sale prices of the goods and services.

Fırat Yalcın (fyalcin@pekin-pekin.com) and Onur Çeliker (oceliker@pekin-pekin.com), Pekin & Pekin

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Erdikler, Taxand Turkey
	Mazars Denge
	WTS & Çelen
3	BDO Denet
	Erdikler – Taxand
	Pekin & Pekin
	YükselKarkinKüçük

Transfer pricing regulations were introduced in Turkey in 2007, and thus legislation is still not very well developed. Up until a few years ago, transfer pricing in Turkey was seen as merely compliance and documentation.

The regulations were updated again in 2008, but there have been no updates since then. Although there are no drafts of new regulations, taxpayers can be reasonably certain that this is an area which will be updated in the next few years. According to İzel Levi Coşkun, of Mazars Denge, "there is pressure on the government to make new legislation".

Another indicator of this that the tax authorities are becoming more proactive in transfer pricing, and reaching out to other countries for assistance.

"There is a specialised group for transfer pricing that is in contact with other authorities like Canada and the US", said Gökçe Gücüyener, head of transfer pricing at Mazars Denge. "They are technically improving when it comes to transfer pricing."

Turkey joined the OECD in 1961 and as such, any new regulations are likely to be in line with its guidelines.

APAs are available in the jurisdiction, but, as of yet, only five have been granted – although that is two more than a year ago. The process of obtaining one is arduous, and usually takes at least 12 months. The Amadeus database is also used by companies and the tax authorities, but it is not well-developed and as such is not as useful as it is in other jurisdictions.

While the authorities are improving, they are by no means experts. "There is not any consistency in the rulings," said Gücüyener. Rulings are directly given from the tax authorities, and their opinions change every day."

Another feature of the Turkish tax landscape is the use of tax amnesties, one of which will be enacted within the next few months.

Coşkun, however, is not a keen supporter of the amnesties. "We have these every three years instead of fixing the fundamentals of the current system," he said. "Rather than amnesties we need a more concrete tax legislation. There are a lot of grey areas at the moment."

Tier 1

The transfer pricing team at **Deloitte** has been growing since its inception in 2006 and is led by partner **Güler Hülya Yılmaz**. The firm was the first of the Big 4 in Turkey to establish transfer pricing as a separate service line. Another important name is economist **Ozgur Toros**, who has both academic prowess and practical experience working for the Deloitte US transfer pricing practice.

The team consists of two partners and a varied team of other fee earners, who are experienced and specialised in a variety of fields including auditing, accounting, economics, international tax, local tax and practical US transfer pricing applications.

The firm operates across various industries, but is particularly experienced at working with clients in consumer business, including tourism and the hotel business, life sciences, healthcare, manufacturing (automotive, chemicals and textiles), energy, technology, media, communications and financial services.

Alper Yilmaz is the head of the transfer pricing department at **EY**, in which he is the sole partner and leads 23 other fee earners including one executive director, one senior manager, four managers, seven senior staff, eight other staff and two interns.

Key industries for the firm are pharmaceuticals, telecommunications, automotive, electronics and

Tax rates at a glance

(As of September 2014)

Corporate tax rate:	20%
Capital gains	20%
Branch tax	20%/15% (a)
Withholding tax	
Dividends	15% (b)
Interest	0%/10% (c)
Royalties	20% (d)
Net operating losses (years)	
Carryback	0
Carryforward	5

a) Branches of foreign companies are taxed at the same rate as domestic companies, in addition to a 15% branch profits tax imposed on after-tax profits remitted to a foreign head office.

b) Dividends paid to nonresident companies are subject to a 15% withholding tax unless the rate is reduced under an applicable tax treaty. Where applicable, Turkey imposes a branch remittance tax of 15%.

c) Interest on loans payable to foreign states, international institutions, or foreign banks and foreign corporations that qualify as "financial entities" are exempt. The 10% rate applies to interest on loans from nonresident entities that are not authorized "financial entities."

d) Royalties paid to nonresident companies are subject to a 20% withholding tax unless the rate is reduced under an applicable tax treaty.

technology and consumer goods. The firm provides a full range of services, including compliance and documentation services, services in controversies and dispute resolution, transfer pricing planning, restructuring and risk management.

In one deal, Yilmaz and **Cenk Esin** advised a gas company about the transfer pricing implications of a potential restructuring. Turkey's gas market is highly regulated, so the firm formulated all potential outcomes for intercompany gas trade to minimise total imbalance penalty payments.

The firm is also very strong at negotiating APAs, an area where Yilmaz and **Serdar Sumay** are very active, and is involved in discussions about what is likely to be the first bilateral APA granted in Turkey. The firm has also successfully negotiated the first APA in the pharmaceutical industry in the last year.

The contact for transfer pricing at **KPMG** is partner, **Abdulkadir Kahraman**. Other important names in the transfer pricing team are senior tax manager **Başak Diclehan** and managers **Murat Kılıç** and **Funda Kopp**. The firm has offices in İstanbul, İzmir and Ankara.

The firm provides a wide range of transfer pricing services, including assistance understanding new regulations, preparation of risk analyses regarding related-party transactions, devising, adjusting and implementing transfer pricing policies, preparation of transfer pricing documentation, economic analyses, negotiation of APAs and dispute resolution.

The firm serves clients in all business sectors, but is particularly experienced in travel, leisure and tourism, transportation and business services, public sector work, property and infrastructure, private equity, pharmaceuticals, healthcare, financial services, energy and natural resources, electronics and software, diversified industrials, consumer goods and retail, communications and media, chemicals and the automotive industry.

The transfer pricing department at **PwC** offers a wide range of services, including transfer pricing diagnostic reviews of groups' transfer pricing documentation; risk and opportunity analysis; tax inspection advisory; assistance negotiating advance rulings including APAs and reviews for transfer pricing aspects of due diligence and structural business rulings.

Key names at the firm are tax partners **Zeki Gündüz** and **Özlem Güç Alioğlu**, who is respected in the market for his work in negotiating APAs. Another name at the firm mentioned by other practitioners is

Bilgutay Yaşar, for his work in cross-border structuring.

Key industries for the firm include investment management, automotive, energy, utilities, mining, industrial products, government, telecommunications, real estate, transportation and logistics, banking and capital markets, insurance and private pensions, retail and consumer products, healthcare, technology, entertainment and media and transportation and logistics.

Tier 2

The transfer pricing team at **Erdikler, Taxand Turkey** is led by partner **Uluc Ozcan**, who has more than 15 years' experience in international tax and previous experience in the Big 4.

The firm provides a wide range of transfer pricing services including audit support, negotiation of mutual agreements and arbitration procedures, global, regional and local documentation, economic analyses, benchmarking studies and the preparation of defensive policies.

The firm also offers value chain optimisation services such as risk management, intellectual property tax management, global restructuring, tax leakage minimisation and tax-optimised valuation services such as intangible assets valuation and assessment of arm's-length royalty rates.

Gökçe Gücüyener leads the transfer pricing team at **Mazars Denge** (**Denge İstanbul YMM**), which employs three additional fee earners: **Hayret Oral**, **Metin Benbasat** and **Özen Şahinoğlu**.

The firm offers a wide range of transfer pricing services and advises across all industries, with documentation and assistance during audits being key parts of the business.

In one deal, the firm is advising a company during a transfer pricing audit regarding the sales of goods to related parties. The tax auditor challenged the use of full arm's-length range and assessed a tax penalty over the weighted average gross cost plus markup value. The case, which is ongoing, is one of the first transfer pricing cases in relation to use of the arm's-length range.

The firm advises clients in all industries, but is particularly experienced in the digital advertising, automotive, electronic transmissions, luxury goods and healthcare sectors.

The transfer pricing team at **WTS & Çelen** consists of three partners including its leader and founder, **Arif Çelen**.

The firm offers a wide range of transfer pricing services including determination of appropriate transfer prices, system analysis to improve allocation of resources and avoid double taxation, integration of transfer pricing systems in the case of M&A, preparation of documentation and internal transfer pricing policies, restructuring and assistance during transfer pricing audits.

The firm works with clients that operate in various industries, but is most experienced when advising in matters relating to tourism, pharmaceuticals, construction, international trade and mobile technology.

Tier 3

The tax and legal department at **BDO Denet** offers a variety of services, including transfer pricing advice.

Pekin & Pekin lacks the resources to compete with accounting firms on regular compliance support and instead focusses on more complex cases, giving clients direct, practical and innovative tax structuring advice.

The practice is led by **Ahmed Pekin**, who founded the firm in 1971 and is hugely experienced in practically all aspects of taxation, in particular litigation, banking, finance, M&A and corporate law.

In one landmark ruling, which **Özge Okat** described as "one of the most important" the firm had worked on, the firm successfully advised JTI on allegations by the Turkish Revenue Administration which alleged that JTI was transferring its profits through the royalty payments made to a foreign group company.

Despite the availability of Turkey's Tax Amnesty Law, which would require a higher rate of corporate tax to be paid in exchange for exemption from investigation, JTI decided to contest the case. This was one of the first transfer pricing rulings made in favour of a taxpayer by the Turkish Tax Court, and was worked on by all four of the firm's transfer pricing practitioners.

Ersin Nazalı leads the transfer pricing team at **YükselKarkinKüçük**, which employs two other fee earners: **Duygu Kapucu** and **Begüm Solak**.

The firm works mainly on maintaining compliance, litigation and ensuring proper documentation is maintained. In one deal, the firm reviewed Abbott Laboratuvarları İthalat İhracat Tic's sale agreement and evaluated the sale price of the company under Turkish transfer pricing regulations. The court ruled in favour of the company.

In a landmark case, the firm evaluated loans provided to BTMU Turkey from its related party. This consultancy was in relation to "cash collateral" which had no similar precedent in Turkey.

KPMG

cutting through complexity

The Transfer Pricing team of KPMG in Turkey, led by Abdulkadir Kahraman (Head of Tax, Partner), along with Başak Diclehan Ereke (Tax, Senior Manager) includes professionals dedicated to provide robust, forward-thinking advisory services that not only considers the short term needs of your business, but also the longer term implications.

The team has been recognized by professional magazines and industry overviews as one of the leading transfer pricing advisors in Turkey.

Having more than 1000 clients, many of which are multinationals, KPMG in Turkey is one of the pioneering professional services firms in the country today providing audit, tax and advisory services to international and local clients. Having more than 700 professionals, the company operates in 3 cities; Istanbul, Izmir and Ankara.

Contacts

ABDULKADİR KAHRAMAN / Head of Tax, Partner
BAŞAK DİCLEHAN EREKE / Senior Manager, Tax

KPMG in TURKEY

Kavacık Rüzgarlı Bahçe Mahallesi, Kavak Sok, No:29 Beykoz 34805 ISTANBUL
Telephone: +90 216 681 90 00
Email: bdiclehan@kpmg.com
Web: www.kpmg.com.tr

PEKİN & PEKİN

PEKİN & PEKİN
10 Lamartine Caddesi
Taksim 34437 Istanbul
Tel: +90 212 313 35 00
Fax: +90 212 313 35 35
Website: www.pekin-pekin.com

Contacts

Fethi Pekin
fpekin@pekin-pekin.com

Fırat Yalcın
fyalcin@pekin-pekin.com

UK

Tax authorities

Her Majesty's Revenue and Customs
Corporation Tax Office Cardiff, CT Operations, P.O. Box 29997, Glasgow, G70 5AB
Tel: +44 151 268 0571
Website: www.hmrc.gov.uk

LEADING FIRMS

1	Deloitte
	EY
	Grant Thornton
	KPMG
	PwC
2	Alvarez & Marsal, Taxand UK
	Baker & McKenzie
	Freshfields Bruckhaus Deringer
	Transfer Pricing Solutions
3	Clifford Chance
	Macfarlanes
	McDermott Will & Emery
	Shearman & Sterling

After several sluggish years following the 2008 financial crisis the UK was forecasted in July 2014 to be the fastest growing advanced economy in 2014. As a result, output has finally exceeded its 2008 peak and the tax market is braced for an influx of activity. According to KPMG, the UK's low tax regime is second only to Canada in its competitive nature.

In terms of changes to transfer pricing, there has been a gradual flow of changes since the UK moved to endorse the BEPS project in July 2013.

The UK patent box regime became effective in April 2013, and will apply the full reduced rate from April 1st 2017. This will enable companies with eligible patents to be taxed at an effective 10% rate of corporation tax on profits from such patents.

Addressing large groups, legislation, effective October 25 2013, prevents professional services firms obtaining a tax advantage through the operation of service companies. There are staggered exemptions for small and medium groups, with large groups being the target. The legislation removes the ability to claim a compensating adjustment regarding any transfer pricing adjustment in the corporate tax computation of the service company. However, it should be noted that corporate members of the firm will still be able to claim the adjustment.

Generally, transfer pricing is facing increasing scrutiny from authorities. This is reflective of the public's negative reaction to companies who have practised profit shifting recently, such as Starbucks. However, there has been substantial drive over the course of 2014 by the government to attract foreign investment from Indian and Chinese sources. This is somewhat reflective of the dichotomy the government faces, between the need to attract investment and comply to BEPS initiatives.

Advisers suggest there should be some direction in this regard. "There is pressure on the corporate tax rate, and debate over intellectual property legislation," said Chris Davies of Clifford Chance. "Big business needs consistency, what is the UK government response to BEPS going to look like?"

"The September deadlines are already lacking," said Dominic Robertson of Slaughter and May. "The initial push was incredibly ambitious, but addressing it is the first hurdle."

There is substantial debate over the role of tax as an incentive, and the debated status of the UK as a corporate tax haven. This is amplified by the recent trend of US inversions.

"Compared to international competitors, the UK is a tax haven," said Jonathan Riley of Grant Thornton.

"The lowering of the main rate is the cause, though it is of great benefit if we secure longer term employment growth on the back of it."

As part of this, the authorities are increasingly focused on transfer pricing, and the statistics from HMRC show a growth in settlement yields, APAs and advance thin capitalisation agreements. Furthermore, HMRC has been growing its team in this area.

The future outlook for tax changes really "depends on the general election in 2015", said Tony Beare of Slaughter and May. "It will signal what's going to happen to the tax base."

Tier 1

David Cobb leads the **Deloitte** UK London transfer pricing team, with **Shaun Austin** responsible for the national practice. Austin has more than 15 years' experience in transfer pricing and has been in his post since 2009. Cobb originally worked in the audit practice and has now been practising tax for more than 20 years. This has included international clients of all sizes and across a range of industries. Cobb's major focus is on companies in the technology, media and telecommunications sectors.

Specifically, the firm can assist with planning, compliance, revenue handling, business model optimisation and operational transfer pricing services.

Five partners sit within the transfer pricing practice of **EY**, including leader **Simon Atherton**. The firm employs 68 further tax professionals, and has significantly grown this year with 11 new hires. Within this team there is a growing range of expertise, pharmaceutical and other economists, former HMRC negotiators, specialists in Japanese and Asian inbound companies, transfer pricing for corporate treasury, and experts in thin capitalisation. Additionally, the intellectual property team comprises economists and valuation experts who provide advice and assurance around IP.

The firm employs a multi-disciplinary operating model effectiveness approach, in which teams work with clients on operating model design, business restructuring, systems implications, transfer pricing, direct and indirect tax, customs, human resources, finance and accounting to deliver a bespoke, optimal solution. The firm lists specialities in energy, pharmaceuticals, hospitality and leisure, technology, media, telecommunications, retail, hospitality and catering.

Wendy Nicholls is the lone partner leading a team of 14 transfer pricing professionals at **Grant Thornton**. Nicholls previously led PwC's South-East UK transfer pricing practice. Since May 2013, six new transfer pricing professionals have joined the team, which reflects the growth of transfer pricing as a discipline and merits the position of firm in Tier 1. The team is set within the wider tax practice of 46 partners and 716 other fee earners.

Through a cross-service line offering, the team has worked on a number of prestigious deals including the development of a bespoke solution in the sale of a bankrupt client's assets. The tax team designed the appropriate structure for acquisition of trades and assets held in more than 30 jurisdictions, due diligence, implementation of supply chain and transfer pricing structures for more than 100 jurisdictions, IP work and VAT support.

Additionally, the firm participated in the commercial restructuring of the travel division of a UK-headed group.

The firm advises all industries, but has particular specialities in technology, media and communication, consumer industrial products, business services, financial services, and travel and leisure.

Komal Dhall is the UK transfer pricing leader of **KPMG**, having joined the firm from the US in 2012. There are five key areas within the practice: BEPS & business models, funding, global documentation, operational transfer pricing and dispute resolution. The in-house team is made up of economists, tax practitioners, lawyers and financial analysts, who can rely on the assistance of the wider firm to deliver bespoke transfer pricing solutions.

Annie Devoy leads the transfer pricing practice of **PwC** in the UK, which comprises 11 partners and 150 transfer pricing professionals, set within one of the largest tax practices in the UK. The firm is capable of servicing almost all industries, but lists specialities in consumer, industrial, technology, media, and financial services.

Devoy began her career in international tax and has over 20 years of transfer pricing experience, working in the US and the UK. In the course of this, Devoy has extensive experience in the information services, technology, consumer goods, banking and asset management sectors.

Ian Dykes is one of the other key leaders in the practice, a director who has more than 15 years' experience in innovative policy design and implementation.

Tier 2

David Pert leads the transfer pricing practice of **Alvarez & Marsal, Taxand UK**, in conjunction with one other partner and three further tax professionals. Pert has more than 35 years of experience in tax advisory and litigation. Having begun his career with HMRC, he is perfectly positioned to assist clients in negotiating the UK tax and transfer pricing regime. In the 2013, the firm added one associate from Deloitte. Two staff departed the firm: **Steven Labrum** to a partner position at KPMG and **Fabrizio Lolliri** to become director of transfer pricing at Hogan Lovells.

Deals this year have included the Asian expansion of a private equity-backed global retail brand, involving the establishment of a unique legal structure of local distributors, leveraging both existing physical infrastructure and commercial corporate aspects. Additionally, the firm has undertaken IP work for a global telecoms provider, and the resolution of a significant shortfall in UK taxable income arising from transfer pricing adjustments over an eight-year period.

Tax rates at a glance	As of January 1 2014	HMRC - As of April 1 2014
Corporate income tax	23% (a)(b)	21%
Capital gains tax	23% (c)	21%
Branch tax	23% (d)	21%
Withholding tax		
Dividends	0%	0%
Interest	20% (e)	20%
Royalties from patents, know-how, etc.	20% (e)	20%
Branch remittance tax	0%	0%
Net Operating Losses (Years)		
Carryback	1 (f)	1
Carryforwards	Unlimited	Unlimited

a) The small profits rate of corporation tax is 20%. Effective from April 1 2014, the main rate of corporation tax will decrease to 21%, while the small profits rate will remain at 20%. The intention is that the main rate will decrease by a further 1% to 20%, effective from April 1 2015. The main rate of corporation tax for ring-fence profits (that is, profits from oil extraction and oil rights in the UK and the UK continental shelf) is 30%. The rates for ring-fence profits will not change on April 1 2014.

b) The small profits rate of 20% applies in certain circumstances if taxable profits are below £300,000 (approx. $500,000). This benefit is phased out for taxable profits from £300,000 to £1.5 million. These limits are reduced if associated companies exist.

c) Capital gains are subject to tax at the normal corporation tax rate.

d) Note branch tax is always taxed at the main rate of 23% (21% from April 1 2014).

e) Withholding tax on interest and royalties from patents, know-how etc. applies to payments to non-residents and non-corporate residents, unless reduced by a tax treaty or EU directive.

f) Trading losses must be utilised in the current year prior to any carry back.

Source: Tax advisers from Alvarez & Marsal Taxand

The UK firm has access to more than 2000 advisers in around 50 countries who can provide assistance in multi-jurisdictional transactions. Although the firm is capable of supplying advice to any industry, Alvarez & Marsal listed transfer pricing specialities in oil & gas, retail, private equity, finance, and industrial.

Richard Fletcher heads the transfer pricing practice of **Baker & McKenzie**, as the sole partner leading four tax professionals. The team is set within the wider tax practice, which consists of eight partners and 22 further tax professionals.

The team has experience in negotiating advance pricing agreements and transfer pricing-related issues with HMRC, in addition to international limited risk manufacturing and distribution structures. Further services include supply chain restructuring and intellectual property management. These capabilities are enhanced by the mixture of finance and economics personnel on offer at the firm.

Murray Clayson leads the transfer pricing practice of **Freshfields Bruckhaus Deringer** in conjunction with **Danny Beeton**, head of transfer pricing economics. This is reflective of the mix of economics and law employed by the practice, which has positioned itself at the forefront of thought leadership. The firm has been involved with a variety of working groups to submit recommendations to HMRC and the OECD.

The transfer pricing department at Freshfields is a specialist area of the practice, which relies on the wider tax practice in integrated deals, which consists of 10 partners and 25 further tax professionals. The practice specialises in financial institutions, consumer and healthcare, manufacturing, real estate, and energy.

The practice brings a combined law and economics approach to its transfer pricing work, and has seen an increase in its disputes work in relation to transfer pricing. This year the firm has been engaged in providing advice to a logistics business to support its review of alternative transfer pricing models for regional operations. This involved a review of the extent to which the OECD's BEPS action plan – in particular the intangibles – could impact the current arrangement of the client. This involved a cross-jurisdictional team.

The firm was also engaged by a French multinational to seek a UK APA, which concerned the attribution of profit to a series of construction permanent establishments.

Transfer Pricing Solutions is a dedicated transfer pricing firm consisting of the sole partner **Gareth Green**. Green has specialist knowledge of the service industry, fund management, publishing, fashion and real estate. He has worked in transfer pricing since 1995 in the UK, USA, and New Zealand, and was a director at EY before setting up Transfer Pricing Solutions in 2003. Green has contributed to several publications related to transfer pricing and is engaged as a consultant by other firms.

The firm engages clients ranging from four FTSE 100 companies to small businesses with fewer than 10 employees. The firm also handles all areas of transfer pricing, including documentation/compliance, design of appropriate transfer pricing policies, disputes and APA negotiation.

Tier 3

Clifford Chance operates a litigation-focused transfer pricing team out of its London office, which is integrated into the wider tax practice. The tax department consists of eight partners in the UK, who utilise the wider global network to engage cross-border clients. The team advises on a full spectrum of corporate, financing, investment and real estate transactions, disputes and transfer pricing.

Chris Davies is global head of tax, employment and employment practice for Clifford Chance. Davies specialises in the taxation of corporate and financing transactions with specialities in structured finance and international taxation.

Macfarlanes provides a full service transfer pricing and thin capitalisation service, which is capable of providing a comprehensive legal, strategic and economic service to clients. The team is a mix of economists and tax lawyers, who operate conjunctively under the leadership of **Martin Zetter**. Zetter has more than 25 years of experience with transfer pricing and is also a senior economist with the firm. Zetter brings his experience as a director within the transfer pricing practice of EY to Macfarlanes.

In addition to standalone work, the team operates conjunctively with other practices, such as corporate M&A, private equity, branding and IP, hedge funds, finance, litigation and dispute resolution.

Established in the US in 1934, **McDermott Will & Emery** has traditionally given priority to transfer pricing work, because it is central to their international advice to European and American companies. The tax practice is run by **Tom Scott**, with one other partner and three other professionals who are ready to assist on both standalone and integrated transfer pricing projects.

In addition to advising top tier established clients, the firm has advised several international start-up businesses established by individuals, in relation to holding structures, intellectual property and the personal tax position of the founders. This has involved working with transfer pricing colleagues overseas.

The firm's client list includes Campari, Dun & Bradstreet, Electronic Arts, Honeywell, MetLife, MTG Ltd, Luxottica, Panduit, Sega and Stora Enso. Recent wins of the firm include D&M Holdings and Lego.

Head of tax, **Sarah Priestley**, operates the transfer pricing practice of **Shearman & Sterling**, which is integrated into the wider tax practice. The practice is supplemented by four further qualified tax professionals. The practice specialises in energy and infrastructure, financial, healthcare, metals and mining, technology, media, and telecommunications.

One of the firm's ongoing flagship clients this year is ICE. Shearman & Sterling are involved advising on the transfer pricing impact of the evolving market in which ICE operates. As a provider of clearing services for financial trades, it has a number of products with uncertain transfer pricing impact.

Ukraine

Tax authorities

State Tax Administration

Postal address: 8 Lvivska Square, 04655, Kyiv – 53

Tel: +38 44 284 00 07; +38 44 272 44 02; +38 44 272 51 59; +38 44 272 08 41

Fax: +38 44 272-08-41

Email: kabmin_doc@sta.gov.ua

Website: www.sta.gov.ua

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	DLA Piper
	KM Partners
3	Avellum Partners
	International Legal Center EUCON
	Jurimex

Tax rates at a glance (As of August 2014)

Corporate income tax	18%
Capital gains	18%
Branch tax	18%
Withholding tax	
Dividends	15%
Interest	15%
Royalties from patents and licences	15%
Branch remittance tax	
Net operating losses (years)	
Carryback	
Carryforwards	indefinitely

Source: Tax advisers from Egorov Puginsky, Afanasiev & Partners, Taxand Ukraine

The Ukraine has undergone a tumultuous 2013 and 2014, as political and economic stability have deteriorated against the backdrop of the Crimean crisis, unrest in Donetsk and the downing of a Malaysian airlines plane. To add to this, in April the economy was forecast to shrink in 2014 by 3%.

As such, tax has not been the main focus for the government this year. “Tax is not the main point of Poroshenko’s programme,” said Danil Getmantsev of Jurimex. “However, they will make the authorities more comfortable for taxpayers with time.”

“The crises had a huge impact in Ukraine,” said Ron Barden of PwC. “Investment dried up, there was a bit of debt restructuring but the majority of work is transfer pricing in relation to the new laws.”

The fallout of the Crimean crisis has created issues particular to that area. Firstly, the band on Ukrainian currency has meant that all companies using the rouble are in breach of Ukrainian law, and vice-versa under Russian law. Secondly, companies are subject to double taxation due to the existence of two regimes which has created a tax and legal entanglement for businesses operating in Crimea.

Despite the mounting crises, some transfer pricing changes were introduced. In May 2014 the parliament passed the Draft Law that amended existing transfer pricing provisions in the Tax Code of Ukraine. This included the passing of the Bill “On Amendments to the Tax Code of Ukraine Regarding Improvement of Transfer Pricing” in April 2014, which decreased some penalties for non-compliances and elected to postpone the deadline for submission for the Report on

Controlled Transactions until October 2014 (reporting period: September 2013 – December 2013).

There have also been changes to the calculation of the UAH 50 million ($3.7 million) threshold. The Draft Law specifies that only business transactions that constitute the purchase of goods/works/services may be counted.

Furthermore, some industries have the right to use simplified transfer pricing rules until 2018. Importers and exporters of specified goods (oil, gas, chemicals, metals), where the other entity is in a low tax jurisdiction, are eligible for this.

"Following these laws, companies are moving to adhere," said Barden. "The next stage will be when litigation begins after the tax office starts auditing."

The tax authorities in Ukraine are in a state of flux, but have a history of challenging tax assessments. Recently, there were changes in the state apparatus, and changes in attitudes are expected in the coming year.

"The authorities are quite aggressive at the local level," said Konstantin Karpushin of KPMG Ukraine. "The national authorities are not so [aggressive] and are very intelligent in understanding businesses prior to bringing things to court. Due to the new government, local authorities are not yet well-coordinated."

In spite of ongoing crises, advisers were optimistic about the future outlook for Ukrainian transfer pricing. "In the next year there will be amendments to legislation responding to the developments in BEPS," said Karpushin. "The main problem the government faces is profit shifting from Ukraine."

Tier 1

Victoria Chornovol is the sole partner who leads a team of 10 transfer pricing specialists at **Deloitte**. This team sits within one of the largest and most respected tax practices in the country, which can be relied upon for operational support. Indeed, several of the transfer pricing professionals have been seconded to member firms elsewhere, such as Germany. Whilst the firm is large enough to provide advice on a range of Ukrainian and international tax issues, Deloitte lists particular specialities in foodstuffs, agriculture, manufacturing, telecommunications, media, technology, financial services and energy & resources.

The practice expanded rapidly in 2013, driven by the introduction of new detailed transfer pricing regulations which are effective as of September 1 2013. This required all groups and companies in Ukraine to ensure transfer pricing compliance. The key transfer pricing clients include Metinvest – the largest business group in Ukraine – and MHP – one of the largest Ukrainian agricultural holdings, listed on the London Stock Exchange.

The flagship deal of the year demonstrates the large capacity of the firm, a project for Metinvest requiring the full-scope implementation of transfer pricing compliance, monitoring and reporting.

EY's transfer pricing practice in Ukraine is integrated into the wider tax practice and forms part of an operating model effectiveness service. This aims to provide an integrated restructuring, transfer pricing and operating model service. The firm can help with strategy and policy, governance optimisation, global transaction support, risk management and controversy advice. EY was the first Big 4 firm in Ukraine to launch a transfer pricing practice in 2009, and it has since been led by head of tax **Vladimir Kotenko**.

Sergey Popov leads the transfer pricing group of **KPMG** in Ukraine, and is the sole partner overseeing 20 transfer pricing professionals. The group was created in 2013 as a group of five specialists and has experienced rapid growth, having won more than 40 projects by the end of the year. Despite the nascent nature of the practice, director **Konstantin Karpushin** is already involved in a working group that advises the government on policy within Ukraine.

The firm is one of the few firms in the region to offer IT support related to transfer pricing issues, it has developed software solutions which facilitate information monitoring and reporting. Notably, the firm provides a free transfer pricing diagnostic of transfer pricing policies to clarify where it differs with Ukrainian legislation. This has been developed as a response to the constantly evolving international transfer pricing market. Analysis and comment is provided free of charge.

KPMG has been involved with documentation preparation for Ukrainian subsidiaries of a Russian national oil company, in addition to reports on controlled transactions. Additionally, there has been work within the retail and pharmaceutical sectors in relation to documentation preparation. The firm lists particular specialities in consumer markets, automotive, pharmaceuticals, energy and natural resources and IT.

Ron Barden leads the Ukrainian transfer pricing practice of **PwC**, which involves key partner **Slava Vlasov**. The firm is well-respected for its transfer pricing work, and was this year involved with the development of the country's transfer pricing legislation with the Ukrainian Tax Ministry. The responsible partner – **Slava Vlasov** – has also been involved in private sector work for a multinational tobacco producer. The firm has specialities in the metal, chemical, financial services, FMCG and pharmaceuticals.

In further work, Vlasov and the team have provided commodity analysis and structured an IT department for the automation of the transfer pricing process.

Tier 2

Baker & McKenzie has been involved in various projects in Ukraine's nascent transfer pricing market in the past year. Head of tax **Hennadiy Voytsitskyi** has led on a number of transfer pricing deals this year, advising one of Europe's leading developers of shopping centres. The firm provides sophisticated international tax planning for major corporations, including tax optimisation in connection with inbound and outbound investment. Other services include domestic tax planning, tax planning for mergers and acquisitions and post-acquisition restructuring. The firm offers assistance with tax audits and frequently draws on the network of Baker & McKenzie experts in offering tailored solutions. The firm's transfer pricing specialties are construction and pharmaceuticals. Despite a downturn in investment into Ukraine, the firm has leveraged its existing clientele to grow this year, and the market is beginning to grow again following the recent elections.

Svitlana Musienko leads the transfer pricing practice of **DLA Piper**, in addition to the wider tax practice. Musienko is the sole partner overseeing four transfer pricing professionals. The firm has specialities in pharmaceuticals, energy, oil & gas, mining and IT.

The firm can provide services in the design and implementation of transfer pricing policies in addition to documentation, transaction reviews, the valuation of intangibles and tax audit defence.

The Kyiv office has been involved with a global provider of software engineering and IT consulting services, on transfer pricing regulations in Ukraine and assisted in providing the necessary transfer pricing documentation. The firm also provided similar services for a multi-channel B2C e-commerce platform, and a global producer of industrial minerals.

Alexander Minin leads the transfer pricing practice of **KM Partners**, established before the recent major developments in transfer pricing legislation. KM Partners has advised on more than 50 matters related to transfer pricing in 2013-2014, including representing companies in court proceedings. The firm's experience includes assistance to a variety of the largest international companies, such as agricultural business, FMCG, retailers' chains, software structuring and television advertisement.

KM Partners provides consulting support on transfer pricing issues; support of reporting on transfer pricing; documentation services; risk-based auditing; tax audit support; and dispute resolution.

Minin and tax partner **Alexander Shemiatkin** have been involved in a range of deals this year, including a defence of Cargill and Louis Dreyfus Commodities and a number of consulting projects for different companies on transfer pricing in Ukraine, which include elaboration of defence strategies against tax authorities on respective matters.

Tier 3

Managing partner, **Mykola Stetsenko**, is responsible for the transfer pricing practice of **Avellum Partners**.

The transfer pricing practice intermingles with the wider tax practice, and operates in conjunction with it. At the time of writing, Avellum was advising Crimean Titan in a unique situation regarding their Crimean assets and their reorganisation. This will be a particularly large transfer pricing challenge due to the ban on the Ukrainian currency by the Russian government.

The firm also advised on the full-scope restructuring of Premium Spirits Brands, involving a variety of tax areas, tax optimisation, customs legislation and the implications of WTO accession on Russian customs policies. The firm also cooperated with a number of other firms on the restructuring of Roshen group.

The practice consists of three partners and eight other fee earners.

Managing partner **Yaroslav Romanchuk** and **Larysa Vrublevska** jointly run the transfer pricing practice of **International Legal Centre EUCON**, which has six further fee earners. Vrublevska is a new hire, as of March 2014, joining from International Audit Union, and becomes head of transfer pricing. Although the wider tax practice has a variety of services on offer, the transfer pricing team specialises in agricultural, manufacturing, construction, energy and telecommunications.

The practice was founded in response to new legislation in Ukraine which has been effective since September 1 2013, and includes attorneys, auditors and professional appraisers. To reinforce this development, the firm joined the TPA Global Network. This is a web of independent specialist providers of expert transfer pricing, tax valuation and customs services, which will enable EUCON to deliver transfer pricing services on a global scale. EUCON is generally well-positioned in its responses to legislation, partially because Romanchuk is the chairman of the Public Council under the Ministry of Revenue and Duties of Ukraine, and vice president in legal and tax issues of the Ukrainian National Committee of the International Chamber of Commerce. This keeps the firm abreast of new developments for its clients.

This year the firm has been involved with the elaboration of transfer pricing policy for Louis Dreyfus Commodities, and advising Zepter Ukraine on documentation and regulations. Additionally, the firm has been engaged in a risk management capacity regarding a transfer pricing system.

Jurimex's transfer pricing team is headed by **Danil Getmantsev** – honorary president – and **Marina Slobodnichenko**. The practice is moderately sized, consisting of seven fee earners.

Their clients have included MSL LLC, who they advised on a deal which included the transfer of intellectual property rights. This was in response to new transfer pricing regulations which came into effect on September 1 2013. "Due to change in legislation, we are hoping there is an increase in transfer pricing deals in the next year," said Getmansev.

This year the team has been involved in a deal involving the transfer of intellectual property rights.

5 Pankivska str., fifth floor
01033 Kyiv, Ukraine
Tel.: +38 044 490 71 97
Fax: +38 044 492 88 59
www.km-partners.com

Key contacts:
Alexander Minin, Senior Partner, tax & customs issues, tax litigation
a.minin@km-partners.com

Alexander Shemiatkin, Partner, tax & customs issues, tax litigation
a.shemiatkin@km-partners.com

Maxim Oleksiyuk, Partner, corporate and commercial law, real estate & construction
m.oleksiyuk@km-partners.com

Uruguay

Tax authorities

Dirección General Impositiva (DGI)
Av. Daniel Fernández Crespo 1534
CP 11200 Montevideo
Tel: +598 21344
Website: www.dgi.gub.uy

LEADING FIRMS

1	Ferrere
	Grant Thornton
	Guyer & Regules
2	Deloitte
	KPMG
	PwC
3	EY

The first transfer pricing audits came to fruition in the past year, giving tax professionals reason to urge their clients to spend more time considering their transfer pricing methodologies. Much of the work surrounding transfer pricing has been pre-emptive, or preparatory, rather than a result of tighter authoritative controls, however in select cases the authority has been markedly more aggressive than in the past in applying regulations.

"It's not mandatory to file transfer pricing studies," noted Jonas Bergstein of Bergstein Law. "Except where there are inspections, or when pricing exceeds about five or six million [dollars]."

Requests for documentation have been increasing, however, and with the tax office receiving more transfer pricing studies, the expectation that audits will start increasing in number is one that all tax professionals hold for the upcoming year.

"It's to be expected that within the next few years transfer pricing litigation will increase," said Gustavo Melgendler, head of KPMG's international tax department. Recently the firm's transfer pricing team settled an administrative dispute concerning transfer pricing issues derived from increases in the price of raw materials, and are also assisting a software company in issues related to royalty payments.

Grant Thornton has been working with various multinationals including Bunge and Sherwin Williams in their transfer pricing studies, preparing, in particular, a defence supporting that each company had properly satisfied the arm's-length principle related to imports and exports of goods, commodities, and machinery.

Tier 1

Led by **Gianni Gutiérrez**, **Ferrere**'s transfer pricing practice advises clients on the implementation of transfer pricing strategies, documentation and audit defence. Last year the firm assisted a multinational banking institution in implementing transfer pricing regulations, involving the development of a method for testing transactions with related parties, identifying comparable transactions and calculating the transfer price adjustment to be included in the tax return.

Grant Thornton assists clients with transfer pricing studies and represents them in litigation. Its clients include some of Uruguay's leading agribusinesses, financial institutions and manufacturers: Bunge, Cargill, HSBC, Volvo/Renault and Yamaha. **Rafael Sánchez** leads the transfer pricing practice, which recently prepared a transfer pricing study for Bunge's Uruguayan subsidiary to prove that arm's-length principles were adhered to in its intercompany transactions. The preparation involved independent

Tax rates at a glance

(As of September 2014)

Corporate tax rate	25%
Capital gains	25%
Branch tax	25% (a)
Withholding tax	
Dividends	7% (b)
Interest	3%/5%/12% (c)
Royalties	12% (d)
Net operating losses (years)	
Carryback	0
Carryforward	5

a) Branches are taxed at the same rates as domestic companies. There is no branch remittance tax.
b) Dividends paid to a nonresident company are subject to a 7% withholding tax, unless the rate is reduced under a tax treaty.
c) The withholding tax on interest paid to a nonresident is 12%, which may be reduced to 3% or 5% (depending on the period of the loan) if paid by a Uruguayan financial institution. The rate may be reduced under a tax treaty.
d) The withholding tax on royalties paid to a nonresident is 12%, unless the rate is reduced under a tax treaty.

analyses of imports of goods, exports of commodities, considering CUP from transactions from third parties, and price readjustments to befit specific local regulations and shipment delay expenses.

Led by **Juan Manuel Albacete**, **Guyer & Regules**' transfer pricing practice focuses on preparing contemporaneous documentation for clients, to show their transfer prices with related parties meet the arm's-length standard. The practice also advises on transfer pricing strategy, negotiates advance pricing agreements (APAs), and represents clients before the tax authority and in court. Guyer & Regules prepared Newmark's transfer pricing study to prove that the interest rates were at arm's-length. The group stated a new criteria for evaluating interest rates in response to the Central Bank's classification of the company's initial interest rates.

Tier 2

Led by **Gonzalo Lucas**, **Deloitte**'s transfer pricing practice focuses primarily on assisting clients in preparing and filing their transfer pricing reports with the tax authority. The practice also advises clients on transfer pricing strategy and represents them in negotiations for advance pricing agreements (APAs) and in administrative trials, with an affiliated law firm, Costa Brum, representing clients in court.

KPMG's transfer pricing service focuses on reviewing documentation to make sure that transfer prices are at arm's-length. Clients are mostly foreign multinationals with operations in Uruguay, and include leading companies in the pharmaceutical, agribusiness and insurance industries. Earlier in 2014 the group advised a multinational industrial company in an administrative dispute regarding transfer pricing issues derived from the increase in the price of raw materials. The practice is led by **Alejandro Horjales**, who acts as well as a professor of transfer pricing subjects at the Master Degree Program of the Universidad de Motevideo.

Led by **Sergio Franco**, **PwC**'s transfer pricing practice assists clients with the preparation and filing of documentation to show compliance with the arm's-length standard. The firm also negotiates APAs, and acted as an adviser in the first unilateral APA in Uruguay. In the event of a transfer pricing audit, PwC possesses a strong controversy practice capable of defending clients in both administrative and judicial proceedings.

Tier 3

EY's transfer pricing practice focuses mainly on compliance services for multinationals. **Martha Roca** leads the practice.

US

An audit guide by Keith Reams and Cindy Hustad of Deloitte.

Tax authorities
Internal Revenue Service (IRS)
77 K Street NE
Washington DC 20002
Tel: + 1 202 874 6748
Website: www.irs.gov

The US has enacted extensive statutory, regulatory, and administrative guidance governing the conduct of transfer pricing audits. Transfer pricing audits are part of the general overall audits of multinational taxpayers, but because of their complexity and magnitude, they frequently become the major focus of IRS audits.

1. How does the tax authority select transfer pricing audit cases?

Audits can be risk-selected or random. Corporations are classified according to revenue, asset size, and other relevant factors. The largest corporations are generally under continuous audit by the IRS. Midsize corporations can be chosen for audit at random or after an initial review indicates some issues are present that warrant IRS review. The IRS also periodically examines cases from specific economic sectors.

2. How will a company find out it has been selected for audit? What is the official notification?

The IRS notifies a taxpayer that it has been selected for audit by sending out an opening letter. This letter will relate to a specific accounting period and will be issued to the corporation. Generally, standard information document requests (IDRs) are attached to the letter. After the letter is sent, the taxpayer and the IRS will establish a date for the opening conference. During the opening conference, the IRS will explain the audit process. At this point, the IRS will also expect the taxpayer to respond to the initial IDRs, if it has not yet done so.

3. When a company has been notified of an audit, what is the first thing it should do?

The company should review the standard initial information document requests and begin to gather the requested information, which includes tax work papers, trial balances, board of directors minutes, financial statements, etcetera. At the beginning of the audit, the IRS will request the taxpayer's contemporaneous transfer pricing documentation as required by the Internal Revenue Code. This documentation must be provided to the IRS within 30 days of the request as one of the necessary conditions for the documentation to provide transfer pricing penalty protection to the taxpayer; the documentation must meet the other requirements of the regulations to confer penalty protection (see 4 below). Therefore, the taxpayer should be prepared to provide its transfer pricing policies and any contemporaneous documentation that was prepared at the time the tax return was filed.

4. Are there legislative, regulatory, or other procedures applicable to taxpayers subject to a transfer pricing audit?

There are a number of legislative, regulatory, and other procedures applicable to taxpayers subject to a transfer pricing audit. Some of the more significant procedures include the following:

At the time the taxpayer files its tax return, as a general matter, the taxpayer must have and maintain the information necessary to support its return filing position, including its transfer pricing results. To avoid the assertion of transfer pricing-specific penalties, the taxpayer must timely prepare its transfer pricing documentation and must provide this documentation to the IRS within 30 days of an IRS request. The transfer pricing documentation must include:

- An overview of the relevant business, including an analysis of the economic and legal factors that affect the pricing of its property or services;
- A description of the taxpayer's organisational structure (including an organisation chart) covering all related parties engaged in transactions potentially relevant under IRC section 482, including foreign affiliates whose transactions directly or indirectly affect the pricing of property or services in the US;
- Any documentation explicitly required by the regulations under IRC section 482;
- A description of the method selected and an explanation of why that method was selected;
- A description of the alternative methods that were considered and an explanation of why they were not selected;
- A description of the controlled transactions (including the terms of sale) and any internal data used to analyse those transactions;
- A description of the comparables that were used, how comparability was evaluated, and what (if any) adjustments were made; and,
- An explanation of the economic analysis and projections relied on in developing the method.

In addition, the taxpayer must maintain and be able to provide the following items:

- A description or summary of any relevant data the taxpayer obtains after the end of the tax year and before filing a tax return, which would help determine if a taxpayer selected and applied a specified method in a reasonable manner; and
- A general index of the principal and background documents, and a description of the record-keeping system used for cataloguing and accessing those documents.

Once the audit begins, there are guidelines set forth in the Internal Revenue Manual and various directives that the IRS follows in auditing transfer pricing issues. The IRS recently issued a Transfer Pricing Audit Roadmap that provides detailed guidance to its agents for the conduct of a transfer pricing audit. The roadmap anticipates that the agents will engage in extensive factual development, including interviews of company and non-company personnel.

5. How does the US differ in its approach to transfer pricing audits from other countries?

The US approach to transfer pricing is similar to that of other countries, albeit with stronger tools to compel the US taxpayer to obtain information that might be in the hands of a foreign affiliate. Transfer pricing continues to be a major area of focus for the IRS. In addition, the IRS cooperates with foreign jurisdictions to exchange tax information.

6. How does the tax authority compile information on a taxpayer for a transfer pricing audit?

The IRS gathers information from a number of sources including tax returns, financial statements, transfer pricing documentation, websites, and other public information. The IRS will request additional documentation and information through the course of a transfer pricing audit. Generally, the IRS gathers information from the taxpayer and seeks interviews and site visits during the audit through IDRs.

The IRS recently issued new directives on issuing IDRs that call for the IRS to discuss the requests and timing of responses to those requests with the taxpayer before issuing them. Generally, the IRS expects a response to its requests within 15 to 30 days. If the IRS does not receive responses, the directive requires the IRS to take steps that can lead to the judicial enforcement of administrative summonses if the taxpayer does not provide the information voluntarily.

7. What are the some of the issues more likely to trigger a transfer pricing audit by the tax authorities?

Items in corporate tax returns that might trigger a transfer pricing audit include cost sharing arrangements, licensing of intangibles, transfers of intangibles, business restructurings, and management charges. The IRS has stated that it looks for transfers of intangibles from high-tax jurisdictions to low-tax jurisdictions.

8. What documents are requested from the taxpayer during a transfer pricing audit?

In addition to the information that would be included in the transfer pricing documentation discussed above, the IRS may request any documents and information that may be relevant to the taxpayer's transfer pricing. The actual information requested will be dictated by the facts and circumstances of the transactions being audited. The IRS may request documents and information supporting the assumptions, conclusions, and positions in the transfer pricing documents. The IRS also may request contemporaneous presentations made to the board of directors, audit committee, or others concerning the transactions under audit, notes of meetings about those transactions, and interviews with individuals involved in those transactions. The IRS also may request documents and interviews to perform a functional analysis with respect to the transactions. Finally, the IRS may request information and interviews from third parties.

9. Are there any restrictions on a company's business during a transfer pricing audit?

No. Publicly traded companies may be subject to disclosure requirements by the Securities and Exchange Commission.

10. Are there any restrictions on the taxpayer's advisers during a transfer pricing audit?

Taxpayers' representatives are subject to rules governing their practice before the IRS, set forth in IRS Circular 230.

11. How long does a transfer pricing audit last?

A transfer pricing audit may last from six months to four or more years. The length depends on the scope of the issues and whether the taxpayer agrees to an extension of the statute of limitations.

12. What happens after an audit has been completed?

If the IRS agrees with the taxpayer's position, it will issue a no change letter and accept the taxpayer's return as filed. If the IRS proposes adjustments with which the taxpayer disagrees, the taxpayer has several options. If a tax treaty exists between the US and the country of the affiliate, the taxpayer may seek double tax relief through the tax treaty's Mutual Agreement Procedure (MAP), which frequently results in a reduction of the IRS's proposed adjustment. The taxpayer may appeal the adjustment administratively, exercising care to protect the taxpayer's ability to obtain full double tax relief through tax treaty MAP if such relief applies and if the administrative appeal results in a reduction but not elimination of the proposed adjustment. Another alternative is for the taxpayer to challenge the adjustments judicially. If seeking judicial redress, care must be taken to protect the taxpayer's ability to obtain full double tax relief through a tax treaty MAP if such relief applies and if the administrative appeal results in a reduction but not elimination of the proposed adjustment.

13. How can a company manage its audit risk?

The best way to manage audit risk is to establish and follow effective, sustainable, transfer pricing policies, prepare annual contemporaneous transfer pricing documentation establishing the appropriateness of transfer pricing results, and provide transfer pricing documentation within 30 days of an IRS request. To further mitigate audit exposure, companies should confirm they are fully compliant with the relevant tax laws, file tax returns within the prescribed time limits, pay tax on time, and monitor their transfer pricing results, including key indices such as industry margin profiles on an ongoing basis during the year. In addition, a taxpayer can review the Transfer Pricing Audit Roadmap and maintain the documentation often requested in an IRS audit to confirm it can support its transfer pricing policies and results. Finally, taxpayers may enter into an advance pricing agreement with the IRS to manage their US tax examination risk.

LEADING FIRMS

1	Baker & McKenzie
	Deloitte
	DLA Piper
	EY
	Fenwick & West
	KPMG
	Mayer Brown
	PwC
	Skadden Arps Slate Meagher & Flom
2	Alston & Bird
	BDO
	Caplin & Drysdale
	Duff & Phelps
	Grant Thornton
	McDermott Will & Emery
	Miller & Chevalier
	Vinson & Elkins
	White & Case
3	BaseFirma
	Morgan, Lewis & Bockius
	Sullivan & Cromwell

Transfer pricing professionals describe a business landscape laced with uncertainty surrounding BEPS, with clients knocking on the doors of their tax advisers looking either for ways to restructure their intercompany transactional systems, or minimise tax burdens without violating impending OECD proposals. The effective result is one of anxiety on the part of multinationals and governments, where the former must lower their tax burdens while staying compliant and the latter will compete with each other to attract the most business. "It started out putting limits on corporate tax planning, but it's come down to pitting countries against countries," said Jim Fuller of Fenwick & West.

Professionals from the international tax planning side further address the implications of BEPS, noting the spill-over effects of the impending rules on their planning practices. "I think the shoe that will drop will be BEPS," said Ron Creamer, head of Sullivan & Cromwell's Tax Group and M&A practice. "The usual [planning] techniques will become more difficult and will all have to be re-examined."

According to tax professionals, multinationals are responding to the uncertainty on several different levels. To avoid future controversies concerning substance, many are looking to extract their subsidiaries from tax havens to restructure in lower tax jurisdictions. "They're looking at countries they may not have looked at five years ago, like the UK."

Additionally, companies have begun to focus on their intangibles and internal intellectual property structures, with IP alignment controversy increasing and cross-border mergers giving rise to questions surrounding cost sharing, not to mention the prevalence of high-profile disputes such as Amazon's promising broad implications regarding ecommerce and profit sharing.

The BEPS discussion about intellectual property has inevitably given businesses operating in the digital space further cause for concern regarding value drivers. Where traditionally the issue of intangibles has homed-in on companies with either marketing or IP assets, governments are lately looking at service sectors, such as IT, to evaluate the cost-sharing methods between the research and development and manufacturing arms of companies.

Because of the increased complexity – and volume – of the work created by the anticipation for BEPS-compliant procedures, many corporations are looking inward to create solutions. "Corporations are driving more of the transfer pricing area from an outsourced service to an in-house service," said BaseFirma's US transfer pricing lead Fabian Alfonso.

Proprietary operational transfer pricing software systems therefore continue to arise from within law and accounting firm transfer pricing services, giving MNCs further options in their quests for integration and compliance.

Of course, the OECD's guidelines do not, and most likely will not, align completely with the IRS' transfer pricing rules, creating further opportunities for uncertainty in operational transfer pricing. "Last time I checked," said Joel Williamson of Mayer Brown, "there's no consensus between the OECD and the Treasury with regards to what the transfer pricing rules should be."

Consequently, measures resulting in certainty could prove a hot commodity. "If you want certainty and not a lot of expenses and delay," said Julia Kazaks of Skadden, "you want to get an APA or go through competent authority to get a multi-country resolution to your problems."

Tax professionals are split, however, regarding the popularity of APAs among clients. Fabian Alfonso of BaseFirma said some of his clients simply do not have the time to engage in APAs that may only last three to five years, while Henry Birnkrant of Alston & Bird said the interest in APAs has been steady. "The OECD has draft changes in the intangibles area," said Birnkrant, "which is creating a lot of uncertainty and will drive people to APAs. That way they can ride out the storm with certainty."

Recent staffing hiccups at the IRS have produced further anxiety from within the board rooms, where questions about how the authorities will deal with the results, or lack thereof, of legislation relating to cash repatriations and inversion schemes. With a timeline as ambitious as the OECD's, where the BEPS completion goal has been set for the end of 2015, the next year in transfer pricing should prove exit strategies and contingency plans for BEPS have been, and will continue to be, an integral discussion between tax professionals and their US-based multinational clients.

Tax rates at a glance	As of January 1 2014	IRS - As of January 1 2013
Corporate income tax	35% (a)	35%
Capital gains tax	35%	35%
Branch Tax	35% (a)	35%
Withholding tax (b)		
Dividends	30% (c)	30%
Interest	30% (c)(d)	30%
Royalties from patents, know-how, etc.	30% (c)	30%
Branch Remittance Tax	30% (e)	30%
Net Operating Losses (Years)		
Carryback	2 (f)	2
Carryforwards	20 (f)	20

a) Graduated rates may apply. In addition to corporate income and branch taxes, many states levy incremental income or capital-based taxes.
b) Withholding tax rates may be reduced by treaty.
c) Withholding tax on dividends, interest and royalties from patents, know-how etc. is applicable to payments to non-residents.
d) Interest on certain portfolio debt obligations and noneffectively connected bank deposits may be exempt from withholding tax.
e) US branches of non-US corporations are subject to the branch profits tax.
f) Special loss utilization rules may apply. Alternative minimum taxes may also apply.

Source: Tax advisers from Alvarez & Marsal Taxand

Tier 1

Melinda Phelan, head of transfer pricing at **Baker & McKenzie**, estimates that about 60% of her firm's 175 or so tax professionals are involved in transfer pricing. The firm provides all transfer pricing services: planning, documentation, APAs and controversy. It is representing a number of leading US and non-US multinationals challenging large transfer pricing adjustments, in appeals and in court. Baker & McKenzie is representing a number of US and multinational companies in obtaining intergovernmental agreements under various tax treaties, eliminating double taxation risks through competent authority and advance pricing agreements (APAs).

Deloitte has a full-service transfer pricing practice comprising more than 230 professionals across the country. **Todd Wolosoff**, based in New York, is Deloitte's US and global managing tax partner for transfer pricing. Also in New York is **Rob Plunkett**, who leads the firm's financial services group, which provides transfer pricing services to investment banks and other financial institutions. Central Region Leader **Darcy Alamuddin** is head of the Chicago transfer pricing team, whose clients include companies in the manufacturing, consumer products, engineering, executive, recruiting and healthcare sectors. The Houston practice, led by **Randy Price**, and the Dallas practice led by **John Wells**, mainly service multinational oil & gas companies. **Mark Nehoray** leads the Los Angeles transfer pricing practice, dealing mostly with clients in media and entertainment. **Ron Saake** leads the San Francisco practice, focusing on transfer pricing for tech companies in Silicon Valley. Deloitte's Washington, DC team is headed by **Arindam Mitra** and **Aydin Hayri** and is particularly strong in audit defence and in negotiating competent authority and advance pricing agreements (APAs). Deloitte's operational transfer pricing offerings have been a key resource in helping companies streamline and analyse their multi-jurisdictional transfer pricing actions, as a means to comply with OECD and BEPS initiatives.

DLA Piper prides itself on offering the same transfer pricing services as the large accounting firms – planning, documentation, advance pricing agreements (APAs) and litigation – but with a more personalised service and with more input from high-level, experienced transfer pricing professionals. The firm's global transfer pricing practices comprise 200 professionals and are led by **Clark Norton** in the New York office. **Alan Winston Granwell** is in charge of transfer pricing at the Washington, DC, office, while **Eric Ryan** leads transfer pricing operations in San Francisco and Palo Alto. **Liga Hoy**, former Franklin Templeton director of global transfer pricing, was recently hired as principal economist for the firm's Palo Alto transfer pricing group. She is considered by peers to be a significant addition to the practice.

The firm is advising a cybersecurity company in its IP migration to Ireland, and integration for a subsequent $1 billion acquisition into the structure. The deal would involve a bilateral APA, the first of its kind between the US and Ireland. **Michael Patton** leads the Los Angeles transfer pricing practice, which is involved in transfer pricing planning, documentation and global defence for a manufacturer of personal and homecare appliances.

EY's transfer pricing practice comprises 48 partners. The practice is led by **Purvez Captain**, Americas director of transfer pricing; **Jay Camillo**, Americas market's leader of transfer pricing; and **David Canale**, Americas leader of transfer pricing controversy.

Fenwick & West is a nationwide transfer pricing practice with Fortune 500 companies among its clients. Transfer pricing strategy accounts for about half of its transfer pricing business, with the other half coming from litigation. The firm has successfully defended a number of major clients, including Apple, Hitachi, Limited Brands, Adaptec and DHL, either before the IRS or in state and federal courts. The firm's transfer pricing planning practice is led by **Jim Fuller**, who is widely recognised by peers for his expertise in corporate tax and international tax. **Kenneth Clark** leads the firm's litigation team.

Led by **Brian Trauman**, **KPMG**'s transfer pricing practice is one of the largest in the US. The practice offers multinationals an "end-to-end" transfer pricing service comprising planning, documentation, implementation and controversy, although clients are also free to engage KPMG for specific transfer pricing services. KPMG's operational transfer pricing methods aid clients in the automation of their transfer pricing services throughout the company.

Mayer Brown's transfer pricing practice focuses primarily on controversy and disputes, and represents clients in both administrative and judicial proceedings. The practice, which comprises 18 partners, is led by **Joel Williamson**, who is the firm's lead trial attorney in tax litigation. Williamson currently represents Boston Scientific Corporation and its subsidiaries in six related actions filed in the US Tax Court, in which the IRS has determined that one of the company's subsidiary's licensing and manufacturing deals with affiliates in Puerto Rico and Ireland were not arm's-length. Additionally, the firm is representing Altera in a case that will ultimately establish a new law concerning the limits of IRS rulemaking authority, as well as the scope of the IRS's powers to reallocate income.

PwC provides services in all areas of transfer pricing including planning, documentation, advance pricing agreements (APAs), supply chain management and controversy and dispute resolution **Horacio Pena** leads PwC's transfer pricing network in the US, while **Kevin Brown** is the US tax controversy and dispute resolution leader.

Skadden Arps Slate Meagher & Flom advises US and non-US multinationals on the establishment of sound and effective transfer pricing strategies, and works with outside economist to prepare contemporaneous documentation. The firm also negotiates competent authority issues and APAs with the IRS and other national tax authorities, and represents clients in transfer pricing dispute at both the administrative and judicial levels. **Matthew Rosen** and **Fred Goldberg** lead the firm's transfer pricing practice, which recently added two partners from Bingham McCutchen, one of whom had formerly been a trial attorney at the IRS. The group is assisting a foreign multinational in a possible corporate migration including significant IP migration and supply-chain planning. On the controversy side, the team is engaged in a major transfer pricing dispute in the US Tax Court involving one of the largest e-commerce companies in the world.

Tier 2

Led by **Henry Birnkrant**, Alston & Bird's transfer pricing group provides consulting and planning services to US and foreign multinationals, and assists them in the development and implementation of tax-efficient transfer pricing strategies. It places a particular focus on the preparation and filing of documentation and with negotiating APAs with the IRS as well as with foreign tax authorities. The group is currently representing a client in securing an APA that proposes a methodology for determining IP profit valuations between the parent company and its affiliates on a retroactive basis dating 15 years before the first year of the APA.

BDO offers a full range of transfer pricing services including documentation and planning, compliance services, audit defence support and benchmarking services. BDO's transfer pricing practice places particular emphasis on its tax efficient value chain management services in relation to transfer pricing audit defense and preparation. **Robert Pedersen** is the national practice leader for international tax and transfer pricing services for BDO's US operations.

Caplin & Drysdale focuses mainly on transfer pricing controversy, and combines extensive transfer pricing expertise with a deep bench of preeminent tax litigators to represent clients in audits, appeals and litigation, and to negotiate APAs and competent authority relief on their behalf. The practice is led by **Patricia Lewis**, who has worked at the firm for over four decades. **David Rosenbloom**, who frequently acts as an expert witness in transfer pricing cases, previously served as international tax counsel and director of the Office of International Tax Affairs in the US Treasury Department. The firm recently hired **Clark Armitage**, a well-respected leader in the transfer pricing sector.

Duff & Phelps established its transfer pricing practice in October 2012, after acquiring Ceteris, the largest independent transfer pricing firm in North America. The practices comprises 13 partners, including practice leader **Mike Heimert**, and more than 50 transfer pricing professionals overall. The practice provides services in all areas of transfer pricing including APAs, competent authority and audit defence before the IRS and other tax authorities around the world. About 85% to 90% of the firm's clients are US multinational corporations, although it is representing a growing number of foreign clients.

Grant Thornton's transfer pricing team assists in planning, policy making, APA considerations, implementation, documentation and compliance. The group additionally provides audit defence support before the revenue appellate authorities. As regards

APA services, Grant Thornton provides assistance in cost benefit analyses, preparing and representing in the pre-filing consultation, preparing the APA application, negotiating the APA terms with authorities, and assisting in compliance report audits.

Mark Martin leads McDermott Will & Emery's interdisciplinary team of lawyers, economists and accountants who lend considerable expertise in support of international transfer pricing projects. The practice is heavily controversy-oriented, with Martin and partners, Cym Lowell and Mark Horowitz, leading a seven-member, full-service controversy team focused on transfer pricing. Stephen Hannes is a well-regarded transfer pricing specialist who has, according to a client, "a deep knowledge of transfer pricing". The firm's California practice is well-known for its cost sharing methods, helping companies develop intangible properties for research and development purposes. It is advising a Fortune 100 technology company on its multi-jurisdictional business structures relating to the integration of its various acquired businesses. A fourth partner, John Woodruff, advises on transfer pricing strategy.

Miller & Chevalier brings together lawyers who are widely renowned for their transfer pricing expertise, including practice leader, Rocco Femia, recognised by his peers for his work on complex and high-value transfer pricing matters. Alex Zakupowsky's clients celebrate him for his technical expertise and negotiating skills, while Kevin Kenworthy is known for his skills as a litigator. The practice advises multinationals on transfer pricing strategy, negotiates APAs and guides them through the competent authority process. In the last two years, the firm has helped resolved transfer pricing adjustments initiated by tax authorities in the US, Canada, Germany, Mexico, Korea, Japan and India. Clients are from a broad range of business sectors, including oil & gas, natural resources, pharmaceuticals, electronics, telecommunications and retail.

Led by George Gerachis, Vinson & Elkins' transfer pricing team comprises attorneys located in the firm's Austin, Dallas, Houston, Washington and London offices. The group recently hired Sheri Dillon, a partner from Bingham McCutchen, and Jason McIntosh from BP to add to their transfer pricing team. The team assists with the planning and documentation of transfer pricing strategies, focusing on pricing for intangibles, cost-sharing and services. The team also negotiates APAs, and resolves transfer pricing disputes through competent authority procedures and in trials at both the administrative and judicial levels. Vinson & Elkins is representing a multinational oil & gas company in transfer pricing involving liquefied natural gas (LNG) trading and associated services, an emerging global industry which does not yet have clearly developed transfer pricing rules.

White & Case's transfer pricing practice leader Brian Gleicher, who is Washington DC-based, has more than 15 years of transfer pricing experience and is considered an expert on transfer pricing matters related to South Korea and Japan. Kim Boylan litigates and negotiates APAs, and has more than 25 years of experience advising on transfer pricing matters, including the new cost-sharing regulations. The practice is focused on APAs and dispute resolution before the IRS, foreign tax authorities, competent authorities and the US courts, including the Tax Court, the Court of Federal Claims, federal district courts and various appellate courts.

Tier 3

Led by Fabian Alfonso, BaseFirma is an international boutique firm for transfer pricing and international tax services. The firm provides services in all areas of transfer pricing: planning, documentation, APA, intangible assets valuation and audit defense. Basefirma uses sophisticated statistical and financial models to defend transfer pricing policies, and consults with local law firms on how to best approach local tax authorities. They recently developed an in-house documentation integration system for a Fortune 500 chemical company's global headquarters, providing tailored benchmarking and economic analyses to reduce the client's compliance burden and optimise costs.

Morgan, Lewis & Bockius' transfer pricing practice has three core offerings: transactional support, consulting, and controversy and litigation. The practice also has extensive experience in using the APA and competent authority programmes to avoid possible controversy. Clients are from a broad range of sectors, including pharmaceuticals, technology, banking and finance. **Baron Bassett**, who splits his time between the Palo Alto and San Francisco offices, is the head of the tax practice.

Sullivan & Cromwell focuses on transfer pricing for large financial institutions and non-US multinational companies. The firm advises clients on which transfer pricing strategies to adopt and which corporate restructuring is required to implement these strategies. The firm also advises clients on documenting transfer pricing compliance, and negotiates bilateral APAs with tax authorities in different countries. **Don Korb**, a former IRS Chief Counsel, leads the transfer pricing practice. Other partners include **Andy Solomon**, who one client refers to as "clear and forthright in giving his opinions" and **S. Eric Wang**, who has significant first-hand knowledge of the issues that the IRS and other tax authorities raise in transfer pricing disputes.

CRA Charles River Associates

CRA is a leading global consulting firm that offers economic, financial, and business management expertise to major law firms, corporations, accounting firms, and governments around the world. Our transfer pricing experts have a wide range of industry experience and provide the most rigorous, fact-based economic and financial analysis available. We provide clients with clear, implementable solutions to complex business problems, particularly in cases with pivotal and high stakes outcomes. We offer the full complement of transfer pricing services, including documentation, supply chain assistance, planning/economic benchmarking, IP migration and valuation, ASC 740/FIN 48, enterprise valuation, and audit and controversy.

Contact

Rebel Curd
Vice President, Practice Leader of Transfer Pricing
Pleasanton
+1-925-460-1332
rcurd@crai.com

Deloitte.

Deloitte
30 Rockefeller Plaza
New York , NY 10112-0015 USA
Phone: +1 212 492 4000
Fax: +1 212 489 1687
Website: www.deloitte.com

Contact: Todd Wolosoff
Email: twolosoff@deloitte.com

Firm profile:
Multinational organizations are operating in an environment of unprecedented complexity. The rising volume and variety of intercompany transactions and transfer pricing regulations, accompanied by increased enforcement activities worldwide, have made transfer pricing a leading risk management issue for global businesses.

The goal of the DTTL member firms' globally managed transfer pricing network is to help companies manage tax compliance risks by aligning practical transfer pricing solutions with their overall global business operations and objectives, assist with documentation to support their transfer pricing practices, and resolve disputes efficiently. Deloitte has a well-earned reputation for quality and delivering results. Our services include:

- Dispute Avoidance: Advance Pricing Agreements
- Dispute Resolution: Examination Defense and Mutual Agreement Procedure/Competent Authority
- Transfer Pricing Planning and Documentation
- Business Model Optimization (BMO)

Fenwick & West
Silicon Valley Center
801 California Street
Mountain View, California 94041
Tel: +1 650 988 8500
Fax: +1 650 919 0942

Firm profile:

Fenwick & West LLP has represented over 100 of the Fortune 500 largest corporations in tax planning, transfer pricing, acquisitions, joint ventures and tax dispute resolution, including litigation. Over 50 are Fortune 100 companies.

Our primary focus is in the international tax area. *International Tax Review* named us in 2014 as having one of the world's leading tax planning and tax transactional practices.

Dispute resolution also is an important part of our tax practice. We have favorably resolved disputes in well over 100 IRS appeals proceedings. We currently have pending or resolved during the past 12 months 15 large-corporation appeals proceedings. We also have been counsel to corporate taxpayers in over 70 federal tax court cases. Many of these appeals proceedings and cases involve or have involved transfer pricing.

Five Fenwick tax partners appear in Euromoney's Tax Controversy Leaders (2014), and five have appeared in Euromoney's World's Leading Transfer Pricing Advisors (2014).

Euromoney Legal Media Group has named Jim Fuller, one of our tax partners, as one of the top 25 tax lawyers in the world. Nine Fenwick partners, including our tax practice group leader, David Forst, Jim Fuller, Ron Schrotenboer, Jennifer Fuller, Michael Solomon, Walt Raineri, Andy Kim, Adam Halpern and Larissa Neumann have appeared in *Euromoney's* World's Leading Tax Advisors.

MAYER • BROWN

C. Cabell Chinnis
Partner, Palo Alto
cchinnis@mayerbrown.com
T +1 650 331 2020

John T. Hildy
Partner, Chicago
jhildy@mayerbrown.com
T +1 312 701 7769

Charles P. Hurley
Partner, Washington DC
churley@mayerbrown.com
T +1 202 263 3260

Thomas Kittle-Kamp
Partner, Chicago
tkittlekamp@mayerbrown.com
T +1 312 701 7028

Shawn R. O'Brien
Partner, Houston
sobrien@mayerbrown.com
T +1 713 238 2848

Scott M. Stewart
Partner, Chicago
sstewart@mayerbrown.com
T +1 312 701 7821

Charles S. Triplett
Partner, Washington DC
ctriplett@mayerbrown.com
T +1 202 263 3262

Joel V. Williamson
Partner, Chicago
jwilliamson@mayerbrown.com
T +1 312 701 7229

Mayer Brown's Transfer Pricing Practice: Mayer Brown's Transfer Pricing group is one of the most active in the country, and is known for employing innovative techniques in providing clients with advice and representation for transfer pricing structuring, large case audit and administrative appeals, U.S. and foreign unilateral and bilateral advance pricing agreements, competent authority matters and litigation.

A number of our attorneys are devoted almost exclusively to transfer pricing matters, with broad experience in the representation of corporate taxpayers in transfer pricing planning, audits, IRS Appeals, and Competent Authority, as well as in the federal courts including the U.S. Tax Court. Several of our partners have been recognized among the leading transfer pricing advisors in the U.S. and many of our attorneys have significant government experience at the IRS and Department of Justice, where they participated in Competent Authority and treaty negotiations; litigated various transfer pricing issues; and contributed to the development of and major revisions in several regulatory and procedural projects.

In 2008, we launched our fully integrated European Transfer Pricing Centre, headquartered in Brussels, to coordinate transfer pricing strategies in the area. The breadth of practice experience, the ability to manage Pan-European projects, and the concentrated EU focus of the Centre ensures that each client's transfer pricing strategy is optimized on a multi-country level.

Venezuela

Tax authorities

Servicio Nacional Integrado de Administración Aduanera y Tributaria
Torre Capriles, Plaza Venezuela, Caracas
Tel: +58 212 709 2888 / 709 2064 / 709 2027
Website: www.seniat.gob.ve

LEADING FIRMS

1	Deloitte
	D'Empaire Reyna Abogados
	EY (Mendoza, Delgado, Labrador & Asociados)
2	KPMG
	PwC

Venezuela, which is not yet a member of the OECD's white list (jurisdictions that have substantially implemented the internationally agreed tax standard) has in the past year suffered a great deal from political strife and the continued effects of its expanding money supply, inefficient state-run companies, poor currency control system and the resulting 40% inflation rate.

The Fair Price Law, which officially went into force on January 23 2014, sets a maximum selling price on products sold inter-institutionally and a ban on company profits totaling over 30%. It differs from the 2011 Law of Fair Costs and Prices in its all-encompassing expression of punitive measures, but will continue to require companies to enter into transfer pricing adjustment stages to comply.

Its enforcement, led by the decentralised SUNDDE (Organic Regulations of the Office of the Superintendent for the Defense of Socio-Economic Rights) began with hygiene products, continued with medical products, and will expand to all products in the food chain. The near term results have been increased shortages of basic products like bread and milk and an expansion of the black market.

If in violation of the law, SUNDDE reserves the right to: issue fines, suspend RUPDAE (single register for individuals developing economic activities), temporarily occupy or close a company warehouse for up to 180 days, close warehouses, deposits or establishments dedicated to the trading, conservation, warehousing, production and processing of goods, confiscate goods, and revoke licenses, permits or authorisations.

The activities constituting crimes (which can carry prison sentences of up to 14 years) under this law are: speculation, fraudulent alteration, hoarding, boycott, conditioning of the sale of goods or provision of services, contraband by extraction, usury and alteration of goods and services. No penalties exist to prevent corrupt behaviour on the part of SUNDDE inspectors.

Transfer pricing disputes revolving around the Law of Fair Costs and Prices, and the newly enacted Fair Price Law, have predictably increased in number, with many taxpayers needing to restructure their business models to comply with the strict regulatory constraints of the law. Transfer pricing professionals have been typically tasked with segmenting clients' financials to demonstrate compliance with arm's-length standards, ensuring consistency throughout the company value chain.

Tier 1

Deloitte's transfer pricing practice is recognised for the quality of its work, the strength of its client relationships and the depth and breadth of its transfer pricing experience. Led by **Iliana Salcedo**, the practice comprises the first team of Venezuelan transfer pricing professionals trained in the US, Canada and Mexico. It assists multinational companies in their interaction with the country's tax authority, particularly in transfer pricing audits, as well as with

Tax rates at a glance

(As of August 2014)

Corporate income tax rate	15% to 34%
Capital gains tax rate	15% to 34%
Branch tax rate	15% to 34%
Withholding tax	
Dividends	0%/34% (a)
Interest	15% to 34% (b)
Royalties from patents and licences	34% (c)
Branch remittance tax	0%/34%
Net operating losses (Years)	
Carryback	0
Carryforwards	3

a) Dividends are generally exempt from income tax. However, if the dividend distribution is more than taxable profits, a withholding tax is imposed at the same rate as the corporate income tax rate, that is, 34%.

b) Interest paid to a non-resident legal entity is taxed at the normal corporate income tax rates, that is, 15% to 34%. Interest paid to non-resident banks or financial institutions is subject to a withholding tax of 4.95%. Interest paid to a non-resident individual is subject to withholding tax of 34% applied to 95% of the gross payment, resulting in an effective rate of 32.3%.

c) Royalties paid to a non-resident company or individual are subject to tax at a maximum rate of 34% applied to 90% of the gross payment, resulting in an effective rate of 30.6%.

Source: *Taxand advisers from Taxand Venezuela*

their related party documentation. Its clients are some of Venezuela's largest domestic and foreign companies, including Cerveceria Polar, Interamericana de Cables, 3M and Bristol Myers. The firm just added a former Fiscal Administration member (SENIAT) to its ranks as well, in **Adriana García**.

Led by **Alberto Benshimol**, the transfer pricing practice of **D'Empaire Reyna Abogados** focuses on advising global companies on effective and tax-efficient transfer pricing planning and on documentation, although calculations are outsourced to specialised firms. **Humberto Romero-Muci**, head of the firm's controversy practice, has litigated in some of the country's largest transfer pricing disputes. Romero-Muci and Benshimol recently assisted RCTV in a dispute in front of the Supreme Court, concerning VAT credits.

Mendoza, Delgado, Labrado & Asociados, an EY member firm, advises on a number of transfer pricing issues, including transfer pricing planning and documentation, customs valuations and tax-efficient supply chain management, as well as the role of transfer pricing in risk management and financial services transactions. **Maria Calvino**, **Carolina Nadal** and **Luis Benitez** are all widely recognised for their transfer pricing experience.

Tier 2

KPMG's transfer pricing practice advises on transfer pricing strategy and assists with the preparation of transfer pricing studies and documentation. **Jorge Rodriguez** leads the practice.

PwC assists clients with the preparation of transfer pricing assessment studies, and with documentation required for demonstrating compliance with the arm's-length principle. It also advises on transfer pricing planning. The practice is let by **Elys Aray**.

Vietnam

Tax authorities

General Department of Taxation, Ministry of Finance
123 Lo Duc St, Hanoi
Tel: +84 4 3971 2310
Fax: +84 4 3971 2286
Email: bbtweb@gdt.gov.vn
Website: www.gdt.gov.vn

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	DFDL
	Grant Thornton

"Vietnam is showing itself as a real player for large scale foreign investors," said Jack Sheehan from DFDL. In 2014, multinationals showed more confidence in the Vietnamese market, and accordingly, the market is paying increased attention to transfer pricing. Transfer pricing regulations in Vietnam were virtually non-existent until 2006, when general guidelines were introduced into law under Circular 117. In the years since, tax and legal firms have amped-up their expertise in the area to address the influx of work.

In December 2013, Vietnam issued general anti-avoidance rules. Circular 205/2013/TT-BTC dated in December 2013 introduced rules against abusive business structuring to obtain tax relief. The issuance of Circular 205 indicates that the tax authorities will begin looking more closely at business structures to determine if tax abuse exists. A seven-point test is used to determine transaction substance. Red flag points include the applicant not carrying out any business operations in the jurisdiction, or the applicant being formed with the sole purpose of treaty shopping.

"Existing structures into Vietnam are going to become more scrutinised," says Sheehan. Vietnam has a number of free trade agreements including bilateral FTAs between the US and EU countries, and is negotiating several more through ASEAN.

"There hasn't actually been any guidance that has followed the revised regulations which were issued in about 2010," said Thomas McClelland of Deloitte. Many practitioners echo McClelland's sentiment that clarity on transfer pricing regulations would be appreciated. How transfer pricing audits will play out in the court system remains to be seen. Partners at DFDL point out that, in Vietnam, there is no explanation on whether the burden of proof for tax transactions lies on the tax authorities or on the taxpayer.

On February 5 2014, the Ministry of Finance's Circular 201/2013/TT-BTC became effective. Circular 201 provides guidelines for APA applications for taxpayers who have "controlled transactions with associated parties". Measures addressed in the Circular include APA framework, governance, responsibilities and expectations of taxpayers, and those of the authorities. Regulations generally follow the guidelines laid out by the OECD.

The Circular 201 initiative is a major step in Vietnam's developing transfer pricing economy and it opening up to global taxation standards. A handful of firms have jumped on the opportunity to secure clients' tax positions, and at least two bi-lateral APAs have been submitted to the GDT.

The Vietnamese government's Action Plan 2012-2015 has set transfer pricing targets; one of which stipulates that 20% of multinational taxpayers will be audited over the same time frame. It is uncertain how the GDT will meet this target, however corporations in Vietnam can be certain that transfer pricing will continue to be an area of focus. Richard Irwin of PwC said: "To the tax authorities, transfer pricing is a very useful weapon to collect more tax."

Tier 1

Along with the surge of transfer pricing work in Vietnam, **Deloitte** has made parallel hires to increase its capabilities in this field. Under the leadership of **Thomas McClelland**, the firm has made personnel investments at the senior and consultant levels over the past year in its major operations in Hanoi and Ho Chi Minh City. McClelland has spent five years with Deloitte, and has worked in Vietnam for more than 14 years. One client described the experience with Deloitte as "very good, they have experienced staff".

Key areas of the firm's practice are manufacturing, electronic equipment, textiles, and trading – many of Vietnam's key industries. McClelland and **Quang Tran-Trung Phan** advised a client in the garment industry in one of the GDT's first transfer pricing audits. The firm offered holistic services, including preparation of documents before the audit, assistance to resolve issues, and support through discussions with the GDT. The case was successfully concluded with the original assessment reduced by an incredible 97%.

Circular 201 codified APA regulations, and Deloitte has been one of the first firms to move in this arena, having already submitted the paperwork for a bi-lateral APA between Vietnam and South Korea. Results of the application will not be determined for a number of years, but the firm is hopeful the new laws will encourage more businesses to seek the arrangements. The firm was also involved in reviewing the draft APA regulations on behalf of the GDT to ensure their compliance with international standards.

The transfer pricing practice at **EY** had a shake up this year after practice leader **Nitin Jain** moved to EY India. **Christopher Butler** has temporarily stepped into the role as the firm looks for a potential internal promotion to replace Jain. In addition to transfer pricing, Butler is capable in corporate taxation and human capital.

The firm has 17 professionals dedicated to transfer pricing and is looking to make additional strategic personnel acquisitions in the near future. Manager **Phat Tan Nguyen** holds a PhD in transfer pricing, and focuses his practice on the Vietnamese market.

The team said transfer pricing audit work has slowly begun, and has helped clients through several disputes with the GDT, resulting in settlement.

While Vietnam is still developing its transfer pricing legislation, **KPMG** has capitalised on the opportunity to develop a niche in advising APAs from both the government and clients' perspective. Before APA laws were put into place, the firm flew in regional leaders to discuss recommendations to the GDT and holds a key position to negotiate tax deals with authorities. KPMG is the sole firm that continues to aid the GDT in developing APA regulations- including provincial capacity building, technical assistance, and independent consultation to aid with the implementation of Circular 201.

Hoang Thuy Duong leads the practice of 30 professionals. The firm is heading APA deals, including a multi-million dollar pilot case, led by Duong, for a a large group engaged in fast moving consumer goods. The deal involves conducting a feasibility study and early stages of APA negotiations for the limited risk distributor subsidiary.

The firm negotiates with the GDT on behalf of clients in a number of key technical areas, and helps resolve transfer pricing audits.

In April of 2013, **PwC** brought on **Matt Gulbis** from PwC Australia to deliver leadership to the transfer pricing practice. The firm set ambitious goals for transfer pricing growth that Gulbis has met and exceeded. Personnel size has nearly doubled through strategic external hires of high level professionals. "They are very experienced and have the right contacts and are able to provide pragmatic advice," said one client.

The practice emphasises a pre-emptive approach to transfer pricing, because the Vietnamese market is likely to continue to develop transfer pricing regula-

Tax rates at a glance

(As of September 2014)

Corporate tax rate	22% (a)
Capital gains	22 (b)
Branch tax	22% (c)
Withholding tax	
Dividends	0% (d)
Interest	5%
Royalties	10%
Net operating losses (years)	
Carryback	0
Carryforward	5

a) The standard corporate income tax rate dropped from 25% to 22% on January 1 2014. It will further reduce to 20% on January 1 2016. The rate for enterprises operating in the oil and gas and natural resource sectors ranges from 32% to 50%, depending on the project.

b) Gains derived from sales of fixed assets are treated as taxable profits and are subject to tax at the normal corporate income tax rate. Gains derived from sales of capital or shares in an entity are subject to tax at a rate of 22% (the tax rate will be reduced to 20%, effective from January 1 2016). Transfers of securities by foreign investors are subject to presumptive tax of 0.1% on total sales proceeds, regardless of whether the transfer is profitable.

c) Income from a branch of a business is consolidated with the income of the head office to calculate the income tax of the entire business. There is no branch remittance tax.

d) Vietnam does not impose withholding tax on dividend payments overseas (unless paid to individuals, where a 5% withholding tax is imposed).

tions over the coming years. Because documentation is not viewed until several years later, the firm said it must be robust to hold up to more knowledgeable future auditors.

The firm conducted a deal for a limited risk distribution company, a structure that is fairly rare in Vietnam. The client was new in the Vietnamese market and thus the firm's role involved advisory, designing, and implementation of the LRD model. The structure also had to harmonise the new transfer pricing model with the global operating model.

The team approximates that it was the first transfer pricing practice to submit paperwork for an APA on behalf of a global consumer products company. Gulbis is especially supportive in this area, having conducted a number of APAs and MAPs on behalf of clients in Australia.

Tier 2

DFDL has introduced transfer pricing services and is making its debut in *World Transfer Pricing*. The firm has an exclusive alliance with Quantera in the Mekong region. **Lea Gracia Molina** was seconded to Vietnam in March of this year from Quantera to grow the firm's transfer pricing abilities. Along with Molina's expertise, the firm has seen an increase in transfer pricing engagements. Molina is accompanied by **Bernard Cobarrubias**, an expert in international taxation that is now focusing on transfer pricing.

The firm took on a deal on behalf of a French software producer. The deal involved a full benchmarking study and compliance analysis.

The firm is making moves in the APA sector and is advising several clients on applications for the agreement. The firm is additionally publishing thought leadership on the topic in articles and client announcements.

Grant Thornton made a huge step this year in its acquisition of rival tax firm Nexia. The new joint enterprise will continue to operate under the name Grant Thornton Vietnam. The merger completed on July 1 2014 and the transition is keeping partners busy with both regular tax work and work created by the transition. **Matthew Facey** is no longer with the merged entity. Stepping into his place as head of transfer pricing is **Hoang Khoi**.

In a recent deal, the firm provided advice to a client regarding its tax obligations before and after corporate restructuring. The team, under Facey, was involved in a pre-audit review and successful reconciliation that resulted in zero additional tax assessments. The new practice is also advising on pre-filing procedures for APAs.

INDEX OF ADVERTISERS

INDEX OF FIRMS