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World Transfer Pricing 2014

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

World Transfer Pricing 2014

INTERNATIONAL TAX REVIEW™

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Introduction

Welcome to the first edition of World Transfer Pricing 2014, *International Tax Review*'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 all 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 as 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 and 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 *International Tax Review* presents World Transfer Pricing 2014, 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

International Tax Review 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

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.

leading firms and write the commentaries for 51 jurisdictions in World Transfer Pricing 2014.

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 much 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 2014 to be a valuable tool in helping you identify the appropriate advisers in the jurisdictions covered.

Sophie Ashley
Online editor *International Tax Review* &
Managing editor *TPWeek*

Global transfer pricing developments

Worldwide transfer pricing is in the midst of potentially big changes. **James Fuller**, **David Forst**, **Kenneth Clark**, and **Ron Schrotenboer** of Fenwick & West discuss the developments that have impacted transfer pricing on a global scale over the past year.

The OECD is working on significant reports on intangible assets, transfer pricing safe harbours and documentation issues. The organisation is also working new BEPS (Base Erosion and Profit Shifting) action plan. The BEPS action plan states that the OECD will develop rules regarding transfer pricing documentation to enhance transparency, and the intangibles work is specifically listed in the BEPS action plan.

Let us start with BEPS, as the breadth of this project will likely encompass the other OECD projects and affect worldwide transfer pricing for decades to come.

BEPS

The OECD presented a BEPS action plan at the G-20 finance ministers' meeting in Moscow on July 19 2013. The action plan identifies 15 actions: (1) address the challenges of the digital economy; (2) neutralise the effects of hybrid mismatch arrangements; (3) strengthen the controlled foreign company rules; (4) limit base erosion via interest deductions and other financial payments; (5) counter harmful tax practices more effectively, taking into account transparency and substance; (6) prevent treaty abuse; (7) prevent the artificial avoidance of permanent establishment status; (8, 9, and 10) assure that transfer pricing outcomes are in line with value creation regarding intangibles, risks and capital, and other high-risk transactions; (11) establish methodologies to collect and analyse data on BEPS and the actions to address it; (12) require taxpayers to disclose their aggressive tax planning arrangements; (13) reexamine transfer pricing documentation; (14) make dispute resolution mechanisms more effective; and (15) develop a multilateral instrument to enable interested countries to implement measures developed in the course of the BEPS work and amend bilateral tax treaties.

Many of these projects will directly affect the future of worldwide transfer pricing. The action plan also specifies deadlines for completing the work: September 2014, September 2015 and December 2015.

OECD intangibles project

In 2010, the OECD announced the commencement of a project on the transfer pricing aspects of intangibles. A scoping paper was published for public comment. Three public consultations were held with interested commentators. The OECD then published a revised discussion draft in July 2013.

The initial discussion draft contained two principal elements: (1) a proposed revision of the provisions of Chapter VI of the OECD Transfer Pricing Guidelines; and (2) a proposed revision of the Annex of Chapter VI containing examples illustrating the application of the provisions of the revised text of Chapter VI.

The revised draft adds a discussion on features of the local market, location savings, assembled workforce and group synergies, and makes certain other amendments, such as commentary on the use of a corporate name.

The word intangible in the guidelines is intended to address something that is not a physical asset or a financial asset, and that is capable of being owned or controlled for use in commercial activities. Rather than focusing on accounting or legal definitions, the thrust of a transfer pricing analysis in a matter involving intangibles should be the determination of the conditions that would be agreed upon between independent parties for a comparable transaction.

The availability and extent of legal, contractual, or other forms of protection may affect the value of an item and the returns that should be attributed to it. The existence of such protection is not, however, a necessary condition for an item to be characterised as an intangible for transfer pricing purposes. Similarly, while some intangibles may be defined separately and transferred on a segregated basis, other intangibles may be transferred only in combination with other business assets.

The guidance is intended to address transfer pricing matters exclusively. It is not intended to have relevance for other tax purposes, the discussion draft states.

Distinctions are sometimes made between trade intangibles and marketing intangibles, between soft intangibles and hard intangibles, between routine and nonroutine intangibles, and between other classes and categories of intangibles. The approach used in the discussion draft for determining prices in cases involving intangibles does not turn on these categorisations. Accordingly, no attempt was made in the guidelines to delineate various classes or categories of intangibles.

The draft discusses numerous illustrative intangibles or items that might be candidates for intangibles status: patents; know-how and trade secrets; trademarks, trade names and brands; licenses and similar limited rights in intangibles; goodwill and going concern value; group synergies; market specific characteristics; and assembled workforce. Group synergies and market specific characteristics, however, are not intangibles in that they are not owned or controlled by a single enterprise.

Transfer pricing documentation

Transfer pricing documentation requirements have been rapidly growing around the world. This trend continues every year with new additions to the list of countries requiring the preparation of transfer pricing documentation. The OECD's White Paper on transfer pricing documentation was developed as part of an effort to coordinate and simplify transfer pricing documentation requirements. It now interrelates with BEPS, as well.

The BEPS action plan states that the OECD will develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance cost for business. The transfer pricing documentation project seeks to modify the rules around the world to make transfer pricing compliance easier and more straightforward, while at the same time providing tax authorities with more focus on useful information for consideration in connection with transfer pricing risk assessment and transfer pricing audits.

Advance pricing agreements (APA)

In the US, the APA programme has undertaken an interesting digression from what otherwise should be the goals of the programme; namely, certainty.

Eaton Corporation and the IRS entered into two APAs establishing a transfer pricing methodology for covered transactions between Eaton and its subsidiaries.

The IRS determined for unstated reasons that Eaton did not comply with the APAs' applicable terms and unilaterally cancelled them. The IRS then issued a deficiency notice to Eaton based on an alternative transfer pricing methodology. Eaton argued with the IRS and in court that the APAs are enforceable contracts and that the IRS must show that it was entitled to cancel the APAs under general contract law principles. The IRS asserted that it can cancel the APAs under certain of its revenue procedures that reserve specified discretion to the IRS.

In *Eaton Corp. v. Commissioner*, 140 T.C. No.18 (2013), the Tax Court held for the IRS on the cross motions for summary judgment on this issue. It stated that the APAs' legal effect and administration were governed by the IRS revenue procedures. To succeed in challenging the IRS's terminations, the taxpayer must show that the IRS's cancellations were arbitrary, capricious or without sound basis in fact. That is, the taxpayer must demonstrate that the IRS abused its discretion in cancelling the APAs. General contract law principles do not apply.

Development in other countries

Other countries have experienced changes as well. Canada, India and Denmark seem to be among the most aggressive countries in making transfer pricing adjustments. India presents special problems in the transfer pricing world. The US competent authority recently took a surprising action in this regard: He stated in public that the US competent authority has been frustrated by positions taken by his Indian counterpart. Unfortunately, the competent authority process between the US and India has been described as "broken". Tax practitioners are hopeful that recent changes in India (the appointment of a new competent authority) will improve the transfer-pricing relationship between India and other countries.

Many treaties now include arbitration provisions in their mutual agreement articles to provide the taxpayer with an alternative possibility for relief in case the competent authorities are unable to resolve matters between themselves. Some companies have been forced to litigate transfer pricing adjustments in situations in which the competent authorities could not agree. GlaxoSmithKline and Caterpillar are two fairly recent examples where the US competent authority could not agree with the relevant foreign competent authority.

However, competent authority arbitration provisions have also found their way into court. In Canada, *TeleTechCanada, Inc. v. Minister of National Revenue* involved a case in which the court declined to compel the Canada Revenue Agency (CRA) to accept the company's request for competent authority assistance and submit it to arbitration. The taxpayer seems to have suffered a grave injustice, although the court kept its decision narrow, pointing to alleged tardiness with respect to the company's competent authority filing. A review of the court's opinion indicates that the company was not really tardy since the US IRS had advised CRA that the taxpayer's "self adjustment" had been made in the US and invited CRA to participate in a mutual agreement proceeding. Instead of responding, CRA simply closed its file on the taxpayer's matter. The taxpayer only learned about the letter after the litigation started.

Documentation requirements also have found their way into court. A recent Spanish Supreme Court decision rejected intercompany charges for services from the entity's Swiss parent. The ultimate parent was a US chemical company. The Spanish company received management support from the Swiss entity acting as the multinational group's parent in Europe. The court said the mere recording of an expense does not justify its deductibility. Instead, the expenses must be proven necessary for the production of income, and there must be a direct relationship between the income and expense. The court was concerned that the taxpayer had not attested to the actual supply of the service, the amount thereof, or quantification of the costs invoiced. This decision certainly emphasises the importance of proper documentation.

Summary

In summary, the world of transfer pricing is an extremely active one with major changes likely on the short-term horizon.

Argentina

Tax authorities

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Website: www.afip.gov.ar

LEADING FIRMS

1	Bruchou, Fernandez Madero & Lombardi - Taxand
	Deloitte
	EY (Pistrelli, Henry Martin y Asociados)
	KPMG
	PwC
	Rosso Alba Francia & Asociados
2	Estudio O'Farrell
	Grupo GNP
	Teijeiro y Ballone, Abogados

Some of Argentina's largest agricultural exporters are challenging the scope of their country's transfer pricing regime in a dispute that reaches all the way to the Federal Supreme Court. The court's pending decision in the March 2013 case could result in most of the tax authority's notices of deficiencies against agricultural exporters being declared null and void.

The core constitutional issue of the case concerns the so-called sixth transfer pricing method for commodity exports, which originated in Argentina's 2003 law that established its general anti-avoidance rule (GAAR). Developing nations frequently use variations of this method to avoid price manipulations (and lower tax revenues) in transactions involving an intermediary in a country with a lower tax rate.

The sixth method mandates that when exporting to a related party through a foreign intermediary, the benchmark for evaluating the transaction should be the price of the commodity at the contract date or at the shipment date; whichever is greater.

The law states that the sixth method applies only if the intermediary is not a third party, in that it is a shell company that exists to obtain passive income or serve as an exclusive intermediary in transactions between the related parties. However, former President Nestor Kirchner, in his 2004 decree implementing the law, overlooked this requirement, thus widening the scope of the method.

The decree is unconstitutional because "it violated the will of the congress," said Cristian Rosso Alba, the managing partner of Rosso Alba, Francia & Asociados and counsel to the agribusinesses. "We say implementing the regulations goes beyond the law. No taxation without representation," he added.

Tier 1

Led by **Matias Olivero Vila**, **Bruchou, Fernandez Madero & Lombardi – Taxand** advises clients – mostly multinationals – on transfer pricing planning, compliance and litigation. The firm also assists with customs valuation. Documentation services are outsourced to **José Luis Eguia**, a partner within the transfer pricing group at the Buenos Aires office of Eguia & Asociados. Clients include the Argentine subsidiaries of Prosegur, a Spanish private security company; onMobile, an Indian telecommunications company; and Bunge, a New York-based agribusiness giant. The firm also has a strong presence in the agribusiness, automotive and pharmaceutical sectors. Bruchou, Fernandez Madero & Lombardi enjoys an excellent reputation among competitors as a litigator, and represents clients in some of the most important transfer pricing-related cases in Argentina. The firm is litigating against the Federal Tax Authority in tax court, challenging its suspension of Molinos Rio de la Plata in the

Tax rates at a glance

(As of August 2013)

Corporate income tax rate	35% (a)
Capital gains tax	35%
Branch tax	35% (b)
Withholding tax	
Dividends	0% 35% (c)
Interest	15.05% (d)
Royalties	12.25% 21% 28% 31.5% (e)
Branch remittance tax	0%
Net operating losses (years)	
Carryback	0
Carryforward	5

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

c) Dividends paid to non-resident shareholders generally are exempt from withholding tax. However, a 35% rate is imposed (via withholding) on profit distributions, including dividends, that exceed taxable accumulated profits.

d) The general 35% withholding tax is reduced to 15.05% if 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.

e) Royalty payments made to non-residents for the exploitation of copyrights in Argentina are subject to a final withholding tax of 35% on 28% of the gross payment effective rate of 12.25%, provided the works are registered with the National Copyright Bureau and other conditions are satisfied. Patent royalties and fees for technical assistance, engineering or consulting services paid to non-residents are subject to a final withholding tax of 35% on a prescribed percentage of the gross payment, which varies according to the type of payment. The effective withholding tax rates are 28% (35% x 80%) on patent royalties and 21% (35% x 60%) on fees for technical assistance, engineering or consulting services if the agreement under which the royalties or fees are paid is registered by the National Institute of Industrial Technology (INTI) and, in the case of fees, the services cannot be obtained in Argentina. If these conditions are not satisfied, the effective rate on the royalties or fees is 31.5% (35% x 90%).

Fiscal Registry of Grain Traders. It is also supervising PwC's defense of Molinos against a $40 million tax assessment.

Deloitte provides planning, documentation and valuation services, and represents clients before the tax authority and in court. **Horacio Dinice** leads the practice.

Pistrelli, Henry Martin y Asociados, an EY member firm, has one of Argentina's largest transfer pricing teams, with roughly 40 professionals, including two partners. It is also one of EY's most dynamic, accounting for roughly 15% of the tax practice in terms of both head count and revenue. The team focuses on planning and compliance services, including reviews of documentation, supply chain structures and transaction flows. It takes a proactive approach to transfer pricing controversy, analysing transactions before their implementation, to reduce or prevent potential challenges from tax authorities. The transfer pricing team is led by **Carlos Casanovas** and **Gustavo Scravaglieri**, who are also in charge of EY's International Tax Service.

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, including the new rules for 2013.

Led by **Juan Carlos Ferreiro**, **PwC**'s transfer pricing practice in Argentina comprises a multidisciplinary team of transfer pricing specialists who advise on transfer pricing strategy, documentation, regional transfer pricing policy developments and audit defense. The practice also includes associate partners **Violeta Maresca** and **José María Segura**.

Rosso Alba Francia & Asociados provides a full range of transfer pricing services, with controversy accounting for a significant part of its business. The firm litigates in some of the largest transfer pricing controversies before the Argentine courts, including the Supreme Court of Argentina. In March 2013, it represented clients who are challenging the constitutionality of former President Kirchner's transfer pricing rules for commodity exporters. The decision, which will affect all commodity exporters is pending. The firm is also active in mutual agreement proceedings. **Cristian Rosso Alba** leads the practice, which also provides consultancy and planning services to domestic and international clients in the oil and gas, pharmaceutical, automobile and agricultural commodities industries. It is one of the few law firms in Argentina to have in-house economists and accountants.

Tier 2

Miguel Teson 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. The practice consists of several lawyers who are transfer pricing experts and have litigation experience at every judicial level, from the National Tax Court to the Supreme Court of Justice. One of its key members, **Eduardo Baistrocchi**, lectures at the London School of Economics, and is the author of a leading book on resolving transfer pricing disputes. Clients also receive assistance in the preparation of documents to show compliance with related party pricing rules and on the interpretation of national and OECD rules on transfer pricing. Clients include oil and gas, pharmaceutical and automobile companies.

Led by **Guillermo Perez**, **Grupo GNP**'s transfer pricing practice assigns a multidisciplinary team comprising economists, accountants, market research specialists and business administrators to every transfer pricing engagement. The practice advises on transfer pricing planning and preparing and filing documentation. Its clients are mostly mid- to large-sized companies in such key economic sectors as logistics, real estate, pharmaceuticals and retail.

Guillermo Teijeiro, a founding partner of **Teijeiro y Ballone, Abogados**, is head of both tax and transfer pricing at the practice. Teijeiro co-founded the practice in 2012 with **Mario Ballone**, who has worked with Teijeiro for the last 15 years. It has two other partners, **Ana Lucia Ferreyra** and **Gloria Gurbista**, who previously worked at Negri & Teijeiro with Teijeiro and Ballone. Together, the partners advise local and international companies on transfer pricing planning and compliance issues. They also represent clients in litigation, and are representing a large agribusiness company in its appeal of a $200 million transfer pricing adjustment. The size of the adjustment and the client's importance to the economy make this one of the most important transfer pricing disputes in Argentina.

Australia

Tax authorities

Australian Taxation Office
Ground Floor, Ethos House,
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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

Australia's transfer pricing legislation has experienced an overhaul since it was first introduced over 30 years ago in 1981, which changes the transfer pricing landscape significantly. The new laws are more vigilant with a broader coverage and taxpayers need to figure out how the Australian Taxation Office (ATO) will enforce them.

"Although the new rules have been introduced in bill form, there is an urgent need for guidance from the ATO as to how the rules are going to be administered," said Andrew Sommer from Clayton Utz.

The new legislation allows the ATO to reconstruct the related party transaction if the price paid is deemed not in line with the arm's-length price. The ATO can also challenge deductions for intercompany interest, in spite of the thin capitalisation safe harbour limit. "One clear message is that the ATO is given much broader power to investigate companies," Baker & McKenzie's John Walker observed.

As the new rules apply retrospectively from July 1 2004, taxpayers need to make sure they have appropriate supporting documents for related party transactions and cross border funding dating back nine years. Intense scrutiny is placed on multinational corporations (MNCs), especially for highly profitable ones.

"Transfer pricing traditionally was only an issue of big conglomerates, but now matters in a broader sense," Peter McCullough of Ashurst said. "Since Australia joined the global model, it potentially becomes much harsher in rules, to make itself credible in the globe." Being a member of the OECD, Australia continues to be consistent with the OECD views.

A significant number of profit-shifting risk reviews and audits have been flagged by the ATO in 2013. Meanwhile, the ATO also established a new taskforce to collaborate with tax authorities offshore investigating corporate tax evasion under the BEPS (base erosion profit shifting) project. "They would look at lower tax jurisdictions to review the operations of Australian businesses," disclosed Anthony Seve from KPMG.

Tier 1

The reputed transfer pricing practice in **Deloitte** is under the leadership of **Fiona Craig** and the head of its tax department **Paul Riley** is a transfer pricing (TP) specialist as well. The team has added three new personnel since last year and now comprises eight partners and 50 specialists. **Mark Kenny** and **Cameron Smith** are based in Sydney and Melbourne, and **Ockie Olivier** is based in Perth. The practice now has a well-rounded service. It is sharp in helping clients reduce risks by advising concrete solutions, preparing strategic documentation and managing disputes.

Tax rates at a glance

(As of September 2013)

Corporate income	30% (a)
Capital gains	30%
Branch tax	30%
Withholding tax (e)	
Dividends	0% - 30% (b)
Interest	10% (c)
Royalties	30%
Branch remittance tax	0%
Net Operating Losses (Years)	
Carryback	0
Carryforwards	Indefinite (d)

a) As a general rule, tax rates and treatment are the same for all companies, including branches of foreign companies; however, there are exceptions for special types of companies such as cooperative firms, mutual and other life insurance companies, and non-profit organisations, which are taxed at slightly different rates.

b) Dividends paid by Australian resident companies from profits already taxed at the corporate rate may carry franking credits for the tax paid. Dividends are referred to as "fully franked," "partially franked" or "unfranked," depending on the extent to which a company has chosen to use its franking credits. To the extent distributions to foreign residents are unfranked distributions, they are subject to withholding tax at the statutory rate of 30%, which may be reduced under a tax treaty.

c) Interest paid by an Australian company to a foreign resident is generally subject to a 10% withholding tax. There are some exemptions, including for certain public offer debentures and limited nondebenture debt interests. An interest withholding tax exemption applies for interest paid to unrelated foreign financial institutions or government bodies under specific tax treaties.

d) Tax losses may be utilised and carried forward indefinitely to offset against future assessable income provided a "continuity of ownership" (more than 50% of voting, dividend, and capital rights) or a "same business" test is satisfied. However, capital gains can only be offset against capital gains.

Deloitte is a leader in TP related issues in energy and resources as well as financial services. And these are also the two industries that generated the most revenue for the team, given the heightened focus of the Australia Taxation Office (ATO). Craig and Riley successfully assisted a large Australian listed mining company in a TP audit matter in early 2013. Thanks to the team's efforts on factual and functional studies and analysis of the issue, the ATO was finally convinced to drop the case, and no further action was taken.

Besides substantial audit cases, the team has also concluded a large number of advance pricing agreement (APA) cases and renewals. In addition, the team regularly contributes to the TP development in Australia by publishing niche articles and preparing submissions to the tax authority about latest observation and analysis in the market.

Paul Balkus leads the transfer pricing practice at **EY** in Australia, supported by **Jesper Solgaard**. The practice offers all the TP related services one might expect from a top-tier firm. Additionally, the team provides supply chain management to traditional service provisions such as compliance, documentation, planning and controversy. Because the Australian Tax Office is increasing compliance requirements, the team is prepared to meet the market trend: it employs professionals with an economic degree, as well as a diverse experience in industry. Extractive industries and financial services are two sectors the team has deep knowledge and experience with. Over the past year, the team sees compliance continue to be the area to generate the most revenue. However, it is handling more advance pricing agreement (APA) and dispute settlement cases.

Anthony Seve heads **KPMG**'s transfer pricing team, comprising five partners and 42 fee earners. The team is highly industry specialised, especially in dealing with issues relating to financial services and energy/resources. In the meantime, KPMG maintains close connections with the tax authority, which combines with its sound field and technical knowledge to create unique and tailored solutions for different clients. The TP practice offers assistance on areas of compliance, future planning and risk management to international business activities.

The team is proud of its flexibility and its collaboration of resources within the firm in dealing with cases that require a particular specialty. Seve, for instance, has worked together with a partner in corporate tax to defend a client for a TP audit in front of the ATO. The ATO proposed a significant adjustment through a hybrid TP method challenging the client's internal transaction. The team has successfully convinced the tax office about the appropriateness beneath the transaction, and the client therefore avoided the significant penalties.

PwC's transfer pricing practice has upheld a reputation for its technical proficiency. Clients has made positive comments on its practice as "strong… very good at bringing about new ideas". The team has Asia Pacific TP leader **Pete Calleja** based in Sydney. Calleja, who has experience in over 30 countries for a number of large multinationals, has the know-how of implementing effective TP methodologies in cross-border transactions.

In Melbourne, managing partner **Helen Fazzino** has been building up her specialisation in TP since 1996, serving clients from a broad range of industries. She has extensive experience coordinating TP matters in the industrial and consumer production sector. Advance pricing agreement implementation is also a focus for her.

Besides traditional services in TP such as business transformation planning, compliance, documentation management and audit defence, PwC adds value to clients by closely tracking TP development from the tax office. Because the new co-operative compliance programme actively targets large and medium sized organisations, the team has helped clients to review their TP approaches and ensured they are in line with the updated rules.

Tier 2

Ashurst has been making efforts to gain market share in this TP advice with solid legal background to its team. The firm's TP practice has a differentiation from its accountancy competitors, as it is able to inject sophisticated legal analysis into TP cases. In the first half of 2013, the firm obtained a successful outcome for an Australian listed group in defence of a TP audit by the ATO. The case involved complex combinations of Australian tax and TP rules.

Peter McCullough, as the leader of the tax team, oversees the service line in TP. McCullough used to work in two Big 4 firms and brings along the experience to Ashurst. Senior consultant **Ian Fullerton** who joined the firm in 2012 has been involved in a number of TP cases by applying his specialty in international tax and financial matters. His capacity boosts the firm with a good portfolio in assisting clients from the financial industry with TP related matters. In addition, partners **Vivian Chang** and **Paul O'Donnell** have also worked on TP issues for the firm.

Baker & McKenzie's transfer pricing group is another popular alternative in the Australian market. Being a law firm, the practice has established a different model on TP by combining professional knowledge in law and economics Also thanks to its global network, the team is able to absorb that experience where necessary .

The TP team at Baker & McKenzie comprises two partners, including tax head **John Walker**. TP has been a principal area of practice for **Dixon Hearder**, especially in legal, compliance, risk management and documentation. Hearder's other specialty is in indirect tax, which adds value to the team's TP solution provision together with Walker's expertise in corporate tax.

In early 2013, Hearder, Walker and **Tom Brennan** assisted a large agricultural company on its intra-group debt management for a large takeover valued at US$ 969 million. The trio developed a TP pricing strategy for the client, making it comply with recent changed thin capitalisation and TP rules.

Tier 3

DLA Piper has good exposure in the market place for its transfer pricing practice. Tax partner-in-charge, **Jock McCormack**, has recognisable capability in TP granted by his extensive market experience in international tax advice. Senior associate, **Anshu Maharaj**, regularly supports McCormack for cross-border contentious matters involving TP.

Benefitting from DLA's international network, the firm is able to outsource talents from other hubs to further assist complicated TP issues. The firm also uses the local Big 4 offices to complement its services. In 2012, McCormack and Maharaj teamed-up to work together with KPMG and successfully settled a TP audit case for a client. The duo provided legal advice and drafted final settlement documents with the ATO.

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

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	Leitner & Leitner
3	Freshfields

Tax rates at a glance

(As of September 2013)

Corporate income tax	25%
Capital gains	0%
Branch tax	25%
Withholding tax (a)	
Dividends	0/25%
Interest	0%
Royalties	0/20%
Branch remittance tax	
Net operating losses (Years)	
Carryback	0
Carryforwards	unlimited

a) Qualifying payments to companies in the EU may be exempt under EU directives

It has been a demanding year for advisory firms in the Austrian tax market. While several advisers noted the embryonic signs of economic recovery, the financial crisis continued to make itself felt in other ways, in particular by the tax authority, which is working hard to maximize its revenue.

Transfer pricing has been at the very centre of the government's focus. With an initiative by the OECD on base erosion and profit shifting due to introduce tough measures in 2014, the Austrian authorities have already initiated a great deal of transfer pricing litigation. "There is a much stronger need of documentation in transfer pricing," said one adviser. "You have to be absolutely watertight. The authorities want money and have become very litigious to get it."

"We experience a much tougher match with the tax inspectors, they really challenge taxpayers these days," said another adviser. "This makes things more difficult because tax structures are more frequently challenged, so it is harder to come up with tax planning that is innovative and at the same time holds water. Our clients want to have maximum comfort and maximum compliance and maximum savings – lining up all three can be very difficult."

There have been several broader legislative changes designed to swell the flow of revenue into the Austrian coffers. One significant ruling, relating to capital markets, came into effect at the beginning of 2013. Previously, if a company or individual held portfolio shares for a period of longer than a year, they could sell them without incurring any capital gains tax. Now, they must pay 25% tax on their gains regardless of the holding period. A similar change came into effect regarding real estate. Whereas previously if property had been held for ten years or more then the owner would pay no tax, now, as one adviser put it, "you can hold it for a hundred years and sell it and you'd still owe tax".

Another revenue-generating ruling occurred in the context of Austria's R&D tax code. The jurisdiction has a generous 10% R&D cash premium in place, but the rules governing qualification for this have been made much stricter. Any company wishing to claim this R&D benefit must gain an opinion from Austria's national funding agency (FFG) for industrial R&D before they are can do so.

This ruling has had the side-effect of creating extra work for the country's accountancy firms. Following a positive verdict by the FFG, taxpayers have to have their R&D expenses certified in an audit. Previously it was only the tax authority that could do this, but now this power has been extended to accountancy firms.

This generates yet more work for the advisory firms. "There is more corporate income tax scrutiny from our tax authorities," said another adviser, "which changes the work we do in the sense that clients come to us with requests such as "let's review these structures within the current climate". What we've done before in good faith might now be seen as too aggressive, and we've seen several clients change their views on past structures."

Tier 1

Deloitte Austria's Transfer Pricing practice comprises 12 dedicated professionals, including specialists from Germany, Russia, Luxembourg and the Czech Republic, providing a pan-European perspective. They also offer an specialist experience of a range of industries, with different fee earners having worked in the automotive, manufacturing, food and beverages, computer, pharmaceutical and financial services industries.

The head of the department is **Andrea Lahodny**, who takes responsibility for transfer pricing documentation projects, benchmark analysis and tax audit defences, as well as APA, competent authorities and arbitration procedures. A second key partner is **Gabriele Holzinger**, who has defended multinational enterprises in transfer pricing audits and is extensively involved in providing planning and documentation solutions to companies performing cross-border transactions. She also specialises in transfer pricing projects regarding intellectual property transfers.

A significant project for Holzinger over the past year involved supporting the development of an intergroup loan concept for an Austrian real estate development group with more than 700 subsidiaries in eight countries. Andrea Lahodny worked on the development of a documentation system for a banking group headquartered in Austria with subsidiaries in central and Eastern Europe, which was worth over $500,000.

One client of **EY** Austria's transfer pricing services said: "They've always been excellent, proactive, attentive, creative." The practice has a well-regarded transfer pricing team with a particular focus on tax effective supply chain management; it is particularly well known for its work on supply chain design business restructuring. The practice also offers documentation services, helping clients review, document, manage and defend their transfer pricing policies and processes, ensuring their strategy has substance and is aligned with broader business processes.

KPMG has a particularly strong tax practice in Austria and within it transfer pricing has grown rapidly in recent years. Two partners have expertise in the sector, **Sabine Bernegger** and **Barbara Pollster-Gruell**, although neither is devoted full-time to transfer pricing. Senior Associate **Werner Rosar** is focused entirely on transfer pricing and so generally oversees the smooth running of the practice's work in that sector.

KPMG Austria offers the full spectrum of transfer pricing services, including documentation, negotiating APAs, litigation, planning, and supply chain optimisation. For the more economic aspects of transfer pricing it cooperates closely with KPMG Austria's team of economists, which is situated within the firm's financial advisory division. A client praised the transfer pricing work as "absolutely fine, everything was managed perfectly".

In the past year, in the context of transfer pricing litigation, the practice represented a big international company during an arbitration procedure.

PwC "meet their global reputation, they are very efficient and effective," said one client employing

PwC's transfer pricing team and operating in the Austrian jurisdiction. The firm has a well-regarded transfer pricing practice in Austria, providing the whole spectrum of transfer pricing services.

Tier 2

Imke Gerde is the head and sole partner of **Baker & McKenzie**'s Austria practice, which is focused on international tax law and is not engaged with purely domestic Austrian tax work. Gerde's practice spans transfer pricing and general corporate tax, including a large bulk of international tax planning. Her role as vice chairman of the Austrian branch of STEP (the worldwide professional association for practitioners dealing with family inheritance and succession planning) also gives the practice some expertise in wealth management. Gerde has particular familiarity with the luxury goods, IP, dot com, and automotive industries.

Over the past year Gerde tackled a diversity of international tax work. In transfer pricing disputes, she successfully closed down two cases in which the tax authorities claimed for large quantities of additional tax by negotiating a much lower figure. In one instance, this resulted in a reduction from a tax claim of €8 million ($10.5 million) to a tax payment of €1.5 million.

Baker & McKenzie's Austria practice also does a lot of transfer pricing planning. This includes supply chain restructuring, for example restructuring a US multinational's supply chain and implementing an IP structure in a total overhaul of the firm's European distribution structure. One client who had worked with Gerde in this context praised her "exquisite knowledge" which is "always absolutely up to date."

Leitner and Leitner are one of the few law firms in Austria with broad transfer pricing capabilities, alongside specific partners with expertise in the sector. **Clemens Nowotny** and **Manfred Wänke** both focus on transfer pricing; Nowotny leads transfer pricing work in the firm, while Wänke is a certified auditor and tax adviser with an educational background in economics.

In the last year, Wänke took the lead with regard to an important transfer pricing project for an energy business. He worked on calculating the transfer prices and also directed the documentation of these transfer prices. In a separate project in the pharmaceutical field, Wänke was the lead adviser in a project that generated the first ruling on transfer prices ever issued in Austria under the latest procedural regulations.

Tier 3

Freshfields in Austria has a small practice led by a single partner, **Michael Sedlaczek**, who has been with the firm for fourteen years. He focuses on corporate and M&A tax work and also has particular expertise in the financial institutions sector and in providing structured finance advice. The practice also engages in a reasonable amount of medium-sized business, family, and private client work. Alongside Sedlaczek, it consists of the principle consultant **Claus Staringer** and seven further associates. The principal associate, **Hans Jorgen Aigner**, left in the course of the last year to establish his own tax boutique; two new associates have been taken on.

Freshfields do a small amount of transfer pricing work in their Austrian offices. This focuses on tax law and implementation and does not include the more economic aspects of transfer pricing. It draws on Sedlaczek's expertise in financial institutions to provide advice on transfer pricing in relation to that sector. And it advises on the arm's-length principle, working with companies aiming to become more efficient by concentrating their functions within certain group entities. Such restructurings lead to the question of whether this concentration is being discharged at arm's-length, and the Freshfields tax practice looks into this, advising, negotiating, and, if it comes to it, dealing with litigation.

Baltic States

Tax authorities

Estonian Tax and Customs Board	Latvian Ministry of Finance	Lithuanian Ministry of Finance
Narva mnt 9j, 15176 Tallinn	1 Smilsu Street, Riga, LV-1919	Lukiskiu 2, 01512 Vilnius
Tel: +372 676 1002	**Tel:** +371 6709 5405	**Tel:** +370 5 239 0237
Fax: +372 676 2709	**Fax:** +371 6709 5410	**Fax:** +370 5 239 0102
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
	LAWIN

Until recently, Latvia had no established transfer pricing practice and the tax authorities are still relatively under-developed in this field. In the past few years, there have been a small number of court cases between the taxpayer and the authorities in relation to transfer pricing issues. Due to the increased number of transfer pricing investigations over the past year, the number of cases brought before the court is expected to increase.

Until relatively recently, the legislation of the Republic of Latvia did not establish the mandatory requirement to prepare transfer pricing documentation to justify compliance with the market prices. In July 2012, amendments were made to the Law On Taxes and Fees, introducing this requirement.

In Latvia, companies with a turnover exceeding LVL 1 million ($200,000) are now obliged to prepare transfer pricing documentation, however, there are no fines or penalties associated with this obligation. Since 2004, Lithuania has enforced the mandatory inclusion of transfer pricing documentation for companies earning over LTL 10 million.

Advanced pricing agreements (APA) are now available in Latvia, under a mutual agreement procedure between the taxpayer and the authority (SRS). This procedure is approved in the OECD guidelines. APAs are also now applicable in Lithuania. As of yet, taxpayers in Estonia are not able to apply for APAs.

The official authorities overseeing transfer pricing in the Baltics are "still developing" but they are much better than they have been in the past, explained one partner. The transfer pricing audits are becoming increasingly accurate as the authorities sophisticate.

Mantas Juozaitis, senior associate at the Baltics firm Motieka & Audzevičius noted that there has been a "constant increase in tax litigation over the past three years". Specifically, the Lithuanian tax authorities have become more and more aggressive in their stance towards tax issues. This has resulted in a good deal of uncertainty for clients operating within the jurisdiction. The establishment of a new Lithuanian parliament in 2012 means that advisers and clients alike await proposals from the government detailing a variety of planned tax measures.

Tax avoidance measures are to be introduced in Lithuania. One adviser predicted that the outcome of these changes will be "much more complexity", necessitating the use of more complex forecasting methodologies such as financial modelling. This is likely to result in more instability, a situation which is bad for both taxpayers and their advisers in Lithuania.

At the start of 2013 a new holdings company regime was put into place in Latvia. Because this regime promises the possibility of companies paying no corporation tax for a number of years, the jurisdiction is becoming increasingly attractive to foreign investors. Jānis Taukačs, partner at Sorainen, explained that, as a result of these tax regime changes, his clients were in a state of relative security. Most decisions regarding tax in this region have been made in Latvia so it is likely that the tax environment will continue to stabilise. This stability in Latvia is underpinned by some of the strongest economic growth in Europe.

Tier 1

The **Deloitte** practices in the Baltic States perform a full range of transfer pricing services. All of the transfer pricing team comes from an economic background making them particularly proficient in this area. The firm benefits from having offices in all three Baltic states.

Ivo Vanasun, the Deloitte Estonia tax manager, is one of five people officially nominated by the Estonian Minister of Finance, as an independent and competent person who will form a transfer pricing advisory commission to hear disputes between EU Member States.

Another notable adviser at the practice is **Janina Landisa**, a Deloitte Latvia senior tax consultant, who regularly lectures on a variety of transfer pricing issues. These lectures benefit clients, as Deloitte cooperates closely with the Latvian Tax Authorities who are invited to present their views on transfer pricing issues.

The practices recently worked on deals involving the preparation of statutory transfer pricing documentation, assisting a client in the course of a transfer pricing audit and the preparation of a pan-European transfer pricing policy.

The firm is particularly experienced in work for the financial services industry and insurance.

Deloitte tax advisers are also involved with work for non-governmental organisations. This includes membership of the Estonian Service Industry Association, Foreign Investors Council in Latvia, the Latvian Chamber of Commerce and Investors Forum in Lithuania, and actively participates in the development of fiscal policy in the Baltic States.

The tax practice at **EY** in the Czech Republic offers a broad range of tax services. The practice is subdivided into specialist teams, each focused on one specific area of tax. Some of the areas covered by the practice include, among others, cross border tax, human capital, personal taxes, tax performance advisory, tax policy and controversy, transaction taxes, and transfer pricing.

The transfer pricing team offers the full suite of services including planning, documentation, contro-

Estonia: Tax rates at a glance

(As of September 2013)

Corporate income tax	21% (a)
Capital gains	0% (b)
Branch tax	21%
Withholding tax	
Dividends	0%
Interest	0% to 21% (c)
Royalties from patents and licences	0% to 10% (d)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	Unrestricted
Carryforwards	Unrestricted

a) Only distributions are subject to tax, retained earnings are not taxable.
b) There is no corporate income tax on capital gains unless profits are distributed, at which point a rate of 21% applies
c) Interest is exempt from withholding tax unless interest is paid to a non resident company and exceeds the market interest rate. In such cases, interest is subject to tax at a rate of 21% on the difference between interest rate charged and the market rate.
d) A rate of 10% withholding tax applies unless reduced under an applicable tax treaty

Latvia: Tax rates at a glance

(As of September 2013)

Corporate income tax	15%
Capital gains	15%
Branch tax	15%
Withholding tax	
Dividends	0% to 15% (a)
Interest	5% to 10% (b)
Royalties from patents and licences	5% to 15% (c)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	Not allowable
Carryforwards	Unrestricted

a) Dividends paid by a Latvian resident to a non-resident company established in a jurisdiction with low or no taxes are taxable at a rate of 15% withholding tax. Otherwise, no withholding tax is paid.

b) The rate of 10% applies to interest paid to a non resident company, 5% is applied if interest is paid by a commercial bank to a non resident company. Rates may be reduced under a tax treaty.

c) The rate varies from 5% to 15% withholding tax on royalty payments made to a non resident company depending on the type of royalty

Lithuania: Tax rates at a glance

(As of September 2013)

Corporate income tax	15%
Capital gains	15%
Branch tax	15%
Withholding tax	
Dividends	0% to 15% (a)
Interest	0% to 10% (b)
Royalties from patents and licences	0% to 10% (c)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	Not allowable
Carryforwards	Unrestricted

a) The rate is set at 15% unless the participation exemption applies. Under this 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

b) No withholding tax is applied to interest paid to a company resident in an EEA country, or in a country that has a tax treaty with Lithuania. Otherwise, a 10% rate applies.

c) A rate of 10% applied unless the rate is reduced under a treaty, or an exemption applies under the EU interest and royalties directive

versy and risk management, tax effective supply chain management, transfer pricing in financial services, and transfer pricing and customs.

The practice is a member of the global EY firm that possesses a network of approximately 28,000 professionals in more than 120 countries worldwide. The tax practice therefore benefits from this international presence and knowledge, especially when working in an international context.

The practice offers regular client events in the form of seminars and workshops, with the aim of clarifying the finer points of the Czech transfer pricing system and any changes therein, as and when they occur.

The transfer pricing team at **KPMG** in the Baltics offers a full range of transfer pricing services including documentation, economic analyses, implementation of service fee systems, tax efficient intra-group pricing policies, intra-group agreements and transfer pricing audits.

The practice in the Baltics is part of the global KPMG professional services firm. The firm operates in 156 countries – an extensive international resource beneficial to the Baltics firm, especially when working on international tax matters.

The practice draws from KPMG's global resource pool and can deploy experienced local and foreign financial, legal, business, performance, IT and other advisors to offer tailor-made sessions to their clients.

The transfer pricing practice of **PwC** in the Czech Republic is headed by **David Borkovec** and consists of a specialised team of tax professionals with expertise in both national and international tax law. Combined with this, these individuals also possess specific industry experience and are able to provide risk processing and benchmarking analyses enabling the determination of the prices for services and goods at arm's length.

In 2013, **Sorainen** of Latvia in the Baltics received the "Baltic States Transfer Pricing Firm of the Year" award at the International Tax Review European Tax Awards. The firm is a member of various international networks including the WTS Alliance (tax network) and TPA Global (transfer pricing).The firm also benefits from informal relations developed through **Jānis Taukačs**, the regional head of the Sorainen tax and customs team, who attends the International Fiscal Association conference once a year as the only representative from Latvia.

Taukačs also boasts the role of deputy chairman of the Tax Committee at the Latvian Bar Association. In February 2013, the firm was joined by **Ilze Berga**, ex-head of the transfer pricing consulting practice at PwC.

Taukačs, was commended by a client for his "recognised expertise and knowledge", compounded by "publishing regularly and working with the government on various acts". Another adviser commended by a client for "good, high quality service" was **Rokas Daugėla**, tax associate at the practice.

The firm offers the full range of legal and tax services related to transfer pricing design, implementation, and risk management.

Sorainen recently advised Stockmann, a Nordic retail business operating department stores, on their transfer pricing documentation, advising that they redraft it to comply with Estonian regulation. Sorainen's knowledge of the Baltic States was exemplary in this case, transfer pricing being a key area that the Estonian authorities have begun to aggressively investigate.

Tier 2

In January 2013, **VARUL** reopened an office in Latvia following a merger with the local firm BDO Zelmenis & Liberte, established by **Janis Zelmenis** and **Vita Liberte** – both of whom previously worked for Deloitte. VARUL now spans the whole of the Baltics with offices in all three of the Baltic States and, following the merger, the firm employs a total of 86 attorneys and lawyers.

The transfer pricing team across all three of the Baltic States consists of six partners and four other professionals. The practice offers a full range of transfer pricing services including the economic aspects – a capacity bolstered by the presence of economists in the team.

Liberte recently led a transfer pricing project involving Arcers, one of the leading construction companies in the Latvian market. The work involved consultation for Arcers on their tax obligations concerning a new project in Belgium, including transfer pricing and PE taxation. Success in this matter was essential for Arcers, because the value of their activity was worth several million Euros – potential tax exposure in this case was $3 million.

The practice also analysed the transfer prices for a number of clients to ensure their compliance with the local rules.

Tier 3

Borenius has offices in all three of the Baltics States and is therefore able to provide seamless tax advice for the entire region. Each of the offices is populated by one partner and four or five other tax professionals.

The practice offers some transfer pricing services; predominantly documentation and compliance work. Their clients will have often already completed their own benchmark analyses. As such, this is not a service they specialise in, but with aid from their Finnish colleagues, they can offer it to their clients.

The practice is experienced in working with clients from the energy industry. The practice also deals regularly with clients from the pharmaceutical industry.

The **LAWIN** tax team represents major international and domestic banks, investment firms, insurance companies and other financial institutions in the region. The team has assisted with the introduction of some complex and innovative financial instruments in the region.

The tax team works seamlessly with the other practice areas of the firm which include corporate, mergers and acquisitions; finance; industry and regulatory; real estate; and dispute resolution.

The tax team offer transfer pricing services such as litigation and compliance.

Belgium

Tax authorities

Service Public Fédéral Finances
North Galaxy, boulevard du Roi Albert II 33, B - 1030 Bruxelles
Tel: +32 2 576 2111 **Website:** www.fiscus.fgov.be

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	Loyens & Loeff
	Mayer Brown

Tax rates at a glance

(As of July 2013)

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*

Belgium is known as a country that rigorously follows OECD guidelines, and so it is not surprising to see that they have bolstered their tax authority in response to the increased international pressure on planning and emphasis on substance.

"The number of inspectors doing transfer pricing audits has doubled, and the number of transfer pricing audits in Belgium has really exploded," said Dirk van Stappen, head of transfer pricing at KPMG. "That has of course increased the interest of taxpayers in transfer pricing topics, because a huge number of companies have faced transfer pricing audits in Belgium."

This increased focus on the part of the tax authorities is seen in tangible changes they have made to their forces. They have a special fraud squad of around 275 individuals, and increased the number "by 20% or 25%" according to one adviser.

The increased vigour of the tax authorities has made some companies a little twitchier, according to advisers.

"The degree of uncertainty has increased. More firms are keen to get agreements in advance with the authorities to avoid being on the front page of newspapers," said one. "There is a much higher need to be compliant."

All this has meant that the audit firms, especially, have expanded their transfer pricing teams to cope with the swelling demand, while a number of law firms stated their intention to do so in the very near future.

On the other hand, some forms of international tax planning that would once have made up a significant chunk of advisory firms' deal flows have become near-impossible. "You simply cannot do the tax planning that was common even two years ago," said Astrid Pieron of Mayer Brown. "We have a government that is determined to tackle aggressive tax planning."

Transfer pricing in Belgium is busier than ever but it is also shape-shifting rapidly. Advisers are moving away from a heavy focus on complex tax planning and supply chain optimisation, and towards a strategy that incorporates a much greater focus on controlling risk and reputational issues.

Tier 1

Deloitte's transfer pricing practice draws on its strong international network and global reservoirs of data to position itself as one of the strongest transfer pricing teams in Belgium. It is led by **Patrick Cauwenbergh**, an expert in transfer pricing and business model optimisation (BMO) as well as a professor at Antwerp University. Cauwenbergh is assisted by two other partners who bring economics expertise to the head of the practice:**André Schaffers**, a reputed economist and leader of Deloitte Belgium's T&L EMEA transfer pricing economists network; and **Jeroen Lemmens**, an economist and lawyer with years of in-house experience in industry. These three partners oversee a team of 20 fee earners.

Deloitte, consequently, has both depth and breadth in transfer pricing expertise in Belgium. This encompasses supply chain optimisation, economics, indirect tax and law, enabling the practice to advise on multiple themes: BMO, debt, pricing, intellectual property valuation and structuring, transfer pricing implementation, mutual agreement procedures and arbitration, and negotiation of unilateral, bilateral and multilateral APAs.

An example of the practice's work from 2012, a project worth $3 billion, involved an all-round transfer pricing servicing in relation to refinancing, cash pooling, and a central entrepreneur ruling. This included assessments of synergies in an Excess Profit Ruling Context; the negotiation of a central entrepreneur ruling with the Belgian tax administration; the establishment of transfer pricing defence and APA negotiation for a cash pooling system involving more than 30 countries; and in-depth analysis of conditions applicable to the core refinancing of European operations through a large mezzanine refinancing including hybrid instruments.

EY have had a strong couple of years in the Belgian jurisdiction in terms of transfer pricing, making up for what was perceived by some advisers as a weak link within the practice. "EY was lagging behind but I believe they have managed recently to catch up," said one peer about the practice's transfer pricing team. The practice has a particular focus on tax effective supply chain management, and also offers documentation services and undertakes the full spectrum of transfer pricing work.

KPMG Belgium has eleven full-time professionals devoted to transfer pricing. This team is led by **Dirk van Stappen**, who has been participating as a private sector member of the EU Joint Transfer Pricing Forum since its establishment in 2002. Broadly, the practice covers five areas of transfer pricing work.

Firstly, it prepares transfer pricing documentation for clients, ensuring that multinationals are complying with the rules in each jurisdiction. Secondly, it works on planning, helping multinationals design tax efficient supply chain structures while taking into account issues of substance. This often involves creating a structure in which the principal entity is located in a tax efficient country.

Thirdly, the firm assists clients in resolving tax disputes, especially in Europe where tax authorities are stepping up the rate at which they audit taxpayers. This also involves dealing with the threat of double taxation within the EU, making use of international instruments such as the European Arbitration Convention.

Fourthly, it negotiates APAs (advance pricing agreements) with tax authorities in jurisdictions around the world, gaining certainty for clients that their business structures will be accepted. During 2012 and 2013 KPMG negotiated a number of both bilateral and multilateral APAs. Finally, the firm also utilised market-leading software to work in relation to operational transfer prices.

PwC's transfer pricing practice was frequently mentioned by advisers as equal to the other big four practices in the Belgian jurisdiction. It offers the full spectrum of transfer pricing services, and was especially quick off the mark in responding to the observed upsurge of audit activity by the Belgian government. It encouraged and assisted its clients to be proactive in assessing how well prepared they were for the sudden advent of an audit. "It's difficult to say because we haven't had the tax audits yet," said one client of these services. "But they are very efficient and proactive."

Tier 2

Baker & McKenzie have one partner, **Géry Bombeke**, and one associate, **Matthias Doornaert**, focused on transfer pricing work in Belgium. More complex transfer pricing projects invariably involve these two practitioners working alongside the firm's Amsterdam office, which has a team of economists. With their assistance, Bombeke is able to offer Belgian firms and multinationals a full range of transfer pricing services: planning, supply chain remodeling, documentation, APA negotiation, litigation, and so on. Much of the advising and litigation work can be done by the Belgian team alone; the Amsterdam economists then come into help with benchmarking and certain aspects of documentation.

In the past year, Bombeke has negotiated a couple of significant rulings with the Belgian tax authorities. He successfully obtained a bi lateral advance pricing agreement between Belgium and Switzerland for a US multinational with a principal structure in Switzerland and a commissioner in Belgium. This was one of the first APAs concluded between Belgium and Switzerland. Another negotiation resulted in an excess profit ruling for a listed US multinational with a principal company in Belgium, which enabled the firm to reduce their effective tax rate sufficiently to enable Belgium to remain a palatable principal company location for the client.

Finally, the firm also works in close collaboration with the business consultancy Delaware, who have developed a unique cross-charge transfer pricing assessment model, enabling clients to assess with great accuracy the consequences of implementing such a model.

The new head of **Loyens & Loeff**'s tax practice, **Enrico Schoonevilt**, reports a "booming year" in transfer pricing, citing it as the firm's most dynamic sector. Accordingly, in July, the lead lawyer in transfer pricing work, **Natalie Reypens**, was promoted to the position of partner. Working alongside her are three attorneys-at-law. Together they cover a range of transfer pricing work unusual for a law firm, including documentation, planning, negotiations with tax authorities and dispute resolutions.

One high-profile client in 2012 was Heinz. Reypens advised them on the Belgian tax implications of a restructuring of its European business model, focusing in particular on the transfer pricing aspects of the conversion itself as well as on the future transfer pricing policy of the new business model.

In another deal, worth $8.1 million, Reypens led a project assisting Altana – a German based group in the chemical sector – with the Belgian tax implications of the acquisition of a Belgian production plant. This included an assessment of permanent establishment issues and the tax implications of outsourcing. Such work, orientated around the details of Belgian international tax law, is typical of the practice's caseload.

Astrid Pieron leads transfer pricing work at **Mayer Brown**, and her strong reputation is attested to by her membership of the European Joint Transfer Pricing Forum. Through 2012, she drew on plentiful experience in disputes to handle a rapidly growing number of transfer pricing litigation cases. Authorities have increasingly utilised transfer pricing audits to raise much-needed revenue, requiring Pieron's clients to take steps to protect themselves against large assessments. Some of this work has come at very short notice, and required a prompt response from Pieron and, often, **Charles Albert-Helleputte**, a VAT specialist and the other key member of Mayer Brown's team in Brussels.

In one such instance, Pierron and Albert-Helleputte put together an in-depth review of existing intercompany flows for a division of a multinational group with operations in France, before helping the firm implement an EUTPD (European Union Tobacco Product Directive) compliant framework. They also helped another large European group, with presence in France, Belgium, Ireland, Luxembourg and Switzerland, to re-assess their transfer pricing strategy. Another project necessitated collaboration with Mayer Brown's tax practice in France. This involved assisting a Moroccan-based credit institution with significant presence in Europe to structure its operations, including dealing with the arm's-length nature of specific intra-group support services and the allocation of profits within the institution's head office and its permanent establishments.

Brazil

Tax authorities

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LEADING FIRMS

1	Castro, Barros, Sobral Gomes
	Deloitte
	KPMG
	Lilla, Huck, Otranto, Camargo Advogados
	Rolim, Viotti e Leite Campos Advogados
	Siqueira Castro Advogados
	Trench, Rossi e Watanabe
	PwC
2	EY Terco
	CFA Advogados
	Felsberg e Associados
	Machado Associados – Advogados e Consultores
	Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados
3	Barbosa, Müssnich & Aragão – Taxand

Brazil's transfer pricing professionals agree that controversy grew last year, but differ on what this means for their firms, or for transfer pricing, in the long run.

Transfer pricing expanded in Brazil last year even as the economy cooled. Tax receipts shrank, but the Brazilian government's appetite for revenue did not.

The government remains opposed to the OECD's transfer pricing guidelines, however. Intercompany transactions are still priced according to statutory profit margins rather than market prices, which maximises tax revenue regardless of economic conditions.

Some transfer pricing professionals believe OECD convergence will come with time. "Transfer pricing rules were established in Brazil, in 1996, say, 15 years ago," said Henrique Munia e Erbolato, of CFA Advogados. "The structure of our IRS is not as advanced as those of the US or Europe in evaluating transfer pricing rules," he said.

Others see Brazil as something of a trailblazer. Clarissa Machado, of Trench, Rossi e Watanabe, said that within the OECD countries, there is a trend of more countries "having to apply statutory margins as we have in Brazil, because the rules have become so complex".

What is beyond dispute is that Brazil's tax authority is getting better at handling transfer pricing. "Tax authorities are getting more sophisticated and better equipped to identify transactions and challenge them," said Gustavo Haddad, of Lefosse Advogados.

"The consulting side of a tax practice must be more deeply involved not only in planning but in executing transactions," he added.

Cristiano Viotti, of Rolim, Viotti & Leite Campos Advogados, agreed, adding that Brazil's tax authority is "maturing," and "is beginning to forego strict interpretation in favour of a more intuitive approach".

Paulo Bento, of Barbosa, Müssnich & Aragão – Taxand, agreed, pointing out that Brazil recently amended its transfer pricing laws to correct some distortions. He believes that "the transfer pricing environment will begin to favour the taxpayer". "I would say the government is finally accepting many things that should have been accepted before. They are moving in the right direction," he said.

Tax rates at a glance

(As of September 2013)

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 in excess of BRL240,000 per 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

Tier 1

Andre Gomes de Oliveira leads **Castro, Barros, Sobral, Gomes**' transfer pricing group, which specialises in sophisticated transfer pricing planning and business model optimisation for multinational companies. During the past year, the firm structured the management fees and royalty contract for a US marketing company with operations in Brazil, and advised a global agricultural exporter on selecting a jurisdiction for a trading subsidiary in Latin America.

Deloitte is a full-service transfer pricing practice that focuses on compliance and advisory services. Over the past year, the practice has experienced double-digit growth, in terms of both headcount and revenue. Deloitte is widely recognised by peers for its excellence in transfer pricing. The practice is led by **Carlos Ayub**, who is also head of tax.

The transfer pricing practice of **Lilla, Huck, Otranto, Camargo Advogados** focuses on assisting domestic and foreign companies in complying with Brazil's transfer pricing rules on imports and exports. The practice is led by **Mauricio de Carvalho Silveira Bueno**, who is also head of tax and a member of the firm's litigation team. The practice also comprises **Joao Paulo de Seixas Maia Krepel** and **Isabel Garcia Calich de Fonseca**.

Lilla Huck is advising a portfolio management company on organising its activities regarding intra-group transactions. This required the practice to analyse all of the client's intra-group transactions regarding the rendering of services to make sure they complied with Brazil's transfer pricing rules, particularly with respect to the export of services, to avoid the country's PIS/COFINS social welfare taxes and municipal tax.

The practice is also advising an international shipping company on the complete restructuring of its Brazilian activities, for the purpose of enhancing logistics and efficiency. This has required Lilla Huck to analyse several companies scattered across Brazil and abroad, and to restructure the new activities between the Brazilian companies and their overseas parent companies while complying with federal and state tax law, with special attention paid to transfer pricing rules.

Led by Marienne Coutinho and Eliete Ribiero, **KPMG**'s transfer pricing practice specialises in planning, advisory and documentation services for international companies latest transfer pricing rules, which were implemented earlier this year. Coutinho, who is also head of international tax, has spent 18 years at KPMG, where she has also worked at the firm's Customs Group in New York. Ribeiro 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.

Rolim, Viotti e Leite Campos Advogados' 12 transfer pricing partners focus primarily on compliance issues, as well as planning and controversy. The leader of the transfer pricing practice, **Joao Dacio Rolim**, is a transfer pricing expert who has written extensively on the subject, including the chapter on Brazil in a popular book on resolving transfer pricing disputes published by the London School of Economics and Cambridge University Press. Clients include global corporations that are market leaders. In the last year, the firm advised a well-known US information management services company on compliance with Brazilian transfer pricing rules. It also prepared a study on a tax-efficient trade structure for the export operations between Brazilian and Uruguayan subsidiaries of a leading French company in the energy sector.

Led by **Richard Dotoli**, **Siqueira Castro Advogados**' transfer pricing practice focuses on transfer pricing planning for large domestic and foreign multinational corporations. Since late 2012, it has focused on providing advice to local subsidiaries of foreign corporations on the application and the impact of the changes to Brazil's transfer pricing laws that were implemented in January 2013. Also known for its strong controversy practice, Siqueira Castro defends clients in audits, appeals and litigation related to transfer pricing. The controversy team also has experience in negotiating cross-border pricing agreements, particularly with Argentina and Switzerland. Clients represent a broad cross-section of business segments, and include oil and gas, health care and automobile companies, and banks.

The transfer pricing practice of **Trench, Rossi e Watanabe** 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** heads the practice, which comprises five partners and eight fee earners. Clients include large Brazilian companies such as Braskem and foreign multinationals including Eaton and Adidas.

In May, Trench, Rossi e Watanabe completed a very complex and detailed analysis for a global client of the application of the new transfer pricing rules on intercompany loans and export finance. The analysis required the firm to interpret the new transfer pricing rules that the Brazilian government implemented earlier this year, and to measure the risks for each adopted interpretation.

The firm is also representing the same client in a lawsuit filed in 2004, challenging the calculation of the resale price method under the transfer pricing rules enacted in 2002. This calculation results in a significantly higher tax burden than the calculation under the 1996 transfer pricing rules.

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.

Tier 2

EY Terco's rapidly expanding transfer pricing practice serves a client base that includes some of the largest companies involved in the exploration, extraction and export of the country's oil, natural gas and minerals. EY Terco also serves clients in the financial services, pharmaceutical and technology sectors. The practice comprises two partners and 46 other transfer pricing professionals. The practice leader, **Werner Stuffer**, focuses on compliance issues, while Marco Oliveira, who leads the practice in Rio de Janeiro, has significant expertise in documentation and planning. EY Terco is also strong in transfer pricing controversy, and is aligned with law firms that can litigate on behalf of clients.

CFA Advogados advises foreign clients on planning and compliance matters related to Brazil's transfer pricing rules, with special attention paid to new rules implemented in 2012 on safe harbours and deductible interest rates. The practice, which is led by **Henrique Munia e Erbolato**, also handles transfer pricing controversy, at both the administrative and the judicial levels. In recent months, Erbolato has advised clients on transfer pricing methods that comply with the revised safe harbour rules for imports and exports. He also conducted a compliance review of a client's transfer pricing position in relation to Brazil, in order to ensure that both Brazilian and OECD transfer pricing rules were followed.

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, taking over from **Antonio Amendola**, who left to join Dias Carneiro Advogados in July 2013. In recent litigation, Felsberg successfully defended a global engineering company with a substantial presence in Brazil in a dispute involving the company's credit and certain long-term operations.

The transfer pricing practice of **Machado Associados – Advogados e Consultores** provides advice on transfer pricing planning, calculation and litigation to domestic and international corporations of every size. Lead by **Luis Rogerio Farinelli**, the practice comprises three partners and four fee earners. Its newest associate, **Pedro Leonardo Stein Messetti**, joined the practice from Deloitte Touche Tohmatsu in July 2012. The firm represents companies from a variety of business sectors, including oil and natural gas, chemicals, pharmaceuticals, electronics, automotive and food.

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, with pricing calculation performed by an accounting firm. Clients include the local subsidiaries of Dow Chemical and Fujifilm and STMicroelectronics. Its highly respected controversy team is defending a number of local subsidiaries of foreign multinationals against assessments levied by the tax authorities. In April, it successfully defended Camargo Correa, one of Brazil's biggest conglomerates, against a charge of illegal distribution of disguised profits.

Tier 3

Barbosa, Müssnich & Aragão – Taxand is a transfer pricing boutique specialising in transfer pricing policy and planning for multinational corporations. The practice is led by **Paulo Marcelo Bento**, who joined the firm as head of tax in May 2012 from Souza Cescon, Barrieu & Flesch, where he was a partner for six years. 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 clients of international law firms on a regular basis, regarding transfer pricing planning for their Brazilian subsidiaries.

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Our team of recognized specialists partners with corporations of different sizes operating across various industries which are subject to the Brazilian Transfer Pricing rules. To assist your company complying, managing and planning its intercompany pricing policies Deloitte offers a variety of solutions, including:

- A diagnosis of the company's transfer pricing readiness;
- Support preparing enquiries and requests to tax authorities;
- Use of a proprietary enabling-technology – TPS® – developed by Deloitte to determine the tax effects of transfer pricing operations;
- Licensing of TPS® to our clients so that they can calculate and manage transfer prices;
- Review of transfer pricing studies prepared by the companies for potential tax optimization or contingencies;
- Solutions to extract information necessary to calculate transfer prices from the company's database;
- Training company's professionals responsible for managing transfer prices;
- Support in tax inspection processes and assistance in defense proceedings at the administrative level.

KPMG

cutting through complexity

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Profile

KPMG is a global network of professional firms providing Audit, Tax and Advisory services. We operate in 156 countries and have 152,000 people working in member firms around the world. In Brazil, approximately 4.000 professionals working in 20 cities located in 11 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.

Bulgaria

Tax authorities

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LEADING FIRMS

1
- Deloitte
- EY
- KPMG
- PwC

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

3
- Tax and Financial Solutions

Tax rates at a glance

(As of 2013)

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 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*

Transfer pricing in Bulgaria is rudimentary in relation to the rest of Europe. The transfer pricing authorities do not have access to any databases so it is still troublesome for them to check whether prices are correct. Advisers have noted that this state of affairs is set to change with authorities making a concerted effort to sophisticate their methodology.

The Bulgarian Corporate Income Tax Act stipulates that the arm's-length principle must be observed and determines cases where the prices are deemed not to comply with the principle.

Bulgarian legislation requires taxpayers to hold documentation containing evidence that its relations with associated parties are in line with the arm's-length principle. However, there is presently no requirement to file this documentation as a matter of course with the revenue authorities.

Advance pricing agreements (APA) are still unavailable for taxpayers. However, PwC Bulgaria clarified that "it is possible to obtain a written opinion from the revenue authorities on a case-by-case basis" – these are not binding but can provide some protection from assessment.

One adviser said clients are yet to show any great interest in the area of transfer pricing. The authorities are still in the process of devising transfer pricing methodology for the jurisdiction and it is likely, once this has been completed, that clients will begin to engage with transfer pricing more regularly.

Bulgaria remains a relatively favourable tax jurisdiction for business. It currently has some of the lowest tax rates in the world with corporate and personal tax rates of 10%. VAT is set at 20% with a reduced rate of 9% applying to hotel accommodation services. The courts process is also relatively short with a high court decision taking approximately only about three years.

However, the tax authorities themselves complicate the stability of the tax environment as they are "unsophisticated", explained Delchev, and it can sometimes feel like one is "talking to a wall" when dealing with them.

The authorities have also become slightly more aggressive. A number of advisers noted that the amount of tax litigation has increased, something resulting from the occasionally spurious approach of the tax authorities with regards to their tax assessments.

Pavlov Gentscho, of Pavlov & Partners complained that a lack of sophistication in the Bulgarian tax authorities means that some audits can take up to six months. Because the sum of the tax in contention is unavailable to the taxpayer during these six months; this will cause liquidity problems for the taxpayer involved.

Tier 1

The transfer pricing team at **Deloitte** offers a full range of services. They recently performed a number of transfer pricing studies for clients, with a cumulative value of $9 million. In addition, because the OECD principles of transfer pricing apply in Bulgaria, Deloitte produce documentation for their clients to comply with these.

The client portfolio of the practice is formidable, and includes: two of the three leading telecommunications operators in Bulgaria; one of the biggest energy and resources projects in Bulgaria; three of the big shopping mall operators in the capital Sofia; leading financial institutions and leading multinational pharmaceutical companies.

The transfer pricing team at **EY** Bulgaria consists of one partner and four other fee earners. They are capable of offering the complete range of transfer pricing services. Although they do not perform benchmark analyses in-house, they are able to utilise the global EY network to do this for their clients.

One client explained that, having had experience of other Big 4 firms, EY is "quicker and more efficient" and therefore his tax firm of choice for all tax issues including transfer pricing.

Over the past year, the team provided mainly transfer pricing documentation services to a number of the local subsidiaries of big multinational enterprises from a variety of industries, for example, retail, pharmaceutical, and manufacturing.

EY regularly holds events for its clients and many of these recently have had a transfer pricing focus.

EY is one of the few tax firms actively participating in the committees of American Chamber of Commerce in Bulgaria; German – Bulgarian Chamber of Commerce and Hellenic Business Council in Bulgaria; as well as the Confederation of Employers and Entrepreneurs. Through active participation in these forums, EY has a leading role in an ongoing initiative for requesting a tax reform by local and foreign investors in Bulgaria.

The transfer pricing team at **KPMG** Bulgaria offers a full range of transfer pricing services including documentation, economic analyses, implementation of service fee systems, tax efficient intra-group pricing policies, intra-group agreements, transfer pricing audits, and transfer pricing seminars.

The transfer pricing team is led by tax partner, **Kalin Hadjidimov**. Hadjidimov has been with KPMG since 1996 and became partner in October 2006.

The practice in Bulgaria is part of the global KPMG professional services firm. The firm operates in 156 countries – an extensive international resource beneficial especially when working on international tax matters.

The practice also offers tax seminars to their clients to offer them the opportunity to expand and further their knowledge of key areas. The practice draws from KPMG's global resource pool and can deploy experienced local and foreign financial, legal, business, performance, IT and other advisers to offer tailor-made sessions to their clients.

The tax practice at **PwC** Bulgaria, led by tax partner, **Paul Tobin**, consists of two partners and 20 other tax professionals. Because the practice is relatively small in reflection of the Bulgarian market, the team adopt a generalist approach to tax, in that all advisers are capable of acting on the majority of tax matters.

They do however; have specialists who perform transfer pricing work for their clients. They are able to perform benchmarking, produce documentation and prove market prices. The relatively underdeveloped nature of the transfer pricing department is reflective of the under developed state of the area in Bulgaria at large.

PwC Bulgaria works with PwC Assurance and attorneys-at-law from Tsvetkova, Bebov and Partners to devise, not simply tax solutions, but comprehensive business solutions for their clients.

Tier 2

Petya Atanasova is the head tax partner at **Baker Tilly** and oversees all the work with the aid of one other paid professional. Atanasova worked at Ernst & Young for a number of years before moving to Baker Tilly and, as such, is experienced in a very wide range of tax matters.

The Bulgarian tax practice is a member of the Baker Tilly Klitou group, an independent member of the English, Baker Tilly International. Baker Tilly Klitou has offices in Bulgaria, Romania, Cyprus, Moldova, and Serbia. In this context, the Bulgarian branch works very closely with the Baker Tilly in Cyprus and Romania.

The transfer pricing team at Baker Tilly recently worked on a number of deals where they were responsible for the preparation of the transfer pricing documentation. This aspect of transfer pricing is the area with which Baker Tilly is predominantly concerned . If their clients require a more holistic transfer pricing service including aspects such as benchmark analyses, the practice is able to consult with the Romanian branch of the firm.

The transfer pricing team at **Delchev and Partners** is led by partner **Veselina Petkova**, who is supported by two additional paid professionals.

The practice offers the full range of transfer pricing services. As it is a legal firm, there are no economists employed in house. If the clients need this aspect of transfer pricing done, the practice is able to tap into the WTS Alliance, an international tax firm network represented by firms in approximately 100 countries worldwide.

The practice has completed transfer pricing work for many large Bulgarian companies over the past year including BTL Industries AD, a global manufacturer of medical and aesthetic equipment, and HBO Bulgaria EOOD, the local entity distributor of HBO TV Channels. This work involved the preparation of transfer pricing documentation.

The transfer pricing team at **Grant Thornton Bulgaria** consists of one partner and four other dedicated tax professionals. The main service that the team performs is the preparation of transfer pricing documentation files which includes: business, functional, benchmarking, and economic analyses; characteristics of the transaction; and a cover letter on risks and opportunities.

Grant Thornton Bulgaria is a member firm of Grant Thornton International Ltd which has member firms in more than 100 countries worldwide.

The practice's client base is varied including companies from the production and services industries, as well as the financial services industry. The international pedigree of the practice is exemplified by a number of recent clients including Ixetic, a large German manufacturer, and LCWaikiki, a Turkish clothes company.

Pavlov & Partners in Bulgaria works in association with the law firm CMS Reich-Rohrwig Hainz that has a significant European presence. CMS, headed by tax partner, **Gentscho Pavlov**, consists of ten member firms and has 54 associated offices in 29 different tax jurisdictions throughout Europe. This network enables Pavlov & Partners to offer comprehensive cross-border tax support.

The transfer pricing team has access to all of the databases in Europe as a of their links to the other firms associated with CMS. This means they are able to offer the majority of services required presently in Bulgaria. Should clients require economic analyses completed, the practice will work with affiliated accountants; they do not offer this service in-house.

The Bulgarian tax practice boasts an impressive client portfolio including two IT companies listed in the New York stock exchange and number of significant companies from the defence sector. Other notable clients include Barclays, the multinational bank, and EVN, the prominent electricity supplier.

Tier 3

Tax and Financial Solutions is jointly led by **Plamen Grozdanov**, **Dimitrinka Spiridonova** and **Andreana Premyanova**. Each of these individuals is a professional tax adviser with extensive experience working for the tax authorities and / or Big 4 professional firms.

Spiridonova possesses a prodigious knowledge of transfer pricing; something developed in her previous employment for EY and Deloitte Bulgaria. She has been nominated by the national tax authorities and approved by the European Commission to act as one of the Arbiters of Bulgaria in the case of transfer pricing disputes between Bulgaria and third countries under the Arbitration convention.

Canada

An audit guide by Michael Friedman, Todd Miller, Mickey Yaksich, and Andrew Stirling of McMillan LLP.

Tax authorities

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Over the last several years, the Canadian federal tax authority, the Canada Revenue Agency (CRA), has become increasingly aggressive in auditing the affairs of multinational enterprises. In the face of growing fiscal deficits and increased demands for government spending, the CRA has devoted greater resources to reviewing international transactions that may be aimed at reducing Canadian taxes payable.

Recent Canadian legislative proposals have also imposed more extensive reporting obligations on Canadian taxpayers that enter into transactions with non-residents, and have extended the period in which such taxpayers may be reassessed if they fail to comply with such reporting requirements.

As a result of the increased scrutiny of international transactions by the Canadian government, it is critical that tax directors and their advisers properly manage Canadian transfer pricing audits.

Identification of audit targets

Any Canadian taxpayer that enters into a transaction involving a party with which it does not deal at arm's length may be at risk of being subject to a transfer pricing audit. While there is an element of chance inherent in whether a particular taxpayer will be selected for a Canadian transfer pricing audit, certain circumstances can increase the likelihood of a taxpayer being audited. Such circumstances include:

- The persistent reporting of losses over an extended period of time;
- The payment or receipt of material intra-group charges in respect of intangibles, services or guarantees;
- The receipt or provision of bundled supplies;
- Contract manufacturing arrangements;
- Business reorganisations and/or intellectual property migrations;
- Transactions involving parties resident in low tax jurisdictions;
- Reporting deficiencies/anomalies on CRA Form T106, *Information Return Of Non-Arm's Length Transactions With Non-Residents* (including indications that the taxpayer has not prepared contemporaneous documentation in respect of a cross-border transaction); and
- Changes to historically applied transfer pricing methodologies.

Contemporaneous documentation

The *Income Tax Act* (Canada) (the Tax Act) permits the CRA, in certain circumstances, to assess a special transfer pricing penalty, generally equal to 10% of the amount of any unfavourable annual net transfer pricing adjustment, if the unfavourable net adjustment exceeds a statutory safe harbour equal to the lesser of (i) C$5 million ($4.8 million), and (ii) 10% of the taxpayer's gross revenue. However, a transfer pricing penalty may not be applicable to the extent the taxpayer has "made reasonable efforts to determine arm's length transfer prices" in respect of the subject transactions. At a minimum, this requires the taxpayer to prepare contemporaneous documentation that contains a complete and accurate description of:

- The property or service to which the transactions at issue relate;
- The key terms and conditions of the relevant transactions and the relationship between the contracting parties;
- The functions performed, the property used, and the risks assumed by each party to the transactions at issue;
- The data and methods considered, and the analysis performed, to determine acceptable arm's length transfer prices; and
- The assumptions, strategies and policies that influenced the determination of the appropriate transfer prices.

For an indication of the types of contemporaneous documentation that the CRA frequently seeks to review, see the "Pacific Association of Tax Administrators (PATA) Transfer Pricing Documentation Package" available at http://www.cra-arc.gc.ca/tx/nnrsdnts/cmmn/trns/pt-eng.pdf.

Initiation of a transfer pricing audit

The CRA generally has broad authority under the Tax Act to inspect or examine the books, records and property of a taxpayer for any purpose related to the administration or enforcement of the Tax Act.

An audit is generally initiated by a written request by the CRA for documentation, including contemporaneous documentation as described above, in the form of a letter or audit query sheet. A copy of a typical initial CRA transfer pricing audit letter can be accessed at http://www.cra-arc.gc.ca/tx/nnrsdnts/cmmn/trns/tpm05-eng.html#AppendixA.

Upon receiving notice from the CRA that it is initiating a transfer pricing audit, a taxpayer should promptly compile all relevant documentation in its possession. In this regard, systems should be put in place to ensure that privileged documentation is not inadvertently disclosed to the CRA.

It is critically important that a taxpayer provide requested contemporaneous documentation to the CRA within three months after being served with a written request for such documentation. A taxpayer that fails to provide contemporaneous documentation to the CRA within three months after properly being served with a request for such documentation will be deemed not to have made reasonable efforts to determine arm's length transfer prices and may be subject to transfer pricing penalties.

The CRA may obtain information regarding a taxpayer's financial and transfer pricing practices from a variety of public sources, including public company filings and the taxpayer's website. In certain cases, the CRA may also use its audit powers to request information from third parties.

The audit

Taxpayers are generally free to carry on their business during a transfer pricing audit. However, some disruption to the activities of a taxpayer is inevitable where the auditor is reviewing documentation at the taxpayer's premises.

Generally, a single representative of the taxpayer should be designated as the individual to interact with the auditor and respond to any requests for additional documentation. It may also be advantageous to have a professional adviser present during an audit to respond to queries regarding the taxpayer's rights and obligations.

The length of time needed to complete an audit will depend on the particular facts and circumstances of the taxpayer. Generally, an auditor will commence an audit by reviewing certain base documentation and thereafter may attend at the premises of the taxpayer to review additional materials and/or seek to interview certain key personnel.

Subsequent to completing his/her initial factual review, an auditor will normally issue (i) a letter indicating that no adjustments are required, or (ii) a proposal letter setting out the auditor's initial views on proposed adjustments. Taxpayers are typically provided an opportunity to respond to a CRA proposal letter with a formal submission and/or additional information.

The exchange of proposal letters and responses can extend over a lengthy period of time and it is not uncommon for an audit to last for many months. The CRA will ultimately issue a final letter setting out its proposed transfer pricing adjustments, if any, which is thereafter followed by the issuance of formal federal (and provincial) Notices of Reassessment.

The CRA has an administrative policy requiring auditors to refer matters to the CRA's Transfer Pricing Review Committee (the TPRC) before seeking to levy transfer pricing penalties or issuing an assessment to recharacterise a transaction pursuant to paragraphs 247(2)(b) and (d) of the Tax Act. Taxpayers are generally entitled to make written submissions that will be reviewed by the TPRC in such circumstances. Under CRA policy, a taxpayer is also entitled to respond to an auditor's draft statement of facts before a referral report recommending a recharacterisation assessment is delivered to the TRPC.

Recommendations

Advance preparation for a Canadian transfer pricing audit is the key to potentially securing a successful outcome.

There are certain common errors that many taxpayers make when managing their transfer pricing affairs, including the following:

- Maintenance of insufficient/incomplete contemporaneous documentation;
- Inappropriate use of transfer pricing comparables/methodologies;
- Failure to update contemporaneous documentation;
- Failure to provide contemporaneous documentation within three months of a written request;
- Failure to appreciate jurisdictional differences;
- Failure to maintain agreements in writing;
- No inter-affiliate coordination/consistency;
- Compromise of legal privilege; and
- T106 reporting errors.

Audit risk and penalty exposure can be minimised with diligent record keeping and the maintenance of detailed contemporaneous documentation. Up-to-date and organised records enable a taxpayer to advance their strongest arguments at the outset of an audit, rather than having to disabuse an auditor of an opinion that has already been formed without the benefit of certain relevant documentation.

At the outset of an audit, the taxpayer should engage the CRA auditor in a discussion of the scope of the audit review, required information, and timelines. Open and candid communication with the CRA at the beginning of an audit minimises the risk of misunderstandings or adverse inferences being drawn and generally increases the efficiency of the audit review process.

In managing a transfer pricing audit, the taxpayer must also remain mindful of limitations to seeking relief under the Competent Authority provisions of an applicable treaty and must ensure that timely notifications are made, as required.

Ultimately, diligence in establishing comprehensive transfer pricing policies and practices will help to minimise Canadian transfer pricing audit risk.

LEADING FIRMS

1	Blake, Cassels & Graydon
	Deloitte
	EY
	Gowlings – Taxand
	KPMG Canada
	McCarthy Tetrault
	PwC
2	McMillan
3	Stikeman & Elliott

One year after Canada's government lost the first transfer pricing case to reach the Supreme Court, the country's transfer pricing professionals have reported that demand for transfer pricing controversy services is still on the rise.

"Canada has a relatively mature transfer pricing market," said John Oatway, of EY, adding that the government has invested heavily in audit and competent authority personnel through the years. As a result, "the government has become sophisticated from the perspective of looking at transactions."

In *Canada v. GlaxoSmithKline*, the Supreme Court ruled unanimously against the Canada Revenue Agency (CRA) and affirmed the decision of the Federal Court of Appeal to send the case back to the Tax Court. The case began when the CRA issued a $52 million income tax assessment to GlaxoSmithKline (GSK), for paying a Swiss affiliate too high a price for the active ingredient used in its popular ulcer drug, Zantac.

GSK challenged the assessment in the Tax Court, arguing that the CRA, in determining an arm's-length price for the transaction, did not take into account a separate license agreement that granted GSK the right to sell the drug under the Zantac trademark in exchange for an annual royalty of 6% of net sales paid to its parent company, Glaxo Ltd.

The Tax Court agreed with the CRA that determining whether an arm's-length approach is reasonable requires a strict transaction-by-transaction basis. The Court of Appeal overturned this decision, and the government in turn appealed to the Supreme Court.

Finding for GSK, the Supreme Court rejected the transaction-by-transaction approach. Rather, the court held that any determination of a reasonable arm's-length price must account for all agreements between the parties in the transaction that set it apart from the arm's-length transactions to which it is compared.

Previously, Canada's judiciary had provided little judicial guidance on transfer pricing. The court's opinion on what constitutes a reasonable arm's length price serves as "real world" guidance on transfer pricing that is consistent with the OECD's transfer pricing guidelines.

The Supreme Court's willingness to overrule the government on transfer pricing has not made the CRA any less aggressive, however.

"An increase in transfer pricing audits in the last two to three years has been a key driver of growth for the firm," said Heather Evans, of Deloitte. "Tax authorities are looking for inconsistency in how transfer pricing is set up vis-à-vis how the business operates."

Andrew Sterling, of McMillan, agreed, adding: "The CRA has indicated that transfer pricing will become a key focus of audits of international enterprises. We believe such audits will likewise serve to grow the tax businesses of law firms, including our own, for some time."

Tier 1

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 and advance pricing agreements.

The practice is led by **Scott Wilkie** and **Janice McCart**, who have a combined 65 years of transfer pricing experience. Wilkie, who joined the practice in September 2012 from Couzin Taylor, is highly regarded by his peers for his transfer pricing work and tax treaty advice.

Tax rates at a glance

(As of July 1 2013)

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	3
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*

The resolution of transfer pricing disputes, at both the administrative and judicial levels, accounts for a significant part of the practice. Blake, Cassels & Graydon is representing McKesson Canada before the Tax Court of Canada in ongoing litigation. The closely watched case concerns the related party debt factoring arrangement between McKesson Canada Corporation and a Luxembourg subsidiary. There are no similar cases in Canada or elsewhere, and the court's decision will likely set a precedent affecting future transfer pricing operations.

Deloitte offers a comprehensive suite of services related to transfer pricing design, planning and engagement. The practice, led by **Markus Navikenas**, focuses on domestic and international corporations that want to revise their approach to transfer pricing, to align it with the restructuring and growth of their businesses and to support M&A transactions. Deloitte's business model optimisation team, led by **Richard Garland**, advises clients on setting up transfer pricing studies and making sure their transfer pricing planning is consistent with their business models, operations, people and technology. Clients include oil services, mining, energy, automobile, technology and financial services companies. Deloitte also represents clients in audits and administrative trials through its controversy group. Deloitte Tax Law, its affiliated law firm, represents clients in court. Prominent transfer pricing litigators **Cliff Rand** and **Dave Muha** joined Deloitte Tax Law from Stikeman Elliott in January 2013.

John Oatway leads **EY**'s full-service transfer pricing group, comprising 12 partners and approximately 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 – bilateral and multilateral and to mutual and accelerated competent authority agreements. It also advises on treaty compliance. Litigation is handled by the affiliated law firm of Couzin Tailor.

Gowlings – Taxand's transfer pricing and competent authority team focuses on transfer pricing planning and implementation strategy. Its leader is **Dale Hill**, whose international transfer pricing experience includes 16 years at the Canadian Revenue Authority, where he participated in more than 40 advance pricing agreements and hundreds of competent authority requests. The team's attorneys are supported by economist and fellow CRA alumnus, **Jamal Hejazi**. Clients include more than 60 Canadian and foreign multinational companies from Canada and abroad. In recent months, their growing demand for APAs and mutual agreement procedure transactions has become a key business driver. In one instance, Gowlings filed a competent authority request and APA on behalf of a Canadian pharmaceutical company with a foreign parent. The case was resolved in early 2013 with a value of approximately $1 billion in potential income adjustments.

KPMG's transfer pricing practice comprises 10 partners and 40 earners in four offices across the country. The practice, led by **Michael Glaser**, advises multinationals on avoiding transfer pricing disputes through competent authority procedure and advance pricing agreements. KPMG has 20 APAs under negotiation with the Canadian Revenue Authority. One APA involves IP developed by a Canadian company but implemented by its US subsidiary, which is its most profitable. The APA shifts the residual, entrepreneurial profit from the US to Canada, which enjoys a lower corporate tax rate.

The practice also provides services related to transfer pricing compliance and planning. In an engagement which began in June 2012, KPMG is designing a single transfer pricing policy for three acquired businesses with three different historical transfer pricing approaches.

KPMG's clients vary by region, with the Calgary and Vancouver offices respectively serving oil and gas companies and mining companies, while the Toronto office serves a number of insurance companies, reinsurance companies and banks. New hires include **David Francescucci**, who joined KPMG as a partner after serving as a senior manager in Deloitte's Montreal office.

Douglas Cannon leads the transfer pricing practice of **McCarthy Tetrault**, which focuses heavily on transfer pricing dispute avoidance and resolution.

During the past year, McCarthy Tetrault won several significant victories in transfer pricing cases before the Canadian Revenue Authority and in court. In April 2013, the firm convinced the CRA to withdraw proposed reassessments worth $48 million, thereby avoiding an appeal.

In another matter, in May 2013, the firm convinced the Canadian Competent Authority to take the rare and exceptional step of unilaterally and completely withdrawing a substantial CRA reassessment, in this case as much as $480 million.

Led by **Michael Glaser**, **PwC** provides a wide range of transfer pricing services, including documentation, risk assessment and advance pricing agreements (APAs), and represents clients in audits, appeals and competent authority requests.

Tier 2

Mickey Yaksich leads **McMillan**'s transfer pricing team, which assists global corporations from a wide range of industries on developing transfer pricing strategy and preparing the documentation necessary for showing transfer pricing at arm's-length. Clients include domestic and international companies from every major sector of the Canadian economy, including oil and natural gas, mining, financial services and automobiles. As one of Canada's most experienced transfer pricing practitioners, Yaksich has extensive experience advising some of the country's largest and most important companies, particularly in the automobile industry. McMillan also represents clients at all stages of the dispute resolution process, including litigation, and assists clients in negotiating bilateral and multilateral advance pricing agreements.

Tier 3

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 for the past five years (2008-2012). The transfer pricing team has been recognised as "Transfer Pricing Firm of the Year" in Canada by Finance Monthly (2012, 2013) and Transfer Pricing Firm of the Year by ITR (2011).

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.

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The Deloitte transfer pricing team in Canada is led by Markus Navikenas and consists of over 70 professionals serving clients across the nation from its offices in Montreal, Toronto, South Western Ontario, Ottawa, Winnipeg, Calgary and Vancouver.

Our multidisciplinary team of professionals has extensive backgrounds in economics, tax, law, and accounting. In addition, the team has several prominent high ranking former Canada Revenue Agency executives who specialize in resolving transfer pricing disputes. The Canadian transfer pricing practice plays an instrumental role in the American TP network which won the North American (Canada, U.S. and Mexico) Transfer Pricing Firm of the Year by International Tax Review for 2011 and 2012.

Deloitte Canadian Transfer Pricing team's capabilities include:

Business model optimization: aligning changes to business models and supply chains in a tax efficient and supportable manner
Risk Assessment & Planning: developing transfer pricing policies, evaluating risks inherent in processes, and policies and testing of controls
Compliance: to ensure that our clients have robust documentation and meets the requirements of the tax authorities
Dispute avoidance: to assist our clients proactively achieve greater certainty via advance pricing agreements (APAs) on their transfer pricing methods with one or more tax authorities
Tax controversy management: to support our clients with tax examination defense, voluntary disclosures, transfer pricing review committee submissions and mutual agreement procedures
Training: delivery of customized transfer pricing training to in-house tax teams

Chile

Tax authorities

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LEADING FIRMS

1	Baker & McKenzie
	Carey y Cia
	Deloitte
	EY
	KPMG
	PwC
2	Cariola Diez Perez-Cotapos

The Chilean government adopted a new Income Tax Law in September 2012 aligning the country's transfer pricing rules with OECD guidelines. The rules, which went into effect in January 2013, also establish an advance pricing agreement (APA) programme and authorise the tax authority to conduct transfer pricing audits, while requiring disclosures from taxpayers that describe related party transactions in great detail.

The disclosure requirements require a taxpayer to file an annual sworn affidavit itemising all of its related party transactions, or else risk a fine of up to $49,000. The annual statement must disclose, among other things, the transfer pricing methods used in the transaction; related party information, such as its address and taxpayer identity number; financial transactions between the related parties; and any restructuring of the taxpayer's Chilean business.

The taxpayer is also required to retain all documentation that shows how they reached the prices or results agreed upon with related parties. If the tax authority requests this documentation in an audit, and determines it does not prove that related party transactions were at arm's-length, it can impose an adjustment subject to a 35% tax plus a 5% penalty.

Chilean multinationals are wasting no time seeking tax certainty from APAs. Baker & McKenzie is already negotiating with the country's tax authority to reach what could be first the APA in Chile. PwC is negotiating several APAs between Chile and other Latin American countries, and between Chile and Japan, the UK and Singapore.

However, Chilean companies are still adjusting to the new transfer pricing rules, having little or no experience with the OECD guidelines. Juan Pablo Orellana, a partner at Cariola Diez Perez-Cotapos, expects domestic companies expanding overseas will drive the market for transfer pricing services. "They're going to require more advice, more audits, more planning in that field," said Orellana.

Juan Pablo Guerrero, a partner at KPMG, agreed, adding that compliance under the previous transfer pricing regime was orderly, while the new rules caused confusion. Guerrero suggested many law firms reacted to the new rules at the last minute. "There are a lot of advisers who thought if they read the OECD guidelines, they could be transfer pricing advisers," said Guerrero.

Guerrero said he learned from tax officials that many firms either filed incomplete or incorrect affidavits or neglected to file them at all. He added that in the new regulatory environment, transfer pricing professionals "that have experience and have support will find new opportunities", whereas a string of the audits will lead clients to become "comfortable with the Big 4".

Tier 1

Alberto Maturana leads the transfer pricing practice of **Baker & McKenzie**, which provides advice to large

Tax rates at a glance

(As of August 2013)

Corporate income tax rate	17% (a)
Capital gains tax	17% (b)
Branch tax	17% (c)
Withholding tax	
Dividends	35% (d)
Interest	4%/35% (e)
Royalties	15%/30% (f)
Branch remittance tax	35%
Net operating losses (years)	
Carryback	Unlimited
Carryforwards	Unlimited

a) The rate was reduced from 20% to 18.5% as of January 1 2012. In addition to the corporate tax, an entity must pay a tax (either the global complementary tax for individual residents or the additional withholding tax for nonresident entities and individuals) upon the distribution of profits. The rate was reduced to 17%, effective in 2013.

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. In addition to the corporate tax, a 35% additional withholding tax applies to the remittance of profits.

d) Dividends paid to a non-resident are subject to a 35% withholding tax with the 18.5% corporate tax paid creditable against the withholding tax, lowering the effective rate.

e) A 4% reduced tax rate applies to interest derived from loans granted by a foreign bank or financial institution, provided the lender and borrower are unrelated parties; if the parties are related, the thin capitalisation rules must be observed. The rate is 35% in all other cases.

f) Royalty payments made on trademarks, patents, formulas and other similar services are subject to a 30% withholding tax. Payments for the use, enjoyment or exploitation of invention patents, models, industrial designs and drawings, blueprints or topography of integrated circuits, and 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 programmes. The rate increases to 30% if the parties are related and/or if the beneficiary is resident in a tax haven included on a list issued by the Chilean Treasury.

multinational corporations on the design and documentation of transfer pricing strategy. Clients represent every major sector of the Canadian economy. These are large domestic and international companies such as Eaton, the American power management company and Brazilian petrochemical giant Braskem. The practice is also active in transfer pricing controversy, and is representing several global firms, including Adidas and Herbalife, in litigation.

Led by **Jaime Carey**, **Carey y Cia**'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. Recently, Carey has taken several steps to enhance its transfer pricing practice. It hired **Claudia Gajardo**, a senior lawyer with abundant transfer pricing experience, from the Chilean IRS. The firm is also involved in what might become one of Chile's first advance pricing agreements (APAs).

Carey also offers controversy services, including appeals and litigation. It is currently representing one of the largest mining companies in Chile, in connection with a transfer pricing challenge over the price fixed in a long-term supply contract. It has worked closely with well-known economists in Chile to sustain the financing arrangement underlying the fixed price. It is also working on a transfer pricing case for a large consumer goods company that has its regional office in Brazil, and sells products to related entities in Latin America. Other clients include energy, infrastructure and finance companies.

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 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. Also, while advance pricing agreements are still new to Chile, the firm has negotiated APAs with the tax authorities of other countries. **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 that are expanding overseas.

Chile's first practice with a dedicated transfer pricing team, **KPMG** provides planning and compliance services for some of the country's largest domestic companies, including a third of its top twenty multinationals. It also advises foreign-based multinationals, particularly US and European-based companies. **Juan Pablo Guerrero**, who leads the 10-member transfer pricing team, focuses on providing assistance to clients unfamiliar with Chile's new transfer pricing rules. In 2012, KPMG hired **Alberto Cuevas**, the tax authority official who drafted the rules, as a managing director. KPMG also consults with companies interested in negotiating advance pricing agreements, which Chile accepts under the new regulations.

KPMG Chile offers a strong controversy practice, which is highly successful in obtaining positive resolutions to transfer pricing audits. Presently, the firm is also serving as an advisor in the country's first trial related to transfer pricing, in recognition of its experience and reputation in this area. Its diverse clientele includes several well-known foreign brands of tires, networking solutions and food and drink, among others. It is also heavily concentrated in the country's all-important mining sector.

PwC's transfer pricing practice in Chile, the country's first, is led by **Roberto Rivas** and 19 other fee earners. With the implementation in September 2012 of OECD transfer pricing standards, the firm focuses on advising domestic and international companies on related planning and compliance issues. Roughly two-thirds of clients are multinationals doing business in Chile, including giants in pharmaceuticals and finance. Domestic clients include some of the country's largest and most important companies, representing such key business sectors as mining and agribusiness. It also represents clients in appeals to the country's tax authority, and in litigation. PwC also works on advance pricing agreements (APAs), which were introduced to Chile in January 2013. It is presently working on APAs between Chile and other Latin American countries, and between Chile and Japan, the UK and Singapore, which, if accepted by the Chilean tax authority, will be among the first in the country.

The firm enjoys close relationships with Chile's best-trained resources in transfer pricing, including the tax authority officials responsible for implementing the OECD standards. It has also added experienced practitioners from other Latin American countries, creating a transfer pricing team capable of meeting Chile's growing demand for transfer pricing services.

Tier 2

Led by **Pablo Orellana**, **Cariola Diez Perez-Cotapos**' transfer pricing team advises mostly foreign companies on complying with Chile's new set of transfer pricing rules that were enacted in November 2012 and implemented in January 2013. The team focuses on the reporting of transfer pricing methods and on the conducting of transfer pricing transactions under the provisions of the rules.

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LEADING FIRMS

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

Tax rates at a glance

(As of August 2013)

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

China's transfer pricing regime follows the OECD guidelines, and continues to develop through the years.

In October 2012, China contributed a manifesto chapter in the UN's Practical Transfer Pricing Manual for Developing Countries. The State Administration of Taxation (SAT) explained its transfer pricing focus on issues associated with location specific advantages, local marketing intangibles and alternative transfer pricing methods.

"It's good to see China's learning from the west in transfer pricing policy setting, but potentially that also creates problems to multinationals," Glenn DeSouza from Baker & McKenzie said. "Higher tax would be levied in China for local brands created by foreign investors."

Chinese tax authorities now look at intra-group equity transfer as an additional type of related party transaction. More tax disputes are arising due to the government's more aggressive focus.

Requirements on contemporaneous documentation therefore are being elaborated and drafted by the tax authorities.

DeSouza reminds taxpayers to "read through the new requirements, show respect to the tax authority and get supporting documents ready". In addition, applying for advance pricing arrangements (APA) is viewed as a good measure to prevent future disputes. "Previously I would not recommend APA to clients, but now it becomes thinkable," said Ma Hongxiang from WTS Consulting.

However, the APA development in China is not yet sophisticated.

"APA in China is just like the situation for IPOs (initial public offerings), people are waiting in the long queue for authority to solve one by one," Rose Zhou from Grant Thornton said. The tax authorities are said to inject more resources in this field according to several market observers.

Moreover, the market is also curious to see the transfer pricing arrangements of the high/new-tech enterprises (HNTE). To encourage the development of high-industry, companies qualified for HNTE are granted 15% corporate income tax deduction. HNTEs should not pay significant amount of royalties on licensed technologies and should earn a higher profit margin than the industry average.

Tier 1

Eunice Kuo is **Deloitte** China's transfer pricing leader. She leads the team of over 200 transfer pricing professionals who deliver quality services across northern, eastern and southern China. **Liantang He** supports Kuo as her deputy. **Gangte Muer** and **Patrick Cheung** oversee Chinese business from the north and south. Cheung has profound industry experience in serving multinational clients in banking, insurance and securities sectors.

Since transfer pricing practice often requires knowledge and experience in economics, Deloitte boasts one of the largest teams of PhD degree holders in China to help clients assess and reduce risks in their business activities. Also numerous specialists in the team are former tax officials who not only benefit from that experience but facilitate negotiations with the tax offices as well.

Noticing the close business relationship between China and Japan, the firm has opened a Japanese service group to better serve Japanese clients with complex issues. In late 2012, for example, partner **Victor Li** assisted a leading Japanese manufacturer for office appliances to negotiate and conclude a Sino-Japan bilateral advance pricing agreement (BAPA). The project involves prolonged communications with the tax authorities in both countries, convincing them the rationale behind the TP methodology. In the end, the result has helped the client to minimize double taxation possibilities and brings certainty to further internal transactions, which amount $5 billion every year.

With **Jessica Tien** at the helm, **EY** has a transfer pricing team of ten partners from its 15 offices across China. Practicing in this field more than 20 years, Tien's work includes planning, contemporaneous documentation preparation, controversy resolution and advance pricing agreement (APA) negotiations.

The team offers a full range of transfer pricing services with talents from diverse professional backgrounds. As the SAT tightens documentation requirements, the team has actively assisted clients to prepare supporting documentation for transactions. In addition, dispute resolution and planning are two other service areas that generate growth for the firm. The team also has a strong financial services focus.

Over the past year, the department has concluded three bilateral advance pricing agreement (BAPA) cases in China, one with Korea and two with Japan. Although the market generally observes a slow process of APA in the central tax authority, EY is confident with its negotiations and good connections in SAT, and expects to enter more BAPAs by the end of 2013.

KPMG has more than 20 partners and directors specialised in transfer pricing in China. **Cheng Chi** heads the national transfer pricing practice covering both China and Hong Kong. He has extensive experience handling projects in Asia and Europe including APA negotiations, cost sharing arrangements, documentation and dispute resolution. **Irene Yan**, a PRC certified tax representative, who also has expertise in APA negotiation, supports Chi as the partner-in-charge in northern China.

Chi has advised a landmark APA case for a Fortune200 multinational group. The client has over 20 Chinese entities that are often restricted by SAT in paying intercompany service fees. Chi adopted an innovative benefit testing mechanism to help the entities fulfill conditions required by the authority. Finally, the client entered into an APA for a better guarantee of certainty.

Beyond assisting with documentation, KPMG provides planning advice, dispute advice and risk management initiatives such as APA and mutual agreement procedure (MAP). Despite being an accounting firm, it offers a comparably strong dispute service for clients because fewer cases in China go to litigation. The understanding of the technical issues and also the philosophy of the tax administration ensures success in solving.

PwC is a leading transfer pricing service provider in China with a steady growth. It boasts 13 partners and directors together with over 200 full time transfer pricing professionals and conducts a wide variety of services from eight offices across the country. **Spencer Chong** acts as the transfer pricing leader who oversees operations in China and Hong Kong, supported by **Jeff Yuan** as the TP leader of China. **Ray Zhu** leads the new tax valuation advisory team established this year, to offer a one-stop solution to restructuring.

in the firm offers a full range of services and manages a variety of clients across a number of industries including automotive, electronic components, office appliances, franchising and retailing.

APA assistance is another service on offer. Numerous bilateral advance pricing agreement (BAPA) cases, including the first five formal APA cases in the country, were concluded thanks to the team's efforts.

Tier 2

Glenn DeSouza leads **Baker & McKenzie**'s transfer pricing practice in China with five other specialists under his leadership. The team is proficient in handling planning and documentation studies. It has developed an advanced database for econometrics and benchmarking, which has proved to be a valuable product for clients. Relying on information in the database, clients are able to compare and evaluate their pricing methodology and minimise their business risks. The firm has been providing numerous documentation projects to 40 large multinational companies from industries such as retail, IT, chemicals, semiconductor and fashion.

Former SAT, **Shanwu Yuan**, joined the team this year. His experience as state delegate at international organisations including the UN and the OECD brings the team up-to-date with regard to policy insights. For example, DeSouza and his team are advising a top international electronics company with seven affiliates on implementing an innovative transfer pricing model. The model was just issued in the UN transfer pricing manual's China chapter.

The transfer pricing team at **DLA Piper** has six specialists including **Daniel Chan** who is also the head of its tax practice in Asia. **Windson Li** has over ten years of experience in advising matters in China such as structuring, documentation, benchmarking, audit defence, APAs and cost sharing arrangements.

The team is proud of its integrated transfer pricing service that combines with its corporate and legal advisory provisions. Clients who seek solutions from DLA would not only get standalone answers in terms of the area about which they are asking, but also have their problems reviewed from a broader perspective.

Chan, Li and **Tina Xia** advised a Fortune 10 company's TP structuring in China by providing planning and business model restructuring. The project required thorough deliberation into accounting treatment, tax treatment and legal implication. The new model makes the client defendable under the Chinese tax authority's transfer pricing scrutiny.

Grant Thornton's transfer pricing team is headquartered in Shanghai and operates from five other offices across China to cover the client needs in the rising economy. **Rose Zhou** and her team of 20 professionals have solid knowledge and experience in transfer pricing. Grant Thornton has become a popular option for clients who need transfer pricing assistance in China. "They are comparably good and cost effective," one source said.

The team offers a full transfer pricing service, helping clients to identify risks and opportunities, preparing documentations with benchmark studies, complying with transfer pricing requirements, optimising business processes and minimising tax burdens.

One key area the team has been engaged in is supporting clients in tax audits that involve intangible assets. Although APA is not particularly popular in China, Grant Thornton provides services in this area to taxpayers who seek elimination of future dispute possibilities. In the meantime, the team also brings transfer pricing experience to CFOs and in-house tax managers to equip them with TP capabilities.

The firm has published a comprehensive guidebook to transfer pricing practice in China. The book is first of this kind and has been used by tax officials in China as official training materials.

Dennis Xu, who also leads the tax practice, manages the eight person transfer pricing team of **Hendersen – Taxand**. The firm provides Chinese transfer pricing solutions to large multinational clients, in industries including manufacturing, logistics, financial services, retailing, food and beverage.

As more Chinese businesses invest overseas, the firm has attracted more domestic clients with its practice in transfer pricing studies. A recent example is that the team has assisted an eminent alcohol and spirit producer in China with its transfer pricing related matter overseas. The team has developed long-term and short-term model for the clients. Thanks to Hendersen's strategy, the client is not only able to avoid double taxation but eliminate transfer pricing risks in their business expansion.

NERA operates two offices in Beijing and Shanghai to offer a full range of standalone transfer pricing services in China. The team is affluent with industry analysis, value chain analysis, economic analysis, IP (intellectual property) mapping as well as valuation, which guarantees the legitimacy in its transfer pricing advisory. Benefited from its international network, the team actively supports multinationals who seek tax efficient business opportunities in China. It has successfully assisted numerous international clients by assessing the risk and designing effective transfer pricing models. Complex issues involve IP valuation, location advantage evaluation and royalty payment.

Tier 3

As the China tax authority has increased focus in transfer pricing regulation and documentation requirements, **King & Wood Mallesons** is fully prepared to answer the growing client demands in transfer pricing as a local firm. Under the leadership of **Tony Dong**, the firm provides professional assistance in analysis, reporting and filing, audit and review, disputes and cost sharing arrangements to both domestic and international clients. Although the firm has not yet handled any advance pricing agreement (APA) application, because of a slow development of APA in China, it is also capable in this area. The firm has recently taken over a case transferred by a Big 4 firm and successfully resolved the issue that involved multiple parties in Asia and Europe.

WTS consulting has three people to form a dedicated transfer pricing team. Tax leader **Ma Hongxiang** contributes transfer pricing assignments with her profound international tax knowledge. The firm also has strength in Sino-European business activities. Since transfer pricing practice consumes a lot of manpower and financial support in documentation studies and audits, the focused area of WTS's transfer pricing service is on documentation preparation. Specific service provisions include cost sharing arrangement studies, comparable analysis and other relevant advice.

Deloitte.

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Colombia

Tax authorities

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LEADING FIRMS

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

The Colombian government has made several amendments to the country's transfer pricing rules to strengthen them and bring them into line with OECD standards. The amendments are included in the December 2012 tax reform law and are effective from January 2013.

Among the most important amendments are additional criteria for determining whether a business entity is a related party. The amendments, which are consistent with OECD guidelines, are meant to bring more taxpayers under the transfer pricing regime.

In general, the amendments establish that an entity is a related party if it receives 50% or more of the gross revenue, profits or production of a subordinated entity. An entity that conducts business through a collaborative agreement, such as a joint venture, or through a third party, is also a related party.

Another amendment requires transactions between a domestic entity and a related party located in one of Colombia's free trade zones to follow the country's transfer pricing rules. Previously, Colombia had no transfer pricing law applicable to these types of transactions.

Finally, the transfer pricing rules were amended to apply to an entity that enters into a transaction with a related domestic company devoted to mining, oil and gas or other extractive business. The amendment is an attempt to prevent these businesses from exporting profits.

The tax reform law also allows a taxpayer to obtain an advance pricing agreement (APA) for up to five years. An APA may now cover a prior tax year (also known as an APA rollback), in addition to the tax year it was approved and the three following tax years.

Other provisions implement a gradual penalty regime to boost voluntary compliance from taxpayers. In determining a penalty amount, the Colombian tax authority will now take into consideration the duration, severity and cost of a violation.

Broader related party criteria, APA rollbacks and graduated penalties show that Colombia's government wants to increase its tax take from transfer pricing, but avoid potential transfer pricing disputes. The country's transfer pricing professionals agree that litigation is on the rise.

Martin Acero of Prieto Carrizosa is representing a large US mining company in the largest transfer pricing litigation in the country. The Colombian tax authority wants the company to pay an amount which, with interest, could reach a billion dollars, said Acero. "This is a landmark case that could affect the company, its competitors and transfer pricing in general," he added.

Tax rates at a glance

(As of August 2013)

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

a) Capital gains derived from the sale of assets held for two years or more are subject to capital gains tax. Otherwise, gains are treated as ordinary income.

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

c) Dividends paid to a foreign company or entity not domiciled in Colombia 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.

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 for the exploitation of software are subject to a 33% withholding tax, but only on 80% of their amount.

Tier 1

Deloitte has one of Colombia's largest transfer pricing practices in terms of both the number of transfer pricing professionals and of clients. Led by **Pedro Sarmiento**, the practice provides a number of transfer pricing services, including compliance, consulting and planning, value chain management, valuations and dispute resolution. Its clients are some of the region's largest and most important companies, including Carvajal and Ecopetrol, Colombia's state-owned oil company.

During the past year, Deloitte advised a French luxury goods company on optimising its value chain and reducing its tax risk in several jurisdictions in Latin America and the Caribbean. It also advised a major Colombian oil and gas company on optimising its value chain, including upstream and downstream operations.

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.

The **Baker & McKenzie** transfer pricing group provides documentation and audit defense services for companies throughout Central and South America. The practice is led by **Gustavo Sanchez**, who previously headed Baker & McKenzie's transfer pricing group in Venezuela from 2004 to 2006. Clients include a number of foreign companies in the oil and gas, power, life science, pharmaceutical and consumer products sectors.

Lucas Mora leads the transfer pricing group, one of several specialised tax groups at **Brigard & Urrutia Abogados**, with the support of in-house economist and transfer pricing expert **Cristian Mora**. The group advises global companies on transfer pricing strategy and documentation and in litigation. Its practitioners, who have transfer pricing experience from a number of jurisdictions, also have working knowledge of advance pricing agreements, and have organised seminars for the purposes of familiarising the tax authority with APAs and suggesting ideas on how to regulate them. Brigard & Urrutia is also one of three top law firms in Colombia to sign a legal stability agreement with the government, exempting a client from further changes to tax and transfer pricing law for up to 20 years in exchange for an annual premium. It is representing a global media holding company in ongoing litigation challenging an adjustment on operating expenses derived from services rendered abroad. One of the few transfer pricing processes not yet subject to a decision by the tax authority or the courts, the court's decision will set a precedent for future transfer pricing work.

Deloitte's transfer pricing practice is one of the oldest and most experienced in Colombia. **Pedro Sarmiento Perez** leads the practice, which is active in compliance, pricing planning, value chain management, valuations and dispute resolution. Among its local clients are Grupo Carvajal, which has operations in 17 jurisdictions, and Ecopetrol, Colombia's state oil company. Recently, Deloitte has helped several domestic and foreign multinationals to optimise their value chains and reduce tax risks. It is also engaged in an ongoing review of transfer pricing compliance measures implemented by a Canadian oil and natural gas services company that is expanding into Latin America. The review, which covers Colombia, Mexico, Canada, Argentina, Ecuador and Peru, is intended to identify optimisation cross service charges in the region as well as to minimise risk.

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, and in audit defense and litigation.

Tier 2

EY's transfer pricing group in Colombia is led by **Andres 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 **Martin Acero**, **Prieto Carrizosa**'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.

Prieto Carrizosa is defending Drummond in the first transfer pricing case brought before Colombian judges. This is the largest tax litigation in the country, with the tax authorities seeking $600 million from Drummond, an amount which, with interest, would eventually reach $1 billion. This is a landmark case that could affect Drummond, its competitors and transfer pricing in Colombia.

Czech Republic

Tax authorities

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LEADING FIRMS

1 Deloitte
EY
KPMG
PwC

2 WTS Alfery

The transfer pricing environment in the Czech Republic has recently been aligned with OECD and EU approaches. This means that for tax purposes, prices agreed between related parties have to meet the definition of arm's-length principle, and these prices are often subject to tax audits carried out by the tax authorities.

Following an amendment to the transfer pricing legislation in 2006, taxpayers in the jurisdiction are able to approach the authorities and apply for advanced pricing agreements (APA). PwC Czech Republic cited that, according to their experience, "the average time needed for processing an APA in the Czech Republic is approximately eight months".

Taxpayers in the Czech Republic are not presently obliged to maintain any transfer pricing documentation (this includes the preparation of benchmarking studies or risk analyses). However, this documentation may be required when be subjected to a tax audit, to prove that the arm's-length principle has been observed.

The tax authorities have announced that they are planning to increase their focus on transfer pricing audits. A new, specialised tax office has been established, equipped with transfer pricing specialists, with the goal of administering more transfer pricing audits

Tax rates at a glance

(As of September 2013)

Corporate income tax	19%
Capital gains	
Branch tax	19%
Withholding tax	
Dividends	15% to 35% (a)
Interest	15% to 35% (a)
Royalties from patents and licences	15% to 35% (a)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	
Carryforwards	

a) A final withholding tax of 15% to 35% is levied on dividends paid to a non-resident, unless the rate is reduced under an applicable tax treaty. 15% is the standard rate with the 35% rate being levied on any income being paid to a tax haven (any jurisdiction with which the Czech Republic has not concluded a tax treaty or an agreement for the exchange of information on tax issues). The EY parent-subsidiary directive dictates that dividends paid by a Czech company to a parent company located in another EY member state are exempt from withholding tax if the parent company maintains a holding of at least 10% of the distributing company for an uninterrupted period of at least 12 months. The exemption also applies to dividends paid to a parent company from Iceland, Norway, or Sweden.

Source: Deloitte (2013) International Tax: Czech Republic Highlights on large taxpayers in the jurisdiction. As a result of this, the majority of tax inspections on large taxpayers will include consideration of transfer pricing.

Daniel Weinhold of Weinhold Legal explained that the current tax environment in the Czech Republic is "not a tax paradise but also not a tax hell". A new civil court is to be established at the beginning of 2014. This will involve an entirely new set of processes and terminology which is likely to cause some initial unsettlement. However, in the long term, Weinhold predicted that this new system will eventually improve the processes resulting in an increased level of stability.

There is still a good deal of uncertainty in the jurisdiction with a new interim government expected to last only temporarily. As a result, planned changes such as the corporate tax rate amendment are not guaranteed to last beyond the general election next year. A new civil code that was planned for January 2014 might also be postponed because of this uncertainty. This situation has instilled a sense of instability into the jurisdiction.

Jana Alfery, head partner of WTS Alfery, explained that the tax authorities in general, have become more aggressive in their stance towards tax matters over the past year.

Despite this increased level of aggression from the tax authorities, improvements in sophistication means that it is now easier to have a reasonable, informed conversation with the authorities than in the past. One adviser cited research that has been carried out in relation to the efficacy of the tax authorities over the last year. The results showed that despite only carrying out half the number of audits last year than they did in the previous one, the authorities managed to collect twice as much tax.

One source of concern for clients in the Czech Republic is the absence of the use of precedent in the legal process. For this reason, it was argued by advisers, no two cases are treated as comparable and tax-related injustices may result. However, although there is no formal use of legal precedent, nevertheless, some Supreme Court decisions will be made where previous tax cases are referenced.

A major change with reference to the financial services authority is the introduction of the FATCA rules. These rules have impacted banks markedly, who are now required to share information regarding the accounts of US citizens with their banks with the US Internal Revenue Service.

Tier 1

Deloitte Czech Republic has a specialised transfer pricing team as part of its tax practice. The team is especially experienced in producing transfer pricing documentation and employs economists in-house to contribute to this service.

The practice also has a series of sub-departments specialising on specific industries, for example, the financial services (spilt into a number of teams), energy, life science and healthcare, manufacturing, and automotive industries.

Despite the Czech economy being in economic difficulty, as a result of a sixth consecutive quarter of recession, Deloitte grew by 9% over the last year.

Deloitte Czech Republic held over 30 client seminars over the past 12 months, where experts addressed hot topics and regulation changes. Events were also arranged in cooperation with the British and American Chambers of Commerce addressing subjects relevant to British and American firms operating in the Czech Republic or together with the Prague Stock Exchange.

The tax practice at **EY** in the Czech Republic is subdivided into five dedicated service lines, each specialising in a specific area of tax. These areas are human capital, indirect, business, transaction, and international tax. The transfer pricing team at the practice forms part of the international tax service line.

EY offers the full range of transfer pricing services including transfer pricing structuring, flows, efficient, and supply-chain management. The practice also offers a dedicated transfer pricing audit and legislation team.

Over the past year the practice successfully defended two substantial tax audits. They also worked on seven advanced pricing agreements (APA) at various stages of development.

The practice works with clients from a range of industries but is especially experienced with the energy, automotive, telecoms, and financial services industries.

Radek Halíček leads the tax practice at **KPMG** Czech Republic. Halíček specialises in working with financial institutions and foreign investors. He has an extensive knowledge in the area of cross-border investment structuring, dispute settlement, acquisitions and restructuring.

The transfer pricing practice at the firm offers a range of services: tax optimising business structuring; the preparation of transfer pricing documentation; assistance in obtaining APAs from the Czech authorities; and assistance during tax audits and transfer pricing court proceedings.

Since January 2013, the tax practice at **PwC** Czech Republic has been led by **Peter Chrenko** and consists of eight partners and 130 other fee earners. Chrenko has more than twenty years of experience in tax advisory and came to PwC from the Ministry of Finance where he was Deputy Minister for taxes and duties for three years.

The transfer pricing team at the practice offer services such as assessment of transfer pricing policies; business analysis and optimisation; benchmarking analyses; APAs; transfer pricing documentation; and representation in the event of a transfer pricing litigation.

Tier 2

WTS Alfery has been a member of the global tax-driven network WTS Alliance since 2011. WTS Alliance is a strong network of tax firms in 27 countries which is supported by further associates across the globe, resulting in an overall presence of selected tax firms in more than 90 countries. Although the firm already possessed a body of international clients before joining the network, it has subsequently taken on more cross-border VAT and transfer pricing work.

An example of a recent cross-border transfer pricing deal is the work WTS Alfery did with Pfeifer Holz, in relation to the analysis of the changing transfer pricing rules between the Czech Republic and Germany in deal worth $500,000.

The transfer pricing department is growing, says **Jana Alfery**, head of transfer pricing at WTS Alfery who believes that within the next couple of years the firm will be able to compete with the Big 4 tax firms.

Denmark

Tax authorities

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Bech-Brunn – Taxand
3	Hannes Snellman
	Plesner

Tax rates at a glance

(As of September 2013)

Corporate income tax	25%
Capital gains	25%
Branch tax	25%
Withholding tax	
Dividends	0/15/27%
Interest	0/25%
Royalties	25%
Branch remittance tax	
Net operating losses (Years)	
Carryback	not permitted
Carryforwards	indefinitely

If two trends have characterised the Danish jurisdiction through recent years, they are a market particularly hard hit by the economic crisis, and a tax authority that leads Europe in the energetic exercise of its powers. Both issues again dominated the country's tax market through 2013, and transfer pricing was at the centre of the tax authority's interest.

"Transfer Pricing is still very much the focus of litigation," said Eduardo Vistisen, of litigation boutique Vistisen Attorneys. "This has been a trend in the last five years , and it has increased this year with all the tax avoidance coverage."

In 2012, the value of the transfer pricing adjustments made in the Danish jurisdiction tripled from DKK6.2 billion ($1.1 billion) to DKK21.2 billion, and the number of companies affected rose from 47 to 67.

Several advisers suggested that the Danish authorities are front-runners in the broader European context in terms of their aggressive attitude to tax collection. "Denmark has a very aggressive attitude towards tax planning," said Søren Lehmann Nielsen of Bruun & Hjelje. "It has a long tradition of making legislative anti-avoidance rules as soon as a scheme seems to come up in the international market – it is often one of the first countries to introduce regulation. So it is not the same situation, the same sudden change, as in other European countries such as the UK."

The Danish government's particular scrutiny of large corporations has also placed transfer pricing at the centre of Danish tax work. "There is a terrific focus on multinationals," commented Ida Jensen at BDO. This is reflected in specific legislative changes that have come into force. In transfer pricing itself, the rules and regulations surrounding documentation have been made much more rigorous. And the interest reduction rules in relation to thin capitalisation have been adapted to significantly narrow the scope of their application.

Unsurprisingly, this limits some of the possibilities of tax work in the Danish jurisdiction. "You can't sell Denmark as a holding jurisdiction, you can't even try," says Anders Oreby Hansen at Bech-Brunn. "We even advise against it."

Tier 1

The past year has been relatively turbulent for **Deloitte**'s Danish practice, with a raft of changes at the highest levels and a number of partners leaving the firm. The previous head of the tax practice, **Lars Loftager Joergensen**, stepped down from the role in what peers in the market described as difficult circumstances, returning to his previous position in indirect tax. He was replaced by **Jacques Peronard**, a less high-profile figure promoted from within the practice.

In the context of transfer pricing, one departure was noted in particular by the market. Jens Wittendorff, previously a leading specialist in the firm's transfer pricing practice and a well-respected figure in the Danish jurisdiction, moved to competitor EY.

The head of Deloitte's Danish transfer pricing service line is **Asger Kelstrup**, who was also responsible for the Deloitte European economist network for goods and services for several years. This is suggestive of the strength of Deloitte's transfer pricing work and its market-leading economic capabilities in particular.

While Deloitte maintains strict confidentiality in relation to its transfer pricing work, a general overview of their recent caseload can be given. They have worked on business model optimisations across several countries. They have advised on controversy, initial planning and risk management. They have provided guidance on an overlapping documentation and controversy issue. And they have advised on complex pricing issues, and negotiated APAs in a number of contexts.

EY, a leading global firm in tax, transactions, and advisory services, has a well-regarded transfer pricing practice in Denmark. It was boosted in the past year by the recruitment of **Jens Wittendorff** from Deloitte's transfer pricing team. Wittendorff was described by a peer in the market as "a very well-known doctor in transfer pricing" and "an excellent new partner for EY". Conversely, EY lost Niels-Winther Sørensen to PwC, which one adviser characterised as "a real loss".

Transfer pricing at **KPMG** Denmark is led by **Henrik Lund**, who oversees a team of three other partners and 24 fee earners. Lund has been part of KPMG's global transfer pricing network since 2001, working for three years in the Netherlands group, and has particular expertise in competent authority proceedings, exercised in the negotiation of a large number of MAPs and APAs. Lund advises numerous multinational groups on the structuring of their transfer pricing policies, the implementation of tax efficient supply chain management structures and restructurings, financial transactions, and intangible assets.

KPMG's transfer pricing practice has, since 2007, distinguished itself from its competitors with its transfer pricing audit task force, created by Lund in response to the Danish tax authorities' intense focus on transfer pricing, and the concomitant substantial adjustments and demands imposed on multinationals. This task force continues to provide specialised assistance in dispute management and resolution, controversy, and strategic handling of processes connected with international tax and transfer pricing audits. Among its members are senior tax officials, valuation specialists, economists and tax lawyers.

PwC's transfer pricing work is praised "very highly," by a client, who said she was "very happy with their services". The practice offers the full spectrum of transfer pricing work in Denmark and has been particularly responsive to the Danish government stepping up the pace of transfer pricing audits, a tempting target for increases in tax revenue. The practice can draw on PwC's international network to help clients develop compliant, tax-efficient structures, prepare for rapid audit response, resolve transfer pricing disputes, and decrease transfer pricing exposure in future periods.

Tier 2

Bech-Brunn – Taxand has a small transfer pricing practice, which nonetheless generated a revenue of almost €1 million ($1.3 million) in 2012. The overall head of the tax practice, **Anders Oreby Hansen**, devotes around 50% of his time to transfer pricing matters. He is assisted in this work by one senior associate and two junior associates, who divide their time between transfer pricing and other issues.

This small team is active in two broad areas of transfer pricing work. Around 60% of the caseload comes from transfer pricing disputes, in which context the firm can draw on the expertise of partner and litigation specialist **Kaspar Bastian**. The remaining 40% of transfer pricing work comes from documentation preparation, strategic transfer pricing advice and second opinions on transfer pricing documentation. The firm does not do database searches, and consequently work related to this area is outsourced to other practices.

Tier 3

Hannes Snellman are a Finnish law firm that in recent years has begun to expand its operations across the Nordic area. They opened an office in Denmark in 2011, recruiting **Nikolaj Bjørnholm** from Bech-Brunn to oversee the tax practice. Significant clients since that time have included Shell and the Australian mining company BHP Billton, and the firm's work has received praise from across the Danish tax market. Bjørnholm himself was described by a peer as "far better than some of the individuals in the other big law firms, both in planning and litigation".

Hannes Snellman is one of the few law firms in Denmark to engage meaningfully in transfer pricing work, although this does not extend as far as any projects necessitating specialised economic expertise. Instead, Bjørnholm and his team are primarily engaged in transfer pricing litigation, an area in which they are strong.

In 2013, Bjørnholm successfully represented Tyco in a tax dispute concerning taxation of a deemed contribution from a foreign parent company. He is also representing an international packaging business in a tax dispute concerning a transfer pricing adjustment made by the Danish tax authorities.

Beyond litigation, the practice does a small amount of documentation work for international firms that operate in the Nordic area.

Plesner are a law firm with a highly-regarded tax practice, and an especially strong reputation in litigation: "Plesner is still a brilliant litigation firm," said one adviser from a Danish competitor. In the context of transfer pricing, the firm does not work with pure documentation projects, nor does it have any economics expertise. But their outstanding reputation for litigation extends into the realm of transfer pricing disputes.

Work in this area is led by their overall head of tax, **Hans Severin Hansen**, and one of their partners with an expertise in corporate litigation work, **Lasse Esbjerg Christiensen**. They are in the process of assisting a number of clients pursued by the Danish tax authorities. The aggregated income increases sought by the Danish government in these cases exceeds €5.4 billion; mandates related to a third of this total were won in the first half of 2013, much of it by Plesner's transfer pricing team.

Firms to note

Vistisen Tax Attorneys is a litigation boutique handling a wide range of tax cases, but with a particular specialty in transfer pricing. **Eduardo Vistisen**, who established his own firm after leaving Kromann Reumart in 2011, has in his career worked on some of Denmark's largest and most prominent transfer pricing cases, representing clients such as Microsoft and Intel.

He is now working on the largest aggregated transfer pricing case in Denmark, which involves all of the country's municipalities. Each of the tax-exempt municipalities set up two taxable companies, one for water and one for waste water, so the basis for taxation needs to be established through valuation of these companies. Vistisen Tax Attorneys are doing the barrister's work at the Danish Administrative Tax Tribunal, in a case that is worth an aggregated $20bn. It is most likely the first transfer pricing case since the 1990s to go to court.

Finland

Tax authorities

National Board of Taxes
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LEADING FIRMS

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

Tax rates at a glance

(As of 2014)

Corporate income tax	20%
Capital gains	30% (32% for capital income exceeding €40,000)
Branch tax	20%
Withholding tax (a)	
Dividends	
- corporate entities	20%
- individuals	30%
Interest	0%
Royalties	
- corporate entities	20%
- individuals	30%
Branch remittance tax	
Net operating losses (years)	
Carryback	
Carryforwards	

a) Payments to European companies that qualify under EU directives may be exempt

Source: Tax advisers from Borenius – Taxand

The Finnish tax authority has applied its focus to transfer pricing for a number of years now.

"The focus has increased over the past few years in Finland," said Titta Heikkinen, head of transfer pricing at Deloitte. "The tax authorities have centralised their transfer pricing work nationally to a large transfer pricing office and they have formed a specific transfer pricing team."

This crack squad consists of 37 practitioners focused on transfer pricing, handling all the litigation and auditing issues related to the sector. Advisers were unanimous in noting a more aggressive attitude in transfer pricing audits, and those with expertise in the sector shrewdly acknowledged that it was yielding the most significant controversies.

"The atmosphere is difficult for companies because there is so much discussion around tax, and so much pressure from media and politicians on tax planning," said Janne Juusela, head of Borenius's tax practice. "As soon as someone notices there is a tax haven in a company structure then you have a problem and you have to provide some explanations. This is something companies need to consider right now; what is their position regarding international structures? Tax planning is not popular right now because of this pressure."

Despite this pressure, market-orientated transfer pricing work has remained active. The Finnish market has traditionally been quite conservative, and so a drop in interest in aggressive tax planning is not as terrain-changing for tax advisory firms as it might be in other jurisdictions. Instead, transfer pricing remains a key practice area, but the goals of companies in relation to it have become wider than just money.

"Of course they take tax issues into account in all business planning but they rarely drive decisions," said Heikkinen. "Planning projects are still there, but the focus is not on getting the last penny saved from tax. It is on tax risk planning and control of consequences. Companies have not been focusing on the benefits of tax planning, they have been paying attention to compliance and documentation – they really don't want to see themselves in the press."

It is clearly a time of transition in Finnish transfer pricing work, and practitioners are following developments with a great deal of interest.

Tier 1

Deloitte has a medium-sized transfer pricing practice in Finland, the smallest of the Big 4's but still a significant and established force. The practice consists of 10 fee earners and two partners – **Titta Heikkinen** and **Outi Ukkola** – whose time is overwhelmingly dedicated to the sector. The department has grown in the past year with the recruitment of two new juniors.

Together, this small team covers the entire range of transfer pricing challenges, from basic documentation through to business model and supply chain optimisation. They also work in litigation, preparing appeals and assisting firms in the lead up to international pricing audits.

A significant project from the last year involved working with a Finnish-based group with a multibillion dollar turnover in the development of three different business lines. The most sizeable challenge involved a completely new business line, which required the whole range of business model planning: how to arrange manufacturing, distribution, sales, IP location and so on. The other two smaller business lines needed assistance determining an overall strategy and also more specifically with their procurement activity.

EY's transfer pricing is spearheaded by the partner **Harri Pettersson**, while **Kari Pasanen** also takes on much of the corporate business modelling side of transfer pricing work. In general, the majority of the firm's small tax team will contribute to transfer pricing whenever their skills are relevant.

EY Finland has extensive access to economics expertise, both in-house and through its network and relationships with other EY tax practices; EY Finland can work with whichever team has the most appropriate resources in each particular instant. The practice is engaged in all forms of controversy related to transfer pricing, and it ensures clients are compliant through its documentation work. The tax team is also active in assisting clients when changing business and transfer pricing models, working to both ensure compliance and to optimise the tax structure. Most of all, the firm has seen increasing demand in the context of supply chain optimisation.

"**KPMG** has the strongest transfer pricing team in Finland," said one competitor, echoing a sentiment expressed by several Finnish tax practitioners. KPMG's market-leading team is led by **Eric Sandelin**, who can draw on transfer pricing expertise both from within KPMG's Finnish firm, as well as in the network more broadly. The practice covers all areas of transfer pricing, including documentation, litigation, and business model and supply chain optimisation.

PwC have the second largest transfer pricing team in Finland behind KPMG. It is led by **Sari Takalo**, who is assisted by partner and accountant **Merja Raunio**. One client, who relies on PwC for transfer pricing assistance, said: "They work as a global company, on a very high level and to a very good standard. We have a very smooth working relationship."

Tier 2

Alder & Sound first started its operations as a transfer pricing boutique in 2010. It was launched by the former EY transfer pricing specialist **Hannu-Tapani Leppänen**, who has extensive past experience in business model optimisation. He was subsequently joined by two of his former colleagues at EY, **Reima Linnanvirta** and **Henri Becker**. The last year saw further highly transformative growth, as the practice worked to expand its tax capacity beyond a narrow focus on transfer pricing.

Transfer pricing remains at the heart of the practice's tax work, however, and their most characteristic engagement continues to be a fully-fledged transfer pricing planning project, encompassing planning, evaluation, and documentation. All of the practice's three partners and nine fee earners contribute in one way or another to these transfer pricing projects.

A good specific example of the practice's transfer pricing expertise, a project completed in May 2013, involved designing a new transfer pricing model for a listed Finnish group with a €3 billion ($4 billion) annual turnover. Elsewhere, for a listed company with operations on three continents and an annual turnover of approximately € 4.5 billion, the practice also designed a state-of-the-art transfer pricing management tool for budgeting and monitoring service costs in the context of intra-group services and financial transactions.

Transfer Pricing is central to **Borenius**'s practice, and has been among their most dynamic sectors over the past year. It is led by **Jouni Honkaaho**, a transfer pricing specialist who has handled the firm's TP work for a number of years.

This year Borenius recruited **Jarno Mäkelä** from the Finnish tax administration, where he worked as head of the tax audit group. Mäkelä brings with him experience with the Big 4, but it is his preceding role that is most valuable in the Finnish context, where transfer pricing is a big issue and the tax administration is very active on audits and evaluations. Mäkelä marks a significant addition to Borenius's TP practice, specialising in financial transactions and IPR (intellectual property rights). Honkaaho has a more general scope across the firm's transfer pricing work, which spans tax planning, tax audits and tax litigation.

Last year, both advisers worked together to defend a stone wool insulation producer in litigation proceedings concerning tax years 2006-8, a significant transfer pricing audit case within the Finnish jurisdiction. A larger team also assisted the global brand business group in a mutual agreement procedure in its corresponding adjustment between Finland and Canada.

Tier 3

Roschier's transfer pricing work is limited, and only rarely involves APA negotiation, TP documentation, or project management. Rather, there is a focus on disputes and defending clients against tax authority claims, and occasional collaboration with tier 1 profile law firms on general business model planning.

Most of the firm's work this year has been undertaken by **Mika Ohnoten**, the practice's overall head, in partnership with **Journi Weckström**, tax counsel at the firm. Together, they advised a multinational corporation in a Finnish tax audit process. The audit covered a number of years of direct taxation and involved controversial compensation given on the termination of certain trademarks and technologies. They also represented two private equity portfolio companies in a tax audit process concerning the arm's-length nature of their financing structure.

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Tax authorities

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LEADING FIRMS

1	CMS Bureau Francis Lefebvre
	EY
	KPMG
	Taj (Deloitte)
2	Arsene – Taxand
	Baker & McKenzie
	Freshfields Bruckhaus Deringer
	Landwell et Associés (PwC)
3	August & Debouzy
	Fidal Direction Internationale
	LexCase
	Mayer Brown
	TP Associates

In France, statutory rules on transfer pricing adopt the arm's-length principle for cross-border related party transactions. Increased resources have been allocated to the tax authorities so that they might improve their ability to deal with transfer pricing issues more effectively. More court cases are dealing with transfer pricing issues, which aid the interpretation and application of the relevant legislation.

Although most tax auditors are not particularly experienced in the area of transfer pricing, there is an expert team within the tax authority where these cases are transferred. This is a positive thing, said Laurent Borey of Mayer Brown, because transfer pricing disputes are properly handled, engendering predictability to the outcomes of such assessments.

Transfer pricing rules have been upgraded in France to match those of foreign regulators. This has meant a lowering of the financial threshold at which a company is compelled to have transfer pricing documentation.

Between 1999 and 2004, only bilateral APAs were accepted by the French tax authorities. In 2004, the Finance Bill was rectified extending the scope of APAs to unilateral APAs. Additionally, an APA procedure that requests only very limited documentation is now available to small- and medium- sized enterprises.

Eric Meier, head of tax audit and litigation at Baker & McKenzie in Paris, explained that rapid reforms to the tax system have been coupled with a "trend from the tax authority...to launch very aggressive tax audits". These audits can result in severe financial penalties. This situation has engendered feelings of insecurity for clients in the jurisdiction, something exacerbated by the tax authority's unwillingness to settle on disputes. Gianmarco Monsellato of Taj (Deloitte) contended that the state of the French tax environment is "aggressive but not insecure". He explained that despite the aggression of the French tax authorities, at least one can be sure this is how the authorities will be.

Tax and transfer pricing is presently trapped in the oppressive heat of the belligerent media spotlight which has resulted in a great deal of "tax bashing". Big multinationals have frequently been the targets of such assaults despite their tax planning schemes being technically legal. It is the civil immorality of the multinationals' actions that the media, and subsequently the public, take great exception to.

Sonia Bonnabry, partner of Lexcom explained that the tax authorities have had instructions to be more aggressive with regards to their approach to tax disputes and auditing. The tax authority's new proactive stance has culminated in dramatic dawn raids such

Tax rates at a glance

(As of September 2013)

Corporate income tax	33%
Capital gains	33%
Branch tax	30% (a)
Withholding tax	
Dividends	0% to 30% (b)
Interest	0%
Royalties from patents and licences	0% to 33.33% (c)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	1 (d)
Carryforwards	Unrestricted (e)

a) This rate may be reduced under applicable tax treaty. It may also be increased up to 75% if the profit is deemed to be distributed to an entity located in non-cooperative state or territory.

b) Dividends paid to a non-resident company are taxable at a rate of 30% withholding tax, unless reduced under a tax treaty or the dividends are paid to a qualifying company under the EU Parent-Subsidiary Directive.

c) Royalties paid to a non-resident company are usually taxed at 33.33% unless the rate is reduced under an applicable tax treaty or payment is made to an associated company under the EU Interest and Royalties Directive. This rate may also be increased up to 75% if the royalty is paid to an entity located in a non-cooperative State or territory.

d) One year carryback applies for sales of up to €1 million, there is no allowable carryback for sums above this.

e) Tax losses carried forward are only available to offset €1 million plus 50% of the current taxable income exceeding that amount. The tax losses that cannot be offset in a given year can be carried forward and offset against future profits with no time limit.

Source: *Tax advisers from Arsene Taxand*

as that on the Microsoft offices in July 2013. Nearly all cases are being transferred to the courts and in some cases it is taking up to seven years for the case to be heard. One partner described how his clients were simply building up their capital reserves and then waiting to see the extent of their tax bill under the new regime.

Insecurity has meant that individuals and companies have continued to approach their advisers to discuss the feasibility and efficacy of leaving the tax jurisdiction in search of a more favourable regime. Philippe Drouillot of LexCase explained that migration to avoid Hollande's punitive tax measures had been a taboo subject in France until very recently as individuals and companies began to seriously consider it. It must be noted that for companies located solely within, and with the majority of their dealings in France, migration is difficult, if not to say near impossible to achieve. However, for individuals with little equity and real estate, migrating is a much easier process. Nevertheless, it is expected that individuals and companies will continue to consider migrating over the coming year.

Foreign entities and start-ups are two groups that have been cited as leaving or thinking about doing so.

It has been suggested the OECD studies and proposals concerning the combating of tax avoidance are only likely to have an effect if they are backed by the US. It has also been suggested that before the global tax havens can be effectively tackled, some of the local regimes must first be examined. For example, Ireland, Luxembourg, Belgium, and – outside of the EU – Switzerland. Public opinion remains solidly in favour of the prosecution of individuals and companies. However, as the emphasis on tax fraud is heightened; the likelihood is that the number of criminal proceedings based on tax fraud will increase. As a result, firms with criminal law departments as well as tax specific departments are likely to become increasingly useful.

Tier 1

The transfer pricing team at **CMS Bureau Francis Lefebvre** is led by **Bruno Gilbert**. The team aims to combine transfer pricing-related tax expertise – coordinated by **Xavier Daluzeau, Pierre-Jean Douvier, Stéphane Gelin, and Bruno Gibert** – with economic expertise under **Arnaud Le Boulanger**'s responsibility.

The practice provides holistic advice on a global scale to French groups (groups of the CAC40/Fortune 500) and on a European scale to foreign groups, in particular, North-American ones.

During the last 12 months, the team has assisted several French groups in their transfer pricing policy, in terms of securing the business. It has prepared numerous transfer pricing documentations for either the French tax authority or foreign tax authorities (in particular, documentations for the Chinese subsidiaries of two major groups of the CAC40).

The team has also taken part in entering into around twenty advance pricing agreements (the firm has advised two multilateral procedures, one for a French group and the other one for a foreign group).

Finally, the team have been actively involved in the negotiation of settlements. For two French groups, the negotiation of settlements followed transfer pricing adjustments for several hundred of million euros). The firm has also been involved in tax audits/mutual agreement procedures.

The tax team at **EY** in France counts among its clients 36 companies from the CAC 40; the French benchmark stock market index. The transfer pricing team is led by economist, **Jan Martins**, who joined the practice a year and a half ago from KPMG. The team consists of 33 transfer pricing experts some of whom come from the French tax authorities (with at least one from an advance pricing agreement background). Some of the team are dedicated lawyers and others, economists.

The team is frequently engaged in tax effective supply chain management analyses leading to the design of transfer pricing policy; tax audit defence, mutual agreement procedures and advanced pricing agreements.

The practice works with clients from a range of industries but is particularly active in the areas of real estate, consumer products, telecoms and government bodies.

The transfer pricing team at **KPMG** France offers a full range of transfer pricing services including documentation, economic analyses, implementation of service fee systems, tax efficient intra-group pricing policies, intra-group agreements, transfer pricing audits, and transfer pricing seminars.

Taj, Société d'Avocats is a member-firm of the global Deloitte Touche Tohmatsu Limited law firm. The practice employs both tax experts and economists enabling them to offer a full range of transfer pricing services including transfer pricing planning and documentation, examination defence and mutual agreement procedure, business model optimisation, financial services and debt pricing.

Taj serves a number of high profile clients including 80% of the companies listed on the CAC40 (benchmark French stock market index) and 94% of French groups quoted in the Global Fortune 500 (world's biggest companies compiled by CNN Money).

Tier 2

The transfer pricing team at **Arsene – Taxand** is led by **Antoine Glaize** and consists of both economists and tax specialists. The team offers the full range of transfer pricing services including design, documentation, and implementation. Transfer pricing is presently a key focus for the practice as it becomes more central to the activity of the French tax administration.

The team also offers its clients tax audit assistance and is able to negotiate with the authorities for advanced pricing agreements. They have the expertise necessary to defend their clients' transfer pricing policies against the authorities.

The transfer pricing department of **Baker & McKenzie** in France is led by the extensively experienced **Caroline Silberztein**. Silberztein worked at the OECD for 10 years, working on the Transfer Pricing Guidelines where she would "interact with over 50 governments on a daily basis". She has represented the OECD at the EU Joint Transfer Pricing Forum, the UN Committee of Experts Subgroup on Transfer Pricing and many others.

Silberztein clarified that although Baker & McKenzie may not have the manpower of the "Big 4" tax firms, because of a combination of her experience and the other five associates at the firm, Baker & McKenzie is able to offer intelligent "strategic thinking, planning, and defence against litigation".

The transfer pricing team at **Freshfields Bruckhaus Deringer** promotes a combination of law and economics in transfer pricing to enable the team to handle a wide range of issues. At the centralised economics department in London, the firm has the full suite of databases and research staff with which to determine arm's=length prices and to prepare transfer pricing documentation.

Freshfields France takes advantage of its global network of firms across 28 countries. This capacity was utilised in the past year as the practice carried out work for a worldwide transport group in the context of the acquisition of a majority stake in a French based logistic group located in 12 countries, and redefined the transfer pricing policies within the target group and the seller.

Landwell et Associés (PwC) offer transfer pricing work as part of the business taxation services it offers. One client commended the firm for its transfer pricing work, explaining that it is"good with overall TP advice and planning – especially within the US".

Tier 3

The transfer pricing team at **August & Debouzy** consists of two partners and six other professionals.

The practice has worked on a number of deals over the past year where it was required to draft transfer pricing documentation for their clients.

The practice deals with a number of notable clients including office supplies giant, Staples, and Ipsos, a global market research company.

The transfer pricing team at **FIDAL Direction Internationale** works in a multi-disciplinary context and comprises lawyers that specialise in international tax, intellectual property, and transfer pricing.

The practice offers services across all aspects of transfer pricing including assistance with audits and litigation, audits of transfer pricing policies, assistance in determining transfer pricing policies, documentation, and assistance in negotiating advanced pricing agreements.

FIDAL's international tax department has a cooperation agreement with the KPMG tax network.

Philippe Drouillot is the partner in charge of French Law Firm **LexCase**'s tax department.

Drouillot is in charge of all transfer pricing work and is well-versed in the area having worked on many transfer pricing projects in the six years he worked at Ernst & Young. Recently, Drouillot has worked with a number of big clients including, two major international news agencies and an influential international games publisher.

Drouillot described the firm as "boutique", but was keen to clarify that the kind of work LexCase does is comparable to that of many of the much bigger tax firms in France. The boutique status of LexCase allows them more flexibility than some of the bigger tax firms, according to Drouillot.

The transfer pricing department of **Mayer Brown** is centralised and located in the US. As such, the French practice is able to offer a full range of transfer pricing services by utilising this resource.

Clients said the transfer pricing team at Mayer Brown is "excellent at assisting with transfer pricing controversy issues". Partner, **Astrid Pieron** was hailed as being "outstanding" in her efforts as an adviser on transfer pricing work.

Laurent Borey heads Mayer Brown France and is also one of five firm practice leaders heading the firm's worldwide tax practice. As a member of the Paris Bar since 1995, Borey has worked extensively for private equity clients in the area of acquisitions, and for European and US corporations in domestic and cross-border transactions.

The practice has a huge profile of corporate clients such as Morgan Stanley, Charterhouse, and Cinven.

TP Associates has five main aims when it advises its clients. These are to: reduce costs, optimise supply chain operations in a tax efficient manner; simplify transfer pricing processes, mitigate risks in cross-border transactions, and to represent their clients in the case of transfer pricing disputes.

The practice has extensive industry experience with the automotive, chemicals, financial services, FMCG, luxury & apparel, mining, oil & gas, pharmaceutical, and technology, media, and communications.

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Firm profile:

Taj professionals, with Deloitte globally-managed transfer pricing network, help companies reduce risks by aligning practical transfer pricing solutions with their overall global business operations and objectives, assist with strategic documentation to support their transfer pricing practices, and resolve disputes efficiently. Taj has a well-earned reputation for quality and delivering results. Our services include:

- *Transfer pricing planning and documentation* – Taj provides practical solutions such as strategically approaching transfer pricing documentation requirements, which enable global businesses to achieve operational and international tax planning objectives.
- *Dispute avoidance: Advance pricing agreements (APA)* – APAs allow taxpayers to proactively achieve greater certainty via advance agreements on their transfer pricing methods with one or more tax authorities. Taj's experience with the APA process spans the entire history of the French national APA program. Our historical knowledge of how to achieve successful results helps companies manage their transfer pricing issues – particularly the risk of double taxation – on a prospective basis.
- *Dispute resolution: Examination defence and mutual agreement procedure/competent authority (MAP/CA)* – Taj takes an integrated approach to resolving transfer pricing disputes in the MAP/CA process. Our teams include transfer pricing MAP/CA specialists from both countries teamed with professionals who specialize in local country requirements for indirect taxes, taxes imposed by local or state/provincial jurisdictions, international tax and interest calculations for late payment that invariably affect the outcome.
- *Business model optimization (BMO)* – The global economic environment is characterized by continuous improvements in technology, urgency to adopt and implement best practices and processes. Assessing a multinational's global business model is no longer an optional exercise. Business Model Optimization (BMO) is the process of balancing the demands of operations and tax law and integrating them into the business model. This helps ensure tax planning does not curtail the bottom line and that the business model does not surrender some or all of the value it creates. Taj provides high quality,

customized tax and BMO services that focus on helping multinationals integrate operational and tax planning in a scalable and sustainable way in order to enable business leaders to make more effective decisions on an after-tax basis.

Germany

An audit guide by Oliver Wehnert of EY.

Tax authorities

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Fax: +49 3 018 682 32 60
Website: www.bundesfinanzministerium.de

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10117 Berlin
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Fax: +49 3020625 6601
Website: www.dstg.de

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

Cases can be selected by two means: First, cases are automatically pre-selected because of attributes such as size (sales, amount of wages, etcetera) or because they have been audited in the past already. These pre-selected cases are then high level reviewed by the responsible tax audit department. The department decides, after the desktop review, whether the case looks relevant given the audit resources. Second, cases can be nominated by the tax office in charge for tax assessments. The audit trigger can be any observation (for example variation in profits, media coverage on business restructurings). These suggestions are then also reviewed by the audit department. A tax audit can also be initiated when MAP or APA procedures are applied for by the taxpayer or a foreign counterpart.

In summary, the likelihood of a tax audit in Germany is high for domestic and foreign groups of companies. Usually, a tax audit covers a three to four year period on a continuous basis.

2. How will a company find out it is being audited? What is the official notification?

The taxpayer will receive a written notice about being audited in advance (normally more than two months in advance) including information about periods and taxes being subject to audit, and the beginning of the audit.

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

The taxpayer should collect all documents for the audit periods (tax returns, documentation) and test whether electronic data access can be granted to the tax audit (restricted for the years and companies under audit) upon request.

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

The tax audit is regulated under the Fiscal Code, the taxpayer is informed about its rights and obligations together with the tax audit notice. The German tax authorities have also issued several circulars on transfer pricing and procedural issues, known as the Administration Principles, which provide non-binding guidance for taxpayers.

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

Tax auditors usually work at the taxpayer's premises and have several audits in parallel.

Thus, tax auditors interrupt their audit often for several weeks/months and then return. This can make the audit process last several years.

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

Tax auditors start with a desktop review of the documents available within the tax administration, this is supplemented with internet research and then draft a hot topic list is compiled. Once the audit procedure has begun, tax auditors also have the right to gather access to all tax relevant documents electronically available with the taxpayer, either by requesting the taxpayer to collect certain documents or by using the authorities' own access to ERP and other systems.

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

Tax audit triggers may include a huge variation in profits over a number of years, a continuation of no reported profits, a significant increase in the profit/loss cost positions, a change of ownership, or business restructurings (as reported in the media).

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

The tax audit can request all written or electronic documents relevant for tax purposes. In the context of transfer pricing, usually the statutory documentation and supporting documents such as contracts, financial data (segregated profit/loss, budgets), organisational charts are requested. The tax audit also has access to documents/meeting minutes related to board meetings and other documents not originated by the tax department, but operational departments.

Since 2002, tax auditors have had the right to access the taxpayers' computer systems within the scope of tax audits, to electronically audit the accounting records, which have been created with the help of the data processing system. The scope, which has been drawn up with regard to data access, is very comprehensive. The auditor can choose between direct access, indirect access, or data transfer on machine readable data medium. According to the latter, the taxpayer is obliged to provide the original, digitally-created and tax-relevant data with the corresponding hardware and software without delay in a machine readable format.

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

No.

10. Are there any restrictions on the taxpayers advisers during audit?

No.

11. How long does an audit last?

A tax audit can last up to several years, especially if a specialist transfer pricing auditor is consulted. This is not unusual and also depends on the number of cases a tax auditor is working on at the same time. However, timely responses and a professional tax audit management can help to minimise tax audit duration.

12. What happens after an audit has been completed?

After the tax audit closing meeting, a written tax audit report is prepared. This document can be reviewed by the taxpayer before being finalised. Any audit adjustments included in the tax audit report are then transferred into amended tax assessment notices. The taxpayer can subsequently file an appeal or request competent authority.

13. Tips on negotiating with the authorities.

German tax authorities usually start with unrealistic high proposed adjustments in transfer pricing topics. The aim is to increase the tax basis by a portion of the original proposed adjustment, only, but without any follow-up work. Thus, a tax audit settlement is often combined with a waiver of any subsequent competent authority proceeding. Taxpayers should be aware that often two, three or even more settlement discussion can take place. Tax auditors and their requests should be taken serious, timely responses are much appreciated and could help to create a good working environment.

14. How can a company manage its audit risk?

A thorough preparation of tax audits is key, including creating awareness about weak points in argumentation. Transfer pricing documentation should not be considered a commodity for German purposes, it is an important defense element in tax audits and consequently should address the key argumentation straight. Taxpayers should also, in the very beginning of an audit, verify to what extent relief from potential double taxation can be granted, for example, using MAP. However, for this, counterparty country-specific formal requirements should be analysed (for example, statute of limitation).

LEADING FIRMS

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

Tax rates at a glance (As of September 2013)

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

a) 5.5% solidarity surcharge also levied on corporate income tax. Local corporation tax of 12-18%. Effective corporation tax rate of 30-33%.

b) Payments to European companies that qualify under EU directive may be exempt

In general the past year was a fairly quiet one for tax legislation in Germany. With elections on the horizon, the country's political parties have been tactically circumspect about their intentions regarding tax. Despite this, in the context of transfer pricing, the trend of recent years continued, and the sector has seen more tweaking of its rules and regulations than in any other area of tax.

"In the last ten years in Germany the German foreign tax code was amended regarding transfer pricing issues at least four or five times," said Xaver Ditz of Flick Gocke Schaumburg. "And in addition, the documentation requirements have been made stricter and stricter."

The aim of these changes is encapsulated in a significant 2008 change to exit taxation, mentioned by numerous transfer pricing practitioners in Germany. This introduced the taxation of the shift of business functions to foreign-affiliated companies. It is now making itself felt, and, according to one adviser, "is a very new and a very active area for the tax auditors".

In the last year another change to transfer pricing legislation was introduced, in the form of a significant amendment to section 1 of the German foreign tax act regarding the formation of partnerships. This introduced the authorised OECD approach with regards to the application of the arm's-length principle.

As this trend suggests, advisers are finding transfer pricing to be a busy and demanding sector of tax work.

"In tax audits for German-afffiliated multinationals and stocklisted German multinationals, as well as small and medium sized German companies, transfer pricing issues are becoming more and more in the focus of the German tax authorities," said Xaver Ditz. "One main business of our transfer pricing practice is therefore assisting multinationals in tax audits. If the case can't be solved in tax audits, then we assist them in the courts."

Things are expected to get even busier after the elections. Tax advisers anticipate a deluge of legislative and regulatory attention, and they expect this to take the form of more anti-avoidance rules. These rules are likely to have particular focus on transfer pricing.

"The tax authorities have been reacting to aggressive tax planning with a lot of anti-avoidance rules, and there are more and more to come," said Michael Best at P+P Pöllath. "They want to protect the tax revenue, to reduce planning and structures which are not good for a substance perspective." Consequently, in the words of another adviser: "We're seeing many avenues for tax work being closed down."

Even as this happens, however, new avenues are opening up, as firms increasingly turn to tax advisory firms for new forms of advice. Certain aspects of these new functions more closely resemble modern PR than they do the traditional law and accountancy professions.

"Tax has become a topic that is much more present in the public consciousness," said Christian Seidenabel at Hengeler Mueller. "This affects the work of tax advisers, because clients don't just expect technical advice about whether something is in line with tax laws; we see increasing interest in our views and experiences of how certain structures are perceived by the public and the government."

A number of global and economic forces are coalescing to make transfer pricing the most dynamic and unpredictable area of tax work. In Germany, this trend will only intensify as we move into 2014.

Tier 1

Deloitte's transfer pricing team in Germany is led by **Achim Roeder**, who works alongside five partners and a further 60 fee earners. This team includes economists and attorneys, has a network of eight hubs around Germany, and is part of a global Deloitte network of over 1500 transfer pricing experts, enabling it to draw on local expertise in any jurisdiction that becomes a part of a multinational's structure. The practice has also established specific centres of excellence in a number of industries: the financial services, transportation and shipping, automotive, chemical and pharmaceutical industries.

It offers full-service transfer pricing advice ranging across planning, defence and documentation. Specific examples of projects in the past year include a global transfer pricing documentation project covering 26 countries and 44 entities to be documented for three years, for a leading German automotive supplier company. The practice also conducted a company-wide transfer pricing planning project for transferring all existing IP owned by various operational German legal entities of a DAX 30 company to a German IP holding company to back-license the IP to the operational entities in five business segments for the next decade.

EY's German transfer pricing practice is led by **Oliver Wehnert**, who has been with the firm since 1998. The German transfer pricing practice is one of the strongest transfer pricing practices within EY, already the largest within the country, and projected to continue its growth significantly in the coming years. It currently consists of about 150 dedicated transfer pricing professionals from more than 15 nations, reflecting the diverse nature of the clients served. EY's German transfer pricing practice consists of highly experienced certified German tax advisers, lawyers, economists and industry experts. This diversified team works closely together to develop integrated and comprehensive solutions for globally operating clients. The services provided by the German Ernst & Young transfer pricing team comprise all areas of transfer pricing including transfer pricing documentation, planning, controversy and tax effective supply chain management. EY Germany differentiates itself by taking a holistic approach that focuses on meeting clients' needs from start to finish, from concept/solution development, documentation and implementation, to defense and dispute resolution.

Amid its international tax team, **Flick Gocke Schaumburg** have a compact and integrated group of professionals who devote a substantial proportion of their time to transfer pricing matters. Four partners and ten other fee earners work on transfer pricing planning, documentation, APA, audits, and litigation, alongside other sectors of tax work.

Transfer pricing work has expanded consistently at the firm over the past decade, as the topic has become increasingly central to the focus of the German tax authorities and their auditing procedures. Three new fee earners were taken on through 2012 to 2013 with substantial expertise in transfer pricing matters. One partner, Michael Puls, also left the firm; an internal promotion is anticipated to fill his role.

The adviser most engaged with transfer pricing work is **Xaver Ditz**, a partner in the practice since 2005 whose specialism in transfer pricing fits nicely with corresponding expertise in international tax law and tax audits. Throughout 2012, Ditz led a project handling the tax audit of a German subsidiary of a US multinational; this concerned the taxation of a transfer of the firm's main business functions to an affiliated Swiss company. Worth $600 million, it was a challenging and difficult case that lasted 18 months, finally concluding in May 2013.

Tier 2

Baker & McKenzie offer strong transfer pricing services in Germany, evidenced by the fact they won the 2012 Transfer Pricing Firm of the Year award from the *International Tax Review*. Incorporating their vast global network, the practice can work across markets and borders to formulate well-woven solutions to the most significant transfer pricing issues, including the design, implementation and management of transfer pricing structures, the integration of transfer pricing methods with regional, national or global tax strategies, the negotiation of APAs, and global and local documentation.

Transfer pricing is led by **Stephan Schnorberger**, who is also head of the tax practice as a whole in Germany. Schnorberger advised on the first multilateral transfer pricing APA involving Germany, and international planning and valuations for business restructuring have become increasingly central to his practice. He also combines industry experience in the automotive, pharmaceutical, telecommunication, software, financial services and consumer products industries.

Dr Matthias Kaut leads transfer pricing at **KPMG**, overseeing a practice of 10 partners and 77 further practitioners. This team was boosted in the course of 2013 with the lateral hire of **Axel Nientimp** from Deloitte, a partner with a great deal of experience in defending multinational enterprises in transfer pricing tax audits and Competent Authority procedures.

KPMG were involved in several significant transfer pricing projects through 2012 to 2013. Towards the end of 2012, the practice advised a multinational steel company on the development of a transfer pricing approach for the remuneration of sourcing entities engaged in the procurement of commodities. And, for a German headquartered financial institute, the practice advised on the first transfer pricing dispute resulting from the financial crisis; a loss split taking into account the new authorised OECD approach.

Luther – Taxand offers a broad range of transfer pricing assistance, including litigation and controversy services, tax audit assistance, APA negotiation, tax efficient supply chain optimisation, and documentation. It is led by **Christoph Kromer**, whose strength in the litigation field is well known and can be seen in the work itself. In 2012, Luther helped several clients defend multiple adjustments proposed or fixed by the Federal and Land Tax Auditors for Transfer Pricing. In all the cases in which Kromer was involved, the tax adjustments, totalling €160 million, were brought down to zero.

Luther – Taxand has also developed a web-based software solution aimed to help global clients establish, manage and monitor their transfer pricing documentation in a standardised manner. This software solution can also coordinate the cross-border transfer pricing documentation activities of all TAXAND firms involved. In 2012, this software was implemented by a global client for its European activities and helped to identify transfer pricing documentation requirements for more than 100 transfers and for more than 100 entities in six countries.

The practice also expanded its capabilities with the recruitment of **Michael Puls** from Flick Gocke Schaumburg, a move that was remarked upon with admiration by others in the German market.

PwC Germany provides transfer pricing advice based on a good understanding of the sector and of cross-border value-added processes. It is also careful to back up its structures with immaculate documentation of these cross-border transactions, ensuring they are consistent and logical so as to avoid the significant financial penalties that can otherwise occur. Their German transfer pricing practice is well-respected but, advisers suggested, "definitely weaker" than either Deloitte's or EY's.

Transfer pricing at PwC Germany is led by **Lorenz Bernhardt**, who has over a decade's experience in tax consulting, in particular in planning, implementation and defence of transfer pricing systems as well as in international tax structuring. He advises large international clients, both those headquartered in Germany and abroad.

NERA is a niche firm working on sophisticated transfer pricing issues, intellectual property, and financial valuations. It is led by the partner **Alexander Voegele**, who is assisted by a team of seven fee earners. Their work over the past few years has ranged from writing reports for thin capitalisation cases against the Swedish government, calculating insurance premiums for various funds, brand migration, and brand valuation, including calculating the value of fuel brands such as Shell, Exxon and BP. They have also been involved in significant tax audit defences.

Alexander Voegele brings transfer pricing expertise to the firm, and, accordingly, handles all such cases himself. In the spring of 2013, he guided the tax free migration of valuable and well-known intellectual property for a client.

Tier 3

Transfer pricing work at **Dentons** is conducted by two partners, forming a significant section of their overall international tax work. **Michael Helm**, a partner with Dentons since 2006 and a partner at Haarmans for five years before that, works from the Berlin office. However, the majority of foreign investors route their work through Frankfurt rather than Berlin, and Dentons had only a very limited tax team in their Frankfurt law office, consisting of a counsel and an associate who engaged in a little tax work. Consequently, in May 2013, they hired **Michael Graf** from Haarmans, who took the role of partner and spearheads the firm's international tax work from its Frankfurt office.

Dentons transfer pricing work involves planning, disputes, and some documentation work; however, as they can't compete with KPMG on price for more straightforward report writing, they only become involved in documentation if the allocation of risks and rewards is legally complicated.

A representative case from the last year stemmed from the sale of a family owned business to a US investor. The German fiscal authorities argued that the transfer pricing process, conducted between the German firm and their Chinese subsidiary during the sale, left the purchasers liable for a large amount of taxes. Dentons are defending the transfer pricing work done by the sellers through an administrative appeal and mutual agreement proceedings. Tax costs of around €3 million are involved.

The **Freshfields Bruckhaus Deringer** German transfer pricing team has less scope than its competitor law firm Flick Gocke Schaumburg's, but it nevertheless has highly respected lawyers providing the services it does offer. This includes tax-efficient corporate restructuring as well as the determination and allocation of profits to specific locations; assistance with transfer pricing dispute resolution; and advising clients on compliance, including the drafting of agreements, documentation, and benchmarking.

Oppenhoff & Partner is an M&A-based tax practice and transfer pricing is at the heart of their work. Their whole team, consisting of two partners and three fee earners, is able to contribute to transfer pricing cases. The firm has particular expertise in the US market, a long-standing specialism first forged during World War 2 when **Walter Oppenhoff**, the law firm's founder, helped keep Coca-Cola trading in Germany through the conflict.

In 2012, **Axel Bödefeld** advised a leading company in the sweets industry in a dispute over royalty rates. The Swiss parent of this company receives a royalty rate from its subsidiaries which was challenged by German tax auditors. Bödefeld advised the firm through the final stage of the tax audit, focusing on which strategy to use in light of the amendment of the Swiss-German tax treaty, which now provides for mandatory last-best-offer arbitration.

Another 2012 transfer pricing case was handled by the tax practice's second partner, **Gunnar Knorr**. He advised a large automotive supplier on a revision of its European IP strategy and IP allocation, involving a particularly challenging structure because part of the business is held in a joint-venture that restricted what could be allocated to which entity.

WTS's transfer pricing practice has had a paradoxical year: it has grown significantly, gaining two partners and more than 20 fee earners, and is now by far the biggest TP practice in Germany behind those of the big four. But it also likely to disappear – at least as a distinct entity within the firm.

The service has expanded to encompass the whole range of TP services, and has advised 10 of the biggest 30 German DAX corporations in the past year. But **Karsten Gnuschke**, the company's CEO, explains that they no longer consider TP as a separate area, but rather consider it to be an entirely integrated part of their broader strategy.

"It is not seen on an isolated basis but has a very close linkage to both the indirect and direct tax groups," he says. This joined-up approach has been driven by tax authorities' desire for greater revenue, and the heightened level of public scrutiny of company's tax work, Gnuschke continues. For example, for the German Dax 30 Corporation, WTS helped transform the existing TP system into a new global system that took into account related topics such as IP, withholding taxes, VAT and customs.

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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:

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LEADING FIRMS

1	EY
	Deloitte
	KPMG
	PwC
2	Zepos & Yannopoulos – Taxand
3	Dryllerakis & Associates

As of January 2013, the Greek Parliament passed income tax law amendments that include changes to the transfer pricing provisions. The changes mean that transfer pricing rules now apply to all intercompany transactions; such transactions must all be documented, not just those cross-border as was previously the case. Documentation must be submitted to the authorities within 30 days of it being requested and one new provision allows companies to negotiate advanced pricing agreements (APA) related to a specific future transaction with related companies (this will begin in January 2014). These changes were applied retroactively to any transfer consummated in 2012.

Greek APAs are not permitted to exceed two years in length; however, the APA can be renewed for a comparable period, extending the APA's validity to four years.

Previous to these changes being implemented, Greek taxpayers had to deal with two separate authorities, each having its own set of transfer pricing rules – one of these was the Ministry of Development. The new rules should improve this scenario but it is likely that both authorities will remain active in this field over the next couple of years.

The political situation in Greece is relatively stable, with a government in place comprised of three different parties; the first of its kind in Greece. Problems might arise as a result of the two parties on the left, the PanHellenic Socialist Movement (Pasok) and the Democratic Left, being in favour of much harsher taxes in contrast to the more liberal position of the centre-right New Democracy party. Yerassimos Yannopoulos, partner of Zepos & Yannopoulos, called this situation a "fragile equilibrium". He hoped that the government might find a way of uniting to topple the despotic crisis that plagues the Greek economy.

The Greek state and therefore tax authorities are under a great deal of pressure from the IMF and the EU following the implementation of a budget consolidation plan designed to reduce the Greek public debt. The IMF recently asserted that the Greek state needs to reduce its public debt further and to achieve this, another bailout will be needed. If this is not done within the next few months then there is a serious risk that the Greek economy will collapse in nine months time. Whether or not the bailout happens depends largely on the commitment of Germany. A German general election is planned for October 2013 butfor either of the warring parties to commit to such a deal at this point would be political suicide. Greece must therefore wait with baited breath until the outcome of the German general election before their future can be determined.

There has been a "great extent of arbitrary behaviour from the Greek tax authorities" in recent times, explained John Dryllerakis, head partner at Dryllerakis & Associates. This has meant that when dealing with the authorities he is a proponent of the approach: "A hand you cannot cut, you have to kiss".

Yerassimos Yannopoulos, partner of Zepos & Yannopoulos, explained that he felt more optimistic about the Greek tax authorities. They are in the process of hiring 500 young tax advisers of good academic breeding. The presence of better trained individuals will be that "audits will be fairer, more just, and based on the substantive application of legal texts", said Yannopoulos.

Tier 1

The transfer pricing team at **EY** Greece consists of one partner and 15 other fee earners. The team has provided advice to the Ministry of Finance on proposed reforms to transfer pricing legislation.

The Greek EY transfer pricing practice has been established as a "centre of excellence" within EY's Central and South East region. This involves them providing technical support and training to Eastern European nations such as Bulgaria, Romania, Albania, and the Republic of Macedonia.

In the past year the transfer pricing team at EY has been involved in a variety of transfer pricing work. For example, they advised clients on restructuring their inter-company funding. They have also provided transfer pricing planning services to clients, including those in telecommunications, food & beverage and industrial sectors. The team is also involved in a major bilateral APA application in the energy sector.

The transfer pricing team at **Deloitte** Greece is led by **Eftichia Piligou**. The team, comprised of one partner and 10 other professionals, expanded significantly over the past year, taking on four new transfer pricing professionals including **Roukalis Alexandros** from PwC.

Deloitte Greece was named 2013 "National Transfer Pricing Firm of the Year for Greece" at the *International Tax Review*'s European Tax Awards.

The practice has developed substantial expertise in the financial services industry and in intellectual property transactions. The team boasts a number of notable clients including major Greek banks, insurance companies and investment funds, as well as companies operating in oil and energy, automotive, heavy industry and technology.

The practice recently performed a major transfer pricing documentation exercise for a significant private equity investment fund, with respect to investment advisory fees paid to a related entity. This was a cross border project which involved entities registered in foreign countries and required the involvement of international member-firms of Deloitte.

Tax rates at a glance

(As of September 2013)

Corporate income tax	26% (a)
Capital gains	
Branch tax	20%
Withholding tax	
Dividends	0% to 25% (b)
Interest	5% to 40% (c)
Royalties from patents and licences	5% to 25% (c)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	N/A
Carryforward	5 years

a) A surtax of 3% is levied on gross rental income, but the surtax cannot exceed the corporate income tax due.

b) After January 2014, the rate for distributions (including distributions between domestic companies) will be 10%. If the conditions for application of the EU parent-subdiary directive are satisfied, no withholding tax applies.

c) The higher rate applies unless reduced under an applicable tax treaty or the dividends qualify for an exemption under the EU parent-subsidiary directive

Source: Deloitte (2013) International Taxation: Greece Highlights 2013.

The transfer pricing team regularly organise seminars for their clients. For example, in 2013, for the second consecutive year, the firm's transfer pricing seminar' was organised and delivered by Piligou. The seminar was attended by several prestigious clients, including approximately 30 CFOs and accounting managers, and was rated highly by participants.

The transfer pricing team of **KPMG** Greece consists of a range of transfer pricing professionals including economists, tax practitioners, and financial analysts. The practice is led by **Effie Adamidou**.

KPMG Greece offers a range of transfer pricing services to its clients, including advice on how to construct an effective transfer pricing structure that is efficient in both a domestic and global context. The practice aims to produce strategies that are commercially viable, generate tax efficiencies and mitigate the risk of tax authority challenge.

The transfer pricing practice of **PwC** Greece offers a range of transfer pricing services. These include advice on transfer pricing documentation, preparation of files, planning, advice on transfer pricing audits, and the compilation of benchmarking reports.

Tier 2

Having advised clients for the past 120 years, **Zepos & Yannopoulos – Taxand** is one of the oldest tax practices in Greece. The transfer pricing team does not consist of any economists and, as such, the firm is unable to perform benchmark analyses. The firm can however work on documentation projects and is now expanding into the planning part of the work. The firm is able to carry out benchmarking through its connection to Taxand.

Clients praised the firm highly for their transfer pricing work, especially **Yerrassimos Yannopoulos** who is always available, quick to respond and has a prodigious knowledge of the law.

The practice is a member of a number of different independent tax firm networks including Taxand; a network with a presence in 48 countries worldwide.

In 2012 Zepos & Yannopoulos – Taxand was entrusted with the conduct of the first two transfer pricing disputes initiated in Greece in the context of a new specialised transfer pricing reporting and documentation legal regimes. The practice was required to draw upon its extensive experience in this area to parry the blows levelled by this entirely new legal regime.

The practice was also instrumental in a recent deal where it assisted the technology multinational, Hewlett Packard. The practice was also required to assist in a transfer pricing audit worth €45 million ($60.2 million).

Tier 3

The transfer pricing practice at **Dryllerakis & Associates** is headed by **John Dryllerakis**, the ex-vice president of the International Fiscal Association. The team is made up of one partner and two other professionals. The firm employs no economists and is purely a legal firm. For this reason, the firm is predominantly concerned with preparing the legal transfer pricing documentation.

Dryllerakis & Associates is the Greek associate office for tax for the global, US-owned Baker & McKenzie law firm. The relationship has existed for the past two decades and the practice gets a lot of work from Baker & McKenzie as a result.

An example of this working relationship in action can be found in a recent deal where the practice recently prepared a Greek file transfer pricing report for Nalco, a water treatment and process improvement company for a deal worth €4.9 million ($6.33 million). The practice worked closely with Baker & McKenzie on this deal who prepared the parent file transfer pricing report.

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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. The transfer pricing team of Deloitte can provide you with different types of transfer pricing services including transfer pricing documentation, audit defense and planning.

Hong Kong

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	DLA Piper
	Quantera

Hong Kong's Asia's leading business hub for multinationals and transfer pricing has become a real issue because of the increasing number cross border transactions between Hong Kong and China, as well as a broader treaty network. "Transfer pricing is like an octopus that has tentacles that reach everywhere," said Sarah Chin from Deloitte.

As a low tax jurisdiction, the city has enjoyed the benefit of being a popular investment destination for decades. Yet the situation has changed after the financial meltdown in Europe. "Tax authorities overseas often challenge why subsidiaries can make so much profit in Hong Kong while their parent companies are losing money in home countries," Tracy Ho from EY said.

In response, the Inland Revenue Department (IRD) is scrutinising transfer pricing issues more closely. Comprehensive transfer pricing guidelines were released in December 2009 with potential retroactive effect, indicating that the guidelines are consistent with the OECD guidelines and international practice. The IRD will apply the arm's-length principle to determine an appropriate pricing model. "Hong Kong does not want to be regarded as a tax haven," said David Kan from PwC.

In March 2012, the IRD issued guidance establishing an advance pricing agreement (APA) programme in Hong Kong. Generally, bilateral and multilateral APAs are available with jurisdictions that have a double tax agreement (DTA) with Hong Kong. Unilateral APAs will also be passed in special cases. "Although not many APAs have been done, it will cut down uncertainty for corporate taxpayers," observes Ho.

However, since the topic of transfer pricing is in the teething stage in the IRD's agenda, administration problems can still be seen. For instance, the IRD has a dedicated team for transfer pricing investigations. "The Hong Kong tax authority is far too conservative and slow in implementing new things," a source said.

Practitioners believe the IRD is gradually learning and has created specific resources to push its APA programme. In addition, it also sends out its officials overseas for training and continues to participate in international transfer pricing seminars for technical knowledge sharing.

Tier 1

Deloitte has an experienced team led by the regional transfer pricing leader of southern China, **Patrick Cheung**. The practice takes pride of being multidisciplinary in its talent as employs a large group of PhD economists, former senior transfer pricing officials and industry specialists. Cheung has extensive expe-

Tax rates at a glance

(As of September 2013)

Corporate income	16.5% (a)
Capital gains	0%
Branch tax	16.5%
Withholding tax	
Dividends	0%
Interest	0%
Royalties (b)	
Noncorporate	4.95%
Corporation	16.5%
Technical service fees	0%
Branch remittance tax	0%
Net operating losses	
Carryback	0
Carryforwards	Indefinitely

a) Profits tax is levied at a rate of 16.5%, and 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) Royalty payments made to nonresidents are deemed to be taxable in Hong Kong if for the use of or a right to use intangibles in Hong Kong or outside Hong Kong where the royalty payments are deductible for profits tax purposes. The amount deemed taxable is 30% of the gross amount of royalties paid, resulting in an effective rate of 4.95% (16.5% x 30%) (or an effective rate of 4.5% for a noncorporate person (15% x 30%)). If the royalty is paid to an affiliated nonresident for the use of intangibles that were previously owned by a person carrying on business in Hong Kong, 100% of the royalty is deemed to be taxable, resulting in an effective rate of 16.5% (15% for a noncorporate person).

rience in banking, insurance and securities. **Philip Wong** specialises in tax planning and business model optimisation for multinationals. The practice also has lively interaction between funds and banks and insurance companies and provides consistent support with its specialty in financial service industry.

The practice is determined to help companies reduce risks by aligning practical transfer pricing solutions with their overall business operations and objectives. Because Hong Kong has introduced an APA programme, the team is actively guiding more clients to enter the scheme for dispute avoidance. Meanwhile, it never stops contributing to the tax authority with professional and industry insights, guiding the officials on how the transfer pricing regime and the APA scheme should look.

Wong and **Petrina Chang** were approached by a non-profit association in the metal industry to provide business model optimisation services to reach an effective transfer pricing structure and have designed a model that is both practical to implement and administer as well as flexible in allowing for future changes in the client's business operations.

The past 12 months saw **EY**'s fully-fledged transfer pricing team in Hong Kong nearly double in size under the new leadership of **Martin Richter**, following the ramping up of interest by multinationals structuring their operations in Hong Kong. Richter has 13 years transfer pricing experience and is well versed in planning, implementation, compliance and dispute resolution.

The team has been busy supporting Hong Kong taxpayers' residual royalties and services payments to foreign parents, as more investigations are conducted by the tax authority. Another area of service growth has been the reorganisation for multinationals' presence in Hong Kong. Although there have yet been many advance pricing arrangements (APA) concluded in Hong Kong, the team still provides support to clients who are keen to enter this programme for more tax certainty.

As part of the firm's great China presence, the team works closely with its colleagues in China. It has advised a number of clients with share transfer valuation in a group restructuring context and intellectual property valuation on disposal.

Based in Hong Kong, **Kari Pahlman** is the Asia Pacific leader in **KPMG**'s transfer pricing practice. Well versed in transfer pricing related economic advisory assignments, tax effective supply chain management and valuations, Pahlman serves clients from a wide base including consumer markets, energy, financial services, transportation and information and communications. In the middle of 2013, Pahlman advised a global luxury brand in redesigning and implementing a tax effective supply chain model.

Karman Yeung is also based in Hong Kong to cover transfer pricing issues both in the jurisdiction and in south China.

The financial services industry is a focused and strong area of the firm's practice, particularly in banking, insurance and funds. **John Kondos** leads the financial services transfer pricing team in Hong Kong and also wider Asia Pacific region. He has extensive experience in completing regional APAs, audit defence and documentation with leading financial institutions. Late 2012, Kondos undertook a complex restructuring and risk management project for a leading player in the financial services industry. The project required a multi-layered profit split approach to smooth out the restructuring impact. Kondos eventually came out and implemented a practical and efficient solution for the client.

The transfer pricing team of **PwC** in Hong Kong deals with issues in China and Hong Kong. The China transfer pricing leader, **Spencer Chong**, oversees the team in Hong Kong, with **Cecilia Lee** supporting him as leader in Hong Kong. The practice has seen a stable expansion over the past 12 months and now employs three partners and over 30 full time staff.

Although the APA programme is still at its teething stage in Hong Kong, PwC is pioneering in helping clients to enter this scheme and secure certainty in their future business. **Rhett Liu** advised on the first two bilateral APAs in Hong Kong, with one of them the only formally accepted cases by the Inland Revenue Department.

The team also inherits the firm's long time dedication on financial services. **Phillip Mak**, the financial services transfer pricing leader, and his team, continues to provide robust support to national and international banks, insurers and fund managers with planning, documentation and audit defence.

The practice maintains a good relationship with the Hong Kong tax authority and frequently contributes to transfer pricing regime developments in this jurisdiction.

Tier 2

Baker & McKenzie in Hong Kong has a transfer pricing team that comprises two partners and three specialists. The team covers all facets of transfer pricing services including planning, economic analysis and dispute resolution. It is considered by sources as a good alternative to Big 4 firms because it is able to provide more legal insights into transfer pricing issues. Structuring has been a growth area not only to the team but to the firm's tax department as well.

Richard Weisman is the leader of the team and has extensive experience in international taxation with an emphasis on Asias and US issues. He recently advised a leading Hong Kong-based multinational corporation on its international transfer pricing structure. The project requires a practitioner to design varying approaches to structuring distribution. In the meantime, advance pricing arrangement (APA) and related custom duty planning is also involved in the $2 billion valued project.

Competitors also applaud its solid litigation capability. In 2012, tax leader **Michael Olesnicky** litigated an important case for a leading electronic products manufacturer on profit tax disputes. The case involves complex transfer pricing for related party transactions between the clients' operations in China and around the world.

The transfer pricing team of **DLA Piper** in Hong Kong is highly integrated with its presence in China, overseen by **Daniel Chan** who is also the head of its tax practice in Asia. The team is proud of its integrated transfer pricing service that combines with its corporate and legal advisory provisions. Clients who seek solutions from DLA not only get standalone answers in terms of the area in which they are asking, but also have their problems reviewed from a well-rounded perspectives.

Hong Kong tax leader **Patrice Marceau** is also capable in transfer pricing. He recently advised a leading electronic component manufacturer with its tax audit. The Inland Revenue Department challenged the client's operation structure alleging tax avoidance. Marceau introduced the idea of transfer pricing into the case seeking conviction from the tax authority.

Quantera is an independent transfer pricing service provider. Leveraging a network of experienced transfer pricing specialists in Europe, North America and Asia, the team in Hong Kong is able to advise both inbound and outbound transactions and investment flows between continents. **Steven Carey** is the senior partner who gained his 12 years full time transfer pricing experience from working in a global transfer pricing firm, a Big 4 firm in Singapore and the Australian tax authorities. Carey is well-suited to managing large scale transfer pricing system designs, intangible property valuation and APA negotiation. He has a remarkable and diverse portfolio of 200 successful transfer pricing assignments across great China, Asia Pacific and Europe.

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Hungary

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Mazars
	Taxperience Tandax Hungary
3	DLA Piper Horváth & Partners Law Firm
	Jalsovszky Law Firm
	WTS Klient

Hungary adopted transfer pricing legislation in 1992 in their corporate tax act. This legislation aligned the rules in the jurisdiction with the OECD guidelines, acknowledging the arm's-length principle as the international transfer pricing standard.

In June 2013, Hungary's Ministry of Finance issued new guidance to clarify transfer pricing rules in the jurisdiction. The intention of this new guidance was to diminish the administrative burden on the Hungarian taxpayer. One example of how this was attempted is that taxpayers need not prepare transfer pricing documentation for transactions where the value does not exceed HUR 50 million ($219, 000) in the tax year.

Otherwise, Hungarian transfer pricing legislation requires taxpayers, except small enterprises, to document each inter-company agreement during each tax year.

It is possible to negotiate with the authorities for an advanced pricing agreement (APA) with regards to your future inert-company transactions.

As a result of the range of reformatory tax measures introduced in Hungary, the tax environment has been described by a top tax adviser in the jurisdiction as "becoming stable". This stability is attributed to the success of the recent tax reforms and the tax reform project has been described as being in a good position.

The Hungarian tax litigation system does not take case law into consideration. For this reason, some advisers have mentioned that their clients are wary of entering into tax disputes.

The only investment in the Hungarian economy is from foreign multinationals, explained Tamás Knébel. He said this is because foreign investors are able to avoid the majority of new taxes that have been introduced by the Hungarian government in recent years.

Tier 1

The transfer pricing team at **Deloitte** Hungary offers the full range of transfer pricing services including the preparation of transfer pricing planning and documentation, dispute avoidance, APAs, dispute resolution, and business model optimisation.

The practice works internationally with other Deloitte member-firms to help companies reduce risks by aligning practical transfer pricing solutions with their overall global business operations and objectives.

EY Hungary offer transfer pricing and tax effective supply chain management to its clients. The services it offers include transfer pricing planning, documentation, transfer pricing controversy, work for the financial services and customs services.

The two transfer pricing contacts at the firm are **Zoltan Liptak** and **Balazs Szolgyemy**.

The main service lines of the transfer pricing team at **KPMG** Hungary are transfer pricing review, the preparation of documentation, development of transfer pricing policy, representation during transfer pricing disputes, and benchmarking.

The team also offers tailor-made training sessions for their clients in the form of lectures and / or seminars where they can learn documentation compilation techniques and how to coordinate intra-company transfer prices

Clients explained that the transfer pricing team at KPMG "has good initiatives for supporting their clients".

The transfer pricing team at **PwC** Hungary offer services in four main areas: documentation, APAs, dispute resolution, and planning. The team is led by partner **Zaid Sethi**.

The documentation work the practice offers includes a review of existing transfer pricing documentation from a Hungarian perspective, the localisation of centrally prepared group documentation from a Hungarian perspective, and general assistance with the preparation of transfer pricing documentation.

The practice helps clients with APAs; both the application and the negotiation process.

Tier 2

The transfer pricing senior manager at **Mazars** Hungary is **Gabriella Nagy**. The team offers services in the area of planning, including the mapping and planning of transfer pricing risk; preparation of transfer pricing documentation, including benchmarking; APAs; and settlement of transfer pricing disputes both in and outside of the courts.

Taxperience Tandax was established in November 2012 by Tamás Knébel, the founder, head, and only member of the practice. Knébel's firm, Tandax, joined the Taxperience network at the beginning of June 2013. Membership of this firm means that the practice is able to easily cooperate with the other Taxperience practices when working on cross-border deals.

Knébel has extensive tax experience and previously worked for various "Big 4" firms for over the last10 years. Just before establishing Tandax, Knébel was a director at Deloitte Hungary where he headed the indirect tax service line. Upon establishing the new practice, a number of Knébel's clients followed. Knébel is actively marketing the practice to new clients because the boutique is still in its start-up phase of development. Knébel also possesses a large informal network of friends in the industry who he is also able to work with, as and when their expertise is required.

Knébel has worked on transfer pricing issues for more than 10 years and has worked with the Hungarian Ministry of Economy to draft the transfer pricing rules for the jurisdiction. As such, he has an extensive knowledge of transfer pricing in Hungary.

Tier 3

The tax professionals at **DLA Piper Horváth & Partners** Law Firm are generalists and offer a wide range of tax services in the fields of tax litigation, transactional, and compliance services. The practice also offers the full range of transfer pricing services.

Akos Becher, the head partner at the practice, helps in this respect because he has an economic background and is able to perform the financial aspects of transfer pricing work such as benchmark analyses. The practice also boasts a strong transfer pricing litigation team.

The tax practice is particularly experienced in dealing with the real estate and financial services industries, working with both domestic and international clients.

Pál Jalsovszky leads the transfer pricing team of **Jalsovszky Law Firm** which consists of one partner and two other fee earners.

The practice's workload comprises predominantly of transfer pricing defence cases against the tax authorities. They also work on APAs, which is becoming more routine for the practice.

In the past year, the team prepared the transfer pricing documentation regarding intra-group loans received and provided by Hungarian intermediate holding companies of a US-based paper and packaging material manufacturing group. Transfer pricing expert **István Csővári** led on this project.

WTS Klient was formerly known as HLB Klient. The name change was necessitated by the practice's international tax firm network shift, from HLB to the WTS Alliance. **Tamas Gyanyi**, partner of the firm, explained that the amount of transfer pricing has increased markedly over the past two years. The firm is able to advise on the compliance side of transfer pricing and, although they do not employ any dedicated economists, the advisers have a workable knowledge of the area.

The firm is actively involved in discussions about how to improve the Hungarian tax system. Over the past three months, **Zoltan Lambert**, a partner of the firm, has visited the German headquarters of more than 30 multinational companies to ascertain how they perceive the Hungarian tax system.

Tax rates at a glance

(As of September 2013)

Corporate income tax	10% to 19% (a)
Capital gains	
Branch tax	10% to 19%
Withholding tax	
Dividends	0% (b)
Interest	0% (c)
Royalties from patents and licences	0% (d)
Branch remittance tax	N/A
Net operating losses (Years)	
Carryback	N/A
Carryforwards	Carried on indefinitely

a) A 19% rate applies to a tax base above HUF 500 million, the 10% rate applies on tax base below this figure. A surtax is levied at varying rates on financial institutions, as well as on energy, retail and telecommunication companies, and as from 2013, on financial transactions.

b) Withholding tax is not levied on dividends paid to a non resident company. Dividends paid to a non-resident individual may be subject to a withholding tax at 16%, unless the tax rate is reduced under an applicable tax treaty.

c) Withholding tax is not levied on interest paid to a non resident company. Interest paid to a non-resident individual may be subject to a withholding tax at 16%, unless the tax rate is reduced under an applicable tax treaty.

d) Withholding tax is not levied on royalties paid to a non resident company. Royalties paid to a non-resident individual may be subject to a withholding tax at 16%, unless the tax rate is reduced under an applicable tax treaty.

Source: Deloitte (2013) International Tax: Hungary Highlights 2013

India

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LEADING FIRMS

1 Deloitte
EY
KPMG
PwC

2 BMR Advisors – Taxand
Grant Thornton
Sudit K Parekh
TP Ostwal & Associates

3 ELP Advocates & Solicitors
GM Kapadia & Co
K C Mehta & Co
Khaitan & Co
Luthra & Luthra
MZSK & Associates
Nangia & Co

Other firms to note
Majmudar & Partners

Over the past year, transfer pricing has been a material issue that outweighs others in Indian tax market, and there is a growing administrative emphasis on this subject according to several practitioners.

The tax authority has expanded its transfer pricing audit team and coordinated an all-India transfer pricing approach. A recent round of transfer pricing audits has made adjustments to the tune of $9.5 billion which equals the amount accumulated in last six rounds of audits, according to Rohan Shah from ELP Advocates & Solicitors.

"The tax authority is becoming increasingly aggressive in transfer pricing audits and targeting taxpayers who constantly reports losses or low profits," said Karishma Phatarphekar from Grant Thornton.

Transfer pricing audits are often triggered in deals with high royalty or technical fee payouts, high advertising and marketing expenses, cost allocations and loans. Moreover, the restructuring of transactions is also under close scrutiny from the tax authority. Practitioners predict companies in financial services, automobile, IT, pharmaceuticals and chemicals sectors are more likely to expect adjustments.

Milin Mehta from K C Mehta & Co sees such a trend as a local duplication of global practice: "The [revenue] department is learning and trying to be more rational in using transfer pricing to increase revenue." Although India is not an OECD member country, its transfer pricing guidelines generally adopt the international principle.

Litigation, however, has long been a real headache for both taxpayers and practitioners. One experienced tax litigator calls India a "factory of litigation" since 70% of the world annual tax litigations derive from the country. "Once you come into a litigation issue, you'll go for at least six or seven years. That's not only very time consuming, but wastes a lot of money as well," said Suraj Nangia from Nagia & Co.

The introduction of an advance pricing agreement (APA) regime in the Financial Act 2012 is a positive sign to taxpayers who seek certainty in transactions. Although it is yet to know the actual impact, the mar-

Tax rates at a glance

(As of September 2013)

Corporate income	30%-40% (a)
Capital gains	10%-20% (b)
Branch tax	40%
Withholding tax (c)	
Dividends	0% (d)
Interest	5% - 20% (e)
Royalties	10% - 20%
Technical service fees	10% - 20%
Branch remittance tax	0%
Net operating losses	
Carryback	0
Carryforwards	8 years (f)

a) Corporate income tax rate is 30% for domestic companies and 40% for foreign companies and branches of foreign companies. Taking into account surtax and cess, the highest rate is 32.445% for domestic companies and 42.024% for foreign companies.

b) As from financial year 2012-2013, the applicable tax rate on long-term capital gains derived by a nonresident from the sale of unlisted securities is 10%. Gains on other long-term assets are taxed at 20% (with benefit of an inflation adjustment). Short-term gains on listed shares and specified securities, which are subject to the STT, are taxed at 15%, and gains from other short-term assets are taxed at the normal tax rates.

c) If the nonresident does not have a Permanent Account Number (PAN), i.e. 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 the Dividend Distribution Tax (DDT) at an effective rate of 16.22%.

e) As from 1 July, 2012, interest paid to a nonresident on debt incurred under a loan agreement or by way of the issue of long-term infrastructure bonds by an Indian company in foreign currency is subject to a 5% withholding tax, plus the applicable surcharge and cess, if the loan agreement is approved by the central government and the funds are borrowed between 1 July 2012 and 30 June 2015.

f) Business losses and capital losses may be carried forward for eight years, with short-term 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 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.

ket generally feels optimistic to this approach because it gives taxpayers hope for a fair and positive outcome.

Tier 1

One client reflected that he had the "best experience with **Deloitte** in delivering transfer pricing advisory, very proficient". **Sameer Gandhi** leads the practice and is singled out for his expertise in TP dispute resolution. The team employs eight partners and approximately 250 staff specialists. Its proficiency has been enhanced after four directors and one manager joined the practice in the past 12 months. The team boasts a variety of experience and skills, including economists, tax practitioners, legal experts and former tax authority officials. Together they work on dynamic TP issues surrounding the cross-border transfer of intangibles, goods and services by providing documentation, planning and controversy assistance.

The team has been actively helping clients with advance pricing agreements (APA) under the changing tax and TP landscape. The team gets the credit for the first APA pre-filing in India. It assisted the client with the whole APA application process as it reviewed the nature of the transaction and initiated the idea of APA.

In January 2013, Gandhi and **Mehul Shah** successfully defended one of the largest conglomerates on a dispute in relation to brand income received by the parent company. The client's benchmarking approach and brand fee were challenged by the tax department as not being in line with the arm's-length principle (ALP). The client then underwent arguments and submissions about the rationale for the low brand fee, and finally convinced the tax authority.

EY's transfer pricing work is widely appreciated in the market place. One client reflected: "Each Big 4 firm has its strength in a different region. EY definitely has the best people in India."

Vijay Iyer leads the multidisciplinary team with other ten partners. Professionals help to review, document, manage and defend clients' policies and processes, aligning them with the business strategy. Core services include TP planning, documentation, controversy and risk management. The firm also boasts a dedicated financial services TP team.

In May 2013, **Iyer**, **Ashima Gupta** and **Tarun Bindlish** assisted LG Electronics India on a dispute with the tax authority about advertising cost allocation. The team has gone through several rounds of analysis and argument by applying technical knowledge as well as information in the public domain. As a result, the final and second level appellate authorities ruled the case in favour of the client. The disallowance amounted $2.47 million.

KPMG's transfer pricing practice in India has a dedicated team of more than 200 professionals spreading across seven locations. **Rohan Phatarphekar** leads the practice and is supported by five other partners and six directors. Phatarphekar has been advising multinationals on TP issues since 1997 and specialises on compliance and litigation. The diverse team encompasses talents such as charted accountants, lawyers, economists and financial analysts who offer both local knowledge and a global framework. In addition, the team also has two former high-ranking TP regulators on board, which enhances its service provision by injecting a tax authority perspective.

The firm is proficient in all areas of TP, yet its provision in the advance pricing agreement (APA) negotiation is distinct. Since the introduction of an APA regime, KPMG has assisted its clients to file over 40 applications while the total amount of application filed is about 140.

In February 2013, **Rajan Sachdev** and **Vinod Mangotra** successfully obtained a favourable ruling from the first level appellate authority on the widely debated issue of marketing intangibles for a prominent online travel agency in Indian. The case, involving $20 million, was the first of its kind and has brought out a unique business model that the client may adopt for future activities.

The transfer pricing practice at **PwC** determines to provide a range of TP services with multidisciplinary professionals. **Rahul Mitra** is the national leader of the TP team in India and is recognised for his expertise in TP documentation management. Mitra has over 18 years of experience in this profession and specialises in inbound and outbound planning assignments, repatriation planning, supply chain management projects and profit attribution to permanent establishments. He was instrumental in obtaining the first regulatory approval in India on an industrial franchise model, based on TP methods.

Under Mitra's leadership, the team is equipped to develop TP documentation and defence files coordinating across territories. To mitigate business uncertainties, it also guides clients through the process of requesting advance pricing agreements (APAs). The practice is capable of representing clients in front of tax officials and different court levels in controversial situations. **Sanjay Tolia** is a recognisable TP specialist for dispute resolution.

Tier 2

BMR Advisors – Taxand has a high quality transfer pricing service under the leadership of **Mukesh Butani** who is lauded by fellow professionals for his expertise in TP dispute resolution and advance pricing arrangement (APA) negotiation. Butani is supported by **Amod Khare** in Mumbai and **Sanjiv Malhotra** in Delhi. In response to the global focus on TP, the practice keeps building up its versatility through the years and now employs three partners and 32 other fee earners. **Manish Sabharwal** has worked in three out of four Big 4 firms in the domain of TP and joined the team in March 2013 as a director.

The practice is often exposed to high-profile TP matters and showcases it capability in dealing with strategic documentation, restructuring, litigation, APAs and mutual agreement procedures (MAPs). It retains big international and local names in its clientele list.

In January 2013, Butani and his team were approached to represent a significant TP dispute matter before the Indian revenue and the state court, involving an adjustment to price among an Indian company and its offshore parent. The tax authority made an adjustment to the capital account of the taxpayer, which involved $3 billion. Also complex in nature, the case has received extensive attention from the media and from policy makers.

Grant Thornton's transfer pricing practice in India employs a team of four partners and 50 staff members, under the leadership of **Karishma Phatarphekar**. Having over ten years of experience and having worked in a Big 4 firm's TP team since its inception, Phatarphekar specialises in advising clients in the pharmaceutical and information technology (IT) industry. **Anshu Khanna** arrived at the practice in Hyderabad in May 2013, bringing over her 16-year field experience and sector expertise in manufacturing, IT, infrastructure, pharmaceutical and financial services.

The practice structures its service provision into six lines: planning and restructuring, domestic TP, documentation studies, litigation, advance pricing agreements (APA) and mutual agreement procedure (MAP). Answering to the market demand, it has been aggressive in pushing the APA initiative and has a sizable team to assist APA applications. It has successfully filed a number of APA applications with APA authorities over the past year.

Phararphekar and **Shefali Shah** successfully defended Sanofi India in front of the Dispute Resolution Panel in 2012 and got a full relief of the case despite negative precedents in the tribunal level.

As one of the oldest transfer pricing practitioners in the industry, **Sudit K Parekh** is known for its strong ability in defending transfer pricing assessments. The transfer pricing team is led by **Maulik Doshi**, with two partners and 23 fee earners. In the past year, the team assisted the India branch of a well-known multinational cosmetic company to justify and save one third of its brand intangible expense before the Indian transfer pricing officer (TPO). Sudit K Parekh also focuses on advanced pricing arrangements (APA) applications, given its expertise in TP litigation.

TP Ostwal & Associates is a notable presence in Indian transfer pricing market with the renowned **T P Ostwal** at the helm. Fellow practitioners recognise him as a "very knowledgeable and notable" practitioner in this area. Ostwal is member of the subcommittee on TP of the UN Committee of Experts on International Cooperation in Tax Matters. He authored two chapters of the UN Manual on TP for developing countries which was issued in May 2013.

A variety of TP services are provided by the team including planning, transaction structuring, litigation assistance, advance pricing arrangement (APA) as well as documentation services.

Tier 3

ELP Advocates & Solicitors has experienced a year of upheaval over the past 12 months. After two manager-level professionals left the team to go to Big 4 firms, it only consists of one partner and three associates and trainees. Renowned **Rohan Shah** manages the practice with his profound experience in advising clients on practical and effective TP policies. 70% of its clients have a multinational corporate background and the firm saw a large demand from the telecommunication side during the past year. It has also engaged in reviewing the TP position reports provided by Big 4 firms. In the meantime, the practice is catching the market trend by dealing with a number of cases involving marketing intangibles and advance pricing agreement (APA) applications.

In May 2013, Shah, **Ajit Tolani** and **Darshi Shah** assisted an Indian company to evaluate the challenges and implications of changing the current intellectual property model. The team also provided insights to its TP model by advising on the strategies for reducing ongoing litigation.

GM Kapadia & Co has been providing transfer pricing services since the introduction of TP provisions in the Income Tax Act in 1961. **Harsh Shah** leads the TP group which consists of three partners and two other TP specialists. The team actively assists clients with TP studies and benchmarking, documentation management, TP model planning and representation before the tax authorities. Thanks to the long operating history of the firm, it retains a wide client-ship; some of whom have been with the firm for five generations. Following the updates in TP, the firm also offer advice to domestic clients in relation to the newly-introduced domestic TP rules.

Shah and **Hitesh Trivedi** recently designed a TP model for a Fortune500 company's wholly Indian-owned subsidiary. The client underwent thorough studies to determine the most appropriate method and arm's-length price (ALP) acceptable in both jurisdictions.

In the meantime, the team is also seeing increasing work in litigation and assessment in regard to foreign equity funds.

K C Mehta & Co is a key player of transfer pricing practice in west India. The team has experienced a strategic expansion and doubled in its size since last year. Now **Milin Mehta** leads the team of six. Backed-up with a vast international database, the team is able to offer a range of TP services including the preparation of global TP policy, documentation, compliance and controversy and litigation. It serves large multinational clients such as Schaeffeler, Heubach, Panasonic, Collabera, as well as big local corporations.

In December 2012, Mehta, **Arpit Jain** and two other TP professionals assisted an Indian medical equipment developer and manufacturer with its global TP policy. The client operates more than 12 entities across the world, thus the team was required to undertake comprehensive studies making sure the final model is in line with the TP requirements of different jurisdictions.

Khaitan & Co has a transfer pricing team that focuses on advising high-end TP controversies. The team is dedicated to identifying and developing effective and legally sound strategies to potential and existing TP issues. With resourceful research and legal knowledge, the team often provides legal analysis on benchmarking reports for clients.

In 2012, **Sanjay Sanghvi** advised GMMCO Group, India's biggest dealer of Caterpillar machines and engines, to set up an appropriate legal structure in Singapore. The project involved various TP and permanent establishment implications in both countries. Sanghvi gave insights to the TP model that contains arm's-length pricing (ALP) for the benchmarking of related party transactions.

Luthra & Luthra Law Offices has a transfer pricing team of two partners and five fee earners, with **Vikas Srivastava** taking the lead. Practitioners in the group hold diverse professional backgrounds to inject insights from accounting, finance and economics as well as a legal point of view. As a legal practice, the team's TP service mainly involves TP proceedings. In March 2013, Srivastava and his team successfully defended an Indian business process outsourcing company in appeals filed by the Indian tax department before the Delhi High Court on TP issues. Meanwhile, the team also represented clients from a wide range of industries in front of the tax authorities for dispute resolutions.

In April 2013, **MZSK & Associates** became a member of the BDO International network and was required to increase its practice size as well as services. The practice also welcomed three new talents. **Milind Kothari** leads the team of two partners and 15 tax specialists. Kothari has 30 years of experience in this profession and is renowned for their international tax, transfer pricing and outbound investment strategies. With over ten years field experience, **Jiger Saiya** specialises in formulating global transfer pricing policies and supporting clients in TP litigations.

Kothari and **Gaurav Shah** teamed up to assist an Indian advertising company to develop its international business with a new Singapore subsidiary entity. The firm formulated the strategy while addressing TP risks behind this $485.4 million deal. With their support, the client had the restructuring in line with international TP guidelines.

Nangia & Co provides transfer pricing services with its team of 12 specialists. **Neeraj Sharma** leads the team consisting of people from diverse disciplines such as economics, financial management, accounting and law. The practice is able to provide sound transfer pricing documentation studies to clients. Relying on its researching power, it has numerous successful cases of determining the appropriate TP margins for new businesses. With the firm's 30-year presence in India, the TP practice welcomes clients from a wide range of industries including oil and gas, e-commerce, hospitality, technology, media and manufacturing.

Other firms to note

Majmudar & Partners's transfer pricing is relatively young compared to its other service lines. Currently, most of the work done is on an advisory nature. Maintaining a good working relationship with Big 4 firms, the firm also vets and advises TP analysis done by them.

Managing partner **Akil Hirani** look over the practice, together with **Ravishankar Raghavan**. Both are well versed in corporate and international tax advice. In the end of 2012, the duo advised a Japanese client and its Indian subsidiary in respect of TP regulations. The client was required by the Indian tax authority to submit for TP documentation even though it does not have a permanent establishment in India. The duo supported the client to comply with the authority's notice but avoiding disclosing irrelevant information.

BMR Advisors

BMR's Transfer Pricing practice has consistently been regarded as amongst the best in the country. We enhance value for clients by focusing on solutions that are innovative, yet practical for implementation. Our versatility comes from the fact that the matters range from strategic documentation to restructuring to litigation and now APAs and MAPs. We take pride in being associated with some of the most high profile transfer pricing matters in India as on date. BMR's core team comprise of a unique blend of lawyers, accountants, MBAs and economists to cover all aspect of transfer pricing solutions. Our senior professionals are thought-leaders in the area of transfer pricing and have been part of numerous in-country and global initiatives.

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Deloitte India's transfer pricing practice comprises over 250 professionals and has a presence in all key locations in India including Ahmedabad, Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune. Professionals are from multi-disciplinary backgrounds including tax practitioners, economists, accountants, MBAs, legal experts and ex-revenue officials.

The Deloitte India transfer pricing practice provides a wide range of services including compliance and documentation, planning and implementation, controversy management, global documentation, Mutual Agreement Procedure (MAP), advance pricing agreement (APA), financial transactions, intangibles and valuation. In addition, there is a litigation support team handling transfer pricing disputes.

Other areas of focus include outbound services, financial services and Business Model Optimization.

Grant Thornton
An instinct for growth™

TP practice nominated as the best TP team in India for 2013 by Finance Monthly Global Awards UK.

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A boutique professional firm, offering a wide range of services, specialises in providing expert transfer pricing services. The firm has a presence in more than 50 countries through own offices and through strategic alliances.

Our transfer pricing division assists Indian and Multinational Corporations to develop and implement economically justifiable transfer pricing policies, develop sustainable transfer pricing documentation and provide litigation solutions.

The team of experts drawn from various disciplines – comprising of Chartered Accountants, Management Graduates, Certified Financial Analyst, Economists, Legal Experts and Financial Analysts focus on delivering quality work and sound transfer pricing solutions to a wide range of industries including oil and gas, e-commerce, hospitality, technology, media and communications, industrials and manufacturing etc.

In terms of competency, we offer the following services in the transfer pricing arena:

- Transfer Pricing Advisory
- Transfer Pricing Structuring
- Transfer Pricing Compliance

- Litigation Support
- Audit Defence
- Advance Pricing Agreement
- Mutual Agreement Procedure

Sudit K. Parekh & Co.

Chartered Accountants

Sudit K. Parekh & Co., founded in 1962 and headquartered in Mumbai, has evolved from being an audit and tax practice into a complete solution-providing partner for multinational companies and Indian corporate houses from diverse industries. With over five decades of experience, it has grown into a multi-location, diversified organisation, offering customised solutions to businesses across the world. The firm provides a complete suite of advisory, assurance, tax, and transfer pricing services, encompassing planning, compliance, and representation, from a domestic as well as international perspective. The firm works with a sense of ownership and care to assist clients' businesses right from conceptualisation to implementation. Sudit K. Parekh & Co. is regarded as a leading tax firm in India. With substantial experience and expertise in transfer pricing, the firm helps clients with all elements of transfer pricing, not only for India but also for countries in the Asia-Pacific region and across the world. The firm serves more than 150 multinational companies across various industries annually for their transfer pricing requirements in India.

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Indonesia

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LEADING FIRMS

1
- Deloitte
- EY
- KPMG
- PwC

2
- Danny Darussalam
- Hadiputranto Hadinoto & Partners
- MUC Consulting

3
- PB Taxand
- SF Consulting

Other firms of note
- VDB Loi

The Indonesian transfer pricing market has seen significant changes over the past couple of years since the Indonesian Tax Office (ITO) introduced and enforced a number of TP related regulations.

"They [the tax authority] keep changing regulations, which has increased the cost of reporting," Wahyu Nuryanto from MUC Consulting said. "Once the taxpayers understand the regulation, it has been changed again."

In July 2013, the government updated the transfer pricing audit guidelines, which entered into force for current and future audits. Detailed steps of TP audit are prescribed, which are abreast with Indonesian TP regulations, the OECD guidelines and the UN TP manual.

"The tax authority becomes more international and starts to understand the use of treaty and complex of business model, which is something welcome by practitioners," Roy Kiantiong of Deloitte said.

However, Romi Irawan from Danny Darussalam said: "There are still some grey areas in the internal guidance."

No business would be excluded from the tax authority's scrutiny, according to several market observers. Moreover, new law has granted the tax authority the right to levy business on deemed profit if the corporate taxpayer cannot establish levels of actual profit arising inland. Kiantiong said oil and gas companies will face more pressure under this principle. International marine or aviation companies and foreign representative offices are also warned to be more cautious.

Generally, unilateral and bilateral advance pricing agreements (APAs) are available for application since 2011. However, no APA case has been concluded yet.

Over the next financial year, the market expects to see more sophisticated regulations issued with relation to APA. In addition, practitioners believe the tax authority will intensify TP audits in the coming year and more disputes will arise as a result.

Tier 1

Deloitte's transfer pricing has seen a manifold growth over the past few years and now comprises two partners and 26 specialists. **Roy Kiantiong** leads the practice supported by the experienced **Carlo Navarro**, who joined from EY. The interdisciplinary

Tax rates at a glance

(As of August 2013)

Corporate income	25% (a)
- Corporate Income >IDR 4.8 billion per annum	
Capital gains	25%
Branch tax	25%
Withholding tax	
Dividends	10%/20% (b)
- Individual	
- 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 (Years)	
Carryback	0
Carryforwards	5

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 IDR4.8 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%-35% 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.

Source: *Tax advisers from PB Taxand*

team of MBAs, economists and accountants is able to provide clients with comprehensive and cost-efficient TP solutions. It regularly handles TP planning, advance pricing agreement (APA) and controversy matters for leading multinational corporations. As a part of Deloitte Southeast Asia, the Indonesian team retains a seamless working relationship with other firms in the region, and provides valuable regional outlooks to clients.

The practice has a strong portfolio of various TP matters. For example, it has successfully negotiated the first advance pricing agreement (APA) in Indonesia. It assisted a leading consumer electronics company to reduce a proposed TP adjustment from $55.74 million to $3.72 million regarding the nature of the client's local entity. Another achievement for the team was reversing all proposed TP related assessments for one of the world's leading consumer companies.

The departure of former transfer pricing head Carlo Navarro might be a blow to the TP team at **EY**, yet it remains a sizeable team of 27 people and continues to provide assistance range of services to local and global clients. **Jonathon Mccarthy** was promoted to the partnership in June 2013. Mccarthy has been practicing transfer pricing and international tax for more than 13 years and retains wide international experience, since he used to work in Australia, Canada, China and Singapore before he joined the team in Indonesia, in early 2013.

The firm has a close alliance with the tax authority for various transfer pricing issues as a member to the American Chamber of Commerce and Japan Jakarta Club. Such a connection allows the firm to move quickly on hot topics such as advance pricing agreements (APA) and mutual agreement procedures (MAP).

The transfer pricing team at **KPMG** in Indonesia is overseen by **Iwan Hoo**. Hoo started his tax career in 1995 and became a transfer pricing specialist in 2006. He leads the 14 strong team, which has been strengthened by the arrival of **Danial Khalid** from Singapore. Bennefitting from a global network, this practice is able to gain updated transfer pricing information from its counterparties internationally and provides multinational clients with a seamless service including documentation, planning, dispute resolution and supply chain restructuring. The practice's service provision covers a wide scope of industries, ranging from consumer goods to industrial activities. In addition, the firm's long-time industry specialty in energy and resources and financial services also brings the TP team extra proficiency.

The team has developed a TP documentation compliance product called "TP Light". This product provides the taxpayers with the security of complying because it contains a compliance report upon documentation requirement. It ensures that clients do not provide unnecessary, and business sensitive, information in the compliance procedure. Additionally, the team has also accomplished a mutual agreement procedure (MAP), which is the only successful case recently in the Indonesian market.

Transfer pricing is one of the key serving areas at **PwC** Indonesia with about 30 professionals. Tax service leader **Ay-Tjhing Phan** oversees the practice, supported by **Ravi Gupta**. The firm's service offering encompasses documentation, risk assessment and planning, which helps clients to manage related party transactions. It is generally agreed in the Indonesian market that the firm is among the top transfer pricing service providers.

Tier 2

Danny Darussalam is an independent tax consultant firm with multidisciplinary transfer pricing specialists. Led by **Romi Irawan**, the team comprises two partners and 15 specialists who are able to support clients' demand with accounting, economics, tax law and financial management knowledge.

With solid research and analysis capability, the team provides documentation to over 60 companies from industries such as automobile, oil and gas and financial. One of its competitive capabilities is analysis on inter-company loans. In 2012, the team applied the comparable uncontrolled price (CUP) method to analyse interest rate benchmarking for a client by utilising the dealScan database to find an effective comparable. In addition, it is also active in helping clients to enter advance pricing agreements (APAs).

Besides, the team is capable of defending clients by dispute resolution and negotiation. From 2012, six professionals from the firm have been helping a client from chemical industry with its TP disputes. With thorough studies and outsourcing lawyers, the team was able to justify the client's business activity.

Hadiputranto, Hadinoto & Partners is the local affiliate of Baker & McKenzie in Indonesia. With a tax team of 12 people including three partners and nine associates, the firm is proficient in providing premier transfer pricing services to Indonesian and foreign companies. TP specialists in the firm are well versed handling TP litigation and dispute resolution, as well as documentation. One value-adding aspect of its transfer pricing service is the combination of tax and economic analyses as well as seamless legal implementation. It also helps to implement unilateral, bilateral and multilateral advance pricing agreements for numerous corporations. The firm receives clients from a wide industry basis including natural resources, pharmaceutical, manufacturing, trading and services.

Wimbanu Widyatmoko heads the tax practice, and has experience handling a broad range of international tax planning issues. Widyatmoko and two senior associates are representing and assisting a multinational engineering and electronics company in its civil review in relation to TP issues.

With an accounting background, **Ponti Partogi** is able to provide comprehensive transfer pricing advice both from a legal and an accounting perspective. **Mochamad Fachri** is a specialist on trade related tax issues.

Transfer pricing has been a core practice at **MUC Consulting** which employs an eleven-person team. **Wahyu Nuryanto** re-joined, after an absence with another firm, to lead the team in January 2013. Nuryanto has over 20 years of experience in this profession with 18 years on the tax authority side. Six transfer pricing professionals in the team have obtained certification from the Charted Institute of Taxation (CIOT) in the UK, which endorses the team's capability in transfer pricing planning, documentation, audit assistance and controversy resolutions. In addition, the team is also supported by a lecturer from the University of Indonesia.

Nuryanto and **Sugianto** successfully managed the tax audit process on a matter for a leading electronic parts manufacturer as the team helped to reduce the tax adjustment amount from $38 million to $337,047.

Tier 3

The transfer pricing service line at **PB Taxand** was established in 2009 and is led by **Permana Adi Saputra** who is recognisable in the market for his expertise in documentation. The team now includes one partner and 23 professionals. Supported by the Taxand global network, the firm's TP team is able to get access to important database, professional training and other resources from the organisation's members in 50 countries.

The team provides strategic and practical advice on business structuring in terms of related party transactions, in accordance with the Indonesian tax regulations and transfer pricing guidelines. It also assists the whole process of unilateral and bilateral APAs, starting from the preparation of supporting documents to obtaining approval from tax authorities.

Even though **SF Consulting** only established its transfer pricing service line in 2010, it has developed into a 13 person team. All three partners of the firm's tax practice are capable in this field, with **Sri Wahyuni Sujono** taking the lead. Being a member of MGI International, its team frequently shares experiences and knowledge within the global network. The firm's legal background has endorsed the practice to have proficiency in TP dispute resolution at the tax court level.

In April 2013, **Sri Wahyuni** and her group conducted a case for a Nike shoe toll manufacturer. The tax authority challenged its reported loss over the past year. The group assisted the client to find solid justification and convinced the tax official.

Other firms of note

VDB Loi is a new practice in Indonesia yet it employs an experienced tax specialist, **Graham Garven**, as leader. Having 20 years of experience, Garven used to work as a transfer pricing partner in KPMG and also established the TP practice in that firm. **Augusta Putra** followed Garven from KPMG. The team has three people working in transfer pricing services.

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

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Sarsfield House, Francis Street, Limerick
International callers: +353 61 488000
Email: cgcustserv@revenue.ie
Website: www.revenue.ie

Tax rates at a glance

(As of June 2013)

Corporate income tax	12.5%/25%
Capital gains	33%
Branch tax	12.5%/25%
Withholding tax	
Dividends	20%
Interest	20%
Royalties	20%
Branch remittance tax	
Net operating losses (years)	
Carryback	1
Carryforwards	indefinitely

Source: Tax advisers from William Fry – Taxand

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.

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LEADING FIRMS

1	Deloitte
	KPMG
	PwC
2	EY
	Matheson
	William Fry – Taxand
3	Grant Thornton
	Mason Hayes & Curran

The Finance Bill of 2010 first introduced a full framework of transfer pricing legislation into the country, ushering in a new epoch of transfer pricing rules and regulations. Consequently, outside of the Big Four, transfer pricing expertise remains relatively nascent.

"I would say that in terms of service lines the strongest performers have been transfer pricing, R&D tax credits and global employer services," said Padraig Cronin of Deloitte. "Transfer pricing is definitely a growing area," concurred EY's Kevin McLoughlin.

This process has been accelerated by a couple of changes made by the Irish authorities through 2012 to 2013. An indication of the future direction of travel emerged in May, when the Irish Revenue Commission posted advertisements for staff and database companies to pitch services enabling them to evaluate companies' transfer pricing more effectively. This request accompanied an increase in the Revenue's number of transfer pricing professionals last year.

Alongside this tooling-up on the part of the Irish authorities, there were further developments to the FATCA legislation. FATCA (Foreign Account Tax Compliance Act) was enacted in 2010 with the intention of combating the US government's sense that US individuals were not reporting all of their income earned outside the US. In 2012, the US and Ireland built on this original act by signing an inter-governmental agreement, the US-Ireland IGA, which updated the previous legislation. As a result, Irish laws and regulations now have precedence in governing FATCA compliance for Irish entities. "FATCA has kept us busy trying to keep up, and then keeping our clients updated on it. The changes are quite significant," said Petrina Smyth of Walker's Ireland.

FATCA is especially significant for companies whose transfer pricing structures incorporate Ireland, because it is the key to understanding the relationship between the Irish and US tax authorities. The US Senate Committee has shown some scepticism about the use of Ireland by multinationals such as Google and Apple, most vocally during the US Senate Permanent Subcommittee on Investigations hearing on offshore profit that took place in May 2013. US multinationals operating in Ireland will therefore want to keep a particularly close eye on developments involving FATCA.

Alongside these international pressures, the Irish government itself announced an initiative at the end of 2012, which will require certain Irish taxpayers to perform a self-review of their compliance with Irish transfer pricing rules. This indicates a certain tightening of the Irish Revenue Commission's approach, although these compliance reviews will not be formal audits, and there is the potential for no penalties should an adjustment be agreed during the process. In a way, it is actually indicative of the Irish Revenue's general willingness to engage with taxpayers to discuss their policies.

This fits with the perspective of a number of Irish advisers' on the attitude of the Irish authorities over the past twelve months.

"There's been no knee-jerk reaction from our government, which has been staunch in the defence of our regime," said Petrina Smyth of Walker's Global.

Other advisers concurred. "There hasn't been the same level of interest in the media locally," said Cronin.

Tier 1

Paul Reck leads **Deloitte**'s transfer pricing practice out of its offices in Dublin, drawing on twenty years of experience in international tax and financial services. He heads a team of five other fee earners, including two directors and, as of mid-2012, an ex-Irish Revenue senior officer with over thirty years' experience in tax, who was involved in drafting the Irish transfer pricing legislation in 2010.

While the Irish practice is limited in terms of specific economics expertise, Deloitte's larger network enables the practice to leverage these skills from elsewhere. This includes utilising the resources of the Global Transfer Pricing Centre (GTPC) in India and the Global Economics Network (GEN), which includes the most senior economists in Deloitte's global transfer pricing practices.

Paul Reck worked on a range of significant transfer pricing cases through 2012 to 2013. He led the provision of EMEA transfer pricing master files for 2010 and 2011 for a captive leasing client of a large IT group with EMEA leasing operations centralised out of Ireland. This project became necessary following changes in transfer pricing documentation requirements in certain operating jurisdictions.

Reck also undertook a review of the operations of a US investment manager with portfolio managers in the US and the UK, and mutual funds established in Ireland, with distribution mainly conducted through operations in the UK. Reck's work aimed to reach an appropriate pricing methodology, appropriate not only in terms of the fees allocated to investment management versus distribution and other functions, but also in terms of the appropriate matrix allocation of investment management fees to the UK and the US.

KPMG's transfer pricing practice in Ireland is led by **Eoghan Quigley**, who combines his transfer pricing expertise with his previous experience leading KPMG Ireland's M&A tax team. This allows him to bring a specialism in the tax aspects of M&A transactions together with his planning and structuring expertise when advising a wide range of multinational corporate and private equity clients across a range of industries, including software, communications, healthcare, retail and distribution.

Quigley and his team provide advice on all aspects of transfer pricing, including the design and implementation of transfer pricing policies, compliance and documentation, and dispute resolution. The practice is also part of a worldwide network of global transfer pricing services (GTPS) professionals from KPMG member firms around the world, allowing it to draw on a broad framework of transfer pricing experience that combines local and global expertise.

Partner, **Gavan Ryle**, heads transfer pricing practice at **PwC** Ireland, advising multi-national companies on transfer pricing planning as an element of managing their effective tax rate. He focuses on structuring their international related party transactions to optimise the availability of Ireland's 12.5% corporation tax rate. Assisting him in this aim is **Barbara Dooley**, a director who, before joining PwC in 2009, spent 12 years working in various sectors including banking, technology, and the consumer goods industries. Barbara also brings strong international experience to the practice, having worked in jurisdictions across the UK, US, Europe, Asia and South America. Together, Ryle and Dooley lead a team that continues to develop rapidly following the enactment of the 2010 Finance Bill, which introduced a new era of regulation and enforcement of transfer pricing in Ireland.

Tier 2

Transfer pricing is a growth area within **EY**, and the tax practice has taken on a number of new associates in recent years to manage the swelling demand. The key transfer pricing practitioner within the practice is **Dan McSwiney**, who has been with the firm for three years and has international transfer pricing experience stretching back far beyond that date.

Transfer pricing works closely with the international and cross-border focus of the practice, and so other experienced practitioners within the firm frequently assist McSwiney on large transfer pricing projects. The practice is also able to draw on EY's large international network of expertise, encompassing economists and vast reservoirs of data, to offer market-leading transfer pricing advice. This advice covers all service areas, from interest rate benchmarking to supply chain optimisation projects and royalty flow management.

Ireland is among a handful of European countries in which transfer pricing has only become a relevant area of tax work in the very recent past. **Matheson**'s involvement in the sector first grew not in the green grass of Ireland, but across the oceans in Japan, where it had a number of clients who faced transfer pricing issues with some regularity. Even now, Matheson's transfer pricing clients have tended to come under scrutiny in another country; these cases are rarely initiated in Ireland.

As a result, Matheson has an unusually large transfer pricing team in the Irish context, despite this consisting of five partners, only one of whom is a partner. This is **Joe Duffy**, who leads the transfer pricing department, frequently working alongside the senior associate **Catherine O'Meara**.

As an example of their work, they highlight their role in advising a number of leading US multinationals in connection with the well-known judgment of the US Ninth Circuit Court of Appeal in the Xilink case. This case is famous for the highly unusual incidence of the court deciding to reverse its own decision.

William Fry – Taxand offers a full-range of transfer pricing services, combining both the more legal aspects – such as the drafting of documentation and the negotiation of APAs – with the more economic aspects – such as benchmark analysis and supply chain reorganisation – within one practice.

This practice has in-house economics expertise, led by the consultant **Aoife Garry**. But it can also draw on the broader Taxand network for economic analysis. In particular, William Fry has a close relationship with its UK Taxand equivalent, Alvarez & Marshal. William Fry's transfer pricing team frequently works with the team at Alvarez & Marshal, especially when a project requires more detailed economic analysis or access to benchmarking software.

A number of the practice's tax partners also devote part of their time to transfer pricing challenges. **Martin Phelan**, the overall head of the tax practice, divides his time between corporate and M&A tax work and transfer pricing. **Brian Duffy** and **Sonya Manzor** are also partners who devote part of their time to transfer pricing. In the past year, the team advised Digitel through a reorganisation of their IP structure, shifting the location of the IP from the Netherlands to Singapore, a structure which also incorporated Ireland.

Tier 3

Grant Thornton's transfer pricing work in Ireland is led by **Peter Vale**, who handles much of the firm's cross-border tax work. He has four fee earners working with him. The practice has only limited transfer pricing capabilities in its own right, however, lacking internal economics expertise. But for more challenging transfer pricing matters they draw on the expertise of Grant Thornton's London office, which has an economics practice, and so enables them to take on more in-depth transfer pricing projects. Furthermore, the head of Grant Thornton's Irish practice **Frank Walsh** said the firm plans to expand its transfer pricing practice over the next few years.

One transfer pricing project running through 2013 saw Peter Vale provide advice to an offshore group company in relation to the payment of sums. It involved Vale, with the assistance of Grant Thornton tax manager **Sarah Meredith**, structuring these payments within the Irish transfer pricing rules, as well as managing tax issues under the various other tax heads.

Vale and Meredith also dispensed transfer pricing advice to another international group, this time in the gaming industry. The advice concerned royalties, guiding the group on IP location and the transfer pricing considerations stemming from this.

Mason Hayes & Curran's transfer pricing practice is still fairly nascent. Nonetheless, **John Gulliver**, **Robert Henson**, **Amelia O'Beirne** and **Maura Dineen** regularly provide transfer pricing input on many cross-border transactions and provide comment and review on APA's and other transfer pricing, especially in M&A transactions.

In the past year, the team assisted a major international law firm on Irish elements of worldwide transfer pricing review. A team led by John Gulliver ensured that transfer pricing in respect of Ireland was appropriately documented to ensure eligibility for Irish grandfathering rules. A second project involved assisting a major multinational IT group with a reorganisation of its IP and licensing regime, working with US, Dutch and Hong Kong counsel to do so.

Taxand

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 Irish Tax Firm of the Year at the International Tax Review European Tax Awards 2009 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.

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- Transfer pricing design and planning
- Transfer pricing reviews and documentation
- Mutual Agreement Procedures
- Transfer pricing audit defence

Taxand Ireland:

- Dedicated to tax
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- Partner led from start to finish
- Complex problems, customised advice
- Conflict free & un-bureaucratic
- Passionate about working together

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LEADING FIRMS

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	PwC
2	Bar Zvi & Ben Dov
	BDO Israel
	Fahn Kanne & Co
	KPMG

Transfer pricing is a developing area of tax law in Israel, with the introduction of formal transfer pricing regulation at the end of 2006. However, practitioners believe the Israeli transfer pricing market has "the most potential to grow".

"The Israeli tax authority has started to treat [transfer pricing] more seriously over the past years, making it a substance issue, though they won't be as aggressive as their counterparty in India," said Zvi Friedman of Deloitte.

The regulations require companies to list all cross-border transactions on the corporate tax return form unless it is of a onetime nature and get prior approval from the tax assessor. Corporations are also required to declare the transactions were conducted according to "market conditions".

Further, there is a recent trend, observed by Israeli transfer pricing specialists, for the tax authority to scrutinise more closely business restructuring and intellectual property (IP) migration. "As an R&D centre, there's much pre-acquisition in the high-tech and software industry going on. IP becomes a key issue as it tends to retain high profit," explained Amit Shalit from BDO Israel.

Another critical challenge for TP practitioners in Israel is the lack of any case law under. "Everybody waits for the court decisions to give future directions. Before that, there will be no actual progress," said Willy Elizarov from EY.

Tier 1

Deloitte's transfer pricing service in Israel is under the leadership of **Jacob Houlie**. Houlie has extensive experience handling intellectual property (IP) cross-border planning and authored the first transfer pricing book in Hebrew. Nine professionals in the group provide sophisticated transfer pricing services to over 100 international businesses from various industries. The clientele ranges from start-ups to the largest Israeli based multinationals. The group not only completes comprehensive documentations for corporate clients, but represents them before the tax authority for dispute resolution and advance pricing agreement (APA) negotiations as well. In addition, the team is skilled to plan and implement IP migration while taking into consideration the possible tax incentives and exposure in the respective jurisdictions.

Tax rates at a glance

(As of September 2013)

Corporate income	0% - 25% (a)
Capital gains	25% (b)
Branch tax	25%
Withholding tax	
Dividends	25%/30% (c)
Interest	15%/20%/25% (d)
Royalties	25%
Branch remittance tax	0%
Net operating losses	
Carryback	0
Carryforwards	Indefinitely

a) Israeli companies classified as approved industrial enterprises are entitled to reduced tax rates (0% - 25%), with the period of benefits depending on the location of the plant and whether certain conditions are satisfied.

b) The capital gains tax rate depends on the purchase date and the nature of the asset.

c) Dividends paid to a non controlling foreign resident are subject to a 25% withholding tax; otherwise, the rate is 30%. Dividends paid to a resident individual are subject to a 25% withholding tax, although individuals classified as "significant shareholders" is subject to a 30% withholding tax rate on dividends.

d) The withholding tax levied on interest is dependent on the type of loan (whether or not linked to the index) and whether the recipient of the interest income is an individual or a "body of persons".

Houlie is negotiating with the Israeli tax authority for the first mutual agreement procedure (MAP). In the meantime, his team is also engaged in several business model optimisation projects involving IP issues.

Kost Forer Gabbay & Kasierer is EY's local affiliate in Israel, whose transfer pricing practice is integrated into the international tax practice. Such a model helps to provide a comprehensive outlook on transfer pricing issues. Established in 2000, practitioners regard the team a pioneer in the transfer pricing market especially in terms of planning and APA. The team provides a full-scale service including planning, documentation and controversy assistance with respect to international transfer pricing regulations as well as local requirements.

Now the group has a headcount of 25 professionals and is one of the largest in Israel. It is the only firm in the country that provides transfer pricing services from two offices. **Willy Elizarov** who practiced transfer pricing valuation in the US has led the group since 2003. He is extremely experienced in global documentation work and once led a large-scale international documentation project.

Over the past year, the firm has handled a number of cases in relation to intangible assets. Maintaining a close relationship with tax authority, the firm often advises officials on new legislation. The group has a specialty in solving issues for financial institutions such as banks and insurance companies. It has successfully designed a number of advanced investment models and hedge models to optimise clients' business in the sense of TP.

Tier 2

Bar Zvi & Ben Dov is an Israeli associate of Transfer Pricing Associates (TPA), the independent global network of TP firms. As a law firm, it specialises in assisting international companies such as Berlitz, Crocs and Forex, in the preparation of required TP studies. The firm has a remarkable track record of a 100% success rate in transfer pricing audits worldwide. Moreover, not one of the hundreds of studies filed by the firm has been adjusted or rejected by any tax authority. In addition, it is also capable of providing valuations and APA support.

Yariv Ben Dov leads the practice of two partners and three staff specialists. **Sivan Henik** and **Dana**

Harel joined the team from two local law practices after **Dan Zaidman** left for EY. The two new talents have supported Ben Dov in various transfer pricing assignments from studies and valuations to negotiations. Their clients are from number of industries including construction, high-tech and transportation.

Amit Shalit established the transfer pricing department at **BDO Israel** in 2007. Shalit has over 13 years of experience in international taxation matters and was actively involved in drafting the Israeli transfer pricing regulations during 2006. He has a solid legal and accounting background, and leads the team of three economists. This multidisciplinary team is skilled to inject comprehensive TP insights to clients from different perspectives. Over the past year, it has handled numerous cases involving international funding transactions and represented before tax authorities worldwide. It attracts clients from a wide range of industry backgrounds, including banking, telecommunications, pharmaceutical, energy and logistics.

Grant Thornton's Israeli practice is **Fahn Kanne & Co**. Its transfer pricing team employs four people with **Yigal Rofhe** at the helm. **Benjamin Gandz** joined the group from EY in May 2013 as a specialist. Staff members in the team hold extensive experience in fields of accounting, tax, law and economics with local insights and a global outlook. The firm offers a broad range of services from developing TP policy, preparing studies and supporting APAs.

Gandz and **Shay Moyal** are assisting a public construction company with issues involving $30 million intercompany loans from Israel to India. The assignment is complex in nature since there is no available benchmark for this subject in India.

KPMG has an eight-people team in Israel for transfer pricing. **David Ravia** leads the practice with his expertise in international tax issues and financial related matters. Competitors endorse Ravia, who is well versed in all areas of transfer pricing including documentation project management, APA negotiation and TP dispute resolution. The team serves international clients with its multidisciplinary background in assignments such as documentation, planning and controversy resolution.

Italy

An audit guide by **Domenico Fava** of Fava & Partners.

Tax authorities

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

Italian Revenue Agency (IRA) issues, each year, public guidelines aimed to disclose goals/strategy and actions to monitor tax compliance and challenge aggressive tax behaviour.

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, medium, or high risk profile.

The main parameters, or key areas, which should influence such ranking (and thereby the likelihood of being audited) are:

- aggressive tax planning schemes addressed by the OECD report;
- low profitability in past 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) with a turnover higher than €100 million ($1.30 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 that have fully complied with the Italian transfer pricing protection penalties regime (i.e. that they have flagged the tax return box which attests that documentation is fully consistent and available according to the tax authority 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 scenarios:

- External audit/inspection (at the premise of the taxpayer): this audit usually is never preliminary notified. The Italian Revenue Authority (IRA), and even the Italian tax police, are authorised to start audit activities, by a physical access to the taxpayers' premises (official notification is handed by the tax authorities),
- In-house audit (at the IRA premise): tax questionnaires are delivered to the taxpayer, which is expected to return specific transfer pricing 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 to request the immediate involvement of tax advisers, for proper assistance in the course of the tax audit.

Usually the assistance of the tax adviser might help to address any request of IRA and to 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 taxpayer's rights Statute establishes the general principles that shall be met 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 also be acquired to raise any procedural issue in real time.

5. How does Italy differ in its approach to transfer pricing audit to other countries?

As said at Q1, Italy has enforced a special (facultative) transfer pricing penalty protection regime according to which , if the taxpayer addresses transfer pricing documentation consistently in line with detailed IRA guidelines (and ticks the box in the tax return accordingly), in principle, any transfer pricing challenge should not generate any related penalty.

This regime is aimed to reinforce the cooperative and transparent approach between taxpayer and IRA, by awarding it.

The additional award, according to the very recent guidelines issued in 2013 (Circular letter n. 25), should be that the risk of being audited should be lower than if the taxpayer had not opted for such regime.

Moreover, in Italy there are quite often cross-audits on taxpayers' clients, aimed to verify by interview whether the transfer pricing model is effectively consistent with the facts : these cross-audits might raise deemed permanent establishment (PE) issues of the foreign entity (principal). Deemed PE issue is the (alternative) way IRA challenge aggressive transfer pricing models (cost plus structure, agenct principal model).

6. How does the tax authority compile its information on a taxpayer for 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's highly recommended, although not compulsory, that taxpayers give evidence of transfer pricing documents, as recommended by OECD guidelines (master file, country file, benchmark analysis, etcetera).

Should the taxpayer have voluntarily adopted the Italian transfer pricing penalty protection regime, the whole set of transfer pricing documentation, fully compliant with the detailed IRA guidelines, shall be promptly available for the 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 taxpayers 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 case of specific and extraordinary circumstances.

In facts, 60 days is the standard period and in case the audit is complex the IRA strategy counts only the effective days run at the taxpayers' premise, 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 6o 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 context of an audit.

These pre-requisites usually give proper comfort to IRA.

It is important to maximise all the efforts, getting maximum cooperation both from the tax group department and the tax advisers. If the tax audit is well managed, any challenge could be better faced in the course of a tax controversy. Conversely, a non-cooperative approach (for example, not delivering the transfer pricing documentation) might jeopardise a future tax litigation outcome.

14. How can a company manage its audit risk?

A transfer pricing model should be properly fine-tuned and updated on a recurring basis.

Functional analysis should be internally performed to verify whether the group-selected transfer pricing model is still consistent.

Consistency of the transfer pricing policy inside the group, although it is a value, should not prevent potential change/fine-tuning at local level.

LEADING FIRMS

1 Studio Legale e Tributario (EY)
KStudio Associato (KPMG)
Maisto e Associati
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
Chiomenti Studio Legale
DLA Piper
Legance Studio Legale Associato
McDermott, Will & Emery
Studio Musselli
Studio Professionale Associato a (Baker & McKenzie)
Transfer Pricing Associates
Valdani Vicari & Associati

Other firms to note
Fava & Partners
Di Tanno e Associati

The amount of litigation related to transfer pricing has increased dramatically recently in Italy. The authorities have perceived that transfer pricing audits are a good way to bring in large amounts of capital. Advisers in the jurisdiction predict that this is an area in which the amount of work is likely to increase exponentially over the next 10 years.

Now taxpayers in Italy appreciate the potential financial exposure of transfer pricing issues, advisers in the jurisdiction have begun to secure more advanced pricing agreements.

The Italian tax courts are simply not ready to handle transfer pricing cases, argued Domenico Fava of Fava & Partners. He explained that the judiciary are not knowledgeable enough of the principles of transfer pricing to handle cases in a fair way.

Tax rates at a glance

(As of July 2013)

Corporate income tax	27.5% (a)
Capital gains	0% to 27.5%
Branch tax	27.5%
Withholding tax	
Dividends	0% to 20% (b)
Interest	0% to 12.5% to 20% (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 20% 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 20%. Non-exempt interest on current accounts and bonds is subject to the 20% 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

In the past few years the tax authorities have become increasingly focused on cross-border intercompany transactions. As such, the demand for transfer pricing advice among Italian businesses and foreign entities with Italian operations has increased.

An adviser from STS Deloitte predicted that, in the future, the focus of transfer pricing advisory work will be on defence from tax audits and tax assessments, as well as on the tools enabling taxpayers to avoid double taxation (bilateral mutual agreement procedures (MAP)) or to prevent transfer pricing disputes (typically APAs).

There is a 20-strong dedicated office within the Italian tax authorities that deals with transfer pricing.

Taxation is very high in Italy. Many advisers in the jurisdiction said clients are being much more conservative with investments in the jurisdiction. This situation is set to continue as Italy tries to tackle its spending to reduce its national debt. Francesco Bonichi of Allen & Overy said the tax authorities in Italy have been passive for a number of years.

This passivity has abated said Bonichi, and the authorities are now incisive and active. The tax authorities have "upgraded their approach and their skill" said Domenico Fava of Fava & Partners. The likelihood of receiving a tax claim is therefore increased, resulting in more cases going to court. Advisers said contacting the tax authorities has actually become easier now they are more active and focused. Marco Graziani observed that the new, more skilled authorities are therefore more understanding of complex cases. Bonichi characterised these developments as indicative of the "growing up of the tax authorities in Italy". One adviser said companies and individuals must meticulously document their tax affairs in a very formal manner to mitigate the potential for tax litigation.

Tier 1

The transfer pricing practice of **EY** Italy, led by **Davide Bergami**, is one of the largest in Italy with 35 fully-dedicated professionals.

Clients explained that the transfer pricing team is "very good", having had a good experience – very useful – with regards to TP".

The practice does a large amount of advanced pricing agreement (APA) work and has built up good relations with the transfer pricing authorities in Italy, said Borzumato. Its relation with the APA office in Italy was further bolstered when one of the founders of the office joined EY in Italy.

The transfer pricing at **KStudio Associato (KPMG)** is one of the larger practices in Italy. Head of tax, **Richard Murphy** explained that 75% of those working on transfer pricing at the practice are economists so they are able to do in-house benchmark analyses as well as traditional transfer pricing documentation projects, dispute prevention and resolution, APA and MAP. The practice has been regularly involved with the tax authorities when discussing APA. Because of the firm's reputation, the authorities are happy to work with KStudio Associato in this way, clarified Murphy.

KPMG is lauded by clients as "very good and very professional". The team were commended for producing "well done [transfer pricing] reports that covered everything required".

Murphy said the practice often advises oil and gas companies on new projects in what are, quite often, fairly obscure locations around the world. The extensive network of the KPMG firm means that even if the firm does not have an office in that location, there is almost always someone within the firm with the relevant detailed knowledge.

The tax practice at **Maisto e Associati** is comprised of approximately nine partners and 45 other tax professionals. The team is led by **Guglielmo Maisto**, the founding partner of the firm. Maisto has held the esteemed roles of consultant to the Ministry of European Community Affairs and is a member of the Board of the American Chamber of Commerce in Italy.

The transfer pricing team advises major multinationals on transfer pricing policies and assists clients with the negotiation and conclusion of APAs with the Italian tax authorities. The firm also assists large multinational groups in drafting appropriate transfer pricing documentation (both masterfile and country specific documentation).

STS Deloitte boasts a specialised transfer pricing team which is particularly adept at dealing with APAs. The practice finalised the first ever APA in Italy in 2005. As well as APAs, the practice offers a full range of transfer pricing services.

The practice also boasts specialist knowledge in a number of industries. These include aviation, shipping, public oil energies, manufacturing, global financial services industries, consumer business, tourism, hospitality & leisure, real estate, technologies, and media & telecommunications.

STS Deloitte has tax offices located in Bologna, Florence, Genoa, Milan, Padua, Rome, and Turin.

The transfer pricing team at **Valente Associati GEB Partners** offers a full range of transfer pricing services including the documentation, the determination of transfer pricing policy, benchmark analyses and transfer pricing controversy work, among others.

The head partner at the practice is **Piergiorgio Valente** who is Chairman of the Confédération Fiscale Européenne (CFE) Fiscal Committee, and the International Tax Committee of the International Association of Financial Executives Institutes. He was also the Italian representative of the CFE Fiscal Committee throughout 2012. In addition, at the national level, Valente is Chairman of the Tax Committee of the Italian CFO association (ANDAF), a member of the International Fiscal Association, and a number of other highly esteemed posts. Valente is self-evidently an extremely well respected voice in the Italian tax market.

In December 2012, Valente Associati GEB Partners hired two leading transfer pricing specialists, **Rachele Bernardi** and **Elena Luzi**, previously employed at EY.

Valente and a number of other partners and advisers at the practice publish tax and transfer pricing-related books and articles. The knowledge they impart in such work is indicative of the wealth of collective tax knowledge that is available to clients of the practice.

The transfer pricing team is committed to developing its knowledge of transfer pricing and keeping at the forefront of developments. To achieve this it regularly partakes in conventions, seminars, and workshops on transfer pricing.

Tier 2

Belluzzo & Partners fashions itself as a boutique with an expertise in international tax, both direct and indirect. The transfer pricing team consists of experienced individuals capable of carrying out all aspects of transfer pricing work.

The firm recently hired **Alessandro Barzaghini** and **Giacomo Francioni**, both experts in cross-border tax issues, particularly in relation to UK-Italy transactions and investments. The practice's transfer pricing department has also been bolstered with the recent hiring of **Ettore De Pace**, a specialist in transfer pricing and international tax.

The practice's ideal client are multinational investors in Italy, said **Luigi Belluzzo**, head partner at the practice. Belluzzo explained that the firm will often be consulted by large family-owned companies and, as such, prides itself on the service it is able to provide for these entities.

The transfer pricing team at **Bernoni Grant Thornton** consists of one partner and seven others. Outside of the Big 4 firms, Bernoni Grant Thornton is the only Italian tax practice performing in-house financial transfer pricing analyses independently. The practice recently advised the Italian headquarters of a multinational commodity producer, with an annual turnover in 2011, of $780 million. They informed the company on evaluating, modelling and supporting notional cash pooling.

Giuseppe Bernoni is the managing partner of the Bernoni Grant Thornton tax practice. Bernoni boasts an impressive CV including his former role as the President of the National Association of Chartered Accountants. Another notable partner at the firm is **Alessandro Dragonetti**; a member of the European Tax Advisory Committee of Grant Thornton International, which meets to discuss tax matters at both a worldwide and regional level.

The transfer pricing team at **Bonelli Erede Pappalardo** offers a range of transfer pricing services including litigation (in a domestic context), APAs, transfer pricing policy design, compliance work, and the preparation of documentation. The practice does not employ economists in house and instead uses external economists from Valdani Vicari & Associati; a firm with whom the practice has entered into a strategic alliance.

The practice also benefits from an alliance with the extensively experienced **Graziano Gallo**. Gallo is the former head of the Italian Ruling Office of the Italian tax authorities, which is the department speacialising in transfer pricing issues and in charge of negotiating APAs.

The practice's clients include a number of multinationals listed in international stock exchange markets with a particular focus on the consumer goods, fashion, and automotive industries.

The practice worked on a large number of APAs over the past year for significant clients such as the consumer goods multinational, Unilever, tobacco multinational, Philip Morris International, and world renowned fashion label, Prada.

The transfer pricing team at **Fantozzi e Associati – Taxand** is comprised of one partner and four fee earners and is jointly led by **Alfredo Fossati** and **Stefano Bognandi**. The practice grew significantly over the past year, hiring three new members of staff; two from EY – including Bognandi – and one from KPMG.

The team offers a broad range of transfer pricing services including global design and value chain optimisation services; dispute resolution services; documentation services; and tax optimised valuation services.

The practice advised Natixis a French corporate and investment bank, on the allocation of free capital to the Italian subsidiary of a multinational bank. The deal was worth $60 million and was the first settlement in Italy of its kind.

The practice's clients derive from a wide variety of industries but the firm is particularly experienced in working with those from the energy industry.

The transfer pricing department at **Hager & Partners** was established in 2011, and as such has a relatively small dedicated team of professionals – two partners and four other professionals .Despite the small size of the firm, the practice covers all areas of transfer pricing, including the preparation of documentation at Italian and EU level; assessment of current transfer pricing policies; implementation and design of new policies; assistance during audits and litigation; and much more. The firm plans to expand their practice in the near future.

Hager & Partners in Italy prides itself on being adept at dealing with cases in both domestic and international contexts. **Heinz Peter Hager**, the head of the tax firm, clarified that over 50% of its client base is international. Since 2011, the firm has been a member of NEXIA International, a leading worldwide network of independent accounting and consulting firms located in 100 countries.

The firm is particularly well-suited for dealing with German firms as the majority of the professionals at the firm are native German speakers.

An example of an ongoing cross-border deal the firm is working on is a project involving the value chain located in the Asia-Pacific region of an Italian group, Liu.Jo S. The firm is advising on the extensive restructuring of the flows at intercompany level as well as with third party suppliers.

Tier 3

Allen & Overy in Italy deals specifically with the legal aspect of transfer pricing, namely restructuring, reviewing and redrafting intercompany transfer pricing agreements. The practice recently did work for the well-established Italian banking group, Banca Sistema. The practice successfully advised the bank in starting up a subsidiary in the UK involving their skills in tax planning and transfer pricing.

Allen & Overy has been prolifically involved in a variety of discussions with official authorities regarding a number of recent tax issues in Portugal. Although the practice does not wish to be seen as a lobbying firm, they take part in debates regarding the implementation and implications of specific tax measures in Italy.

The advantage of this sort of work for the practice's clients is that the partners have gained the trust and respect of the tax authorities in Italy.

Chiomenti Studio Legale boasts a specialist transfer pricing unit in its tax team. The team aims to assist clients looking to establish a new transfer pricing strategy.

The majority of the work this firm does is transfer pricing litigation and negotiations with the authorities to procure APAs. Most of their clients are Italian multinationals with operations abroad or foreign multinationals with a presence in Italy.

The transfer pricing practice at **DLA Piper** Italy is led by **Maricla Pennesi** and consists of one partner and two other fee earners.

The majority of the work that the team offers is in relation to transfer pricing documentation. Over the past year they did a lot of this type of work for clients such as Cambrex Profarmaco, an innovative life sciences company and Inalca, a significant food company.

Legance Studio Legale Associato is a completely independent tax practice that covers a broad range of tax matters and the practice prides itself in having advisers well-versed in a broad range of specialities. For this reason, the practice is not divided into subdepartments. The practice deals mainly with the transactional side of tax and possesses a special knowledge of finance and transactions.

The transfer pricing work the firm has increased in recently because the tax authorities have focused more heavily on it. The practice has bolstered its transfer pricing acumen with the hiring of an ex-senior official working within the transfer pricing team within the Italian tax authorities. As such, the practice has "direct access to knowledge and personal contacts", explained **Marco Graziani**, partner at the firm.

The transfer pricing team is able to give advice about the negotiation of APAs, MAPs, arbitration and other related TP issues (including, among others, the review of the existing documentation, the support in drafting new sets of documents, the evaluation of existing policies and of information available for disclosure, as well as of the potential consequences in case of audits and/or subsequent litigation).

McDermott, Will & Emery has extensive experience in the drafting of cost sharing agreements, commissionaire agreements and IP licensing agreements with the view to supporting transfer pricing strategies. The firm assists clients with transfer pricing projects aimed at reviewing intercompany prices and at seeking ruling/APA clearance. It also regularly assists on transfer pricing controversies, at all stages from tax audit to litigation, which includes domestic remedies (including settlements) and international remedies (competent authority procedures).

Carlo Maria Paolella, head partner of the practice, said the firm prides itself on its boutique approach to transfer pricing advice. This approach means that, unlike other firms, the partners will personally spend time advising their clients.

Studio Musselli is a tax, legal, and economic advisory firm. They offer planning, national and international, in particular transfer pricing planning and compliance.

Studio Professionale Associato a (Baker & McKenzie) has offices in Milan and Rome and serves the largest Italian and multinational corporations in a wide range of industries such as energy, luxury goods, machinery, financial services, information technology and pharmaceuticals.

The firm offers transfer pricing services to its clients as a part of its global transfer pricing team.

Transfer Pricing Associates has five main aims when it advises its clients; these are to: reduce costs, optimise supply chain operations in a tax efficient manner, simplify transfer pricing processes, mitigate risks in cross-border transactions, and to represent their clients in the case of transfer pricing disputes.

The practice has extensive industry experience with the automotive, chemicals, financial services, FMCG, luxury & apparel, mining, oil & gas, pharmaceutical, and technology, media, and communications.

Clients described the practice's service as "good". They were particularly complementary about **Caterina Colling**, the head of the practice, who was described as "very nice – she understands the process and provides a good service".

Valdani Vicari & Associati is a European company with an international team. We work across a variety of fields, from business consulting and market research to transfer pricing to economic and market studies on EU policy.

Other firms of note

The transfer pricing team at **Fava & Partners** is led by **Domenico Fava** and is comprised of one partner and three others. Although the firm is not able to design new international transfer pricing policy for their clients in house, Fava has established contacts within KPMG and PwC who work with the firm in this regard. The team offer support in transfer pricing litigation.

The practice recently successfully represented an International Carrier on a tax settlement deed for a price-earnings and transfer pricing matter. This resulted in a full deduction of foreign costs and recognition of analytical net profit computation. The potential exposure of this deal could have been more than €200 million (US$153 million).

Di Tanno e Associati offers advice on transfer pricing issues, ensuring that the tax aspects of transfer pricing have been complied with. The firm can also assist their clients on transfer pricing audits and litigation. They do not employ economists and are therefore unable to do benchmark analyses and database work.

The firm recently advised Apax Partners LLP on the transfer pricing activity between the companies headquarter in the UK and its Italian subsidiary.

Tommaso Di Tanno, head partner and founder of the firm, is widely regarded as an expert in economic and fiscal policy. **Fabio Brunelli**, a partner at the firm, is the former chairman of the European Private Equity and Venture Capital Association (EVCA) tax and legal committee and has been recently re-elected on the committee.

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Firm profile:
Hager & Partners, founded in 1995, is an independent Italian business advisory and tax consulting firm, with 90 ca. professionals with own offices in Bolzano, Milan and Rome and coverage in over 100 countries around the world thanks to the membership of NEXIA International network.

The transfer pricing practice provides high quality transfer pricing services and assistance to large multinational groups as well as to small medium-sized enterprises in industries such as real estate, banking, leasing, financial, insurance, fashion, automotive, food & beverage. The firm also has a strong reputation in the energy industry.

Most of the professionals of the transfer pricing practice come from the transfer pricing departments of large accounting firms and boutique consulting firms. All of them are qualified to offer and to provide client-tailored services, which combine the needs of both Italian and foreign clients.

The approach of Hager & Partners in assisting multinational groups with their transfer pricing matters is aimed at aligning the transfer pricing policy to the value chain, tax/accounting, and legal variables. The team focuses on quality and believes that quality consists in a day-by-day and on-time delivery. The business model is strived to find new, effective and feasible solutions in a rapidly changing national and international context.

The main transfer pricing services provided by Hager & Partners are:

- Transfer pricing design and planning
- Tax effective supply chain management
- Transfer pricing documentation
- Transfer pricing in financial services

- Strategic audit defence
- Dispute avoidance and resolution.

KPMG
cutting through complexity

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LEADING FIRMS

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	KPMG
	Zeirishi-HoJin PwC
2	Baker & McKenzie
	White & Case
3	Grant Thornton
	Kojima Law – Taxand
	Nagashima Ohno & Tsunematsu
	Tokyo Kyodo Accounting

"The economic landscape has changed: Yen becomes cheaper, inbound investment has increased, and foreign expansion for Japanese enterprise continues to flourish. All these things have made transfer pricing a substantial issue," said Yoichi Ishizuka from Grant Thornton.

Japan's transfer pricing landscape is "very sophisticated and advanced compared to most countries in the region", according to Eric Roose from Morrison & Foerster. No significant change in the area of transfer pricing has been included in recent tax reform.

Over the past year, the market has seen more audit cases on intangible and intra-group service transactions, with an emphasis on business activities within Asia. Kai Hielscher from EY Shinnihon Tax has also noticed that "examiners often make adjustment on companies' donation money". The tax authority may apply the donation rules to deny the portion of an intercompany payment.

Japan is one of the first countries to introduce an advance pricing agreement (APA) programme solely for transfer pricing purposes. "Japanese companies like APA very much," said Jun Tanaka from KPMG. "They have very good knowledge on APA with the US, but not with China."

In recent years, the market has observed a great appetite for bilateral APA with China and Korea.

One challenge for Japanese transfer pricing practitioners is the requirement of transaction information. "The NTA asks for a lot of information that taxpayers don't have. Sometimes, taxpayers feel it's necessary to keep certain information to themselves due to business concerns, but they are still required by the tax authority to disclose," explained Tanaka.

Another hurdle barrier, seen by international corporations, is language. Only Japanese can be used in filing the documentation. "The NTA will typically resist the use of 'Asia-Pacific' comparables but instead will focus on Japanese comparables," said Eiki Kawakami from Kojima Law – Taxand. "There is considerable data on Japanese companies but much of it does not appear in international databases or in English."

Tier 1

Michael Tabart oversees the transfer pricing practice at **Deloitte Tohmatsu Tax Co**. The diverse team is made up of eight partners and 68 transfer pricing professionals serving clients from Tokyo, Nagoya and Osaka. The team is keen to assist clients to evaluate their transfer pricing risks, develop sound policies and prepare documentation. In addition, it also offers support in areas of audit defence, APA and mutual agreement procedures (MAP). For example, it has

Tax rates at a glance

(As of June 2013)

Corporate income	25.5% (a)
Capital gains	25.5%
Branch tax	25.5%
Withholding tax (b)	
Dividends	20%
Interest	20%
Royalties	20%
Technical service fees	20%
Branch remittance tax	0%
Net operating losses (years) (c)	
Carryback	2
Carryforward	9

a) The national standard corporation tax rate of 25.5% (reduced from 30% for fiscal years beginning on or after April 1 2012) applies to ordinary corporations with share capital of more than ¥100 million ($1.3 million). A 10% surtax is levied for three years for fiscal years beginning on or after April 1 2012. Therefore, the national corporate tax will be 28.05% for the first three years, and 25.5% thereafter. Special tax rates are available for SMEs.

b) From January 1 2013, a 2.1% surtax will increase the dividend, interest, royalty, technical service fees tax rate to 20.42%

c) For fiscal years starting on or after April 1 2012, only 80% of a company's taxable income may be offset by net operating losses (NOLs). Small and medium size enterprises with share capital of not more than ¥100 million, however, are exempt from the new NOL restrictions. NOL carryforwards may be further restricted in certain situations, including a change of ownership of more than 50% in connection with a discontinuance of an old business and commencement of a new business. The NOL carryforward period is 9 years for NOLs incurred during fiscal years ended on or after April 1 2008. (SMEs may carry back losses for one year for years ended on or after February 2009). Under special relief measures, companies suffering losses from 2011 earthquake and tsunami may carry back disaster losses arising in the period ending between March 11 2011 and March 10 2012 to fiscal years commencing within two years of the disaster year.

Source: Tax advisers from Kojima Law – Taxand

recently concluded a sophisticated bilateral APA between Japan and Ireland.

Because of the increasing business activities between Japan and China in recent years, the team has also placed emphasis in dealing with transfer pricing issues relating to China. The team was involved in a tax adjustment refund case where no successful precedent could be referred. Thanks to the team's effort, it has helped the client to gain the refund and subsequently saved the client half of its tax cost in the cross-border transaction.

The widely praised **Kai Hielscher** is the transfer pricing leader at **EY Shinnihon Tax**. Fellow practitioners have endorsed **Karl Gruendal** as a recognisable APA negotiator.

The team assembles a wealth of expertise in economics, government process know-how and supply chain management. Language is another benefit for clients opting to work with this team: in addition to Japanese and English (generally the norm in Japan) it also employs specialists speaking number of Asian and European language including Chinese, Korean, Thai, French and German. The team is extremely strong in financial services, life science, automotive and natural resources.

Highlights in its service provision over the past year include, but are not limited to, developing a strategy for managing controversy for past transactions and negotiating over 10 bilateral APAs.

In Japan, **KPMG** has maintained a stable practice over the past year and holds one of the largest and strongest transfer pricing teams. **Jun Tanaka** leads the practice of 10 partners and 64 transfer pricing specialists spread across three offices. **Daisuke Horiguchi** is singled out for his specialty in transfer pricing dispute resolution. **Tomoko Wada** is another name often mentioned. The firm offers a wide range of services including planning, documentation, bilateral and multilateral APA negotiations, audit defence and domestic appeal and litigation procedure. Its clientele reaches a variety of industries such as manufacturing, pharmaceutical, software, trading, finance and natural resources. Over the past year, the team has predominantly focused on APA negotiation and dispute resolution. It has successfully assisted a client to refund the entire adjustment amount through an appeal against the tax office.

PwC's transfer pricing service is among the best in Japan according to several market observers. **Akio Miyamoto** leads the sizable practice of eight partners and 60 specialists. **Akio Miyamoto** is lauded by competitors for expertise in transfer pricing disputes.

The team provides a full suite of transfer pricing services including documentation, APA support, mutual agreement procedure MAP advice and controversy. The service provision covers a wide range of sectors, but one focus and strength is in financial services. As TP usually involves multiple jurisdictions, international outlook has been essential for quality service. As an international practice, PwC welcomes professionals with diverse cultural backgrounds.

Over the past year, the transfer pricing team has been very busy helping clients with APA cases. As a leading APA negotiator in the country, the firm concluded an APA last year with another new country, which thickened its already remarkable portfolio. Moreover, the team also assisted on a number of transfer pricing audit cases in response to the ever more aggressive tax office.

Tier 2

The transfer pricing practice at **Baker & McKenzie** has remained stable over the past year, retaining a team of two partners and seven fee earners. **Ken Okawara** leads the practice. In spite of being a law firm, it assembles specialists not only with a legal background, who are capable of managing contentious transfer pricing matters, but also economists, financial analysts and certified practicing accountants. It has extensive experience in handling transfer pricing planning, audits and disputes involving Japan, the US and other countries across a broad range of industries.

Okawara, **Yukiko Komori**, **Satoko Nakamura** and **Howard Weitzman** are engaged in several cases with documentation related matters. These projects involve leading multinational players in industry and each requires a unique approach to analyse the transactions. Additionally, the team is assisting in an APA renewal between Japan and Australia. In the area of litigation, the practice has been advising a Japanese chemical manufacturing company on its appeal to the National Tax Tribunal over a transfer pricing assessment for ten years.

White & Case is recommended in the market as a prominent player in transfer pricing. "Not many firms other than the Big Four are visible in the market, but White & Case makes its presence as an alternative," said one competitor. The team employs seven people including three partners. Leader of the practice, **Gary Thomas** has practiced in Japan for over 30 years. **Akira Akamatsu** used to serve at the NTA as an international examination section chief and is often involved in authority consultations under tax treaties and APA.

With its lawyers being skilled in dealing with matters in Japan, US and other foreign tax laws, it offers a good blend of legal transfer pricing advice. The firm's practice encompasses developing transfer pricing methodologies, preparing documentation, pre-audit planning and representing clients in examinations, different court levels and unilateral and bilateral APAs. One highlight of its service offering is that former transfer pricing examiners in the team also conduct mock examinations, helping clients to identify potential issues and to prepare. Benefitting from an international network, the firm is capable of handling both inbound and outbound transaction issues involving various countries.

Over the past year, the team has been busy engaging with a number of transfer pricing matters, such as assisting Japanese and European companies on bilateral APAs, helping foreign companies to obtain custom tax refunds under retroactive import price adjustments, and creating documentation for number of US and European companies.

Tier 3

Grant Thornton's Japanese affiliate is under the leadership of **Yoichi Ishizuka**. The firm offers a wide range of services such as risk assessment, documentation, benchmarking, dispute supports and assistance for APA and MAP. In a sophisticated and mature market where the majority of the largest companies have entered an APA programme already, the firm has its own vision to focus on assisting small and medium sized enterprises. Over the past year, the practice's focus has shifted from documentation to APA support: it has concluded a number of APA assignments, mainly involving Japan and US.

Kojima Law – Taxand has a three person transfer pricing team, with **Eiki Kawakami** at the helm. **Marl Campbell** is also a notable partner in the practice. The firm's TP practice has over 20 years of experience in Japan, serving clients from the pharmaceutical, medical device, technology, fashion, financial, automotive, diary and chemical industry. Its service mainly involves developing and maintaining documentation for Japanese multinationals and foreign companies doing business in Japan. However, the firm also has 15 years of experience filing for unilateral and bilateral APAs with the NTA and tax authorities in the US, UK, Germany and Switzerland.

Yoko Miyazaki leads the practice at **Nagashima Ohno & Tsunematsu**. Competitors endorse **Atsushi Fujieda**, a remarkable practitioner in dispute resolution. As a law firm, the practice is predominantly involved in transfer pricing disputes and litigation support for clients, both domestic and international. It has successfully secured an audit resolution for a Japanese electrical products company, resulting in no amount of tax being assessed. The team has also acted for various taxpayers such as automobile manufactures and pharmaceutical companies in large-scale transfer pricing controversy cases.

The transfer pricing practice at **Tokyo Kyodo Accounting** is led by **Ryutaro Uchiyama**. The team has experiences steady growth over the past year and now employs three partners and three staff members. This accounting boutique provides documentation and APA support to clients from various industries such as entertainment and logistics. The team has worked on a number of multilateral and bilateral APAs in the past 12 months, and is engaging in a case of withholding tax refund by a transfer pricing secondary adjustment.

Tokyo Kyodo Accounting Office

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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.

Luxembourg

Tax authorities

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LEADING FIRMS

1	Deloitte
	KPMG
	PwC
2	Atoz – Taxand
	EY
	Loyens & Loeff
3	NautaDutilh

Tax rates at a glance

(As of July 2013)

Corporate income tax	21%
Capital gains	0%
Branch tax	21%
Withholding tax	
Dividends	15%
Interest	0%
Royalties	0%
Branch remittance tax	
Net operating losses (Years)	
Carryback	
Carryforwards	indefinitely

Source: *Tax advisers from ATOZ – Taxand*

It was only in 2011 that Luxembourg, in the wake of increasing international pressure for greater transparency, introduced a broad-based framework for transfer pricing legislation. This took the form of two Circulars, issued on 28 January 2011 and 8 April 2011, which stated that the approach of the Luxembourg tax authorities will follow the OECD transfer pricing approach.

Since then, as in other jurisdictions in Europe, transfer pricing has grown rapidly as a sector. "As lawyers we should invest even more in our transfer pricing practice," said Christophe Joosen of Nauta Dutilh. "There is definitely growth in it."

Certain aspects of the tax environment encourage this. "One of the very attractive things for investors going into Luxembourg is that you can meet with the tax authorities and get an advance clearance on your tax position," explained an adviser.

Despite increasing amounts of pressure, multinationals based in Luxembourg seem to be still holding onto these benefits. "They're still as business-friendly as they used to be," said Joosen. "The attitude is still the same."

One particular area of growth is occurring in an area still shrouded in a degree of uncertainty. The rules introduced in 2011 were specific to intra-group finance activities, and there is still a lot of demand out there for this form of tax planning. But according to one tax practitioner, this demand has "now expanded to other types of intercompany transactions even though the authorities do not have specific rules in this area".

However, even as transfer pricing work spreads into new terrain, it is also feeling the greatest squeeze from the broader international pressure on tax planning. As Joosen admits, "There is more strain on the tax planning that a lot of advisers do here in Luxembourg. This will oblige us to be more adaptive and flexible. There will be an increased focus on substance and transfer pricing."

Some advisers feel this squeeze, currently only light, is an intimation of much more dramatic change to come.

"Crude tax planning will die out," said Keith O'Donnell of Atoz. "Setting up companies and transferring revenue into it won't survive long, the greater exchange of information and transparency will wipe that out. There will be a relative decline in the number of transactions and an increase in the complexity of them."

Others, however, feel that these pressures may channel even more tax planning and structuring work through Luxembourg, which, under the fresh legislation, will create a great deal more transfer pricing work for the country's tax practices.

"Luxembourg has a good robust tax system," said André Pesche, head of tax at Baker & McKenzie. "It's now about setting up robust structures, and I'd still call Luxembourg a very stable country."

"There is interest from BRIC countries to structure investments, especially Russia," agreed Peter Moons of Loyens & Loeff. "There is a lot of interest from Russian and eastern European groups to migrate since the Cyprus troubles."

The future direction of travel is clearly uncertain. Luxembourg is in the middle of a crucial period of transition, and tax advisers are observing the unfolding situation with great interest.

Tier 1

Deloitte can make an irrefutable claim to be a pioneer in the Luxembourg transfer pricing market – they established the first such practice in 2009. This practice, led by **Stephan Tilquin**, now has two partners and 16 dedicated professionals, together forming a team that encompasses economists, tax and industry specialists, and professionals with many years of international tax and business experience.

Transfer pricing has also been the practice's most rapidly developing area, propelled by the sector's surging significance in the Luxembourg jurisdiction as legislation comes in on both a national and European level.

The practice is particularly recognised for its business model optimisation work. In the last year it designed a transfer pricing approach for a financing structure involving a Luxembourg entity, as well as designing complex transfer pricing models in the context of real estate.

Philippe Neefs, who has been with **KPMG** for 18 years, established the transfer pricing department in 2011 and continues to lead it now. Neefs is both a tax and transfer pricing partner, with the international tax group he manages encompassing transfer pricing within it. His team covers all transfer pricing work except disputes, and its work is driven primarily by intra-group financing agreements – two characteristic attributes of transfer pricing work in Luxembourg. But the scope of the advance pricing agreements and TP studies prepared and filed by KPMG Luxembourg does not solely address intra-group financing activities but also service activities, intellectual property, business restructuring, and financial services.

Neefs led his team through a series of significant projects in 2012 to 2013. They performed an arm's-length analysis of the margin to be realised from the cash pooling activity of the International Automotive Components Group Europe. Another project, worth $900 million, involved creating a benchmark to determine the remuneration of commercial paper without any comparable for Belfius Financing Company.

PwC's transfer pricing team in Luxembourg is led by **Begga Sigurdardottir**, a partner focusing on transfer pricing and alternative investments. Sigurdardottir has many years of experience in advising alternative investment managers and funds, and has recently been involved in advising on transfer pricing matters in connection with alternative investments, taking into account recent Luxembourg transfer pricing rules. She leads a team of transfer pricing specialists in Luxembourg, which, since the Luxembourg tax authorities incorporated the OECD approach to transfer pricing in 2011, has been providing advice and assistance with all aspects of intra-group pricing arrangements, including transfers of intellectual property or the use of intellectual property, tangible property, services, loans and other financing transactions

Tier 2

Transfer pricing remains an important part of **ATOZ – Taxand**'s work. With a broad emphasis on international corporate tax work, much of the firm's caseload draws on transfer pricing expertise. **Keith O'Donnell**, the overall head of the practice, has been heavily involved in transfer pricing work in the past year. O'Donnell is widely praised by his peers in the market, highlighted as a "very good adviser" with excellent communication skills and "very good at explaining issues in easily understandable language".

O'Donnell worked with a number of real estate investment management firms through 2012. For La Salle, O'Donnell produced transfer pricing analysis and implementation measures to comply with the Luxembourg transfer pricing circulars, preparing 13 advance pricing agreements along with their respective transfer pricing studies. He also guided Heitman on the restructuring of their management fees, involving a complicated functional analysis and the extrapolation of comparables from analogous situations in an industry database.

Key practitioners in **EY**'s transfer pricing team include **Paul Leyder**, a tax adviser with more than 16 years of experience in national and international taxation, and **Nicolas Gillet**, a senior manager. One client, employing the firm for transfer pricing services, said: "I personally decided EY and Deloitte were the two best on the local market. I made it clear that I expected them to come with ideas to me, to bring good ideas, and they have both done so."

Transfer pricing is a growing part of the overall tax practice in **Loyens & Loeff**, but it is also very new. The practice only began any meaningful transfer pricing work in 2011, when the Luxembourg tax authorities introduced transfer pricing documentation requirements. **Peter Moons** leads the majority of the firm's transfer pricing projects, negotiating APAs with tax authorities and considering what should be included in transfer pricing reports. He is assisted by the promising senior associate, **Anna Sergiel**, with other partners engaging with projects when their expertise is needed.

In 2012, Moons led a project assisting the Luxembourg financing company of Heidelberg Cement, one of two market leaders in cement, in their move from the Netherlands to Luxembourg. This required the production of a transfer pricing report and careful negotiation with the Luxembourg tax authorities.

Moons also coordinated work on a number of transfer pricing reports for the many financing companies resident in Luxembourg, who, under ever-increasing pressure from the tax authorities, desired new documentation for a range of their structures.

Tier 3

NautaDutilh's small transfer pricing department was established in 2011, at the same time as the formal TP regulations were enacted in Luxembourg. It primarily focuses on the preparation of TP studies and APAs in the field of intra-group financing and the determination of handling fees for administrative services. As it stands, the department does not perform benchmark studies in relation to royalty rate determination or service contracts – although like all firms in Luxembourg, they are primed for the transfer pricing market to take off in the country.

The department is led by senior associate **Jean-Nicolas Bourtembourg**. This year Bourtembourg worked alongside the overall head of the tax department **Christophe Joosen** to negotiate an APA for a Russian multinational company establishing a principal company in Luxembourg, a deal with a value of $2 billion.

Anticipated growth in transfer pricing work in Luxembourg is reflected in NautaDutilh's decision to begin the process of growing their expertise in the area. In April 2013 they hired **Jacques-Yves Ligier**, a young associate with two years of experience largely in the field of transfer pricing work.

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Malaysia

Tax authorities

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Website: www.customs.gov.my

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Headquarters Inland Revenue Board of Malaysia
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Tel: +60 3 8313 8888
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Website: www.hasil.gov.my

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Shearn Delamore & Co
	Taxand Malaysia
3	Raja, Darryl & Loh

Transfer pricing is a key topic for the Malaysian Inland Revenue Board (MIRB), and several developments have been seen over the past year. The Malaysian transfer pricing guidelines issued in 2003 were revised in July 2012. It indicates that "the tax authority is serious to push transfer pricing agenda through", according to Yee Wing Peng from Deloitte.

The 2012 rules have retrospective effect from January 2009 and cover both cross-border and domestic transactions. The rules apply to the acquisition and supply of both tangible and intangible goods and services between related party financing. "Since the rules have no force of law, it would be interesting to see any challenge raised by the taxpayers," Adeline Wong of Wong & Partners pointed out. "Also there's always arguments about the best methodology."

One clear trend observed in recent years is that audits have been intensifying year on year. Common audit triggers include companies exhibiting consis-

Tax rates at a glance

(As of September 2013)

Corporate income	25%
Capital gains	15% (a)
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) The 15% capital gains rate only applies to gains derived from the disposal of real property or on the alienation of shares in a real property company which are made within 2 years from the date of acquisition. If the disposal is made between 2 to 5 years from the date of acquisition, the rate is 10%. Otherwise, capital gains are not taxed in Malaysia.

b) Was available for assessment in years 2009 and 2010.

Source: Tax advisers from Taxand Malaysia tent losses, fluctuating profitability or reporting very low profits. Companies with significant amounts of related party transactions, especially payments for intra-group services and companies that underwent supply chain or business restructurings are also likely to be selected for a tax audit. Royalty and trademark payments and marketing intangibles now are under MIRB's close scrutiny, according to several market observers.

Many taxpayers are now fighting an uphill battle during audits due to the lack of documentation or evidence to support the arm's-length nature of the charges. "Taxpayers see great difficulty in preparing documentation as they always find they can't satisfy the tax authority," said Yee. "The tax authority examines their transactions on a year on year basis, but taxpayers have no benchmark to compare."

For more certainty on the transfer prices, taxpayers are encouraged to apply for advance pricing agreements (APAs) rather than passively wait until being audited.

Tier 1

The transfer pricing service at **Deloitte** in Malaysia is under the leadership of **Theresa Goh**. Goh is widely recognised in the marketplace for extensive experience in successfully resolving transfer pricing disputes and APA negotiations. The joining in of **Venkataraman Ganesan** and **Hrishikesh Gogte** from India has further strengthened the team of 20. The practice has been actively engaged a great number of documentation management projects and in both local and regional TP planning works.

Dispute resolution is the strength of the firm. Over the past year, the team has achieved success for a number of clients with transfer pricing audits and controversies. It has a mechanism to prevent prolonged and painful litigation between taxpayers and the tax administration. With such a perspective, the firm often acts to push forward the APA process. It was the first team in Malaysia to conclude the APA assignment, and it keeps the flagship during the years. Only in the first half of 2013, it has reached six APAs for different clients.

Sockalingam Murugesan leads the transfer pricing practice at **EY**. With 23 dedicated staff members, it is one of the largest transfer pricing teams in Malaysia. Experienced professionals from a variety of disciplines deliver a quality service to a significant number of Fortune 500 companies, key multinational corporations and large Malaysian conglomerates. **Vinay Nichani** is recognised for his dispute resolution skills. The team's service offerings also cover both outbound and inbound business restructuring, supply chain planning, risk reviews, documentation, controversy management, APAs and mutual agreement procedures (MAP).

As a member firm within EY's global and regional network, the practice often handles large-scale cross-border cases with a seamless and consistent approach while meeting local requirement. The global and regional structure enhances the team's strength in financial services and in the oil and gas industry.

KPMG has a tax practice that offers a wide range of transfer pricing services including documentation management, planning and controversy settlement. Under the leadership of **Bob Kee**, the team has 14 dedicated professionals. It is the first firm in Malaysia to assist its client in a transfer pricing litigation at the Special Commissioners of Income Tax and has been successful in defending various transfer pricing cases for its clients. The majority of the firm's clients are in the top 20 companies listed on the Malaysian stock exchange as well as top MNCs. With an increasing market demand in transfer pricing, the firm is seeking to expand its service.

SM Thannermalai leads the sizable transfer pricing line at **PwC** that employs four dedicated partners and 29 specialists. **Jagdev Singh** who is also the leader of the firm's tax practice specialises in transfer pricing dispute resolution and APA negotiation. Two senior consultants were recruited from India last year to strengthen the team's proficiency.

One highlight of the firm's service provision lies in its sector specialisation: transfer pricing advice is delivered and tailored to match different business needs as professionals in the firm have a profound knowledge in various industries including consumer and industrial products, services, financial, technology, energy and mining. The team is well known for its diversified portfolio of assignments ranging from comparability analyses to planning and advising on intellectual property migrations. Leveraging on the firm's good relationships with the tax authorities, the team has assisted foreign multinationals in designing the transfer pricing strategies for their investments in Malaysia.

Tier 2

Longstanding Malaysian legal firm, **Shearn Delamore & Co,** is prepared to advise clients on key legal issues in transfer pricing. Led by **Ka Im Goh**, the team of six is eligible for assisting clients in the preparation for and response to transfer pricing enquiries and audits. Whenever a dispute occurs, the firm's experienced lawyers are capable to represent clients in their tax appeals and judicial review applications to the courts.

In the first quarter of 2013, **Anand Raj**, **Irene Yong** and **Foong Pui Chi** successfully challenged the revenue authority on the appropriate arm's-length price and selection of comparables on behalf of an international shoes and sportswear company. With solid arguments provided by the team, the tax authority agreed to reduce the super brand's transfer pricing adjustments under the median level.

Renowned APA negotiator and documentation project manager **Leow Mui Lee** leads the transfer pricing line at **Taxand Malaysia**. The dedicated service has two partners and four specialists. **Bernice Tan** has extensive experience working with leading tax firms in Malaysia and specialises in planning and documentation. The team has worked on a variety of assignments utilising support from the Taxand global transfer pricing resources in regional and cross-border assignments. In addition, the firm is seen as a thought leader in Malaysia because it was the first to publish a transfer pricing guidebook explaining the rules, planning and compliance strategies.

Tan and **Florence Hong** advised a leading regional bank on the structuring of intercompany charges for a regional core banking system. The duo ensured the usage of the system was charged under the arm's-length principle and also complied with accounting requirements.

The firm also offers controversy resolution. Tan and **Manmit Kaur**, for instance, have successfully argued in favour of their client based on its limited functionality and risk profile.

Tier 3

Raja, Darryl & Loh's transfer pricing service is supported by financial consultants. Its lawyers help to review transfer pricing positions and get global clients prepared for future dispute matters. **Vijey Krishnan** leads the tax team of four people and handles contentious matters in relation to transfer pricing. Krishnan and **Chang Ee Leen** successfully negotiated a settlement to the tax appeal for one of the world's largest photographic and office automation equipment makers. The Inland Revenue Board was convinced to significantly lower a transfer pricing adjustment. The firm continuously receives referrals from the Big 4 firms.

Mexico

Tax authorities

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LEADING FIRMS

1	Baker & McKenzie
	Deloitte
	Mancera (EY)
	PwC
2	Basefirma
	KPMG
	SKATT International

President Enrique Peña Nieto's latest efforts to increase Mexico's tax revenue, the lowest in the OECD, will likely boost demand for transfer pricing services while hastening the end of the transfer pricing boutique, in favour of the full service model.

"As part of the new Presidential administration, there will be some important changes in the Tax Administration Service (SAT), specifically in the transfer pricing department where Salvador Cruz will be named this week as the new Central Administrator," said Moises Curiel of Baker & McKenzie. "Meeting with the SAT's general administration of large taxpayers, he said very clearly that his intention is to attack aggressive tax planning for restructuring."

Curiel added that at a recent international tax conference, Oscar Molina, head of SAT's Large Taxpayer Administration, said he will pay special attention to approximately 270 companies that restructured themselves as maquilas – manufacturing companies located in northern Mexico's free trade zone – to obtain tax incentives. "They are the first targets for the Minister of Finance," said Curiel. "They will go for those particular audits."

The Large Taxpayer Administration also plans to launch a new unit that will be "more oriented toward attacking companies with aggressive tax planning restructuring," said Curiel. He also said that advance pricing agreements (APAs) will remain the best option for companies to obtain certainty in their related party transactions.

Also, in August 2013, the Mexican congress approved a series of proposals that would impose a 5% royalty on the net profits of mining companies. "Transfer pricing would have a significant impact on royalties, and a number of foreign firms are likely to weigh in on the matter," said Simon Somohano of Deloitte.

The takeaway is that one cannot underestimate the importance of sound and effective transfer pricing planning. "The tax systems in general are getting more mature and leaving fewer opportunities for tax planning," Somohano said. "So transfer pricing planning has to be more sophisticated and more central to tax planning."

Consequently, more of Mexico's transfer pricing practices are becoming one-stop shops for planning, documentation and audit defense services. "What we have seen in the last several years has been an implosion of boutique firms," said Jorge Castellon of Mancera, an EY member firm. "More and more firms are bringing capabilities in-house. That leads to less compliance work for firms like us."

Tier 1

Baker & McKenzie's transfer pricing practice comprises three partners and 16 fee-earners in five practice

Tax rates at a glance

(As of September 2013)

Corporate income tax rate	29% (a)
Capital gains tax	29%
Branch tax	29% (b)
Withholding tax	
Dividends	0% (c)
Interest	4.9% 10% 15% 30% (d)
Royalties	25% 30% (e)
Branch remittance tax	0%
Net operating losses (years)	
Carryback	0
Carryforwards	10

a) The corporate income tax rate was increased temporarily from 28% to 30% for the years 2010-2012. The rate decreased to 29% in 2013 and will revert back to 28% in 2014. The flat tax (IETU) of 17.5%, which applies from January 1 2008, taxes profits determined by excluding from the major part of revenue most expenses and costs [excluding in most cases interest earned or paid, royalties paid or received to or from related parties, and salaries (although a portion of salaries is subject to a tax credit)].

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

c) No withholding tax is levied on dividends paid out of the net tax profit account (CUFIN) to non-residents. If dividends are not paid out of CUFINS, an equalisation tax is imposed, equal to the general corporate tax rate on the gross amount.

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 28%.

e) The 30% rate applies to royalties paid for the use of patents and trademarks; the 25% rate applies to all other royalties and technical assistance.

Source: *Tax advisers from Mijares, Angoitia, Cortes y Fuentes – Taxand*

areas: documentation, consulting, litigation, advance pricing agreements (APAs) and valuations. Litigation, on both the administrative and judicial levels, accounts for most of the practice. Its clients include large domestic and foreign companies such as GE, Alstom, Herbalife and L&L Manufacturing.

The practice is led by **Moises Curiel Garcia**, who helped design and implement some of Mexico's transfer pricing rules, and previously headed the transfer pricing audits and resolution group at the Mexican tax authority. Recent hires include **Ulises Castilla**, who previously was central litigation administrator of large taxpayers for the tax administration service.

During the past year, Baker & McKenzie successfully negotiated the first bilateral APA between the US and Mexico. The APA covers the tax years 2001to 2011 and is valued at $230 million. The practice also assisted GE Mexico to document its intercompany transactions in Mexico and advised the company on thin capitalisation APAs.

Deloitte's transfer pricing practice is one of the largest in Mexico, with 12 partners, 150 fee earners and six offices across the country. The practice advises clients on transfer pricing planning and documentation, APAs and mutual agreement procedure. The practice is led by **Simon Somohano**, who is also leader of the transfer pricing practice for the network of Deloitte member firms in Latin America and the Caribbean.

The transfer pricing practice of **Mancera**, an EY member firm, comprises more than 80 professionals, including eight partners, trained in transfer pricing economics and intercompany finance. Several partners, including practice leader **Jorge Castellon**, **Enrique Gonzalez** and **Jaime Heredia**, are widely respected among their peers for their transfer pricing expertise. The practice focuses on compliance, with documentation accounting for roughly half its workload. It also negotiates advance pricing agreements (APAs) and represents clients in litigation.

During the past year, Mancera concluded the first transfer pricing case ruled in favour of a taxpayer (appealed by the government), and obtained favourable outcomes in several transfer pricing audits. The practice also successfully negotiated several unique APAs, including the first for a Mexican mining company, as well an APA for the energy industry and an APA with a residual profit.

PwC has one of the largest transfer pricing teams in Mexico, with more than 60 specialists in nine offices. The team provides a wide range of services, including transfer pricing studies and documentation, corporate restructuring, valuations, value-chain management and mutual agreement procedures and APAs. It also has an active audit defense and dispute resolution practice. The team is led by **Fred Barrett**.

Tier 2

BaseFirma's transfer pricing practice provides a full range of services, including documentation management, dispute resolution and the negotiation of APAs. Its clients include several large multinational corporations doing business in Mexico, including Anixter International and Dow Chemical. The practice also lends its expertise to regional clients, such as Melia Hotels International, one of the largest hoteliers in the Spanish-speaking world. The practice is led by **Juan Carlos Becerril**, who specialises in intangible asset valuation. In the past year, Becerril has taken on three new hires, including **Victor Calvario**, who brings experience in the engineering sector to the firm, and **Stephania Pimentel**, who specialises in insurance and financial services. Last year also saw the opening of a Guadalajara office, managed by **Claudia Vallejo**.

Led by **Maria Teresa Quinones**, **KPMG**'s transfer pricing practice provides assistance with a wide range of transfer pricing issues, including compliance, transfer pricing studies and documentation, transfer pricing planning, advance pricing agreements (APAs), audit support and dispute resolution, including competent authority relief.

Led by **Emilio Angeles**, the transfer pricing practice of **SKATT International** provides the full range of transfer pricing services, including transfer pricing planning, documentation, advance pricing agreements (APAs), litigation and analysis of intangible assets.

Deloitte.

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Firm Profile:
The largest transfer pricing team in Mexico by number of personnel, including specialists in economics, accounting, and finance. This experienced group of professionals bring a powerful and holistic approach to transfer pricing in all industries with its expertise in the following main areas:

- Elaboration of transfer pricing documentation
- Development of transfer pricing policies & planning strategies
- Valuation of intangible and tangible property
- Optimization of supply chain and business models
- Assistance in tax controversy and dispute resolutions
- Negotiation of Advanced Price Agreements and Mutual Agreement Procedures

Recognized as “2012 Transfer Pricing Firm of the Year” by *International Tax Review*

Netherlands

Tax authorities

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LEADING FIRMS

1	Baker & McKenzie
	Deloitte
	EY
	KPMG Meijburg
	PwC
2	Abel Advisory
	Altus Alliance
	DLA Piper
3	BDO
	Taxperience

Tax rates at a glance (As of September 2013)

Corporate income tax (a)	20/25%
Capital gains	0%
Branch tax	20/25%
Withholding tax (b)	
Dividends	15%
Interest	0%
Royalties	0%
Branch remittance tax	
Net operating losses (Years)	
Carryback	1
Carryforwards	9

a) If taxable profits are less than €200,000, lower rate applies
b) Payments to European companies that qualify under EU directives may be exempt or subject to reduced rate

The Netherlands has experienced a number of significant changes to its transfer pricing regime over the past few years. As a result, advisers have reported growth within their practices. "In general our tax practice has been growing, and transfer pricing especially has been at the front of that growth," said Antonio Russo, head of transfer pricing at Baker & McKenzie.

Advisers remarked upon a market that has matured exceptionally quickly, with clients swiftly becoming sophisticated and selective in the advisory services they choose. "This is proven by the fact that documentation is a commodity nowadays," said Russo.

As well as clients, advisers said the tax authorities have also matured very swiftly in the context of transfer pricing. Several remarked that the level of expertise and the skills the authorities possess have improved a great deal in a very short time. Consequently, the level of scrutiny is higher, deeper, and more complex.

Previously, as Russo said, "the people doing transfer pricing were tax professionals who skimmed on the surface on the technical economic issues". Now, however, a more mature market has made competition much tougher, and tax practices without access to economic expertise find it very hard to compete in transfer pricing.

Further propelling this trend, advisers anticipated a steadily increasing amount of litigation – already increasing sharply – which will force multinationals to think closely about their transfer pricing strategy and so choose their advisory services carefully. They also expect legislation to be passed with the aim of simplifying the market, noting an irritation from both tax authorities and companies over the amount of resources they have to spend on transfer pricing.

Russo also anticipates a further trend that will make the transfer pricing market even tougher. This trend is catalysed by the international pressure on tax planning in general and the spotlight that has been shone on the Netherlands in particular, with some media labelling it a tax haven. The Dutch parliament has responded with discussions about the role of intermediate finance structures as well as about the number of tax structuring deals that go through the Netherlands. Some politicians, media and even tax professionals have been asking if they want to handle so many of these kinds of deals.

"I do see a shake-up in services reliant on transfer pricing," said Russo. "That commodity type of work might decrease so some of the players in the market may shrink in the future. There is a segment in the market which might not be there in the shape we know it today."

Tier 1

Baker & Mckenzie's transfer pricing practice is consistently praised and undoubtedly offers top tier quality within the Netherlands. "It's a very strong practice under the leadership of **Antonio Russo**, very highly valued in the market," said one peer. "Baker & McKenzie is of course especially strong," commented another. "Russo combines very strong technical skills with a commercially-orientated approach, and is also a pleasant person."

The practice has been extremely active over the past year, and has taken on two new recruits – an economist and a junior associate – to cope with the swelling demand. Alongside Russo, the second partner at the firm is **Margreet Nijhof**. Russo is fully dedicated to transfer pricing, although he stresses that his team combines economic and legal insight and is always ready to incorporate thinking beyond the usual scope of transfer pricing into any project. He specialises in transfer pricing design, implementation and valuation of companies and intangible assets, supply chain restructuring and APA negotiations. Nijhof focuses on international tax planning for multinationals with an emphasis on corporate reorganisations and restructurings, particularly in the context of transfer pricing. Together they oversee a team of ten professionals.

An example of the breadth of the practice's approach is the assistance they provided a client in restructuring negotiations on exit fees. This combined technical transfer pricing expertise with careful diplomacy and Baker & McKenzie drew on their good relationship with the Dutch tax authorities to ensure transparency and open lines of communication in developing the project.

A second challenging analysis involved undertaking a sustainability exercise for a huge computing multinational, identifying the company's core business processes and functions and assessing whether the existing organisational and legal structure of the company was sustainable from a tax and transfer pricing perspective.

Deloitte's transfer pricing practice, led by **Thijs Heijenrath**, consists of two partners and 31 fee earners. It is one of the largest transfer pricing specialist groups in the Netherlands, with two partners, five directors and a significant number of senior managers, the practice has a relatively large contingent of very experienced practitioners, many of whom have previously worked with the specialised APA unit at the Dutch Tax Authorities or multinational corporations. The practice leads a wide variety of projects both in the field of transfer pricing and business model optimisation, and is particularly well-respected for its extensive experience in the area of APAs and mutual agreement procedures.

In the past year, the practice provided transfer pricing and business model optimisation assistance for the establishment of a new global model for one of the leading global players in mobile telecommunications. It also provided strategic planning guidance for both existing and new business areas within EMEA for a leading Chinese telecom & ICT solutions provider. And it designed and implemented a new operating model to include tax efficient and sustainable procedures, for one of the world's largest manufacturers of industrial and institutional cleaning, hygiene, and sanitation products.

EY have a full-service transfer pricing practice in the Netherlands, encompassing planning, documentation and controversy. They have strong economists within the Netherlands offices, and are also able to draw on the firm's strong international network both for economic expertise and for expertise relating to relevant local areas. A key practitioner is **Monique van Herksen**, leader of EY's EMEIA international tax and transfer pricing controversy leader.

KPMG Meijburg have a highly-recommended transfer pricing practice in the Netherlands, with one peer commenting "of the big four the one that is very well-regarded in transfer pricing is KPMG." They have a team of five partners supported by 52 fee earners, and together this team has the necessary expertise to manage all intra-group transfer pricing issues. This encompasses documentation and risk management, including operational transfer pricing and adequate software solutions; tax efficient supply chain management; and controversy services. It advises many of the Netherlands' top companies as well as large foreign based multinationals both in terms of transfer pricing as well as in the area of supply / value chain management. These companies operate in all areas of industry, for example financial services, chemicals, pharmaceuticals, high tech, electronics & telecoms, oil & gas, automotive, FMCG, retail, services.

In the past year, KPMG's transfer pricing practice has worked on diverse challenges. They assisted a client – an MNE involved in trading parts in the agricultural industry – in obtaining a combined ruling regarding transfer pricing, informal capital and the innovation box, with the Dutch tax authorities. For a Dutch quoted MNE in the high-tech sector, they concluded a bi-lateral APA between the Netherlands and the US. And the head of the transfer pricing practice, **Loek Helderman**, advised an MNE mining company through a review of the options for a principal structure in the Netherlands or Switzerland. Helderman himself was highly praised by peers, one of whom said he is "especially well-known for his expertise in supply chain solutions".

PwC have an excellent reputation for transfer pricing in the Netherlands. A peer said: "PwC have a very strong transfer pricing practice, perhaps the only one of the big four to have grown. I'd consider them the strongest of the Big 4." Individual practitioners were also praised, in particular the transfer pricing practitioner **Michel van der Breggen**. Der Breggen was described as "a very strong name in I/C financing" by one adviser. Another added: "He is recognised as a leading specialist in the area of transfer pricing."

Tier 2

In 2010, **Frank Schwarte**, then a transfer pricing specialist at DLP, and **Joost Lagerberg**, a transfer pricing specialist with KPMG, decided to break away from their established employers and form their own transfer pricing boutique, **Abel Advisory**. "We both saw opportunities to deal with transfer pricing in a more efficient and pragmatic way," said Schwarte. "And the Big 4 firms aren't growing; they're shrinking, which affects your career perspective. In the Netherlands we've seen a whole range of boutiques starting and almost all these firms have been successful, so we saw a market for a transfer pricing boutique."

They hired their first employee in the summer of 2011 and now, three years since its launch, they have grown into a firm of seven professionals. A third partner joined Schwarte and Lagerberg in February 2013: **Olaf Smits**, formerly of VMW Taxand and **Hewlett Packer**, who is the firm's first equity partner. They offer the full range of transfer pricing services: design, documentation, implementation, audit defence, intercompany financing, valuations, benchmarking, and so on.

Their clients fall into two main groups. On the one hand, they do a lot of work for tax law firms that don't have transfer pricing specialists, particularly Dutch boutiques. On the other, they work with large business clients including several Dutch multinationals. One client said: "Abel is a small firm, so less expensive but twice as good because of their personal involvement." Another was even more enthusiastic: "It's been a fantastic experience. They deliver an outstanding quality of work for a good price compared with the Big 4."

In the past year, they have designed global documentation frameworks for a number of clients, as well as developing software to help firms allocate various fees and expenses.

Altus International began building the **Altus Alliance** in 2010, a global alliance of independent transfer pricing, tax valuation and business restructuring experts. This organisation has 19 alliance members representing 22 countries across all continents. In the Netherlands, they partner with many law firms, who rely on them instead of the Big 4 to assist in complex transfer pricing and tax valuation matters.

Over the past few years, the practice has advised on some of the Netherlands's largest deals. In 2011 it advised on the post-merger integration of Friesland Foods and Campina. Furthermore, in 2012, Altus was responsible for rendering tax valuation services in relation to the legal restructuring of Prysmian after Prysmian purchased its competitor Draka. Other projects have included global benchmarking, financial modeling, policy design and the implementation of transfer pricing policies.

DLA Piper has a small but very active transfer pricing team of six fee earners, advising multinational companies on European transfer pricing issues in M&A transactions, business restructuring, supply chain planning and merger integration. Much of their work comes from emerging economies, and most projects through the past year have had a large input from Africa, Ukraine, CIS and Latin America.

Examples of projects from the past year include arranging intercompany financing intra-group for Hugo Boss AG, a project that involved a number of economically developing countries. The practice also advised the Meltwater group on third party financing and intercompany reorganisation. And it also advised Pagani Automobili on various transfer pricing matters and the international expansion tax.

Agata Uceda, EMEA transfer pricing director in the practice, coordinates much of the firm's transfer pricing work. She was praised by peers in the market, one saying: "Agata is recognised as a singularly professional individual, competent and very responsive."

Tier 3

BDO has a full-service tax practice in the Netherlands, with 21 partners and around 300 other fee earners providing advice across all specialities. The international tax practice is headed by **Hans Noordermeer**, while the practice hired a transfer pricing partner, **Sjoerd Haringman**, in early 2013 to lead transfer pricing in the practice.

Haringman worked with other international tax partners to advise on a large supply chain restructuring for a pharmaceutical company. In real estate, the practice advised on the tax structuring of the acquisition of an Italian shopping centre by a Dutch company. Generally, the company has seen a shift in its client base with more interest from medium-sized international companies, who are increasingly willing to look beyond the Big 4.

Ruben van Aarle, overall head of tax at **Taxperience**, is experienced in transfer pricing matters and so also handles the firm's small transfer pricing caseload himself. In the past year, this included setting up central sourcing including the determination of an appropriate remuneration for one client. It also included setting up a transfer pricing policy concerning a combination of internet sales and sales via rep offices, for another client.

New Zealand

Tax authorities

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Lower Hutt 5045
Tel: +64 4 978 0779
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Website: www.ird.govt.nz

LEADING FIRMS

1	Bell Gully
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	EY
	KPMG
	PwC
2	Ceteris
	Grant Thornton

With concerns about base erosion and profit shifting (BEPS), the Inland Revenue has upped its game and sophistication in terms of transfer pricing enforcement, although its transfer pricing legislation and guidelines remain unchanged for more than 13 years.

New taxpayer targets and approaches to risk areas are announced annually in the compliance review programme. In 2013, both inbound and outbound related party transactions have been covered, and companies that have incurred constant losses often trigger audits or adjustments.

"We see there are increased transfer pricing audit activities in past years, because the Inland Revenue is seeking more real gains," said Neil Russ from Buddle Findlay. "The Inland Revenue has a focus on multinationals, especially those famous global brands. Transfer pricing questionnaires are issued in all general income tax audits of multinationals in the last five years."

"New Zealand based operations with their headquarters in the EU or US are more likely to ensure robust transfer prices, because they receive more instructions from their parent companies," Willy Sussman from Bell Gully observed.

Graeme Olding from Chapman Tripp warns multinationals should "keep a watchful eye", though he does not believe the New Zealand tax authority would become "a thirsty mover" in transfer pricing enforcement. "New Zealand always keeps a close relationship with Australia and looks towards the practice in Europe. Now that Australia is adopting some new rules, New Zealand is very likely to follow," predicted Olding.

There is also an increasing trend that more corporations tend to use advance pricing agreements (APA) to resolve audit disputes. Unilateral APAs have become a popular and relatively cost effective resolution since it usually takes only six to 12 months to be resolved.

Tier 1

Bell Gully has a transfer pricing service that often negotiates and documents transfer pricing arrangements for domestic and offshore clients. **Willy Sussman** leads a team of two partners and four specialists that also negotiate disputes for clients with the New Zealand Inland Revenue Department. The firm sometimes uses outsourced accountants and economists, both in New Zealand and offshore, to handle complex planning works.

Diana Maitland heads the transfer pricing team at **Deloitte** and has been dedicated to this area since

New Zealand first introduced the rules in 1996. She is well known in the market place as an all-round transfer pricing professional. The group also include a specialist who was once a member of the tax authority's transfer pricing unit, which provides extra insights into the government's administration and operation.

The team is heavily involved in negotiations with the tax authority in regards to both unilateral and bilateral APAs. In addition, the group also actively analyses and reviews client's pricing transactions and plans the best pricing strategy. When audits or disputes occur, it is eligible to defend clients' transfer pricing documentation and position in front of the tax authority. Financial services, retail and manufacturing are just some of its industry specialisations.

Mark Loveday leads one of the market's largest transfer pricing teams with 11 dedicated professionals at **EY**. He sits on the Auckland bench with 23 years' experience covering planning and compliance assistance. Loveday has particular expertise within the automotive, pharmaceutical, software, financial services and insurance sectors. **Alejandro Ces** joined the practice from Ceteris and contributes to the team with his 20 years of experience advising multinational companies with their global transfer pricing planning, documentation and defence needs.

The team's service provision is both domestic and international. Its TP people have experience in Europe, Asia, Australia and South America. Benefitting from the global and regional network, the practice often receives new knowledge and information from regional headquarters such as Australia and Singapore. The practice keeps excellent relationships with the tax authorities, and has been involved in a significant number of successful APA negotiations each year.

KPMG's transfer pricing services, led by **Kim Jarrett** have been active in working with clients in respect of unilateral and bilateral pricing agreements, including advice on the importance of pre-emptive planning and processes to ensure that sufficient and accurate documentation is maintained. **Kyle Finnerty** and **Kimberley Webb** arrived from Canada and Hong Kong this year, which bolstered the team to 12.

Jarrett and Finnerty handled a case in January 2013 involving transfer pricing and customs problems concerning the purchase price of goods for a New Zealand-based distributor, which significantly decreased after their client had a restructuring. The duo undertook careful negotiations government bodies and convinced them the change of price was not of a transfer pricing nature.

Tax rates at a glance

(As of September 2013)

Corporate income	28%
Capital gains	0%
Branch tax	28%
Withholding tax	
Dividends	0%/15%/30% (a)
Interest	15%
Royalties	15%
Technical Services fee	15%
Branch remittance fee	0%
Net operating losses	
Carryback	0
Carryforwards	Indefinitely (b)

a) Dividends paid to a nonresident are subject to a 30% nonresident withholding tax (NRWT) to the extent not fully imputed. Fully imputed dividends are subject to a 0% NRWT rate where the nonresident has a 10% or more voting interest in the company. In most other cases, the NRWT rate will be 15%. Rates may be subject to further reduction under an applicable tax treaty.

b) Losses may be carried forward indefinitely, subject to a 49% continuity of ultimate share ownership requirement. Losses also may be offset against the profits of other group companies, where the companies are at least 66% commonly owned at all relevant times. It is generally possible to carry forward part-year losses.

Peers endorse **PwC** has one of the strongest transfer pricing practices in New Zealand. The team emphasises advice regarding business transformation planning, compliance and document management, and audit defence strategies including APA negotiations. **Erin Venter** is the director who oversees the transfer pricing department.

Tier 2

Mathew McKay at **Ceteris,** and two associates, advised a global financial institution on the establishment and maintenance of its New Zealand branch structure and its local income tax consequences, which proactively help the client to avoid future risk.

Ceteris is an independent transfer pricing and valuation firm in New Zealand that usually provides support to leading multinational clients. **Leslie Prescott Haar** is the managing director who leads the team of four. Haar has about 23 years of experience practicing in the US, Australia and New Zealand and specialises in international and domestic transfer pricing. Peers confirm her proficiency as an APA negotiator. Being a boutique firm, the team's service offerings have a concentration on the more complex aspects such as financial dealings and intangible property transactions. Yet its specialists are eligible for all traditional TP service like litigation support, audit defence, APA and negotiations.

Greg Thompson leads the transfer pricing service line at **Grant Thornton** in New Zealand. After senior manager **Elizabeth Burrows** returned to the team in early 2013, the dedicated team retains a workforce of three. Although there have not been many high profile transfer pricing cases to keep the team busy, it firm maintains its integrity as part of Grant Thornton global TP network.

Norway

Tax authorities

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LEADING FIRMS

1	Deloitte
	EY
	PwC
2	BA-HR
	KPMG
3	Arntzen de Besche
	Wiersholm

For a country of its size and economic character, Norway generates a large quantity of transfer pricing work. This primarily stems from its oil and gas industries and the vast quantities of natural resources contained within its distinctive physical terrain. The international size and scale of the companies and operations involved in the energy industry, and in oil specifically, give rise to a disproportionately large amount of transfer pricing work. Consequently, even some of the law firms have fairly advanced transfer pricing practices.

New, overarching transfer pricing rules were last introduced in 2008, and over the past year the authorities have become much harsher in imposing them and in their expectations of compliance.

"The tax authorities have really been saying no, transfer pricing has existed for such a long time that we expect that the companies have organised their business according to those new rules," said Hans Martin Jorgensen, head of transfer pricing at Deloitte. "Because of that the tax authorities have been much more aggressive around transfer pricing, and have said that they will be in the future, both in documentation and planning but especially, I think, in documentation."

Several advisers echoed this description of a particularly active and aggressive tax authority in the context of transfer pricing. One gave the example of the oil taxation office, which has been looking hard at transfer pricing within the petroleum industry. "The authorities have centralised their operations and become more efficient," said Joachim Bjerke at BA-HR. "The general attitudes to tax planning have had an impact too."

Finally, a special oil tax act regulating how to tax oil companies has introduced changes specifically related to transfer pricing. "It provides very technical instructions on how to calculate what proportion of your intercompany debt is deductible," said Hans Martin Jorgensen of Deloitte. "The bad thing about it is that it will have a huge impact on the profitability of some of Norway's big oil fields."

Tier 1

In a jurisdiction with few practitioners devoted to transfer pricing work alone, **Deloitte** sets the pace with two experienced partners dedicated exclusively to the sector. The department is led by **Hans Martin Jorgensen**, who works primarily with transfer pricing optimisation and planning as well as with audit defence and documentation. His colleague, partner **Petter Grünner**, is also dedicated full-time to transfer pricing; he has extensive experience advising both Norwegian multinational corporations on outbound investments, and non-Norwegian multinational corporations on inbound investments into Norway. Grünner also has wide-ranging experience in transfer pricing issues that occur in Norway's vital petroleum sector.

As in many other jurisdictions, increasingly active tax authorities have boosted the amount of tax audit work that transfer pricing practitioners take on. This has moved the practice's focus from M&A-style, work heavy on documentation, and towards reviews and

Tax rates at a glance

(As of September 2013)

Corporate income tax	28% (a)
Capital gains	28%
Branch tax	28%
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) The government has proposed to reduce the corporate income tax rate to 27% effective from January 1 2014. Companies engaged in exploration, production and pipeline transportation of petroleum pay special national income tax at 50% in addition to the ordinary corporate tax of 28%, that is a marginal tax rate of 78%. The marginal tax rate for oil companies is not proposed to be reduced.

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

analyses of the structures as they actually work from a transfer pricing perspective. In this context, data analysis skills have grown greatly in importance.

Another product of such increased tax authority activity is more litigation work. The partner who takes on most of this work in the context of transfer pricing is **Finn Eide**.

Examples of the kind of complex work that the team has taken on in the past year include a multi-country project involving the restructuring and redesign of the transfer pricing policy of a major consumer goods company. This included IP-planning as well as designing a new model for their distribution company, and also necessitated VAT.

EY's transfer pricing practice comprises business structuring and restructuring, transactional analysis, controversy work, MAP, operational transfer pricing services and the drafting of intercompany agreements, as well as the limited quantity of APA work that the Norwegian environment enables. Its team of 18 professionals includes leading experts in the shipping, financial services, consumer goods, parmeceuticals and telecommunications industries. Unsurprisingly, it is the biggest and most active transfer pricing practice in its jurisdiction.

The department is headed by **Mareus Leivestad**, the one partner among its 18 professionals. It is working on the establishment of a worldwide CCA for one of Norway's biggest oil companies, which has a very complex legal and operational structure and invests huge amounts in R&D, launching approxiamtely 400 new projects each year. EY are therefore working to create a very flexible and scalable CCA framework.

Morten Beck leads transfer pricing at **PwC** in Norway, overseeing a team of five partners and 14 fee earners. PwC has perhaps a market-leading transfer pricing practice in Norway: it is the only Norwegian practice with dedicated transfer pricing professionals in more than one office location (Oslo, Bergen and Stavanger), and Beck is among the most experienced and recognised transfer pricing professionals in Norway.

The practice assists clients in the development of tax-efficient structures that help increase compliance with legal requirements, prepare for rapid audit response, resolve transfer pricing disputes and decrease transfer pricing exposure in future periods. In the past year, specific projects have included assisting a multinational energy corporation – a big player in the European Energy market – in preparing pan-European transfer pricing documentation, covering more than 100 legal entities and encompassing more than 90 internal transaction groups.

Another project involved advising a foreign multinational corporation through a global business restructuring process, specifically providing advice on the possibility of transferring intellectual property from Norway to a foreign jurisdiction. And the practice also assisted numerous clients through comprehensive tax audits.

Tier 2

BA-HR has a significant transfer pricing practice, led by the firm's overall head of tax, **Joachim Bjerke**, along with the partner and energy market expert **Jan B Jansen**. While accounting firms in Norway handle most of the compliance work, including documentation, it is law firms such as BA-HR that lead the litigation work.

In Norway, this litigation work primarily comes from the petroleum tax system, due to the dual influences of the country's hyperactive oil industry and the sector's 78% tax rate. Jansen is an acknowledged leading authority on disputes in the context of energy tax. Jansen has been very busy in this area this year. He has been working with several oil companies on the extent of the deductibility of R&D costs when these oil companies have contributed financially to such projects organised by the government or research institutions. The Norwegian Oil Taxation Office accepts that these costs are relevant, but alleges that the participating Norwegian companies should invoice its related companies in other jurisdictions as they may benefit from the same research.

Elsewhere, Jansen has also been representing several companies on the position of their interest margins when they have been challenged by the tax authorities, as well as fighting cases to do with insurance premiums and the pricing of gas deliveries.

KPMG is the third largest provider of audit, tax and advisory services in Norway. It has a large tax team which draws on its excellent international network, investing the practice with outstanding international tax expertise. In the context of the oil and gas industries, the practice is strong in all relevant aspects of transfer pricing. Much of the practice's oil and gas work is led by **Jan Samuelson**, who has a background as a tax manager in Exxon.

Tier 3

For decades one of Norway's leading law firms, **Arntzen de Besche**'s tax practice has grown immensely both in quantity and quality since **Anders Heieren** left PwC to head the department in 2011. This evolution continued apace through 2012 to 2013, with the practice growing to a total of 13 professionals. Among these, the practice has two partners and four fee earners involved in transfer pricing work; the highly experienced **Anders Heieren** keeps an eye on this sector of tax work at the firm, too. In the past year, the practice added **Synnøve Vedde-Fjærestad**, formerly with the Ministry of Finance, to its team.

Projects in the past year have included advising on the group internal financing of a client's Norwegian activity: determining an arm's-length pricing method and verifying the margin level, and performing similar advisory services for the client's guarantee fees and cash management fees. Another similar project involved advising on the determination of a pricing method for group internal financing, this time with a particular focus on how to allocate various bank fees. And a slightly different challenge involved working on a transfer pricing conflict over royalty charges to Norway from a centralised product development and R&D company.

Arntzen de Besche is still fairly new as a firm in this area of tax law, but their tax lawyers are generally well trained and are equipped for transfer pricing as well as more general tax work, and so they are now focusing more of their skills on this area.

Wiersholm have a well-established tax practice primarily focused on two sectors of tax work: energy and private equity. **Arvid Skaar** is the senior tax partner engaged with oil and electricity companies, and the practice as a whole has a great deal of experience advising oil service companies as well as firms in the shipping industry. Partner, **Harald Willumsen**, spearheads the firm's work in private equity.

Concomitant with these sectors, the practice also has a strong line in transfer pricing advisory services in the energy industry. Skaar leads this alongside the young partner **Andreas Bullen**. Skaar and Bullen work across transfer pricing advice and disputes, including documentation and setting up intra-group agreements that will satisfy the tax authorities. They usually outsource the benchmarking components of extended transfer pricing projects.

In the past year, the firm has been busy advising oil service companies moving out of Norway and dealing with the attendant tax issues such as exit taxes. They have also worked with companies that have intra-group service costs which to need to be distributed to all subsidiaries, with Wiersholm advising on how to figure out the amount of costs that should be taken on by each subsidiary.

Peru

Tax authorities

Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT)
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LEADING FIRMS

1	Deloitte
	Estudio Olaechea
	EY
	KPMG
	PwC
2	Muniz, Ramirez, Perez – Taiman & Olaya
	Rodrigo, Elias & Medrano

Peru's transfer pricing professionals expect the market for their services will continue to grow this year, as disclosures and adjustments are both expected to increase.

The tax authority made several amendments to the transfer pricing rules in the past year, to increase disclosure requirements and to eliminate uncertainty about the scope of the application of the rules. The amendments went into effect in January 2013.

As amended, the transfer pricing rules now apply to related party transactions and also to transactions with entities located in "tax haven" jurisdictions.

The amended rules also require taxpayers, subject to the country's transfer pricing rules, to file an annual transfer pricing study to the tax authority, and retain all supporting documentation. This requirement only applies to transactions that affect the calculation of income tax in Peru.

"The market is changing because of these new rules, so that companies need more complete planning reports and analysis," said Gloria Guevara, of Deloitte. The first transfer pricing studies are due in October 2013.

The amended rules also clarify the rules on transfer pricing adjustments, which originally stated that the tax authority could only make an adjustment to a transaction that produced "tax damage", for example taxable income or deductible costs and expenses.

The amended text, however, makes it clear that the tax authority can make an adjustment even when there is no tax damage, if the transaction will affect the taxpayer's tax calculations. Naturally, transfer pricing professionals expect controversy will increase as a result.

They also see the rule amendments as proof that their transfer pricing practices are about to grow beyond planning and documentation services.

"There is no controversy work yet, because transfer pricing has just started in Peru," said Roberto Cores, of EY. "The tax authority has created a specific division to handle international taxation and transfer pricing. Audits are expected to increase in the next few years."

However, other transfer pricing professionals believe controversy is just around the corner. "Recently, there have been audits by the tax authority related to both tax and transfer pricing issues, meaning that in the near future, it is possible the strongest line of business might be the controversy practice," said Fernando Castro, of Muniz, Ramirez Perez – Taiman & Olaya.

Tier 1

With nearly 40 professionals devoted to transfer pricing, **Deloitte**'s transfer pricing practice is one of Peru's largest. It is also one of most experienced, having executed the country's first transfer pricing strategy.

Tax rates at a glance

(As of September 2013)

Corporate income tax rate	30% (a)
Capital gains tax	30%
Branch tax	30% 4.1% (b)
Withholding tax	
Dividends	4%
Interest	4.99% 30% (c)
Royalties	30%
Branch remittance tax	4%
Net operating losses (years)	
Carryback	0
Carryforwards	4/Unlimited (d)

a) 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. For non-resident legal entities and branches, agencies or other PEs in Peru (although the latter are considered resident legal entities), tax is imposed only on Peru-sourced income.

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 non-resident individuals, and to non-resident 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) A taxpayer has the option to carry forward all net operating losses for four years or carry the losses forward indefinitely, but only up to 50% of the taxpayer's taxable income of each subsequent year.

Its core businesses are planning and documentation, although it also advises on advance pricing agreements (APAs). Clients include Peruvian and foreign companies in a variety of business sectors, including mining, pharmaceuticals, financial services, retail and telecommunications. The practice is led by **Rogelio Gutierrez** and **Gloria Guevara**.

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 pricing reports, and recommends modifications as necessary. Clients include leading logistics, oil and gas and life science companies.

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.

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.

PwC's transfer pricing practice 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 **Fernando Becerra**.

Tier 2

Muniz, Ramirez, Perez – Taiman & Olaya provides services related to transfer pricing planning and studies. **Fernando Castro Khan** leads the firm's transfer pricing practice.

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.

Philippines

Tax authorities

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Email: contact_us@cctr.bir.gov.ph
Website: www.bir.gov.ph

LEADING FIRMS

1	Isla Lipana & Co
	SyCip Gorres Velayo & Co
2	Manabat Sanagustin & Co
	Du-Baladad and Associates – WTS

After almost seven years of amendment, the Secretary of Finance of the Philippines issued Revenue Regulation No. 2-2013, or the new transfer pricing guidelines, in January 2013. That has put transfer pricing at the top of the tax office's agenda this year.

The new regulations provides guidance in applying the arm's-length principle to related party transactions, both on a domestic and a cross-border basis. The law is also in line with the OECD Transfer Pricing Guidelines. "The tax office is becoming more understanding to the international rules since a lot of multinational corporations are opening operations here," Dennis Dimagiba from Quisumbing Torres commented.

Practitioners welcome the issuance of the new regulation. "It gives clear guidepost to clients, so that taxpayers know how to avoid transfer pricing risks under proper requirement," said Emmanuel Alcantara from SyCip Gorres Velayo & Co.

Yet, no specific method is preferred by the Bureau of Internal Revenue (BIR) to measure an arm's-length price. "It is crucial for companies get quality documentation ready and prove the comparability of independent transactions," advised Benedicta Du-Baladad from Du-Baladad and Associates. Under the new guidelines, taxpayers are required to maintain and keep adequate and specific transfer pricing documentation. More importantly, the documentation must be contemporaneous.

The BIR activities are expected to intensify as a result of new regulation. Multinationals that generate low tax payments are most likely to be the BIR's review or compliance targets because they normally come into intercompany transactions, according to Du-Baladad. Moreover, transactions that take advantages of tax incentives are also warned to pay extra attention.

For the coming year, practitioners hope the BIR would issue circulars to further clarify the regulations issued this year or provide guidelines on the implementation.

Tier 1

Isla Lipana & Co is the member firm of PwC and offers a recognisable transfer pricing service with **Carlos Carado II** as the leading partner. The practice receives clients from both domestic and international origins and provides them with comprehensive transfer pricing planning by reviewing their risk, opportunity, assessment and benchmarking. Beause of the new transfer pricing regulations, more clients have started to realise the need of proper documentation management. The team has been active to assist documentation studies as well as appropriate value chain exercises in the past year.

Moreover, it also supports clients with good solutions when investigations occur. One of its clients recently faced a severe assessment from the BIR worth $45.7 million. The client approached the firm

Tax rates at a glance

(As of September 2013)

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	
Carryback	0
Carryforward	3 years (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 PHP 100,000 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 3 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

for its strong dispute resolution skills because it did not want the case to go into full litigation in the courts. The team had a strategy to not only convince the BIR, with solid technical arguments, but also educate the officials with up-to-date international practices by inviting them to seminars held by OECD specialists. In the end, the BIR agreed to close the assessment at a very low cost.

SyCip Gorres Velayo & Co is known as the local affiliate of EY in the Philippines and pioneers in transfer pricing service provisions after starting it local transfer pricing practice in 2001. Over the past 12 months, the group has grown from 14 members to two partners, two senior managers, five managers and 10 senior associates. Widely recognised **Romulo Danao, Jr** is founder and country leader of the practice and started his profession handling local transfer pricing assignments in the semi-conductor and banana industry. **Reynante Marcelo** has profound knowledge in international with experience in handling both local and regional transfer pricing issues.

Over the past year, the transfer pricing group conducted a number of documentation studies for big multinational companies engaged in different industries. It has also led a global transfer pricing study engagement for local companies to review and evaluate the client's pricing policies.

With regard to audit and controversies, the team has assisted a big multinational agricultural production company with respect to a huge multi-million-dollar tax assessment against a client, based on alleged transfer pricing mechanisms. It prepared and submitted a position paper to contest the assessment. In the end, the team was able to convince the BIR examiners to close the audit assessment.

Tier 2

KPMG's local presence in the Philippines appears as **Manabat Sanagustin & Co**. Following the issuance of transfer pricing rules in January 2013, a new service line has been opened in response to the market needs. **Glenn Raymond Paradela** joined the firm in January as the supervisor. As part of the KPMG network, the practice often provides global transfer pricing services, together with sister firms in other jurisdictions. During one recent case, disputed allocation charges arose among different manufacturing entities in Asia Pacific. The team, working closely with counterparties in the region, reviewed cases from the Philippine perspective. Under the new rules, the team has also assisted several studies in different industries and provided business certainty to clients. The team has also helped a number of Japanese clients with their investment in the Philippines.

Although the transfer pricing practice is still in its infancy in the Philippines, **Du-Baladad and Associates – WTS** is prepared to offer transfer pricing studies and defence to clients from a domestic and international basis. Tax partner **Benedicta Du-Baladad** leads the dedicated practice of five, including two partners. The firm is a member of World Tax Service Alliance and the Transfer Pricing Analysts. The team can help clients through risk assessment, planning and benchmark analysis, methodology, and APA negotiations. In addition, the team also assists clients to obtain advance rulings from the tax authority given that there are very few public precedents available in the growing market.

Poland

Tax authorities

Ministry of Finance
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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Crido – Taxand
	DLA Piper
	MDDP
	Taxonity
	Taxplan
3	Dentons
	Domanski Zakrzewski Palinka sp.

Poland is a member of the OECD and therefore the transfer pricing legislation in the jurisdiction is aligned with the OECD guidelines. In February 2013, the Ministry of Finance released the details of a draft decree in which they proposed to revise the hierarchy of transfer pricing methods, define comparability analysis, implement rules concerning business restructurings, to identify elements of low value-adding services, define shareholder costs, allow for the possibility of trilateral procedures, and to align the Polish regulations with global standards. The majority of these changes aimed to achieve adherence with the 2010 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Polish taxpayers are able to apply for advanced pricing agreements (APA) that cover transactions between parties and relations between a permanent establishment and its head office. Polish APAs are valid for up to five years at which point the agreement can be extended with the caveat that the criteria used to evaluate such an agreement have not changed and that the application is made six

Tax rates at a glance

(As of July 2013)

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) The EU Interest and Royalties Directive authorised Poland to levy a 5% withholding tax on interest paid to a qualifying EU company until June 30 2013. A full exemption based on this Directive became applicable from July 1 2013.

Source: Tax advisers from Crido Taxand months before the APA is due to expire. New laws are expected with regard to transfer pricing and the Ministry of Finance has expressed an interest in updating APA regulations.

Advisers explained that the basic tax system in Poland is relatively simple to understand. However, in the past few years, this simplicity has been washed away in a deluge of new taxes implemented by the Polish state in an attempt to counteract the economic downturn. Another torrential downpour of taxes is expected at the start of 2014. These are likely to flood the market with the need for the rethinking of any international tax and transfer pricing optimisation structures.

These changes will mean that taxpayers in the jurisdiction need to be more proactive with their tax preparation in avoid being stung by the authorities for not complying with the increasingly demanding legislation.

This tightening of the tax system has been coupled with the Polish tax authorities becoming more demanding over the last year, said Sławomir Boruc of Baker & McKenzie, and many of these tax changes have granted the tax authorities more power. Boruc said his tax practice has been busy over the last year and is indicative of the increased activity of the tax authorities in Poland. Matthew O'Shaughnessy, head partner at Taxplan – Taxperience, explained that the tax authorities are not intense with regards to the frequency of their assessments but once they have begun, they have a tendency to become quite ruthless.

However, one adviser clarified that although the approach of the tax authorities has become more aggressive in comparison to how they were in the past; they are still much less combative than many other authorities in the EU and indeed, the rest of the world.

Tier 1

Iwona Georgijew leads the transfer pricing team of **Deloitte** Poland. The practice comprises one partner and 29 other dedicated transfer pricing professionals. The group represent clients in advanced pricing agreements (APA) negotiations with the Ministry of Finance. The team boasts a 100% success rate with regards to their completion of APAs for their clients.

The practice negotiates APAs for clients from a variety of industries including electronics, pharmaceuticals, automotive, packaging, finance, IT, industrial equipment, media and entertainment, and fast-moving consumer goods.

The transfer pricing team of **EY** Poland offers a range of services and in 2012 was able to successfully conclude two APAs – one with the Netherlands, the other with Luxembourg – and one mutual agreement procedure (MAP) with Germany.

The transfer pricing team benefits from the pooled knowledge from a variety of other service lines at the practice to work on M&A, pharmaceutical, guarantees and intangible valuation, and international projects.

The transfer pricing team particularly works in relation to the valuation of intangibles, taking into account the new OECD developments. This involves the valuation of intangibles using non-standard methods; the allocation of costs in relation to the development of intangibles; engagement with the Ministry of Finance on the impact of local operations on the development of intangibles and their influence on transfer pricing; and the preparation of taxpayers to defend the assumptions behind intangible valuations.

The transfer pricing practice of **KPMG** Poland is headed by partner, **Jacek Bajger**. The team offers a wide variety of transfer pricing services including the analysis of risks, APAs, documentation, benchmarking studies, policy planning and intra-group settlements, allocation of profits, assistance during tax audits, and the implementation of procedures aimed at eliminating double taxation.

The partner in charge of the transfer pricing department of **PwC** Poland is **Mike Ahern**. The practice offers a range of services including transfer pricing planning and optimisation, providing recommendations on product flows and intangible assets, risk, documentation, assistance during audits, defence of documentation, and APAs.

The team is also capable of helping clients plan their transfer pricing affairs reviewing inter-company agreements, benchmarking studies and documentation.

Clients were positive about their experience of the transfer pricing practice, describing their experience as "very good".

Tier 2

Crido – Taxand, formally known as Accreo – Taxand, changed its name in March 2013 after two partners left the firm. Although these partners took a selection of loyal clients with them, the firm reported increased revenues in the first part of 2013, suggesting that the loss has not affected their client's faith in their ability.

The transfer pricing team at Crido – Taxand offers a full range of transfer pricing services including restructuring for transfer pricing optimisation, methodology, and economic analyses.

The team recently completed work for the Polish subsidiary of EDF for a deal worth $20 million. They were required to determine the transfer pricing method to be applied in the joint transaction operation focused on the trade of coal and energy between the Polish and foreign entities of the group.

The transfer team of **DLA Piper** in Poland consists of both lawyers and economists. The practice therefore offers the full range of transfer pricing services to their clients.

The tax practice is particularly specialised in the oil and gas industry and provides ongoing advice to the three largest companies in Poland (oil and gas), PGE (energy), and PGNiG (natural gas), as well as a number of other large multinational companies such as Nike (sports retailer) and Shell (energy and petrochemicals).

The practice was shortlisted for "Best Polish Tax Firm" and "Best Transfer Pricing Firm" at the International Tax Review European Tax Awards 2013.

Arkadiusz Żurawicki is the head of the transfer pricing team at **MDDP**. Since 2010, Tomasz Michalik, the head of the tax practice, has been holding the prestigious position of Chairman of the National Council of Tax Advisors.

The professionals at the practice are divided up into specialised sub-practices dealing with indirect tax, direct tax, payroll and ex-pat taxes, litigation and transfer pricing. The majority of the transfer pricing team are economists and as such, MDDP offers the full range of transfer pricing services.

The practice has clients from a range of industries including pharmaceuticals, financial services, telecommunications, automotive and real estate.

The transfer pricing team recently advised on one of the largest international hypermarket chains on a mutual agreement procedure in a deal worth $5 million per year. This deal was complex and involved the Polish tax authorities attempting to carry out two separate procedures at the same time. MDDP successfully convinced the authorities that they were unable to do this.

Taxonity is a transfer pricing specialist with a focus on both domestic and international transfer pricing issues.

Taxonity designs the transfer pricing policy for proper reconciliation of transactions to be performed between related companies. The practice indicates the method of determining the transfer price as well as through the comparative analysis (benchmark) they are able to determine the price level that should be used in the transaction.

The practice also offers services related to customs valuation, preparation of documentation along with the transfer pricing documentation to provide protection for the customs valuation. The team has the capacity to defend its clients in relation to transfer pricing disputes and litigation.

Taxplan is an independent advisory firm that offers a full range of service tax and legal advice as well as the outsourcing of accounting work. The firm is a member of the international network of tax-boutique firms, Taxperience International. Aside from Taxplan, Taxperience has offices in Germany, Russia, Czech Republic, Hungary, and Switzerland. As such, Taxplan benefits from strong ties with these jurisdictions.

Taxplan is relatively modest in scale with two partners and nine other fee earners. Although the practice lost **Marcin Romańczuk**, a partner at the practice, they gained **Aleksandra Kalinowska**, a partner from WTS SAJA, and **Joanna Deutryk** from KPMG.

Although the practice offers a wide range of services, they are particularly strong in the areas of international tax and transfer pricing; especially in the sphere of benchmarking. The practice possesses all the necessary components to offer a full range of transfer pricing services.

The tax practice advised a number of significant Polish companies over the past year including a large car contract manufacturer which forms part of an international group. Taxplan advised on the tax treatment of fees for intragroup transactions involving price and currency risk.

Tier 3

Karina Furga-Dąbrowska leads the transfer pricing team of **Dentons** Poland which comprises of two partners and one other transfer pricing professional. The majority of the work that the practice does is concerned with the preparation of statutory transfer pricing documentation.

Other work the practice is capable of includes the structuring of intra-group transactions, including the drafting of transaction documentation and benchmarking studies aimed at determining the arm's-length consideration.

The transfer pricing team was commended by clients who "highly recommend this company – the documentation they prepared was excellent.". The practice was praised for always being up to date with changes in TP documentation rules.

Although transfer pricing is not considered an area in which the tax team at **Domanski Zakrzewski Palinka** specialises, if a client requests this kind of work then the practice is more than capable of obliging. DZP employs economists as well as legal advisers and is thus able to offer the full range of transfer pricing services.

The pharmaceuticals team at DZP is the biggest in Poland. They recently advised Hasco-Lek, a Polish pharmaceuticals company, analysing transactions concluded by a manufacturer of pharmaceutical products. They also drafted the transfer pricing policy documentation for intra-group sales of products and service.

Portugal

Tax authorities

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Garrigues – Taxand
	Grant Thornton
	Transfer Pricing Associates Global
	Uría Menéndez – Proença de Carvalho
3	Abreu Advogados
	Baker Tilly Portugal
	Ricardo da Palma Borges & Associados, Sociedade de Advogados, R.L.
	Vieira de Almeida & Associados

Portugal is a member of the OECD and as such, its transfer pricing legislation is aligned with the most recent guidelines. Taxpayers with net sales and other income in the previous fiscal year which is less than €3 million are obliged to set up and maintain a tax documentation file that justifies their transfer pricing policy and that supports the comparability analysis carried out.

Since 2008 detailed advanced pricing agreements (APA) have been in place in Portugal. These state that an APA request or proposal should be submitted to the authorities up to 180 days to commencement of the first fiscal year covered by the agreement. The maximum length of an APA is 300 days for unilateral and 480 bilateral. The APA is then valid for three years maximum at which point it can be considered for renewal. VAT issues are now covered by transfer pricing legislation.

At present, no specific transfer pricing penalties have been defined by the Portuguese law.

The Portuguese tax environment is tempestuous. "The tsunami has passed but there will be aftershocks," proclaimed a senior associate at Garrigues - Taxand in reference to the tax environment in Portugal. "We are at the peak of the EU tax reforms," he said. "This means that it will take some time for these changes to affect the tax landscape."

The tax authorities were described by a number of partners as more aggressive, specifically towards tax disputes. As a result, some advisers in the jurisdiction reported that their clients had become much more cautious with investments. One partner argued that some of the assessments being carried out by the authorities are both "illegal" and "unconstitutional".

The Portuguese government is treating the financial services industry as a cash cow of prodigious mass. Individual taxpayers have been squeezed endlessly by the recent changes to the tax system in Portugal and now the focus is shifting to the large corporations. Clients are therefore not presently viewing Portugal as a good place to invest.

Tier 1

Deloitte Portugal's transfer pricing team is headed by **Patricia Matos**. The team consists of experts in economics, tax and law allowing them to analyse their clients' transfer pricing needs from all three perspectives.

Tax rates at a glance

(As of June 2013)

Corporate income tax – standard rate	25% (a)
Corporate income tax – municipal surcharge	1.5% (b)
Corporate income tax – state surcharge	3% / 5% (c)
Capital gains	25%
Branch tax	25% (a) (b) (c)
Withholding tax	
Dividends	0% to 35% (d)
Interest	0% to 35% (e)
Royalties from patents and licences	0% to 35% (f)
Branch remittance tax	N/A
Net operating losses (years)	
Carryback	0
Carryforwards	5 (g)

a) Corporate income tax (CIT) applies to resident companies and non-resident companies with permanent establishments in Portugal.

b) A municipal surcharge of 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 ($1.9 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.

d) As from January 1 2012, dividends paid to non-resident companies taxed at 25%. The rate of 35% applies if dividends are paid to a resident of a listed tax haven. The rate may be reduced under a tax treaty or exempt under the EU Parent-Subsidiary Directive.

e) As from January 1 2012, the rate for interest paid by companies is 25%. The rate of 35% applies if interest is paid to a listed tax haven. The rate may be reduced under a tax treaty or exempt under the EU Interest & Royalties Directive.

f) Royalties paid to a non-resident are taxed at 25%. The rate of 35% applies if royalties are paid to a listed tax haven. The rate may be reduced under a tax treaty or exempt under the EU Interest & Royalties Directive.

g) 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 used from January 1 2012, the amount deductible each year is capped by 75% of the taxable profit for the year.

Source: *Tax advisers from Garrigues – Taxand*

The practice worked closely with the Portuguese tax authorities' transfer pricing team on a number of technical issues and has been involved in the critical analysis of updates made to the Portuguese transfer pricing legislation. The team has assisted in setting up the only two APAs to have been structured and approved in Portugal.

The team offers a range of services including documentation, tax litigation, mutual agreement procedures, arbitration, planning and structuring.

Since 2001, the **EY** Portugal transfer pricing practice has been a big player in the Portuguese transfer pricing market. The transfer pricing services offered by the practice include documentation, planning, controversy, APA assistance, and tax effective supply chain management.

KPMG Portugal's tax team is led by **Luís Magalhães** and one of the services it offers is global transfer pricing.

The partner in charge of the transfer pricing practice of **PwC** Portugal is **Jaime Carvalho Esteves**. The practice is capable of a broad range of transfer pricing services including design and implementation of tax-efficient strategies, risk management, documentation, performing functional and risk analysis, supporting arm's-length principle, monitoring tax audits, and APAs.

Tier 2

Although **Garrigues – Taxand** the firm does not possess the multidisciplinary transfer pricing personnel that the Big4 have, they have the expertise to deal with the structuring and documentation aspects of transfer pricing.

The firm recently carried out transfer pricing assistance for the prominent tobacco group, Imperial Tobacco, where they devised the most efficient business model to be implemented in Portugal, from both tax and operational perspectives.

The lead associate at the practice explained that they aimed to transpose the model of the Big4 tax firms into the context of a firm with many less personnel. This means that they work closely on both the day-to-day tax issues and also the much more complex aspects of tax.

The firm also benefits from close ties with the tax authorities in the jurisdiction and is one of a select few firms with whom the Spanish government consults when it is drafting new tax legislation. The practice also boasts impressive alumni with one previous partner now in a senior position within the tax authorities.

The transfer pricing department at **Grant Thornton** Consultores, a member-firm of the global tax firm Grant Thornton International, consists of a three-strong team of tax advisers led by **Joaquim Mendes** with the support of **Pedro Santos**. Joaquim Mendes, the lead partner at Grant Thornton in Portugal, has worked as a tax adviser for over twenty years at a number of well respected firms. The firm recently advised a local subsidiary of Eutelsat – a major player in the telecom /satellite industry worldwide – preparing a comprehensive transfer pricing study. The telecom / satellite industry exists in a state of perpetual evolution and change so the team at Grant Thornton Consultores were required to diagnose and forecast in a way that accommodated the nature of the industry.

Grant Thornton in Portugal describes itself as "fast-growing" and has clarified that this growth will continue so long as the work continues to do the same.

Transfer Pricing Associates Global is a dedicated transfer pricing firm and as such, offers a very broad range of services. These include transfer pricing system design, control frameworks, global benchmarking, year-end adjustment, controversy management, and risk management.

The firm does transfer pricing work for clients from a range of industry sectors including automotive, chemicals, financial services, fast-moving consumer goods, luxury and apparel, mining, oil & gas, pharmaceuticals, technology, media, and communications.

Uría Menéndez – Proença de Carvalho is a member of the international Uría Menéndez law firm which has 15 offices located in Europe, the Americas and Asia. Filipe Romão, head partner at the firm, explained that the firm is also connected institutionally with other "best friend" firms in France (Bredin Prat), Germany (Hengler Mueller), Italy (Bonelli Erede Pappalardo), the Netherlands (De Brauw Blackstone Westbroek), and the UK (Slaughter and May). As such, the practice is very well placed to handle cross-border work.

The practice has seen the amount of transfer pricing work it does increase over the last year. This work consists predominantly of transfer pricing planning and structuring (aimed at creating transfer pricing compliant business models and transactions), transfer pricing litigation, and preparation of documentation.

The practice recently worked on a transfer pricing dispute related to the attribution of free capital to a permanent establishment of União de Créditos Imobiliários, a credit institution specialised in mortgage loans operating in Spain and Portugal. This was one of the first attributions of its kind and as such required extensive comparative law research to resolve.

Tier 3

The transfer pricing team at **Abreu Advogados** consists of one dedicated partner and three other professionals. The main transfer pricing service that they offer is assisting their clients in the preparation and reviewing of their transfer pricing files.

The transfer pricing team recently participated in a process that led to the approval by the Portuguese

Government of a law that allows the execution of APAs. As such the team is well versed in this area of transfer pricing.

The team specialise in advising medium-sized businesses that already have their benchmarking analyses complete, and require assistance in aligned their transfer pricing documentation with the Portuguese rules.

The practice does a large amount of work with the financial services industry – this involves work for a number of private banks.

The transfer pricing team at **Baker Tilly** Portugal consists of a dedicated team of six transfer pricing professionals.

The practice works on a wide range of transfer pricing projects and has recently completed deals where they have performed benchmarking studies and have defined intra-group arm's-length guarantees.

For example, the firm recently completed work for Be Artis, a subsidiary of the Sonaecom Group; an entrepreneurial growth company. They assisted the group in performing a benchmarking study concerning the debt-to-equity structure of Be Artis, relating its intra-group loans.

The transfer pricing team does not assist on compliance and the preparation of transfer pricing files.

The firm received positive feedback from clients who described their transfer pricing services as "excellent".

Ricardo da Palma Borges & Associados, Sociedade de Advogados (RPBA) is a Portuguese tax law boutique, led by the eponymous **Ricardo da Palma Borges**, an ex-academic turned tax adviser.

Borges leads on transfer pricing matters, and although the firm does not have a dedicated transfer pricing team, Borges is capable of carrying out such work for his clients.

For example, the firm recently carried out work that involved the drafting of several tax opinions regarding the possibility of application of transfer pricing rules, or presumptive taxation regimes, to non-remunerated shareholders' loans granted by individuals to the companies of which they are quota and shareholders. This complex work was done for several clients including a PSI-20 listed holding company.

Vieira de Almeida & Associados (VdA) is a member of a number of international tax firm networks and as such has contacts in Latin America and close ties in Brazil. The firm is increasingly being asked for advice by companies investing internationally in areas such as Angola, Mozambique, Timor, Brazil, and other African and European countries.

The transfer pricing team at VdA offer the full range of transfer pricing services including compliance and financial work.

The practice is run by **Tiago Marreiros Moreira**. The practice does a large amount of work for the Pharmaceuticals and Telecoms industries.

Romania

Tax authorities

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Mazars
	Taxhouse – Taxand
	TPA Horwath
3	BDO Consulting
	Transfer Pricing Services
	Viboal FindEx

There are a number of transfer pricing related penalties in Romania. When the transfer prices used by the Romanian taxpayer are not deemed to be compliant with the arm's-length principle the tax authorities are able to alter the revenues and expenses of the taxpayer to reflect their market value as they see it. Any adjustment made is then subject to a profit tax of 16%.

Taxpayers are required to prepare and present transfer pricing documentation as and when the authorities request it. This file is meant to contain at the very least, a master file and a country specific file. Failure to provide this documentation upon request may possibly result in fines between approximately €2900 ($3850) and €3500.

Romanian taxpayers are able to apply for advanced pricing agreements (APA) which is both binding and enforceable against the authorities. Agreements can be issued for up to five years; in exceptional cases this may be extended.

The Romanian government recently received another loan of €100 billion ($132.8 billion) to boost its ailing economy. In a report issued by the World Bank, it transpired that the Romanian tax authorities have been spectacularly poor at collecting tax in recent years. This bailout has consequently resulted in pressure being put on Romania to improve both its tax authorities and the tax system hence the plethora of rapid changes enacted recently.

Tax advisers have certainly noticed a more aggressive stance from the authorities. One adviser said the authorities are targeting easy income sources.

Advisers in the jurisdiction complained that the court system in Romania is too viscous. Access to the courts is difficult and the legal process can take up to six years to resolve. Even after this long court procedure, there is, of course, no guarantee that the complainant will win.

Foreign investment in the jurisdiction is still low. Angela Rosca of Taxhouse (Taxand) explained this is partially because of the instability caused on the lead up to the elections last year. Now that a new government has been instated, Rosca predicted that foreign investors might be less wary.

One industry that appears to be thriving in Romania is the software production industry and there is investment still occurring in this area.

Tier 1

Ciprian Gavriliu leads the transfer pricing team of **Deloitte** Romania. The team offers transfer pricing

Tax rates at a glance

(As of July 31 2013 – ref. legislation applicable as of January 1 2014)

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
Carryforwards	7 years (d)

a) Capital gains obtained by corporate entities are included in their regular profits subject to corporate income tax at 16%; 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 EC Parent-Subsidiary Directive for EU, EFTA (Norway, Lichtenstein, Iceland) and Romanian 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; else 16% applies to dividends paid to all other non-residents and resident legal entities or individuals (unless a more beneficial rate applicable under a double tax treaty).

c) The 0% rate applies starting January 1 2011 for payments qualifying under the EC Interest & Royalties Directive to beneficial owners being EU and EFTA (Norway, Lichtenstein, Iceland) tax resident legal entities holding at least 25% of the payer for a minimum two-year period 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.

d) The seven-year period applies starting with the loss related to fiscal year 2009 (losses incurred before 2009 can only be carried forward for five years).

Source: Tax advisers from TaxHouse – Taxand

services in relation to planning and documentation, APAs, dispute resolution and business model optimisation.

The practice consists of one partner and 12 other dedicated transfer pricing professionals. The team grew over the past year, hiring four new professionals.

The transfer pricing team at **EY** in Romania consists of one partner and 12 other professionals. The practice employs both transfer pricing tax specialists and economists to carry out their transfer pricing work and is therefore able to offer the full range services.

Following a variety of tax changes with ramifications for the banking sector, the tax team at EY established what the exact tax implications were for the banks. They then worked closely with the banks and lobbied the Ministry of Finance, informing them of the ramifications of their fiscal changes. The tax team are therefore very knowledgeable about the perpetually changing tax landscape in Romania.

The practice's clients come from a variety of industries including real estate, energy (oil & gas and utilities) and mining & metals.

KPMG Romania's transfer pricing team is led by tax director, **Teodora Alecu**. The practice is multidisciplinary with a mixture of economists, tax practitioners, and financial analysts making up the team.

The practice offers a range of transfer pricing services including the design and implementation of viable prices, document policies and outcomes, and representation of their clients in disputes with the authorities.

PwC Romania offers a wide variety of transfer pricing services including the preparation of documentation, audit preparation, APAs, transfer pricing policy, analysis of supply chain and identification of optimisation opportunities, and the analysis of inter-company agreements to identify and address transfer pricing issues.

Clients described their experience of PwC's transfer pricing team as "very good", describing their "good transfer pricing work".

Tier 2

Mazars Romania offer a range of transfer pricing services including general information about Romanian transfer pricing regulation, preparation and review of documentation, assessment of tax risks of transfer prices: a customised "transfer pricing diagnosis", assistance during tax inspections, APA, and customised trainings.

Taxhouse – Taxand is the Romanian member-firm of the international Taxand network. The practice is led by **Angela Rosca**, who has worked in tax for the past 18 years and boasts extensive experience of both local and international tax. The practice has a dedicated, transfer pricing team which is populated by economists. This means the practice is capable of performing a full range of transfer pricing services including benchmark analyses.

The practice recently updated the local transfer pricing documentation and additional related work for the Romanian subsidiary of an international tire manufacturer; a deal worth €500 million ($669 million).

Claudia Stanciu-Stanciulescu is the partner in charge of the transfer pricing practice of **TPA Horwath**. The team is capable of a range of transfer pricing services including functional analyses, market analyses, design of a transfer pricing model, preparation of documentation (master file, local files), benchmarking using the Amadeus business database, defence of transfer prices in tax audits, and APAs.

Tier 3

The majority of the transfer pricing work at **BDO Consulting** is the preparation of transfer pricing documentation.

Transfer Pricing Services is a Romanian independent advisory firm that offers highly specialised transfer pricing consultancy.

The core transfer pricing services that the firm offers are the review of inter-company transactions, preparation of country specific documentation, benchmarking studies of related party transactions, policy development and implementation, APAs, and assistance during inspections and in disputes with the authorities.

Viboal expanded in June 2012 as it merged with another tax practice, FindEx, to become **Viboal FindEx**.

The transfer pricing team at Viboal FindEx consists of two partners and three other professionals. The practice is able to deal with transfer pricing documentation, transfer pricing audit defence during transfer pricing audits, transfer pricing audit defence during administrative appeal or court proceedings, review of transfer pricing policy or global transfer pricing documentation.

The practice recently worked on a transfer pricing audit worth $15 million. This involved transfer pricing audit assistance in relation to cross-border transactions between Italian and Romanian countries.

Russia

Tax authorities

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	Pepeliaev Group – Taxand
	PwC
2	CMS Russia
	Goltsblat BLP
3	Taxperience

Transfer pricing has been included in Russian legislation since 1991, although the original regulations were crude and ineffectual. Although the rest of Europe has focused on transfer pricing for a few years now, the updated Russian transfer pricing legislation only came into force in 2012.

The new transfer pricing legislation is much more complex and the first submission is yet to be filed. It is likely therefore that the first transfer pricing disputes will occur in the latter part of 2014. Lyudmila Batalova, head partner at Sameta Tax & Consulting predicted that the volume of transfer pricing disputes is set to rise dramatically over the coming two years as a result of the transfer pricing legislation and drive against intra-group loans.

Authorities can now request transfer pricing documentation during a tax audit. The format of the documentation is not rigidly set but there must be information included about the controlled transaction, a functional analysis, the transfer pricing methodology used, a description of the comparables, and a financial analysis.

Tax rates at a glance (As of September 2013)

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 years.

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: Deloitte (2013) International Taxation: Russia Highlights 2013.

At present, only the very largest taxpayers are able to apply for advanced pricing agreements (APA). The APA cannot exceed three years but the taxpayer has the opportunity to extend it by two years provided a set of terms and conditions are met.

The transfer pricing authorities and legislation in Russia has become very strict with regards to intragroup loans. This focus will necessitate contemplation on the part of the big multinationals operating in Russia as to how their intra-group loans are conducted.

Unlike other jurisdictions, the tax authorities have not been cited as being unduly aggressive in their approach to auditing and assessments – although this is confined primarily to the authorities in Moscow. The regional tax authorities in Russia vary wildly, explained one adviser. With over 100,000 employees, there is no guarantee that the officials taxpayers deal with are as sophisticated as those in Moscow. This can result in unpredictable behaviour from the authorities.

Problems with the tax authorities arise when their assault on the tax affairs of a company or individual are politically motivated, explained Batalova. In these cases, the authorities will improvise their tactics endlessly to extract the taxation they want from their target. However, it must be stressed that this type of behaviour from the tax authorities is rare and in the majority of cases their actions are honestly founded.

The courts quite often seem to be ruling in favour of the taxpayer. The environment is therefore generally a pretty positive one explained Graham Povey of KPMG. Indeed, Batalova said there is a good tradition of tax dispute success for taxpayers in Russia. Dispute resolutions have also improved recently with a number of advisers explaining how they are now able to close cases before entering the courts.

Tier 1

The transfer pricing team of **Deloitte** Russia is led by partner, **Dmitry Kulakov**. The team offers a range of transfer pricing services including transfer pricing planning and documentation, APAs, dispute resolution, and business model optimisation.

The transfer pricing team at **EY** Russia is relatively large, consisting of 3 partners and 32 other professionals. The practice expanded significantly over the past year hiring five new transfer pricing professionals, including **Konstantin Yurchenko** who previously worked as a partner at KPMG.

The team offers a full range of transfer pricing services. The practice has significant experience in the area of transfer pricing documentation projects, the design and implementation of complex transfer pricing models, advising on operational aspects of transfer pricing, and TESCM projects.

The team were recently involved in APA discussions for a number of leading companies in the chemical, pipes, oil, gas and metals industries.

The transfer pricing team at **KPMG** Russia offers the full range of transfer pricing services. This includes financial aspects, transfer pricing agreements, and litigation work. Since 2006, KPMG has performed more than 200 benchmarking studies for companies in a wide variety of industries.

The team has a particular expertise in the energy industry (specifically oil and gas), and consumer products industry.

The transfer pricing practice was commended by clients for its high quality of service and "high expertise in pharmaceutical industry matters". In addition, **Natalia Valkovskaya** was recommended for her transfer pricing work.

Sergey Pepeliaev is the head of the tax team at the **Pepeliaev Group – Taxand** which consists of 11 partners and 70 other fee earners. The team grew over the past year, hiring four tax professionals.

The transfer pricing team at the practice offers a full range of transfer pricing services including benchmarking, compliance, documentation, and risk analyses.

They recently advised a bank and its Russian subsidiary on how to reduce transfer pricing risks associated with adaptation of international bank experience to the activities of the Russian bank, when acquiring services from parent foreign bank. This involved analysis of the possible customs and tax consequences of the application of transfer pricing.

The practice serves a number of high profile clients including FIFA, the international governing body of association football; Johnson & Johnson, the pharmaceutical and packaged consumer goods manufacturer; and British American Tobacco, the international tobacco group.

PwC Russia offers a wide variety of transfer pricing services to its clients. These include supply chain transformation projects, justifying pricing methodology, structuring of inter-company transactions, advising foreign multinationals on transfer pricing in Russia, documentation, dispute support and resolution.

The practice has advised clients on a number of major transfer pricing projects in the energy, mining and metals, retail and consumer, pharmaceutical, technology and telecom, and financial sectors.

Clients praised the practice for their "good transfer pricing services".

Tier 2

Dominique Tissot is the head of the transfer pricing practice of **CMS Russia**. Tissot has worked as a tax specialist for 14 years and has a wide range of experience in energy and resources work.

The transfer pricing team offers a range of services including the preparation of local and global documentation, financial and economic studies, transfer pricing policies, support during audits and litigation, and APAs.

The transfer pricing team at **Goltsblat BLP** offer the full range of transfer pricing services including transfer pricing analysis of Russian companies; study and preparation of transfer pricing documentation, ensuring compliance with Russian requirements; and complex structuring advice with regards to the transfer pricing affairs of a company. They also offer economic analyses; this includes conducting benchmark analyses to be included in transfer pricing documentation where required.

The practice's client list includes a number of significant multinationals and large Russian companies in the consumer goods (food, beverage, luxury, and other personal household goods), real estate, automotive, pharmaceuticals, and oil & gas industries. Clients include Danone, Shell, Mitsubishi Motors Corporation, Volkswagen, and a number of other notable companies.

The practice recently worked on behalf of a Russian operating entity of the global family-owned confectionary group which has a global turnover exceeding $10.2 billion. They prepared a transfer pricing report to support export pricing fluctuations in response to claims raised under a tax audit. The case represented a potential exposure of up to $10 million. The practice was successful in eventually facilitating the overruling of the tax claims.

Evgueny Timofeev was recommended by clients "for professionalism and proactive attitude"; as was **Anna Zelenskaya**, "for professionalism, scrupulousness, high availability". The overall feedback from clients about the transfer pricing services offered by the practice was positive.

Tier 3

Taxperience is a specialised tax law firm with one partner and three other fee earners. The firm caters to a very niche sector of the transfer pricing market, focusing mainly on aligning the transfer pricing policies of global firms with the Russian rules.

Taxperience Russia forms part of the international Taxperience network which, aside from Russia, has offices in Germany, Czech Republic, Poland, Hungary, and Switzerland.

Following the recent introduction of a new set of transfer pricing rules in Hungary, Taxperience Russia aligned the global transfer pricing policy of a company with the Russian standards and requirements. This deal was worth deal worth $10,000.

The firm works with a number of notable technology, media and telecommunications companies including Dolby – the global sound technology company.

Singapore

Tax authorities

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Website: www.iras.gov.sg

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie.Wong & Leow
3	Velten Partners

Despite being a low tax jurisdiction, Singapore is seeing an increasing focus on transfer pricing issues.

"Singapore is the Asia Pacific regional hub, there are many regional activities going on. Although it is not an OECD member country, it has to follow the international game rules," Luis Coronado from EY explained.

Although the market does not witness any significant transfer pricing litigation cases within the territory, practitioners warn that multinational businesses based in the economy still face serious problems outbound. "The lower income tax rate encourages people to put more income in than out. That makes Singaporean entities more likely to be attacked in cross-border transactions," said Edmund Leow from Baker & McKenzie.Wong & Leow. Leong Kwong Wing from KhattarWong – Taxand agreed as he has observed in recent years many cases in Japan and Indonesia where Singaporean corporations are challenged.

After the transfer pricing guidelines were first issued in 2006, the Inland Revenue Authority of Singapore (IRAS) has consistently increased the enforcement of the transfer pricing compliance. IRAS stated that it would cast an extra focus on related party transactions and allocation of development cost. An additional section 34D has been enacted recently in the Singapore Income Tax Act (SITA) endorsing that related party transactions should come under the arm's-length price. In addition, IRAS continues to issue transfer pricing questionnaires to companies, which then leads to full transfer pricing audits.

"No one would have Singapore seen as a tax haven," said See Jee Chang from Deloitte about the recent efforts of the IRAS. "It would be harmful to some extent, for the investment climate, but something must have to be done."

Tier 1

See Jee Chang leads the transfer pricing practice at **Deloitte**. Two partners and director level professionals, together with eleven other staff members form the transfer pricing department. Specialists in the team have strong international tax skills and economic knowledge. In addition, they speak various languages and keep sound contact in the government, which ensures the proficiency in the service offering. The team serves clients in designing and implementing effective TP planning strategies, reviewing and putting in place adequate documentation, providing support during tax audits and also assisting in advance pricing agreement (APA) and mutual agreement procedure (MAP) processes. Serving as a regional headquarter, the firm has the privilege to work for big multinational businesses in response to their regional TP needs. Its client base includes manufacturing, oil and gas, transportation, property, financial services and consumer products companies.

Tax rates at a glance

(As of June 2013)

Corporate income	17% (a) (b)
Capital gains	0%
Branch tax	17%
Withholding tax	
Dividends	0%
Interest	15%
Royalties	10%
Technical Services fee	17% (c)
Branch remittance fee	0% (d)
Net operating losses	
Carryback	0 (e)
Carryforwards	Indefinitely (f)

a) The 17% corporate income tax rate is subject to exemptions. 75% of the first SGD10,000 (($7,900) of chargeable income and 50% of the next SGD290,000 of chargeable income are exempt.

b) For years of assessment (YAs) 2013 - 2015, companies will receive a 30% corporate tax rebate up to SGD30,000 per YA.

c) The technical services fee rate applies to non-residents (other than individuals) in respect of fees for the rendering of assistance or services in connection with the application or use of scientific, technical, industrial or commercial knowledge or information, or for the management or assistance in the management of any trade, business or profession. Technical Service Fee paid to non-residents is withheld at 20% on gross payment if he elects to be taxed on net income.

d) Provided that the income has been taxed in the foreign country from where it is received and where the headline tax rate is at least 15%.

e) Losses may be carried back for one year, subject to a cap of SGD100,000 and compliance with the shareholders' and same business tests.

f) Subject to shareholders' and continuity of business tests.

Source: *Tax advisers from Khattarwong – Taxand*

Over the past year, the team has built a diverse portfolio of work, including advice intellectual property (IP) and R&D as well as obtaining competent authority agreements. One recent assignment is to negotiate with the tax authority on behalf of a client in the hotel and tourism sector in relation to royalty deduction. Complicated IP matters and questionable cost sharing arrangements arose in the clients' business restructuring, which faces severe challenge from the tax authority.

Luis Coronado, **EY**'s Asia Pacific head of transfer pricing leads the strong Singapore practice, with **Matthew Andrew** supporting. In addition to providing transfer pricing advice to clients based in Singapore, the practice has played an important role in delivering transfer pricing services in the broader Asia Pacific region. Professionals in the team come from 10 diverse culture backgrounds and have extensive practice experience in multiple jurisdictions.

During the past 12 months, the team has kept a strategic expansion by adding six new talents. **Stephen Bruce** joined from UBS as a partner specialising in the financial services industry. The arrival of **Stephen Lam** and **Molvin Yiu** has further enhanced the team's capability in serving clients involved in China. The firm also has a specialist who used to work in Saudi Arabia and Australia on board. In addition, **Henry Syrett** has been promoted to partner.

The team is currently working on the very first bilateral APA project that the Indonesian tax authority is discussing with Singapore and other jurisdictions such as Luxembourg. Its bilateral APA portfolio also includes cases with Australia, Germany, Japan, Korea, Netherlands, Thailand and UK. Japan also continues to be a growing source of clients.

There are 20 dedicated transfer pricing staff members under the leadership of **Geoffrey Soh** at **KPMG**. Soh has been working in the tax profession for 20 years, including 15 years of advising clients for transfer pricing matters. He is familiar with handling competent authority proceedings with tax authorities from Singapore, China, Canada, US, Sweden, Italy and Japan. In addition, Soh also led the TP work streams in a number of tax efficient supply chain restructuring projects.

Being one of the largest transfer pricing practices in Singapore, the team often assists Fortune 500 clients with their compliance, planning, audit defence and dispute resolution. It has strength in advising the financial services sector. It also advises on the implications of cross-border supply chain restructuring as well as APA and MAP applications.

PwC has a transfer pricing team that covers all compliance, planning and disputes as well as APA matters. Rivals consider this practice as "very competitive". The firm deals with big names in a wide range of industries such as consumer products, technology companies, oil and gas and chemical companies. **Nicole Fung** has been the leader for nine years. With over 23 years of tax experience in Singapore and Canada, Fung has been working in transfer pricing since 2003. She advised on the first bilateral APAs between Singapore and Japan, China, Taiwan, Australia, UK and Korea. She also has experience in dispute resolution to settle several MAPs between Singapore and Japan, as well as Indonesia.

Sui Fun Chai, who used to work as an assistant commissioner at the Inland Revenue Authority of Singapore, joined the team in July 2013 bringing over her instrumental insights from the authority side. She is well known in the market as she once represented the Singapore government in tax treaty negotiations and other international tax matters and in negotiation and implementation of BAPAs and MAPs. Since 2007, Chai resolved more than 40 APAs and double taxation cases, providing great tax certainty for multinationals.

Tier 2

Baker & McKenzie.Wong & Leow is led by **Edmund Leow** with a team of four partners and eight professionals. Keeping a close working relationship with skilled transfer pricing lawyers, economists and financial analysts within the Baker & McKenzie global network, the team is able to provide all kinds of robust solutions to transfer pricing issues, with an emphasis on cross-border analyses.

The law firm background has differentiated the practice from other accounting and consultancy firms in the market because it holds a strong litigation force. It is the only international law firm that can argue before the Singapore Supreme Court. The firm often works on behalf of leading market players in a wide range of industries and Fortune 500 companies. Over the past year, the team has successfully assisted a number of clients on big-ticket tax refunds and has sought certainty in its global transfer pricing policies. Leow, **Allen Tan**, **Peter Tan** and **James Choo** are currently working out an appropriate solution to seek a tax refund from the Singapore tax authority without a relevant tax treaty in force. The assignment has a high requirement of international tax and transfer pricing capability as well as sound connections with the tax authority and other government bodies.

Tier 3

Penelope Velten is the sole partner at **Velten Partners**, an independent and dedicated transfer pricing boutique in Singapore. Velten has more than 12 years experience in this profession working in a number of jurisdictions and Big 4 firms. Being a member of Altus Alliance, an international network of leading transfer pricing professionals, the firm offers tailored solutions to multinational clients' operations in Asia. It not only designs and implements transfer pricing policies with proper documentation management, but also offers proactive TP audit supports as well as controversy resolutions. In addition, the firm is determined to help corporate clients to establish a longstanding TP strategy with their in-house teams. Velten is often seconded into companies to work on the maintenance of transfer pricing systems including the development of permanent in-house capabilities.

South Africa

Tax authorities

South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, 0181 Pretoria (physical address)
Private Bag X923, Pretoria 0001 (postal address)
Tel: (012) 422 4000
Fax: (012) 422 6820
Website: www.sars.gov.za

LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	ENS – Taxand
3	Bowman Gilfillan
	DLA Cliffe Dekker Hofmeyr
	Webber Wentzel

Tax rates at a glance

(As of September 2013)

Corporate income tax	28%
Capital gains	18.6%
Branch tax	28%
Withholding tax	
Dividends	15%
Interest	0%
Royalties from patents and licences	12%
Branch remittance tax	
Net operating losses (Years)	
Carryback	
Carryforwards	indefinitely

The tax legislation surrounding transfer pricing work in South Africa changed significantly in 2013, placing much greater onus on proactive taxpayer compliance. Previously, taxpayers described necessary transfer pricing adjustments to the revenue service, which was then expected to make the changes. Now, however, taxpayers are required to make the adjustments themselves. This has led to a growth in restructuring and due diligence caseloads for tax advisory firms, as companies begin to take transfer pricing more seriously in South Africa.

"We find clients are taking transfer pricing much more seriously," said Billy Joubert of Deloitte. "The nature of the work hasn't changed but people are becoming more diligent about transfer pricing and about the implementation of documentation, and we are doing a lot more due diligence reviews."

In addition, the South African Revenue Service (SARS) has had its powers significantly strengthened by the Tax Administration Act. The changes placed all the tax authority's powers into a separate act, and invested SARS with a great deal more force to carry out their function, such as creating more severe penalties and search and seizure provisions.

"Everyone's quite anxious about this new act and what it means for taxpayers," said one adviser. "We can see a lot of growth in the service offering around it and we foresee that dispute resolution is going to be a real growth area. It's the single biggest development of last year."

A more active and empowered SARS has triggered a growth in the amount of dispute resolution work practices are engaged in, a trend that advisers expected to continue.

Beyond these changes to the powers of the tax authorities, similar forces, as in previous years, have propelled transfer pricing work in South Africa. In particular, the country's position as a gateway to investment in the African continent generates many of the jurisdiction's transfer pricing challenges.

"The biggest trend for us is financial services – major banks and insurance companies – expanding into Africa," said Joubert. "We advise a lot of firms on implementing transfer pricing policies in the African continent."

Tier 1

Deloitte offers a full range of transfer pricing services within the South African jurisdiction, encompassing documentation, dispute resolution and other negotiations with the revenue services, planning, and supply chain optimisation. The department is led by **Billy Joubert**, who is assisted by three associate directors, a senior manager and five further staff members.

An empowered revenue service has generated a significant increase in the amount of dispute work the practice is involved in. In financial services, the transfer pricing team has worked with a number of big South African banks, insurance companies and multinationals expanding into Africa, who required help with implementing their transfer pricing policies in the African continent.

South Africa also has a substantial motor vehicle manufacturing industry, and the department has worked on two substantial projects in the motor industry in the past year, advising a number of companies from Europe and the Far East on the transfer pricing aspects of their manufacturing operations in South Africa.

EY's transfer pricing practice in South Africa has two partners supported by a large team of dedicated transfer pricing experts. Among the team are former members of SARS. The advice comprises transfer pricing compliance, planning and controversy for all types of intercompany transactions: tangible, intangible, service and financing.

EY's practice employs experienced experts in tax efficient supply chain management in South Africa, assisting African-headquartered clients in structuring centralised business models (for example, a global or regional procurement function) and in integrating the client's African operations in regional or global structures (for example, a centralised procurement or a principal structure). The South Africa transfer pricing team also hosts a African transfer pricing support centre for other EY offices in Africa, providing a strong link with tax jurisdictions throughout the African continent.

KPMG has a significant transfer pricing practice in South Africa. It is led by **Natasha Vaidanis**, who works alongside one further partner and fifteen fee earners. The firm's strength across the region is seen in the size and complexity of the work KPMG's transfer pricing team has undertaken in the past year. For a multinational pharmaceutical company, the practice assisted in setting up a supply pipeline into a number of different economies. This involved creating more centrally-coordinated supply chain management processes; managing the international tax impact that resulted from operation changes made in the supply chain, such as the flow of goods and the location of assets; reducing the effective direct tax rate on income derived from the supply chain; and optimising the effect of indirect taxes triggered within the supply chain, including VAT and custom duties.

A second project involved advising a second multinational pharmaceutical company on the implementation of a central stock ownership model for its manufacturing division. This model needed to incorporate full tolling, with the entire production inventory purchased and owned by a central trading partner. In conducting this reorganisation, KPMG's team had a number of stated aims to fulfil. These included: converting the contract manufacturing arrangements to toll manufacturing arrangements; changing the third party supply contracts of raw materials and other products used in the manufacturing process from the local company sites to the trading principal; moving third party contract manufacturers and third party tollers from local sites to the principal; and implementing one single purchase and sales company for two divisions of the multinational.

David Lermer, an international corporate tax partner in **PwC**, spearheads much of the firm's transfer pricing practice in South Africa. Lermer has experience working on numerous reorganisations of multinational groups and mergers and acquisitions, and has also worked with the government on legislative changes, forging a close relationship that he draws on in negotiations and disputes related to transfer pricing. The practice as a whole advises on the full spectrum of transfer pricing issues, from business transformation and transfer pricing planning to documentation, audit defence strategies and pre-emptive guidance on tax authority moves. It can also draw on an extensive network throughout the African continent to advise multinationals expanding into the region.

Tier 2

ENS – Taxand offers a full-service tax practice with by far the largest tax team of any law firm in South Africa. The practice is strong across the board with a particular concentration of expertise in M&A and corporate tax.

In particular, ENS is far ahead of any of its competitor law firms in transfer pricing, with two specialist executives dedicated to the sector, **Jens Brodbeck** and **Okkie Kellerman**. As well as working in disputes along with most law firms, the practice also has strong economic capabilities including the software to do comparables analysis and further economics studies. It frequently draws on this capacity to advise clients on supply-chain restructuring.

Projects in the past year have involved advising on employment structures and reviewing a firm's customs valuation to ensure they comply with current customs legislation. The transfer pricing department is also heavily engaged with the accelerating trend of South African firms expanding into other parts of the continent, advising one company on challenges that arose in the course of enacting its policy of aggressive expansion into various parts of Africa.

Tier 3

Bowman Gilfillan has a small transfer pricing practice which advises on complex issues arising from major transactions that have a transfer pricing element to them, as well as on contentious issues. The practice doesn't do supply chain optimisation, modelling, benchmarking or comparables analysis, but it will advise groups of companies on structuring issues related to transfer pricing. **Willy Horak**, a well-recognised expert in international and cross-border tax, is also known for his work at the top end of transfer pricing. He is assisted by associate, **Simone Esch**.

DLA Cliffe Dekker Hofmeyr's tax practice has two directors involved in transfer pricing, both of whom focus on dispute resolution alongside negotiating advanced pricing agreements with the tax authorities. **Emil Brincker** heads the tax practice overall and also undertakes many of its transfer pricing litigation cases. He is assisted in doing so by **Ruaan van Eeden**, a specialist in cross-border tax matters more broadly, a specialism that he occasionally applies to transfer pricing controversy matters.

Transfer pricing at **Webber Wentzel** is led by **Michael Honiball**, who was previously head of transfer pricing at KPMG in South Africa. Honiball is assisted by **Thabiso Montsho**, an associate and rising star within the practice.

Through its alliance with Linklaters, Webber Wentzel has access to a strong international network. They are also one of the few law firms in South Africa to have access to the various transfer pricing databases needed to offer advisory services in the sector. As a result, they offer a full range of transfer pricing services, including assistance with legally privileged transfer pricing opinions, preparation of transfer pricing compliance, defence, and business restructuring documentation, and the conducting of comparables searches.

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KPMG has a dedicated and powerful transfer pricing team. Our professionals think and act nationally and globally, ensuring a commercial approach is taken to the theoretical concepts. They are well qualified, experienced and equipped to serve our clients' transfer pricing needs – identifying opportunities whilst minimising risk.

KPMG's representation stretches across 43 African countries. We have an integrated African Transfer pricing team, who are able to "hit the ground" running with an approach which will accelerate the delivery of tangible results for our clients.

South Korea

An audit guide by Gil Won Kang of KPMG.

Tax authorities

National Tax Service
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Email: service@mail.nts.go.kr
Website: www.nts.go.kr

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

General tax audit is conducted every four to five years with frequency determined by a programme using certain algorithms. TP issues are generally reviewed during the general tax audit and are infrequently reviewed separately.

2. How will a company find out it is being audited? What is the official notification?

The taxpayer will receive a tax audit notice in writing by the National Tax Service. In rare cases involving possible destruction of evidence, NTS may elect to arrive without prior notice to confiscate the required evidence.

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

The taxpayer should gather and submit the information requested by the tax authorities and arrange for professional assistance.

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

Tax audit is conducted in accordance with the procedures prescribed in the legislation.

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

The approach is similar to other OECD nations as the TP legislation closely mirrors the OECD transfer pricing guideline.

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

The information is first compiled through Tax Integrated System, a database complied by the NTS on all taxpayer information, and through field audit.

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

History of tax/TP compliance issues

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

Information that may be requested by the NTS:

A. Sale transfer agreement(s)
B. Price of the goods
C. Cost of goods sold
D. Related and non-related party transaction details by goods
E. In case of service transactions, information that represent items A ~ D
F. Organisation charts and business descriptions
G. Foreign sales pricing information
H. Global policy on related party transactions
I. Accounting policy on reviewed transactions

J. Responsibilities of the parties to the reviewed transactions
K. Loans, advances, investments and similar amounts of related parties
L. Any information omitted from corporate tax return filing
M. Following information on service transactions required by Ministry of Strategy and Finance:
    i. Service agreement
    ii. Group level organisation chart
    iii. Entity level organisation charts
    iv. Details of cost incurred in providing the service
N. Following information on shared costs required by Ministry of Strategy and Finance
    i. Intra-group agreement specifying name of parties, details of assets contributed and the rights of each party
    ii. Revised agreement reflecting "A" above
    iii. Valuation of assets contributed and related accounting policies
    iv. Benefits expected
    v. Actual benefits realised
    vi. Explanation of differences between expected and realised benefits
O. Any other documents as requested

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

11. How long does an audit last?

The tax audit period is determined based on the size and the complexity of the taxpayer's business operations. Having said that, tax audit period for taxpayer with revenues less than KRW 100 million ($90,000), the tax audit period is to be less than 20 days. In cases where the taxpayer is unable to produce the requested information, causing delay, the tax may be suspended until the information is made available.

12. What happens after an audit has been completed?

If the taxpayer disagrees with the audit results, the taxpayer has the option to make an appeal through domestic appeals procedure or to take the appeals to the competent authorities through Mutual Agreement Procedure.

13. Tips on negotiating with the authorities.

Engage tax advisers from the onset of the audit as the TP issues are one of the hot topics on taxpayers involving cross-border intercompany transactions.

14. How can a company manage its audit risk?

Basic TP risks can be addressed through contemporaneous TP documentation and APAs

Gil Won Kang (gilwonkang@kr.kpmg.com)

LEADING FIRMS

1	Deloitte Anjin
	Kim & Chang
	Samil PwC
	Samjong KPMG
2	EY
	Yulchon
3	Lee & Ko
	Shin & Kim

Practitioners in South Korea feel increasing pressure in the transfer pricing market because of intensified governance and a change of regulation. "Transfer pricing practice is very difficult, especially in a small market like Korea," said Jay Shim of Lee & Ko.

Although the most recent amendment of the Korean transfer pricing regulations took place in late 2010, the effect of the revision continues to be seen in the market. In line with the OECD guidelines, the regulations expect more transparency and accountability from taxpayers when managing their pricing policies and documentations. "Not a lot has changed in the law. Restrictions are more through penalty and the selection of methodology," Shim said.

In 2012, the National Tax Service (NTS) imposed taxes on intra-group guarantee transactions by calculating the guarantee fee using the guarantee fee calculation model developed by the NTS. Four new models were enacted in February 2013 to clarify the calculation of arm's-length guarantee fees for intra-group guarantee transactions.

"As with other jurisdictions, transfer pricing is also an important area of tax audit and therefore a big area of dispute," said Yun Sai Ree of Yulchon.

In the past year, the market has observed an increasing number of transfer pricing audits and the tax authorities have closely scrutinised intra-company transactions with overseas subsidiaries. Withholding tax and companies' entertainment expenses are two other areas that draw great attention from the tax authority.

"Transfer pricing audits are a significant issue, which subsequently drive a lot of advance pricing agreement (APA) requests because the taxpayers want to go for more certainty," said Henry An from Samil PwC. An also said that treaty shopping is another by-product of the increasing scrutiny.

However, one problem deriving from the crowded APA market is that the negotiation procedure becomes longer, because related resources in the tax authorities are limited. Practitioners said there have been less unilateral APAs concluded and some taxpayers then turned to unilateral studies instead.

Tier 1

Deloitte Anjin has a leading transfer pricing service in Korea that optimises local and global clients' TP needs. **Taehyung Kim** leads the service line of two partners and 23 fee earners. Kim holds a PhD degree in economics and has more than 17 years of experience in transfer pricing. **Yongchan Lee** used to take charge of APA and mutual agreement procedure (MAP) issues in the Korean tax authority before he joined as a practice's partner.

The practice has strength in providing seamless global tax audit defence by designing and implementing practical and tailored transfer pricing policies. With good understanding of regulations in multiple jurisdictions as well as industry knowledge, the team is able to minimise double taxation issues while meeting local transfer pricing requirements. The team is also good at APA and MAP negotiations with various countries' tax offices. The team employs a former Korean tax officer, meaning it can leverage substantial experience and knowledge in negotiating with tax officials.

Taehyung Kim and **Taijoon Kim** teamed up with Deloitte Japan for a cross-review of some intercompany transactions between a Japanese parent entity and its Korean subsidiary. The joint force analysed the transaction under both countries' regulations and set up a new transfer pricing position that meets both side's requirements.

Despite being a law firm, **Kim & Chang**'s transfer pricing service is comparable if not better in compar-

Tax rates at a glance

(As of September 2013)

Corporate income	22% (a)
Capital gains	22% (b)
Branch tax	22% / 5% - 15% (c)
Withholding tax	
Dividends	0% / 20% (d)
Interest	15.4% / 20% (e)
Royalties	20%
Technical Services fee	20%
Branch remittance fee	0%
Net operating losses	
Carryback	0 / 1 year (d)
Carryforwards	10 years

a) The tax rate is 10% on the first KRW 200 million of taxable income, 20% on taxable income above KRW 200 million up to KRW 20 billion and 22% of taxable income above KRW 20 billion.

b) Capital gains or losses are usually reflected in normal taxable income subject to corporate income tax. Capital gains derived by a nonresident from Korean sources are taxed at the lesser of 11% of the sales proceeds received or 22% of the gains realised.

c) A branch tax, ranging from 5% to 15% of after-tax profits less deemed reinvested capital may be levied if a tax treaty between Korea and the country in which the branch's head office is resident allows Korea to impose the branch tax.

d) There is no withholding tax on dividends paid to a domestic company. Dividends paid to a nonresident company or individual are subject to a 20% withholding tax, plus the local surtax.

e) Interest on a regular loan paid to a nonresident company or individual is subject to a 20% withholding tax, plus the local surtax. Interest on bonds is subject to a 15.4% withholding tax.

f) Only small and medium-sized enterprises may be allowed to carry back losses for 1 year.

ison to the Big 4 accounting firms. One adviser from a rival firm said: "Kim & Chang has a dominant position in the Korean transfer pricing market." **Dongjun Yeo** is qualified both as a tax attorney and an accountant and heads the transfer pricing practice of more than 40 professionals. Yeo has extensive experience advising transfer pricing issues in the US and Korea, working with a wide range of industries such as automotive, pharmaceutical, consumer goods and software. He is not only experienced in transfer pricing planning and implementation but also represents clients in audits and disputes as well as APA applications.

Professionals from the firm have a deep knowledge in all areas of transfer pricing, providing service to companies from the US, Europe, Japan, China and India. As issues often involve matters such as customs, fair trade and even criminal law, the transfer pricing team works closely with other practice groups within the firm to offer comprehensive advice to particular matters. The practice's key services include establishment of transfer pricing policy, documentation and audit defence, APA and MAP negotiation, as well as appeal and litigation. The firm holds a diverse assignment portfolio, assisting the world's largest companies.

Under the leadership of **Soohwan Park**, **Samil PwC** has the largest transfer pricing group in Korea. Four partners and 60 dedicated professionals form the multidisciplinary team of specialists in accounting, tax, finance, economics and law. The practice's transfer pricing advisory experience includes documentation preparation, planning, policy development and implementation, pre-audit services, audit defence, appeals and litigation support, and APA negotiations. By far, the group has been a market leader in APA and has handled over 100 cases of this subject. Additionally, the firm has specialised teams responsible for handling financial services transfer pricing issues and Japanese multinationals.

Heuitae Lee and **Youngjoo Kim** worked together with two of the firm's customs specialists to assist a client obtaining both a bilateral APA between Korea and a European country and an advanced customs valuation arrangement from the Korea Customs Service. Such a result was very rare because the tax and customs services often hold contradictory views upon the pricing. Thanks to the firm's efforts, the client was able to manage its transfer pricing and customs risk at the same time based on a consistent price.

In Korea, **Samjong KPMG** operates a global transfer pricing service line which consists of four partners and over 30 professionals. The team is actively engaged with developing and implementing transfer pricing plans, negotiating unilateral APAs and bilateral APAs and audit defence. Following the market development, the team sees more work advising outbound businesses by Korean multinationals.

The team has a multidisciplinary background with staff members as accountants, lawyers, economists and other business and industry specialists. **Gil Wong Kang** arrived from Kim & Chang in 2012 and took the leadership of the transfer pricing team, together with the head of tax practice **Jeong Wook Choi**. Kang also has experience working with the National Tax Services and is well versed with advising multinationals' transfer pricing planning. **Sang Uk Lee** and **Don Kwan Kim** are recruited this year bringing their industry and administration experience. That enables the team to not only offer real time solutions, but also to design tailored and sustainable models to corporate clients.

The team is the transfer pricing adviser to Korea's leading carmakers and their global subsidiaries and co-operative entities. It has a sub-line in financial transfer pricing which tackles issues such as financial guarantees, intra-group charges and revenue splits. Kang successfully defended a complicated tax audit case for a finance company involving intra-group management fee payment. Because of significant demands from Japanese clients, KPMG has a separate transfer pricing team to offer advanced services to Japanese multinationals.

Tier 2

EY's transfer pricing practice has been enhanced over the past year because of the arrival of KPMG's former TP head **Sangmin Ahn**. Six other professional manager level professionals subsequently followed Ahn to EY. Ahn and **Unghwan Choi** co-head the practice of 32 staff members. The firm advises on issues relating to inbound investment and financial services. The additional manpower has brought some job opportunities from outbound projects.

In March 2013, Ahn assisted on a transfer pricing audit, targeting outbound deemed royalty issues, which is very rare in Korea. The tax authority initially proposed an adjustment of about $60 million. Ahn successfully argued the case and no adjustment was made as a result. In addition, Choi led a transfer pricing planning case involving a guarantee transaction among foreign related parties. He also concluded a $100 million bilateral APA between Korea and China.

Yulchon's transfer pricing practice has experience in providing service in various forms including studies, pre-audit health checks and audit defence, appeals to tax tribunal or court, APA and outbound payment guarantees. The team's service provision reaches not only Asian countries such as China, Vietnam, India, Malaysia, and Japan, but also Europe and the US. In addition, the firm has established good working relationships with international and local law firms in China, Japan, and India for complex problem solving.

Led by **Kyung Geun Lee** and two other partners, the nine-people force holds a deep understanding on domestic or international tax guideline. The team has experience in carrying out legislation supporting services for Ministry of Strategy and Finance's TP regulations and participation in preparation of the UN Transfer Pricing Manual. Currently, it is providing consulting services to the National Tax Service in Korea on transfer pricing in South East Asian countries. Over the past year, the firm has successfully represented a number of world's top companies on their unprecedented transfer pricing cases before the tax tribunal, which involved multi-million dollars. The team also assisted on a number of APAs between Korea and China.

Tier 3

Lee & Ko continues to build up its transfer pricing team to meet the increasing market demand. The firm employs professionals with a diverse background including lawyers, accountants and former transfer pricing officials. **Jun Suk Kim** joined the team last September, with more than 20 years experience working in the tax office and the Big 4. He also authored several books introducing this subject. The firm also welcomes **Ted Kim** and **Jong Yul Lee**; both of them are well suited in international tax and transfer pricing.

The practice often advises local conglomerate such as Hyundai Heavy Industries on transfer pricing methods and implementation, and represents clients in APA or MAP application. Where transfer pricing is an issue in a tax investigation, the lawyers offer clients support in the case.

The transfer pricing team at **Shin & Kim** includes four specialists. Partner **In-Hwa Chung** is the leader of the team who is a certified public accountant. Chung has been providing a range of transfer pricing services for over 15 years. **Duck-Yeul Jang** holds a PhD degree in economics and has more than 30 years of experience working in the National Tax Service in the international tax field including transfer pricing before he joined the team. Over the past year, the firm has been busy with transfer pricing studies for clients' business activities between Korea and China.

Deloitte.

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Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate.

The shared values of the people of Deloitte bind us together and promote trust among the partners and professionals of our member firms, allowing us to enhance the confidence of the capital markets. These values join us together across different cultures, customs, and languages and are the foundation for collective success.

Our Global Transfer Pricing Group has been increasingly recognized as a top transfer pricing services firm in Korea by Korean and foreign multinational corporations, the National Tax Service, and transfer pricing practitioners in Korea.

Spain

Tax authorities

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LEADING FIRMS

1	Deloitte
	EY
	Garrigues – Taxand
	KPMG
	Landwell (PwC)
2	Baker & McKenzie
	Cuatrecasas, Gonçalves Pereira
	Freshfields Bruckhaus Deringer
	Grant Thornton
	GTA Villamagna
3	Ashurst
	BDO
	Mazars

The transfer pricing authorities in Spain have been cited as much more reasonable than the general tax authorities. Despite this, tax revenue is critical in Spain as the nation attempts to reduce its financial deficit. As a result, transfer pricing is likely to become an area where tax revenue can be raised.

One adviser said in cases where the tax inspector is not well-read in the area of transfer pricing, they will often conduct their audits on a different area of tax.

However, this is set to change as a recent recruitment of a tranche of young, well-trained individuals to the authorities promises a better informed and easier to deal with tax authority in the future. This is certainly the case in Madrid but outside of the capital the transfer pricing authorities still sometimes lack sophistication.

When taxpayers' transfer pricing affairs are audited the authorities can request their transfer pricing documentation which must be supplied to them within a minimum of 10 days. Aside from a few exemptions, a transfer pricing study must be produced for all related party transactions. Since 2009, transfer pricing rules have dictated that it is absolutely essential for companies to have their transfer pricing documentation in order, as the penalties for the contravention of these rules can be severe.

The enforcement of transfer pricing penalties is likely to increase in the near future as related-party transactions become a focus for the authorities, looking to increase revenue.

Spanish taxpayers are able to apply for unilateral, bilateral, and multilateral advanced pricing agreements. There is no filing fee and the authorities do not publish APA data in any public forum.

Tier 1

Deloitte's transfer pricing practice is multidisciplinary. The team consists of two partners who lead about 50 other dedicated transfer pricing professionals. This includes work in the financial services industry, the infrastructure sector, the consumer business sector, the healthcare industry, and the services industry. The practice employs economists as well as tax and legal specialists and so is able to offer the full range of transfer pricing services.

The practice has carried out transfer pricing work recently for a number of high profile clients including the large Spanish bank, Banco Santander,

Brian Leonard, partner of the practice in Spain clarified that not only does Deloitte Abogados boast vast

Tax rates at a glance

(As of July 2013)

Corporate income tax	30%
Capital gains	0% to 21%
Branch tax	30%/21%
Withholding tax	
Dividends	0% to 21%
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
Carryforwards	18

a) For small and medium-sized companies (as legally defined), the corporate income tax rate is 25%, applicable to the first €300,000 ($397,000) of taxable income; any taxable income more than that amount is taxed at 30%. For microenterprises (as legally defined and certain requirements are met), the corporate income tax rate is 20% applicable also to the first €300,000 of taxable income; any taxable income more than that amount is taxed at 25%.

b) There is no special capital gains tax rate although, if some requirements are fulfilled, it may apply a 12% tax credit for reinvestment of extraordinary income.

c) The higher rate applies unless reduced under a tax treaty or exempt under the EU interest and royalties directive.

d) 30% is the general branch tax rate applicable to non-residents with a permanent establishment (PE) in Spain (are taxed at same rate as domestic companies). In addition, a 21% branch profit tax is imposed on after-tax profits remitted to a foreign head office. The branch profit tax does not apply to branches of EU entities or entities based in a country that has signed a tax treaty with Spain.

e) Intercompany payments 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) As is July1 , 2011, royalty payments to associated entities or PEs residing in the EU are not subject to withholding tax under certain circumstances. Royalties paid to a non-resident company outside the EU are subject to the higher rate unless the rate is reduced under a tax treaty.

Source: *Tax advisers from Garrigues – Taxand*

specialist tax teams, but also teams that specialise in specific areas of business. The practice is one of the largest in Spain, employing 27 partners and 250 other tax experts.

The **EY** Spain transfer pricing team consists of 40 dedicated professionals including three partners.

In conjunction with the transfer pricing team, EY has a strong, dedicated tax controversy team capable of working on both domestic rulings and cross-border litigation, particularly in relation to transfer pricing.

The transfer pricing team offers a wide range of services including the design of sophisticated supply chain models and sophisticated intangible planning projects and many more.

The practice has a variety of clients on their portfolio including a number of the most relevant foreign multinationals in Spain. The practice works with a plethora of different industries but is particularly experienced in working with the energy industry, infrastructure, and the financial services industry.

One client explained that they had used EY's services when they needed a master file completed very quickly. The practice delivered and the client described the service as "high quality and very flexible". Another client commended the firm for their good service, explaining that they were assisted by "a very good associate with excellent transfer pricing skills".

The transfer pricing team at **Garrigues – Taxand**, co-headed by **Ángel Calleja** and **Mario Ortega Calle**, consists of more than 40 transfer pricing practitioners including five partners.

The transfer pricing team offers a wide range of services including documentation, policy work, planning, litigation, APAs, MAPs, and benchmarking.

One of the key deals the team worked on over the past year was for entities associated with the Gas Natural Fenosa Group; a leading multinational in the gas and power sector present in more than 25 countries. This involved them performing an in depth analysis of the transfer pricing implications of the business.

The practice provides ongoing advice to a number of Ibex35 index companies, comprised of some of the largest quoted companies in Spain. The practice is particularly active in Latin American investments of different multinationals, especially over the past few years in response to the current economic development in this area. As such, it was recently announced that Garrigues are to open three new offices in Columbia, Mexico and Peru this year (2013).

Garrigues participates actively in both International and Spanish Forums in connection with all kind of technical issues relating to the application of existing transfer pricing rules, including the International Fiscal Association, the International Bar Association, the OECD Business Restructuring working group, the EU Transfer Pricing Forum, the Spanish Association of Tax Advisers (AEDAF), and the Spanish Institute of Fiscal Studies (Instituto de Estudios Fiscales).

KPMG's transfer pricing practice consists of three partners and two managing directors who lead a team of over 45 professionals. At the core of its business model is an innovative approach, that governs the portfolio of products and services that KPMG is offering to the market. This innovative value proposition is forged by the combination of a business and economic approach, a constant search for synergies for clients in the domestic and international tax planning fields, and the leverage on the use of technology. The practice has a variety of clients in the energy, infrastructure and banking industries, with a market penetration exceeding 50% in Spanish blue chips, and is particularly experienced in delivering high value-added projects in the field of international tax planning, tax valuations for transfer pricing purposes (with emphasis on intangibles and financial instruments) and value chain management in a timely manner. The practice has recently hired **Carolina del Campo**, a senior tax official coming from the Spanish Tax Agency (AEAT) specialised in international taxation and transfer pricing, who worked as the head of international taxation team since July 2012 and was also the delegate in the AEAT for OECD meetings (WP6, WP10, Global Forum and CFA). The practice is experienced in advising clients on APA procedures and dispute resolution.

Landwell Spain is associated with PwC. The firm is divided into specialised departments, one of which is the transfer pricing team. It offers a range of transfer pricing services including the design and implementation of transfer pricing policies, economic and functional analyses, advice and preparation of documentation, and assistance on the negotiation of APAs with the authorities.

Tier 2

Baker & McKenzie offers a variety of transfer pricing services to their clients. They try to avoid routine work such as the preparation of documentation, and instead focus on the complex, high-value aspects such as transfer pricing optimisation structures.

Cuatrecasas, Gonçalves Pereira is first and foremost a law firm employing 60 partners and 250 lawyers in total. 80% of the professionals at the tax practice have Masters Degrees in relevant subjects and 50% of the professionals are trained lawyers and economists.

The transfer pricing team is able to offer a range of transfer pricing services including APAs and litigation. The tax practice has registered a 14% increase in its turnover in the past year and they are charging 25% more for their services. This increase has resulted from a shift in the kind of work that the tax practice is taking on; they now predominantly do extremely sophisticated tax work.

The team has extensive international experience and as such boasts large multinational clients such as L'Oréal, Louis Vuitton, Qatar Holding, Deutsche Bank, Liberty, Zurich, British American Tobacco, Pirelli, Banque Chaabi, Petrobras, CSN, Credit Suisse, Media Markt, Petrobras and Beiersdorf, among others

The Spanish practice of **Freshfields Bruckhaus Deringer** boasts one of the few in-house dedicated transfer pricing teams in Spain. The team is made up of transfer pricing specialists who are particularly concerned with transfer pricing issues involving Latin America and the Caribbean. The practice is able to offer the full range of transfer pricing services including the financial aspects because they employ economists capable of doing this.

The transfer pricing team at **Grant Thornton** is led by **Gabriel Yakimovsky**, a member of Grant Thornton International's EMEA global transfer pricing leadership team where he advises on transfer pricing planning, supply chain optimisation, business restructuring and documentation. Aside from the work he does for the transfer pricing team in Spain, Yakimovsky is also actively involved in training staff of the other member-firms of Grant Thornton International.

The transfer pricing team is able to offer the full range of services and employs a number of dedicated economists including Yakimovsky. The team is able to work with other teams at Grant Thornton in Spain when advising on transfer pricing issues; these include the international tax, VAT, and valuations specialists.

The practice was recently involved in a project where they established a tax efficient global franchise royalty structure for a group engaged in the activity of gold and jewels retailing in Spain and Portugal. The team's efforts secured several million Euros of savings for the group.

GTA Villamagna Abogados offers advisory services on tax litigation, general taxation, and wealth management / private banking. The firm is particularly strong in tax litigation and benefits from the extensive experience of **Filipe Alonso**, head partner at the practice.

"The solutions are always tailor made" explained Alonso, and the partners are always directly involved with the tax work.

The practice offers the full range of transfer pricing services and recently employed a transfer pricing expert, trained in both the legal and the economic side of transfer pricing. The department boasts extensive experience in transfer pricing policy design and validation; planning and documentation for major multinational companies; and complex tax valuation exercises, negotiation of advance pricing agreements with the Spanish tax administration.

The transfer pricing team recently advised on the design and implementation of transfer pricing policy to aid the restructuring of a well-known group of companies in the insurance industry in a deal worth approximately $1.6 billion. This involved extremely complex transfer pricing policies due to the type of transactions under analysis.

The practice prides itself in maintaining absolute confidentiality for their clients. They are able to achieve this as a result of their small size and methodology whereby only the partners are aware of the identities of the clients – the rest of the practice works only with a reference number.

Tier 3

The professionals at **Ashurst** are generalists with some degree of speciality, explained **Eduardo Gracia**, head partner at the practice. The practice has recently advised on a variety of tax matters including debt and corporate restructurings; international taxation and transfer pricing; and in defence of a number of clients before the administrative and judicial courts.

The transfer pricing team is able to advise on transactions and negotiations in different transfer pricing cases. Their particular focus is APAs which they have extensive knowledge and experience of.

Gracia has recently been re-elected for the fourth time as the Spanish private sector representative at the Joint Forum on Transfer Pricing of the European Union. Gracia explained that this position has imbued him with an enormous amount of transfer pricing experience and also personal contacts with many senior transfer pricing officials.

The practice recently advised on the functional restructuring of the reorganisation of the Procter & Gamble group (American multinational consumer goods company) in Spain following the acquisition of Arbora (leading Spanish child and feminine hygiene manufacturer).

Clients praised Ashurst's transfer pricing services as "excellent".

BDO's transfer pricing team offers a range of services including the implementation, review and defence of the transfer pricing policyfor both Spanish companies investing abroad and Spanish subsidiaries of multinational groups.

The practice is also capable of the analysis of transfer pricing policy, the valuation for tax purposes of habitual group transactions, compliance and documentation, and advice on APAs.

Mazars offers its clients services that consist of defence strategies, negotiations with the revenue authorities, and planning for the minimisation of the global tax rate.

Sweden

Tax authorities

Ministry of Finance
Jakobsgatan 24
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Fax: +46 8 21 73 86
Website: www.sweden.gov.se/sb/d/2062

Swedish Tax Agency
Postal Address: 171 94 Solna
Visiting Address: Solna strand road 10
Tel: 0771-567 567(in Sweden);
+ 46 8 564 851 60 (abroad)
Email: huvudkontoret@skatteverket.se

LEADING FIRMS

1	EY
	PwC
2	Deloitte
	Grant Thornton
	KPMG
3	Skeppsbronn Skatt – Taxand

Tax rates at a glance

(As of September 2013)

Corporate income tax	22%
Capital gains	22%
Branch tax	22%
Withholding tax (a)	
Dividends	0/30%
Interest	0%
Royalties from patents and licences	0/26.3%
Branch remittance tax	
Net operating losses (Years)	
Carryback	
Carryforwards	indefinitely

a) Payments to European companies that qualify under EU directives may be exempt or subject to reduced withholding tax rate

It has been a challenging year for transfer pricing in Sweden. A slow economy, an energetic tax authority and legislative changes have combined to place a lot of pressure on multinational companies' transfer pricing structures.

"The market for tax services has been quite tough during the past year," said Tina Zetterlund of KPMG. "The recession and the economic environment have been tough for our clients and many companies have had some problems. We also see that the competition for tax services has increased."

Advisers said international clients have been badly affected by the crisis in Europe. Bigger deals involving large multinationals were conspicuous by their absence, as clients became more careful with their budgets and took longer to make decisions, with many focusing on cost-cutting projects.

Legislative change has also made tax planning, by way of interest deductions, more difficult. Since January 1 2013 the regulation around thin capitalisation has been tightened, decreasing the maximum amount of debt on which deductible interest payments are available. Although similar rule changes have been imposed in many European jurisdictions recently, they were felt especially strongly in Sweden.

"Historically, we've had generous thin capitalisation rules, and that has created quite a lot of work nationally," said Mac Berlin at Skeppsbronn Skatt – Taxand. "This has been a huge drain on the Swedish tax base, especially with interest going to foreign entities with no withholding tax or thin capitalisation getting full use of leverage, which has been kind of unique. The government has tightened the whole thing up – there were these light rules on interest deduction before and they're putting more fierce rules in place."

Other advisers agreed that the rule changes have had a big impact.

"The interest reduction rules have had a significant impact on our clients especially those working in an international environment," said Tina Zetturland at KPMG. "All financing structures used by our clients have since become more difficult as the scope for tax reductions is narrowed."

Swedish tax practices also remarked upon the impact of the political climate surrounding transfer pricing. This has been an inflammatory topic in the Swedish media, and advisers said that the tax authorities have been very active in the past year.

"The tax agency has been very active," said Annika Lindström at KPMG. "The number of tax audits relating to transfer pricing are definitely increasing, I'm beginning to compare it to Denmark where the tax authorities are always much more aggressive and work a lot with tax audits."

Magnus Larsson at Deloitte agreed: "It has been tough times in Sweden. It is exceptionally difficult to market some schemes or set up hybrid instruments. Aggressive tax planning has gone for now."

Zetterlund agreed that the shape of tax work in Sweden has been changed quite radically by the pressure to be more transparent.

"Clients are more worried about their reputations, and this has changed the type of tax work that is available. Not many clients are now interested in aggressive tax planning," she said. "Clients now want to take more time to consider the impact on reputation of tax planning activities. They are prepared to be more transparent when it comes to taxes, board members are suddenly changing the type of structuring so it's less aggressive, and they are discussing policies in relation to reputation. This requires some new skills from us."

Tier 1

The Swedish transfer pricing team in **EY** is part of EY's Nordic transfer pricing group, an integrated transfer pricing team within the Nordic region. The Nordic group enables EY to provide specialist services in all the Nordic countries. EY's Nordic transfer pricing group is led by the transfer pricing specialist and partner **Mikael Hall**, who is based in Sweden and is one of the jurisdiction's most experienced transfer pricing advisers, described as "very knowledgeable" by an adviser in a competitor firm.

EY has a leading reputation in Sweden for transfer pricing, and its strong Nordic practice has been at the forefront of advisory work as transfer pricing has become an increasingly crucial tax issues in the region in recent years. The practice provides advice on cross-border restructurings, advance pricing agreements, controversy-related issues, and financial transfer pricing. The group was awarded International Tax Review's Swedish Transfer Pricing Firm of the year in May 2013.

PwC's transfer pricing practice is very highly regarded by peers in Sweden, one describing it as "very good indeed". The team comprises specialists in economics, accounting, project management and tax law, and is well-known for its innovative and creative approach to transfer pricing issues. These issues encompass advance pricing agreements, value chain transformation, documentation and planning, and controversy and dispute resolution.

Tier 2

An important deal for **Deloitte**'s transfer pricing practice over 2012 involved providing advice on risk mitigation and other tactical challenges to an industrial group with an annual turnover of $13 billion. This advice was given to the Board of Directors of a Swedish subsidiary of the larger group, following a restructuring of the company's European operations. Deloitte analysed the local tax implications of a business restructuring entailing a substantial change in the group's transfer pricing model to assist local management regarding potential risks.

This deal was led by **Elvira Allvin**, who alongside **Mats Emanuelsson** spearheads transfer pricing at Deloitte Sweden. Emanuelsson has particular experience in audit defence and the banking sector; Allvin has recently been focusing on expanding the practice's expertise in the south of Sweden and on building relationships with the industrial clients based there.

Allvin and Emanuelsson work with a diverse team of practitioners, who have backgrounds in tax, economics, finance, and business, and experience from working in foreign jurisdictions, in industry, and for the Swedish Tax Agency. This broad-based bunch of professionals offers an equally broad range of services, including business model optimisation, restructuring planning and risk management, implementation advice, all aspects of compliance, audit defence, valuations, and arbitration procedures.

The transfer pricing team works with a diverse base of key accounts comprising banking and private equity firms, as well as many of the largest industrial multinationals, including AB Volvo, Volvo Cars, Hexagon and Getinge.

Grant Thornton Sweden has a full-service transfer pricing practice in Sweden. This department is led by **Per Hedren**, a senior manager and trained economist. Documentation, disputes and supply chain optimisation are all handled by the practice, which is also able to draw on Grant Thornton's practice in other countries on large-scale transfer pricing projects.

It's been an eventful year for the transfer pricing practice within **KPMG**. Its head, **Annika Lindström**, who has been with the firm since 1994 and has led its transfer pricing work since 2005, was promoted to the position of partner, boosting the transfer pricing team's profile.

Documentation work has begun to give way to more planning and structuring projects alongside a sharp rise in audits and litigation. To cover this, KPMG drafted in extra expertise in the form of **Rasmus Gannvik**, who joined from the Swedish tax agency.

Elsewhere, geographically speaking, the practice the firm established in Gothenberg two years ago has started to take off. **Lisa Wåhlin**, who covers all forms of transfer pricing work, was hired from Electrolux to oversee the transfer pricing team there. While there are many similarities between the workload in the two cities, the Gothenburg team tends to work with mid-size firms in a less mature market, while the Stockholm team has more of an international focus.

Key clients include Hexagon, Hoyer, and Electrolux; leading companies with worldwide operations in the fields of visualisation technologies, logistics, and appliance manufacturing respectively.

For Hexagon, Lindström helped develop a group royalty structure designed to maximise tax efficiency while supporting greater group cohesion. The respected transfer pricing practitioner Nils von Koch successfully appealed a Swedish Tax Agency decision that the Swedish subsidiary of one of the world's largest corporations benefited from revenues generated by a group company outside Sweden. And David Perrone, a highly-experienced professional who runs university courses on transfer pricing, worked with Lindström to develop a model for setting interest rates for intra-group loans to subsidiaries for the Swedish manufacturer Thule.

Tier 3

Skeppsbronn Skatt – Taxand has three partners working part-time on transfer pricing issues, and two associates dedicated full-time to the sector. This team is led by **Niklas Bång**. It handles both dispute and advisory issues, and covers all areas of transfer pricing work – documentation, planning and litigation – except benchmarking analysis, which is outsourced because there are no economists in the practice.

In the past year, the practice advised on the restructuring of a supply chain for a global Swedish-headquartered company. This advice encompassed pricing models, transfer pricing documentation, implementation, economical evaluation, and safeguarding exit tax and private equity issues.

The practice also acted for a multinational company through a litigation concerning a substantial transfer pricing reassessment. And it designed, documented and implemented transfer pricing policy for brand charges for a large Swedish-headquartered company.

SKEPPSBRON
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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	TAX EXPERT International

Switzerland is a member of the OECD and has accepted the OECD transfer pricing guidelines. At present, there is no specific requirement concerning transfer pricing documentation. However, for related-party transactions, the taxpayer must be able to prove that the transfer prices used were based on coherent economic and commercial reasoning.

Transfer pricing audits are not covered by Swiss tax law and therefore any audits pertaining to transfer pricing matters are undertaken in accordance with the existing tax audit procedures. Non-cooperation with the authorities when subject to such an audit will result in the imposition of fines.

At present, there is no formal procedure for the procurement of advanced pricing agreements (APA). Bilateral APAs are carried out under the analogous mutual agreement provisions in the relevant double tax treaty.

The Swiss tax environment has become more challenging over the past year. The authorities have become increasingly difficult to deal with; they are much more offensive with their tax audits and have developed a propensity to question every detail in tax submissions, explained one adviser.

The tax authorities in Switzerland are also becoming more and more technical, explained Philip Robinson of EY. The authorities are producing comprehensively researched and constructed rulings as they look very closely at whether or not companies are structured in the way they claim to be.

Tier 1

The tax practice of **Deloitte** Switzerland is structured into service lines; each line specialises in one particular area of tax. The practice specialises in a broad range of tax issues including international corporate tax, mergers and acquisitions, indirect tax, tax accounting and management consulting, financial service industry offerings, global employer services, and transfer pricing.

A large proportion of the transfer pricing team at Deloitte have strong economic backgrounds as well as tax and legal backgrounds. The practice is therefore able to offer the full range of transfer pricing services. Recently, this work has ranged from the preparation of transfer pricing documentation to the elaboration and implementation of cross-border trading models.

The practice also has specific knowledge of a variety of industries which they are able to integrate into their tax advisory services. In particular, they work regularly with companies within the life sciences, manufacturing, oil and gas, and financial services industries.

The transfer pricing team at **EY** consists of a dedicated 20-person strong team of transfer pricing specialists. The practice offers a range of transfer pricing services including global transfer pricing documentation, transfer pricing policy design, audit defence, controversy, planning business reorganisation projects and implementing them, advance pricing agreements, principal rulings, financial services related to transfer pricing, intellectual property, and implementation of tax effective supply chain management.

Tax rates at a glance

(As of January 1 2013)

Corporate income tax rate (a)	11% - 24%
Capital gains tax rate (a/b)	11% - 24%
Branch tax rate (a)	11% - 24%
Personal income tax rate (c)	19% - 48%
Withholding tax	
Dividends (d)	35%
Interest (e)	Nil
Royalties from patents and licences	Nil
Branch remittance tax	Nil
Net operating losses (years)	
Carryback	Not allowable
Carryforwards	7 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%-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 advisers from Tax Partner AG – Taxand

The team is led by **Nicholas Ronan**, who joined the Swiss team after 15 years in the Silicon Valley region of the US.

Within the past year, EY Switzerland's transfer pricing team managed important business restructuring projects and was part of a large tax effective supply chain management (TESCM) project involving the realignment of operations in multiple jurisdictions. The Swiss transfer pricing team, and transfer pricing teams located in affected jurisdictions, along with experienced indirect tax, human capital, advisory, legal, Swiss corporate tax professionals and client personnel all worked together to implement these projects.

Markus Wyss is the partner in charge of the global transfer pricing team of **KPMG** Switzerland. The practice offers their clients status-quo analysis where they help evaluate and identify potential tax risks and areas to improve upon in relation to the transfer pricing policy of a taxpayer.

The team will also help implement new transfer pricing policies, prepare documentation, and manage transfer pricing risks.

PwC Switzerland's transfer pricing leader is **Norbert Raschle**.

The team devises transfer pricing solutions for their clients in the following areas: optimisation and elimination of risks in business structures, documenting and defending transfer prices, reducing risks, determination of arm's-length transfer prices, setting up uniform and transparent value chains, tax-optimisation of global structures, documentation, and creating the optimum basis for M&A restructurings.

Clients praised the practice for its transfer pricing work. In particular **Benjamin Koch** was recommended for his "good knowledge and…practical approach." The team was described as a "solid transfer pricing practice".

Tier 2

Richard Wuermli heads the transfer pricing practice at **TAX EXPERT International** which consists of two partners and 11 other professionals. The majority of work that the practice did for their clients over the past year was in relation to the implementation of new transfer pricing concepts.

The team is in the process of helping their client Soda-Club and Sodastream Beverages achieve a possible saving of €13 million ($17 million) by advising them on an intercompany transfer pricing adjustment between Germany and the Netherlands.

Deloitte.

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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. This regional strategy has been instrumental in building and strengthening relationships with the growing client base across Switzerland.

The Swiss Transfer Pricing practice plays an instrumental role in the Deloitte global TP network which won the European Transfer Pricing firm of the year ITR award in 2013.

Taiwan

Tax authorities

Taipei National Tax Administration
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Jhonghua Road, Wanhua District,
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Fax: +866 2 2389 1052
Website: www.ntbt.gov.tw/etwen/

Taxation Agency, Ministry of Finance, Republic of China
2, Aiguo W Road,
Taipei, 10066 Taiwan
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
3	Baker & McKenzie

Since transfer pricing rules came into effect in 2005, the Taiwanese tax authorities have gradually become more aggressive in the enforcement and have intensified their approach to audit.

"For the first few years of implementation, tax authorities focused mainly on public awareness and education, gathering information, and only selectively audited unusual transactions," said Sherry Chang from KPMG. "In recent years, they became more stringent in their transfer pricing audits and expect higher-standards of reports from corporations."

Besides general tax audits, Taiwan tax offices also put together senior tax officials for special transfer pricing audits with higher tax assessment goals. Such audits are usually more sophisticated and longer than general ones.

Practitioners find the tax officers often hold strong opinions and are difficult to convince. "They usually have different viewpoints about the companies' explanation and positions," said Dennis Yu of Lee and Li. "I think the tax authority is not familiar with this subject and would need some more outside assistance."

Some practitioners also observe a slow-down growth rate in transfer pricing service demand, especially in advance pricing agreement (APA) application. "The market has been quiet, not much APAs over the past year. Quite a few companies even withdraw their application," said Al Chang from Deloitte. "Partly because the tax authority is still learning and it takes a long time to negotiate the result. Some companies become inpatient in the process, even when they are about the sign the agreement, but they decide to hold."

Because of the relaxed relationship between Taiwan and China, a substantial amount of business activity is happening between the two. Further development of the transfer pricing regimes of both jurisdictions is something the market anxiously expects. "Corporations want to manage their risks to minimise the possibility of Taiwan and China claiming taxing rights on their profit," said Sherry Chang.

Tier 1

Deloitte, which dominates 40% of the market share in Taiwan, has a flagship transfer pricing service. The team comprises five partners and 70 fee earners. The service leader **Mike Chang** is a widely recognised professional and has more than 20 years of experience consulting and planning for foreign and local clients under international tax and transfer pricing. **Glendy Yuan** is praised for appeal and dispute resolution.

Tax rates at a glance

(As of September 2013)

Corporate income	17%
Capital gains	17% (a)
Branch tax	17%
Withholding tax	
Dividends	
Paid to a resident shareholder	0%
Paid to a nonresident shareholder	20%
Interest (b)	
Paid to resident	10%
Paid to nonresident	15%
Royalties	
Resident	10%
Nonresident	20%
Technical Services fee	20%
Branch remittance fee	0
Net operating losses	
Carryback	0
Carryforwards	10 years (c)

a) Gains derived from the sale of land and a domestic company's securities currently are exempt.

b) The 15% withholding tax applies to interest paid to a nonresident on short-term bills, interest on securitised 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 rate is reduced under a tax treaty.

c) Assessed tax losses of a business entity (including a corporation and branch of a foreign company) may be carried forward for 10 years, provided the entity keeps accounting books, files a "Blue Return" or an annual corporate tax return that has been examined and certified by a local CPA within the prescribed period in the year the losses were incurred and in the year the losses are utilised.

The practice offers a wide range of transfer pricing services from compliance to defence. It has a focus on planning and consultation, assisting Taiwanese companies in handling their global risks. The team prepares global transfer pricing documentation and ensures effective pricing policies. Over the past year, the team has assisted a number of multinationals with their transfer pricing model optimisation.

Japanese companies are increasing their outbound investment and they have a tradition to use Taiwan as a stepping-stone into China. The firm has noticed the trend and has formed a special Japan team to better serve Japanese clients with their transfer pricing needs.

EY's transfer pricing service is one of the market leaders in Taiwan. Under the leadership of **George Chou**, the team has 30 dedicated staff members. The firm offers a full range of services and has an emphasis on hot issues related to intangibles and royalties. It is proud of its combination of communication and technical skills, which guarantees successful arguments before the tax authority.

In April 2013, Chou and **Winni Hsieh** concluded a landmark case for a Japanese client with significant reduction in withholding tax for service payments made from Taiwan to foreign parties. The client had failed, over a number of years, to apply for reduced withholding tax in accordance with Article 8 of income tax law before it approached EY for documentation preparation. Because of EY's sophisticated contribution analysis, the tax authority finally approved the tax exemption. The case marked a milestone in the alignment of the Taiwan income tax with international tax.

Being part of EY's international network, the team also works closely with its sister practices worldwide for cases that include more than one jurisdiction. Chou and **Angela Chang**, for example, teamed up with EY US to jointly assist a US company with its pricing policy changes and intellectual property migration.

Sherry Chang leads the transfer pricing practice at **KPMG** in Taiwan of four partners and 40 professionals. The team includes senior tax professionals, financial analysts and economists that are able to provide sophisticated advice. Being part of the KPMG's global network, the firm maintains an active multi-firm collaboration, and is especially close with KPMG China, because of a ramping up investment from the other side the Strait. Moreover, the firm has a strong relationship with the tax authority and has gained deep understanding into tax governance on transfer pricing.

In December 2012, the team assisted a transfer pricing audit for a leading publicly listed Taiwanese company. The tax authority challenged the company's profit allocation, deemed unusually high in an Asian subsidiary. KPMG developed a profit split method model for the client and convinced the tax authority with the deductibility of the client's R&D expenses. In the end, the client was able to significantly reduce the adjustment amount.

PwC's tax leader **Howard Kuo** heads the firm's transfer pricing practice in Taiwan, and is named for his quality APA service. **Ming-Chu Yang** is well known for global documentation project management. The practice competes head to head with Deloitte and has more than 70 dedicated professionals. The firm continues to undertake strategic hiring as it welcomed two experienced senior managers from the Netherlands last year enhancing its service provision to European clients. The duo is actively assisting the second APA between Taiwan and the Netherlands.

Preparing transfer pricing documentation for compliance purposes makes up a large proportion of the team's business because of increasing awareness in the marketplace. But the team also assists in a number of APA applications. The very first bilateral APA in Taiwan was concluded by the team and it claims to have worked on around half of the APAs concluded in Taiwan so far. Although it does not have a separate dispute team, the practice's results for transfer pricing audit support have been good. **Lily Hsu** assisted a famous manufacturer with its audit during 2013. She successfully convinced the tax authority that the profit split method is inappropriate to determine the arm's-length price in the client's case. The client, as a result, was shielded from an additional tax exposure of $47 million.

The practice has strength in advising companies in the manufacturing and IT industry. It is now posing more emphasis on value chain transformation for future service development.

Tier 2

Outside the Big 4 firms, **Grant Thornton** operates an alternative for transfer pricing advice in Taiwan to serve both local and foreign businesses. Tax leader, **Jay Lo**, leads the service of seven specialists, assisted by transfer pricing manager, **Carrie Chen**. Team members hold diverse professional backgrounds in accounting, law and economics. The firm's transfer pricing service comprises three parts: documentation, planning and defence. Benefitting from the Grant Thornton international network, professionals in Taiwan receive training and endorsement from the central office. Additionally, the firm will get cross-border assignment referred between sister firms worldwide. The firm uses the Standard & Poor's database for comparable searching, which is coherent with the database used by the Ministry of Finance (MOF).

Over the past year, Lo and **Wella Lee** have assisted a number of clients with transfer pricing studies and benchmarking services. They underwent a comprehensive review of clients' documentation and provided sound advice to minimise their future risks.

There are 16 professionals at **Lee and Li**, including eight partners. **Josephine Peng** and **Frank Lin** who co-led the tax practice. Although **Ko-Jen Hsiang** left the team for a corporation at the end of last year, the practice maintains a solid APA application. With experienced and multi-disciplinary specialists on board, the team is able to conduct sophisticated analyses and reviews on clients' TP methods and documentation, to help avoid future risks. In addition, the practice has strength in negotiating with the tax authority for dispute resolution. But the firm does not offer transfer pricing report services.

Earlier this year, Peng successfully concluded a special transfer pricing audit, conducted by the MoF, on a Taiwan branch of an international bank. When the audit was first raised in 2010, the MoF planned to make an adjustment of $120 million. Thanks to Peng's professional support, no additional assessment would be made.

Tier 3

Baker & McKenzie in Taiwan offers transfer pricing services, though the service line is not handled by a separate team of people. The head of the tax practice, **Michael Wong**, takes charge of the service line. The team's core transfer pricing service is consulting and planning, which includes designing and implementing structure as well as integrating methodology. The firm does not have documentation services as all the documentations in Taiwan is centralised in Shanghai, China.

Turkey

An audit guide by Fırat Yalcın and Onur Çeliker of Pekin & Pekin.

Tax authorities

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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.

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Mazars Denge
	WTS & Çelen
3	BDO Denet
	Erdliker – Taxand
	Pekin & Pekin
	YükselKarkinKüçük

Tax rates at a glance (As of September 2013)

Corporate income tax	20%
Capital gains	
Branch tax	20% (a)
Withholding tax	
Dividends	15% (b)
Interest	0% to 10% (c)
Royalties from patents and licences	20% (d)
Branch remittance tax	15% (e)
Net operating losses (Years)	
Carryback	None, except where a company is liquidated
Carryforwards	5 years

a) Branches of foreign companies are subject to the same tax rate as domestic companies, an additional 15% branch profits tax is imposed on after-tax profits remitted to a foreign head office.

b) Dividends paid to non-resident companies are taxed at 15% unless reduced under an applicable tax treaty.

c) The 10% rate applies to interest on loans from non-resident entities that classified as financial entities. Interest on loans paid to foreign states, international institutions, or foreign banks and foreign corporations that qualify as financial entities are exempt.

d) The rate of 20% applies unless reduced under an applicable tax treaty

e) A 15% tax rate is levied on after-tax branch profits remitted to a headquarters.

Source: Deloitte (2013) International Taxation: Turkey Highlights 2013.

The Turkish transfer pricing regulations were introduced in 2007 and as a result the legislation is still in its infancy. The legislation was updated again in 2008 but remains a very simple, short excerpt of legislation. Abdulkadir Kahraman of KPMG said it is going to be another five years before the maturity of the Turkish transfer pricing environment reaches that of the other European jurisdictions.

Transfer pricing assessments in Turkey are likely to become more frequent and more aggressive as the area becomes one of focus for the authorities. Their aim is to curb the expatriation of profits from the jurisdiction by big multinationals that re-route this capital either to their home jurisdiction or to more tax favourable jurisdictions.

The authorities have established a specialised division within their ranks that has the sole purpose of carrying out transfer pricing audits.

Because transfer pricing is a relatively new phenomenon in Turkey, it is likely that courts will struggle with the complexities of dispute cases due to their unfamiliarity with the concept. It is possible that this will cause problems for taxpayers disputing the judgement of the authorities.

The penalty for wrongful transfer pricing is 100% of the additional tax accrued.

With regards to benchmarking, there is very little information at present in Turkey that can be used to carry out these analyses. Taxpayers are using the Amadeus database but the samples are not sufficient.

There is a variety of documentation requirements in Turkey. The first is an annual transfer pricing report which must be prepared by all corporate taxpayers before the annual CIT deadline and it must be submitted to the tax authorities upon request. The second is a transfer pricing controlled foreign corporations and thin capitalisation form which must be filled in by all corporate taxpayers.

Corporate income taxpayers are able to apply for unilateral, bilateral and multilateral APAs. Taxpayers are able to renew an existing APA only for one more period under the same conditions, assumptions and transfer pricing method. The first unilateral APA was concluded and signed between the taxpayer and tax authorities on July 15 2011. Only three APAs have been completed in turkey over the past six years, explained Metin Duran of Mazars Denge. The process is far too slow but Duran is confident the situation will improve as the authorities become more familiar with the legislation.

Tier 1

Deloitte Turkey has two partners dedicated to transfer pricing. These partners work alongside a dedicated transfer pricing team that is comprised of financial consultants, economists and analysts. The knowledge of the team spans audits, accounting, economics, international tax, local tax, and practical US transfer pricing applications.

The Deloitte Turkey transfer pricing team does not limit itself to the alignment of non-Turkish transfer pricing templates but also provides a diverse spectrum of transfer pricing services including pan-European master file preparations, audit defence, unique intangible valuations for transfer pricing purposes, HQ cost allocation exercises, transfer pricing due diligence, structuring analyses and risk analyses for transfer pricing purposes and support for preparation of applications for advance pricing agreements, among others.

The functional leader of the practice, **Ahmet Cangoz**, used to work for a major Turkish construction company and is therefore very experienced in this area. As well as construction, the practice is also renowned for the work it does in the energy sector.

The headquarters are in Istanbul, the financial capital of Turkey, and also in Ankara, Izmir, and Bursa.

The transfer pricing practice at **EY** Turkey was established in 2006, one year before the Turkish transfer pricing regulations were implemented in the jurisdiction. The practice foresaw the potential issues in compliance, documentation and controversy, as well as advisory services for clients. It is now one of largest practices in the country with 19 dedicated transfer pricing professionals (gaining a total of 11 professionals since 2011). The team grew over the past year, gaining four professionals and losing just one.

All members of the transfer pricing team have an economics or business degree and as such are capable of offering the full range of transfer pricing services including compliance, documentation, planning, and effective supply chain management. They also offer transfer pricing litigation work as a part of their dedicated tax controversy department, which is made up exclusively of lawyers. The team is able to work closely with other service lines at EY as and when the need arises.

EY regularly retrains its employees on a broad range of tax and transfer pricing topics to stay ahead of the demands posed by the perpetually changing markets. In combination with this, the team meets monthly for seminars that incorporate knowledge sharing through presentations and case studies.

In 2008, the transfer pricing team of **KPMG** Turkey began completing documentation work for their clients. Over the past two years they have begun to work on transfer pricing planning and dispute resolution. They have also provided consultancy work to their clients including advice on audits and amendments.

PwC Turkey offers its clients a range of transfer pricing services. These include transfer pricing diagnostic reviews, risk and opportunity analyses, tax inspection advice, representation against the authorities, European comparables searches, and due diligence.

Tier 2

Mazars Denge's transfer pricing team consists of five dedicated professionals, including one partner. The team is led by **Metin Duran** who explained that the majority of the work that the practice completed over the past year has been the preparation of documentation.

However, the practice is also capable of offering advice in relation to transfer pricing audits, consultation and APAs.

The team works for clients from a range of industries including the automotive, textiles, and services industries.

The transfer pricing team at **WTS & Çelen** consists of two partners and three other professionals. The team grew over the past year, employing two new transfer pricing partners.

The practice is able to deal with the full range of transfer pricing services. Although the practice has no in-house facility to perform benchmark analyses, as a member of the WTS Alliance –a tax firm network located in approximately 100 countries worldwide – they are able to draw upon this resource to perform such analyses for their clients.

The practice is a boutique headed by **Arif Çelen**. Aside from Çelen, there are two other partners and six fee earners. The team expanded in the last year, hiring two near partners, **Burcak Arhun** and **Veli Sakinc**.

The firm received positive feedback from clients with one describing the services they received as "vital...if it would not be for the advice and also the critical stance of Arif Çelen vis-a-vis the opinion of other larger tax firms, we would have gone a way which [would not have been] good".

Tier 3

The tax and legal advisory department of **BDO Denet** offers its clients transfer pricing advice as one of its tax consultancy services.

Erdikler – Taxand is a specialist consultancy firm with a focus on tax. **Saban Erdikler** is the head of the firm that consists of seven partners and 48 other tax practitioners. One of the areas covered by the firm is transfer pricing.

The team has particular expertise working with clients across a range of industry sectors, including finance, real estate and fast-moving consumer goods.

The approach of Erdliker – Taxand was described by clients as boutique. They were praised for having a "good system and process" for carrying out tax advice.

Ahmed Pekin is the head of **Pekin & Pekin** and boasts more than 15 years experience of working within tax. He works with three other fee earners at the practice; all are capable of working on a variety of tax matters including transfer pricing.

The transfer pricing team does not consist of economists in-house, nor does it do compliance and documentation. Their main role with regards to transfer pricing is to advise clients on their transfer pricing liability and how to proceed with their affairs.

The practice provides regular support to international clients and works predominantly with clients from the financial industries in the areas of banking and finance, capital markets, project finance, and mergers and acquisitions.

For example, they recently advised on a ruling made by the Turkish Revenue Administration which alleged that JTI was transferring its profits through the royalty payments made to a foreign group company, which is contrary to the arm's-length price. The practice was successful in this regard and this was one of the first judgements of its kind decided in favour of the taxpayer by the Turkish Tax Court with respect to transfer pricing. The deal was worth $7.6 million.

YükselKarkinKüçük is a member-firm of the global DLA Piper law firm that has offices located in Africa, the Americas, the Asian Pacific, Europe, and the Middle East. As such, the Turkish tax practice benefits from the pooled experience of this global network.

The transfer pricing services offered by YükselKarkinKüçük are limited to consultancy services regarding transfer pricing for clients interested in investing in the jurisdiction. This involves providing general information on transfer pricing rules applied in Turkey and some consideration of whether a client's structure and transactions comply with these rules.

The practice also offers follow-up litigation in relation to transfer pricing conflicts that arise between clients and the tax authority.

Clients of the practice expressed their satisfaction with the service they had received, describing it as "highly professional and experienced".

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Baker & McKenzie
	DLA Piper
	KM Partners

Tax rates at a glance

(As of September 2013)

Corporate income tax	19% (a)
Capital gains	19%
Branch tax	19%
Withholding tax	
Dividends	15%
Interest	15%
Royalties from patents and licences	15%
Branch remittance tax	
Net operating losses (Years)	
Carryback	
Carryforwards	indefinitely

a) Corporate income tax will drop to 16% from 2014

Transfer pricing in the Ukraine underwent a significant and, according to advisers, much-needed transformation in 2013.

The previous transfer pricing rules, enshrined in the 2010 Tax Code of Ukraine, were broadly criticised by advisers.

"That law has received a severe critique by the professional community and the business population," said Vladimir Kotenko at EY.

Generally, advisers agreed that the application of transfer pricing rules, particularly between related parties and relating to primary documentation requirements, was poorly regulated under the 2010 tax code. This has led to transfer pricing being underdeveloped as a practice area in Ukraine.

However, advisers expected this to change once the new rules came into effect from September 2013. These new rules broadly follow OECD guidelines on transfer pricing matters, and advisers hope this will provide a greater degree of stability and certainty.

"From September there will be proper transfer pricing rules in Ukraine," said Svitlana Musienko at DLA Piper. "This means there will be mandates for transfer pricing documentation that should be filed by Ukrainian taxpayers engaged in controlled transactions with the Ukrainian authorities. When a taxpayer is requested to do some mandating or reporting there will be a huge fine when that is not done correctly so that guarantees it will be taken seriously. There will be special transfer pricing audits run by special groups organised by the authorities."

From September, Ukrainian companies will have to do everything most firms in Europe are required to do.

"The procedure in Ukraine will become identical to that used in other countries, more or less," said Musienko. "There will be huge compliance on Ukrainian companies."

Broadly, then, advisory firms have welcomed the new tax code. However, some felt it may still take a while before the jurisdiction is as stable as they would like it to be.

"On the face of it it's a positive development because transfer pricing rules were practically absent before," said Igor Davydenko at Dentons. "This new law provides mechanisms for the determination of prices in related transactions and may be an effective tool for the collection of taxes and for the establishment of fair market prices on an arm's-length basis."

"But the current wording contains some difficulties and uncertainties as to how this mechanism will work. And because of Ukrainian realities the practical aspects are important," Davydenko added. "In practice in Ukraine even fair provisions could be abused by authorities, and there are many examples when provisions for tax rules have been used in arbitrary ways and against the interests of taxpayers. So we may expect that this could be the case with the new law as well."

Tier 1

Deloitte's Ukrainian practice is heavily engaged with clarifying the jurisdiction's nascent transfer pricing rules, which, being new concepts to the Ukraine, are often difficult to understand for Ukrainian taxpayers. In response to this, Deloitte has arranged a number of meetings with taxpayers and state authorities, and it has also prepared a number of articles for financial and business magazines.

The team is attempting to work closely with the industry and tax authorities to support the elaboration of transfer pricing legislation in reliance on the global practices applied by Deloitte. It has also provided Deloitte Moscow partners with the information related to transfer pricing issues, and other foreign Deloitte offices have also been advised on the application of transfer pricing documentation in Ukraine for their international clients. The practice is therefore well-positioned to advise on transfer pricing work as it takes-off in the Ukraine over the next few years.

EY was the first of the Big 4 companies to announce the launch of a transfer pricing practice in Ukraine in 2009, and they have continued to develop since then, with a practice consisting of two partners headed by **Vladimir Kotenko** and 10 further fee earners. They advise on all forms of transfer pricing from general advice to complex supply chain management challenges, and they also maintain a close relationship with the Ukrainian tax authorities through such pro bono activities as cooperating with the tax authorities and parliamentary representatives in the drafting of the new Transfer Pricing Law.

Key deals in the past year have included designing a transfer pricing policy for the intercompany transactions of a local subsidiary of an international automotive company. They also included a high-profile and complex transfer pricing restructuring project for a company working in the health and beauty industry, which incorporated representing the client's issues in front of the tax authorities, which ensured a competitive advantage for the company and proved the viability of the restructuring solution EY had designed. Kotenko led the practice's work in both projects.

KPMG's transfer pricing team helps clients structure intra-group transactions in the Ukraine and abroad, analyse tax risks related to the application of transfer prices and substantiate intra-group prices from a tax perspective. It works closely with other tax professionals in the Ukrainian practice, and the overall tax head, **Sergey Popov**, also advises on transfer pricing issues, bringing his expertise in corporate and international tax to bear on client requirements. The practice also leverages KPMG's global transfer pricing experience, working together with colleagues in KPMG's global transfer pricing practice. The expertise offered spans all areas of transfer pricing practice, including intra-group transfer pricing policies, preparation of transfer pricing documentation, mitigation of transfer pricing risks, benchmarking studies to define arm's-length prices, and negotiations with tax authorities in the singing of advanced pricing agreements.

Slava Vlasov was appointed a partner in **PwC**'s Ukrainian tax practice in 2010, and as transfer pricing has slowly and clumsily become a more significant issue in the jurisdiction, he has increasingly focused on the sector. As one adviser in a competitor firm said: "PwC has firsthand experience of designing transfer pricing laws in Ukraine." Although the laws they advised on received a mixed response and have been recently revamped to work more in line with OECD guidelines, the practice remains well-respected for its intimate understanding of the nascent sector in Ukraine. The practice offers the full spectrum of transfer pricing services and has a particularly close relationship with the tax authorities.

Tier 2

Baker & McKenzie's practice, consisting of one partner and five fee earners, has taken on some challenging transfer pricing projects in the past year.

This team advised a leading provider of software and systems, enabling converged billing and active customer management, mobile internet, and value-added services in connection with the expansion of its business into the Ukraine. It advised a leading global health care company on the valuation of certain assets held by its Ukrainian representative, as well as on applicable Ukrainian tax consequences. And it acted for a diversified global manufacturing and technology company in court proceedings challenging a transfer pricing adjustment by the Tax Office.

The tax team of **DLA Piper** routinely advises national and international clients on transfer pricing issues. This has encompassed cross-border tax and transfer pricing advice to a client, involving group restructurings and IP issues. It has also involved advising a client with sophisticated global transfer pricing policies on their plans to enter the Ukrainian market. The practice also collaborates closely with DLA Piper's EMEA transfer pricing team in the Netherlands, enabling it to stay fully informed on international transfer pricing best practices, and advise on applying them in the Ukraine. Transfer pricing work is led by **Svitlana Musienko**, who also heads the tax practice as a whole.

KM Partners has an extensive practice in the field of transfer pricing regulation. The practice advises international companies in various sectors of the Ukrainian economy ranging from agriculture to retail and from energy to IT. Two partners, including practice head, **Alexander Minin**, and four fee earners all devote time to transfer pricing projects.

In the past year, these projects have included performing an elaboration of transfer pricing documentation related to a transactional settlement to improve tax efficiency and reduce risk for a group of companies within a large multinational corporation. It has also involved acting for clients in the case of an administrative appeal against the assessment of additional VAT liabilities by the tax authorities in connection with the application of the recently implemented transfer pricing rules.

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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

Other firms to note

- Slaughter and May

Transfer pricing has come under a great deal of scrutiny in the UK over the past year, as Parliament, the press and activist groups each place increasing pressure on international tax planning.

"Media and politicians have got hold of the notion that big business is avoiding tax, which is the result of the globalisation of business and massive cross-border intra-group transactions, whether they involve goods or IP," said David Howarth of Freshfields. "There are large amounts of money at stake which tax authorities are expected to collect because the government is short of money. The atmosphere can get very adversarial or litigious. There is a lot of pressure on firms to both plan constructively and prepare their defence for any audits or investigations that could occur."

The increasingly political climate surrounding transfer pricing in particular has, in the UK, translated into specific legislation. This legislation is aimed at tax avoidance in general but is likely to have a particularly strong impact on transfer pricing.

"There has been a huge amount of legislative change from FACTA to more bespoke anti-avoidance legislation which means clients have to think very carefully," said David Harkness of Clifford Chance.

Most notable among these changes is the introduction of general anti-avoidance rules (GAAR), which came into effect in July 2013. This legislation sets out what are, from the perspective of the UK tax authority, tax arrangements considered to be abusive. It aims to clarify the distinction between what constitutes aggressive tax avoidance and what constitutes legitimate tax planning. In so doing, it is intended to strengthen HMRC's ability to pursue and prosecute tax structures that it considers to be abusive.

The new rules "will certainly have an impact on the nature of advice we'll be giving", said Peter Jackson of Taylor Wessing. "It will have a wide-ranging impact, that will affect the necessity to consider all steps when thinking about planning and whether something is at risk of being challenged. It will increase the need for diligence and compliance."

Other pieces of legislation that have increased compliance pressures include FACTA, a US Act to combat tax evasion by US tax residents, which imposes new and substantial burden on UK businesses in identifying US taxpayers and reporting information to the US's Internal Revenue Service (IRS). In September 2012, an Inter-Governmental Agreement was signed between the US and the UK to ease the implementation of FACTA in the UK, which required financial institutions to pass information to HM Revenue & Customs (HMRC) who will then automatically exchange this information with the IRS. This reduces some of the administrative burden of complying with the US regulations, although overall, as advisers noted, FACTA is undoubtedly another move that greatly increases the risks connected to aggressive tax planning.

"We've done a lot of advisory and explanatory work on GAAR and FACTA," said Howard Murray of Herbert Smith Freehills.

Overall, the impact of these new anti-avoidance measures on transfer pricing work in the UK is clear. "There is less tax-driven structuring work and less appetite for tax planning," said Howarth. "We've seen the end of the boom in the UK tax-structured finance market."

Not all the legislative changes have constrained or threatened transfer pricing opportunities, however. New controlled foreign companies (CFCs) rules were introduced in January 2013, and the changes in this context diminish some of the risk involved in certain forms of sophisticated transfer pricing planning. The new rules will only tax profits that have been artificially diverted from the UK, whereas the old rules would also catch profits diverted by a CFC from any other country.

Tax rates at a glance

	As of January 1 2012	HMRC - As of April 1 2012
Corporate income tax	26% (a)(b)	24%
Capital gains tax	26% (c)	24%
Branch tax	26% (d)	24%
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) (g)	1
Carryforwards	Unlimited (g)	Unlimited

a) The small profits rate of corporation tax is 20%. Effective from April 1 2012, the main rate of corporation tax will decrease to 24%, while the small profits rate will remain at 20%. The intention is that the main rate will decrease by 1% annually to 22%, effective from April 1 2014. 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% (small profits rate of 19%). The rates for ring-fence profits will not change on April 1 2012.

b) The small profits rate of 20% applies in certain circumstances if taxable profits are below £300,000 ($460,000). 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 26% (24% from April 1 2012).

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.

g) Not applicable if there had been a major change in the nature or conduct of the trade in the previous 12 months.

Source: Tax advisers from Alvarez & Marsal Taxand UK

Sara Luder of Slaughter and May highlighted the CFC rule changes as particularly interesting. "They are a pragmatic solution to the EU challenge of the old regime; a government-sanctioned method of taxing UK business efficiently."

Unsurprisingly, these diverse changes have kept UK transfer pricing departments very busy, explaining and advising firms on how to respond to the anti-avoidance rules, as well as advising concerned multinationals on the potential for increased risk. Although certain forms of planning and intra-group restructuring may have been put on ice, the increased compliance and advisory caseload has made transfer pricing a frenetic sector within the UK tax market over the past twelve months.

Tier 1

Deloitte has six partners and around 115 fee earners working in transfer pricing in the UK, with a strength in economic and benchmarking capabilities that is leveraged by Deloitte's global transfer pricing centre in India. The practice also advises on compliance, negotiates and manages relationships with the UK tax authorities, and advises on business model optimisation procedures. Key practitioners are **John Henshall**, who leads transfer pricing in the south of the UK as well as in intangibles, and **Shaun Austin**.

In the past year, the practice worked with a large and complex multinational to design and implement transfer pricing policies around the world, resolve long running audits, address potential disputes, and assist them in creating an internal transfer pricing team to manage the ongoing requirements of the business. It also helped a FTSE 100 company to reach a resolution on a dispute of many years' duration with HMRC.

EY's transfer pricing practice experienced significant growth in the past year, taking on three new partners: **Ben Regan** who has a broad practice in transfer pricing advisory; **Tom Tsiopolous**, who focuses on transfer pricing issues in the context of financial services; and **Andy Martyn**, who focuses on transfer pricing disputes.

The practice provides advice and assistance across all areas of transfer pricing. This encompasses advising on branch profits and the calculation of profits attributable to a branch operating in a country other than the main body of the company; advising on intangibles and the pricing of transactions involving intangible assets and the location of profits derived from their exploitation; and advising companies in the financial sector on the specific challenges they face, such as the attribution and pricing of capital and the regulatory environment. Alongside these more specific areas of expertise the practice also has strong economic capabilities as well as a well-regarded litigation team, and covers the full spectrum of transfer pricing services including documentation, planning, and disputes.

Transfer pricing at **Grant Thornton** is led by **Wendy Nicholls**. Under her leadership the practice has received the *International Tax Review* UK Transfer Pricing firm of the year award for 2012 and 2013, demonstrating that they are formidable force in the UK market. Nicholls leads a team of 12 fee earners, encompassing economics expertise and conducting economic studies for various clients. This economic analysis is usually led by director, **Elizabeth Hughes**, an economist by training.

In 2012, Hughes led a complex project designing and documenting a complex European wide transfer pricing policy across the supply chain of a global plastic manufacturing business. This involved producing three reports providing recommendations and calculating various profit margins.

Wendy Nicholls and the corporate tax specialist, **Nick Farr**, also designed and implemented a global transfer pricing policy for a multinational group of service providers, which was facing commercial challenges regarding expansion into fast growing markets in Asia.

KPMG has invested heavily in its UK transfer pricing practice, and has a specialised and dedicated team, which incorporates knowledge of working within the OECD, HMRC and in industry. It has also expanded in the past year, bringing **Matt Whipp**, formerly head of business risk and transfer pricing at Diageo, into the team as a transfer pricing director. There was also change at the head of the department, as John Neighbour – head of the transfer pricing team since 2007 – left to become deputy leader of KPMG's global transfer pricing practice. **Stuart McDougall**, who joined KPMG in the UK from Procter and Gamble in 2006, has taken over leadership of KPMG's UK transfer pricing practice in the UK. Recent cases include assisting a leading Japanese consumer electronics MNE in preparing a wide range of transfer pricing documentation across Europe, Asia-Pacific and the US.

PwC's UK transfer pricing practice is among the strongest in the jurisdiction, consistently praised by peers and clients alike, one of whom called it "outstanding." It offers the full-range of transfer pricing services across planning, documentation and disputes. In its cross-border structuring work, the practice can draw on PwC's dedicated teams across the world, comprising professionals in economics, accounting, and tax law.

The transfer pricing department is led by **Ian Dykes**, whose primary experience is in consumer and industrial products, IT and telecoms. Dykes has specialised in transfer pricing for 13 years. He is assisted by partner, **Annie Devoy**, who has had a consistent career focus on international tax, spent time in PwC's New York office, and has been fully dedicated to transfer pricing for over 15 years.

Tier 2

Alvarez & Marsal Taxand UK have expanded their transfer pricing capabilities over the past year. The head of transfer pricing is now **Steve Labrum**, who joined from EY where he was the company's head of global financial services. Labrum brings experience, contacts, and expertise to Alvarez & Marsal Taxand UK's transfer pricing work. Alongside Labrum, the firm has brought in a new director, **Lisette Lach Reichle**, and a new senior associate, **Kieran Taylor**, both from Deloitte. They now have three partners with expertise in transfer pricing, and six other fee earners supporting their work.

Managing director, **Shiv Mahalingham**, led a 2012 project advising a multinational telecoms provider on past and current values of its global brand, in light of a potential disposal from its holding company. This study required an in-depth analysis of the value of the global brand at different points in time, split by region to quantify local disposal costs for tax.

Labrum led a project valuing intangibles for a FTSE 100 multinational. This valuation addressed both technical and marketing intangibles in connection with a business restructuring. He also worked on transfer pricing policy design and documentation for the UK affiliate of a US multinational, in connection with recently acquired technical IP.

Baker & McKenzie has a strong transfer pricing practice in the UK, which draws on the expertise of tax lawyers, full-time economists and transfer pricing advisers. The tax practice as a whole has a strong international focus and this accentuates the strength of its transfer pricing work. The London tax practice has particular experience in the coordination of tax advice from many countries in multijurisdictional projects such as international group structuring and M&A.

Four years ago **Freshfields Bruckhaus Deringer** decided to develop in-depth transfer pricing expertise. This process was overseen by **Murray Clayson**, a partner with a broad corporate and international tax practice. Clayson guided the recruitment of several economists to provide capacity in economic analysis, in particular hiring **Danny Beeton** from Grant Thornton. Beeton became Freshfields's chief economist; he is joined at the firm by several other PhD-level economists. Freshfields is therefore able to offer not just legal advice on transfer pricing issues, but can also perform full quantitative analysis, a depth of capacity which is unusual for a law firm.

Clayson and Beeton are both highly-respected by peers in the market. Clayson was described by one adviser as "among the strongest international tax practitioners working in the UK". They often work together on specific projects, combining their legal and economic expertise.

One deal in which this was the case involved assisting a North African extractive company to form a low risk Netherlands trading company to sell its products into Brazil. Attendant challenges included the benchmarking of operating margins of normal risk redistributors in its industry, and the construction of an argument that this margin should only be earned on the company's gross profit.

Beeton and Clayson have also worked together on the cross-border transfer of the second half of a manufacturing process from Germany to China, for a leading textile machinery manufacturer. And they have advised on a large refinancing, through related party funds, of a French leisure industry group.

Transfer Pricing Solutions is an unusual, perhaps unique firm in the UK tax market: a one-man transfer pricing boutique. It is run by **Gareth Green**, an accountant by training who moved into tax work as a general tax specialist. Over time he has been increasingly drawn to transfer pricing; he was a director in EY's transfer pricing group before leaving to set up Transfer Pricing Solutions in January 2003.

Green works under a strict agreement of confidentiality with his clients and so only a broad outline of his work can be given. Many of his projects are based around the client hiring him to study their transfer pricing strategy. There are then two broad outcomes of this: either he confirms that their transfer pricing strategy is fine, or he concludes it is challengeable and carries some degree of risk, recommending the firm switch to an alternative strategy. The next step is to design that alternative strategy, creating a structure that is more robust.

Transfer Pricing Solutions carries out work for clients from all across the business spectrum, ranging from FTSE 100 companies to small businesses with fewer than ten employees. It is also often chosen by other professional firms to provide transfer pricing assistance. It is active in all areas of transfer pricing, encompassing documentation/compliance, design of appropriate transfer pricing policies, disputes, and APA negotiation.

Tier 3

Clifford Chance's transfer pricing practice benefits from the firm's global reach. Its team of four partners and four fee earners offers clients a wide range of transfer pricing services. It assists in the development of transfer pricing policies and advises on the transfer pricing implications of complex cross-border transactions, especially in the fields of finance, corporate structuring and intellectual property. The team also undertakes negotiations with competent authorities, defends firms through litigation, negotiates and drafts advance pricing agreements, and prepares documentation policies.

The firm's global head of tax, **David Harkness**, is involved in some of the UK practice's transfer pricing work. In 2012, he led a project to resolve a transfer pricing dispute with a foreign revenue authority for a key UK institution, navigating through the dual dangers of double taxation and adverse publicity. Another significant project was led by **David Saleh**, a partner with expertise in real estate and indirect tax who is also involved in transfer pricing. He negotiated the attribution of revenue and profits between European jurisdictions for an asset-owning structure.

Macfarlanes has seriously expanded its transfer pricing expertise over the past year. The practice hired **Martin Zetter** from EY, who brings economics expertise into the firm. Before joining EY's transfer pricing team, Zetter was head of transfer pricing at BNP Paribas. He now handles the economic aspects of Macfarlanes' growing transfer pricing caseload, while two recently hired junior associates manage the functional analysis work.

This small team covers a diverse range of transfer pricing challenges, including advising on transfer pricing for the law firm's hedge fund practice and advising on intangibles, IP pricing, and thin capitalisation. It also negotiates advance pricing agreements and advises large groups without internal expertise on their transfer pricing policy.

More specifically in the past year, the transfer pricing team has worked on a range of projects. It produced a transfer pricing report for a large hedge fund on the transfer pricing of its fees; it has negotiated advanced thin capitalisation agreements, with Zetter's analysis supporting the agreement with HMRC; and it has advised several corporate groups on IP transfer pricing issues.

Internationally, **McDermott Will & Emery** has always given transfer pricing work a priority that is rare within a law firm's tax practice. They have expertise spanning economics, negotiations with tax authorities, advisory and structuring work, and litigation. While the London office has not always been at the forefront of this work, it expanded its transfer pricing operations significantly over the course of the last year.

This was concomitant to developments in the firm's Houston office, which recruited a team of lawyers and economists led by Mark Martin and Cym Lowell with wide-ranging transfer pricing expertise. Back in London, Will & Emery's practice is led by **Tom Scott**, and it works closely with the office in Houston.

This relationship is reflected in the amount of US-oriented work that the London team has undertaken, over the past year. They advised a US-based information services provider in connection with an HMRC transfer pricing enquiry, negotiating two APAs in the process. They also advised an MNE on cross-border transfer pricing issues in the US and Europe relating to a potential restructuring of the group's business model.

Shearman & Sterling's transfer pricing capacity grew in 2013, as the practice brought in the former head of Weil, Gotshal & Mange's corporate tax team, **Sarah Priestley**. Priestley is a recognised corporate tax lawyer and is dedicating part of her time to transfer pricing. In transfer pricing she works alongside **Ian Scoon**, the overall head of the tax practice, and three further associates.

A key deal this team worked on in the past year involved advising InterContinental Exchange, on the transfer pricing impact of the evolving market in which the firm operates, where the clearing services it offers for financial trades may be viewed as adding different value than, for instance, the exchanges it operates, and on which exchanges such trades take place. This advice also encompassed the pricing impact for the services provided by ICE, bearing in mind the opportunities for change as new platforms are added, such as FX clearing and when new corporate acquisitions are made, such as ICE's acquisition of NYSE Euronext.

Other firms of note

Slaughter and May does some limited transfer pricing work as part of its market-leading tax practice. This mainly involves providing advice and guidance on transfer pricing issues, and does not usually encompass any serious economic analysis. They do not have a partner dedicated to or specialised in transfer pricing, but share the caseload across the firm's tax partners.

In the past year, a number of projects have included an element of transfer pricing. This largely relates to advising firms on disputes or potential disputes with HMRC. Recently, this has encompassed questions of thin capitalisation, intellectual property, and profit allocation.

For example, Slaughter & May advised a non-UK bank on the establishment of a presence in the UK, including negotiating with HMRC to agree profit allocations. This project was led by the overall head of the tax practice, **Sara Luder**. The practice also advised a major US group in connection with its dispute with HMRC over the proper construction of their thin capitalisation agreement. A team led by **Steve Edge** is advising a non-UK branch on the attribution of intellectual property related profits in the context of the foreign branch exemption.

US

An audit guide by 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 extensive statutory, regulatory, and administrative, guidance governing the conduct of transfer pricing audits. Transfer pricing audits are part of the general overall audits of large corporate taxpayers, but because of their complexity and magnitude they may 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. Mid-size corporations can be chosen for audit at random or after an initial review indicates that certain issues are present warranting 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, certain standard information document requests are attached to the letter. After the letter is sent, the taxpayer and the IRS will establish a date for the opening conference, at which the IRS will explain the audit process. At this point, the IRS will also expect that the taxpayer will respond to the initial information document requests, 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 workpapers, trial balances, board of director minutes, financial statements, etcetera. In addition, 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 to ensure that the taxpayer receives penalty protection afforded by the documentation.

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

There is both legislative and regulatory guidance relating to the procedure for a taxpayer to follow with respect to a transfer pricing audit. At the time the taxpayer files its tax return, the taxpayer is required to assemble its documentation to support its transfer pricing. This documentation must be provided within 30 days of the IRS request if the taxpayer wishes to rely on the documentation to obtain penalty protection. The information that should be contained in the transfer pricing documentation 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.

Once the audit begins, there are guidelines that the IRS follows in auditing transfer pricing issues. All requests are generally made through information document requests. The IRS generally discusses the requests and timing of responses to the requests before issuing the requests. Generally, the IRS expects response to its requests within 15 to 30 days. If the IRS does not receive responses, it can issue administrative summonses, which can be enforced through legal proceedings. In addition, the IRS can request interviews of company and non-company personnel.

5. How does the US differ in its approach to transfer pricing audit to other countries?

The US approach to transfer pricing is similar to other countries. It continues to be a major area of focus for the IRS. In addition, the IRS is cooperating with foreign jurisdictions to exchange tax information.

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

The IRS gathers information from a number of sources including tax returns, financial statements, the transfer pricing documentation, websites, and other public information. In addition, the IRS will request additional documentation and information through the course of the transfer pricing audit.

7. What are the some of the more likely issues that may trigger a transfer pricing audit from 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. Specifically, the IRS has stated that is looking for transfers of intangibles from high tax jurisdictions to low tax jurisdictions.

8. What documents are required by the tax payer during a transfer pricing audit?

The IRS may request documentation and information that may be relevant to an item on the taxpayer's tax return. The transfer pricing documentation should address the following areas:

- the nature and terms of transactions addressed;
- 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 and alternative methods considered;
- 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;

- the terms of relevant transactions with both third parties and associates;
- an overview of the taxpayer's business and organisational structure;
- controlled transactions used and relevant analysis of those transactions;
- data that the taxpayer obtains after the end of the tax year and before filing a tax return;
- A general index of the principal and background documents and a description of the recordkeeping system used for cataloguing and accessing those documents; and
- All other relevant Section 482 regulation documentation requirements.

The IRS can request any information related to the facts and analysis contained in the documentation report. In addition, the actual information requested will be dictated by the facts and circumstances of the transactions being audited. The IRS may request contemporaneous presentations concerning the transactions, notes of meetings about the transactions, and interviews of individuals involved in the transactions. The IRS may also 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 certain rules governing their practice before the IRS, as set forth in IRS Circular 230.

11. How long does a transfer pricing audit last?

A transfer pricing audit can last from six months to four or more years. The length depends on the scope of the issues and whether the taxpayer extends the statute of limitations.

12. What happens after a TPCR 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 makes adjustments to which the taxpayer disagrees, the taxpayer may administratively appeal the adjustment. Such an appeal can take another 18 months to three years. Ultimately, the taxpayer may be able to dispute the IRS's adjustment in litigation if necessary.

13. How can a company manage its audit risk?

To mitigate audit exposure, companies should confirm they are fully compliant, file tax returns within the prescribed time limits, prepare the required transfer pricing documentation, pay tax on time, review their transfer pricing policies, and monitor certain key indices such as industry margin profiles on an on-going basis.

LEADING FIRMS

1	Alston & Bird
	Deloitte
	DLA Piper
	EY
	Fenwick & West
	KPMG
	Miller & Chevalier
	PwC
	Skadden Arps Slate Meagher & Flom
	Sullivan & Cromwell
	Vinson & Elkins
2	Alvarez & Marsal – Taxand
	Baker & McKenzie
	Basefirma
	Caplin & Drysdale
	Duff & Phelps
	Mayer Brown
	McDermott Will & Emery
	Morgan, Lewis & Bockius
	White & Case

The persistence of deficits and growing public displeasure with perceived tax avoidance has increased both the number of audits and the likelihood of fundamental change to transfer pricing in the US.

"There are structural deficits in the US and around the world that are motivating countries in need of money to try to get it from corporations, rather than average citizens," said Rob Plunkett of Deloitte.

Melinda Phelan of Baker & McKenzie agreed: "Governments are becoming much more aggressive in terms of auditing what were routine transactions, and are proposing more frequent and larger adjustments."

The IRS has also become more sophisticated. Assistant treasury secretary, Michael Mundaca, has reorganised, and substantially increased, the Revenue's team of transfer pricing specialists. The result is "an IRS that is more assertive and smarter on how it audits transfer pricing in this country" according to Paul Oosterhuis of Skadden Arps Slate Meagher & Flom.

Many transfer pricing professionals expect changes to transfer pricing will come from legislative, rather than regulatory reforms. "I think legislation is going to drive business decisions for a lot of companies both from an OECD standpoint and a Congressional standpoint," said EY's Purvez Captain.

Public opinion is another source of concern. "The biggest issue right now is base erosion and profit shifting," said KPMG's Brian Trauman. "The fact that companies are shifting profits to low-tax jurisdictions, even while complying with the law, does not resonate well with the public," he said.

Baker & McKenzie's Phelan agreed: "Companies are increasingly concerned that what are perfectly appropriate and legitimate attempts to comply with the law are in the current environment sometimes perceived and misunderstood."

As a result, "a lot of companies are looking at their transfer pricing and making sure it matches up with the functions and risks that they have," she added.

Henry Birnkrant of Alston & Bird said the challenges arising from increased audits and public scrutiny have created two different markets for transfer pricing services.

"There is a market for what I call commodity work, basic compliance. Most companies want documentation to show they have tried to comply with transfer pricing rules," said Birnkrant. "This is mostly the province of accounting firms and low-cost providers."

"Then there are bespoke, value-added services, usually from law firms, custom-designed to withstand IRS scrutiny. Their clients want more dedicated resources and the benefit of a law firm more geared to advocacy," Birnkrant added.

The present environment greatly favours law firms, said Rocco Femia of Miller & Chevalier. "There is a greater emphasis on finding advisers who are capable of litigating."

Patricia Sweeney, also of Miller & Chevalier, added: "The firm is getting referrals from accounting firms for significant transfer pricing work. The accountants need to demonstrate the ability to litigate even if

Tax rates at a glance	As of January 1 2013	As of June 11 2012	IRS - As of January 1 2012
Corporate income tax	35% (a)	35% (a)	35%
Capital gains tax	35%	35%	35%
Branch Tax	35% (a)	35% (a)	35%
Withholding tax (b)			
Dividends	30% (c)	30% (c)	30%
Interest	30% (c)(d)	30% (c)(d)	30%
Royalties from patents, know-how, etc.	30% (c)	30% (c)	30%
Branch Remittance Tax	30% (e)	30% (e)	30%
Net Operating Losses (years)			
Carryback	2 (f)	2 (f)	2
Carryforwards	20 (f)	20 (f)	20

a) In addition to corporation tax and branch tax, many states levy income or capital-based taxes. An alternative minimum tax is imposed.
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 issued after July 18 1984 and noneffectively connected bank deposit interest are exempt from withholding tax.
e) Branch remittance tax is the branch profits tax.
f) Regarding carryback and carryforwards, special rules apply to certain types of losses and entities.

Source: Tax advisers from Alvarez & Marsal Taxand

they can't do it themselves, with someone next to them."

In all, law firms expect the demand for transfer pricing services, particularly audit defense, to remain a business driver for years to come.

"I see the future as one where there will be continuing disputes between taxpayers and governments in the transfer pricing area," said Joel Williamson of Mayer Brown.

Tier 1

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 also helps with the preparation and filing of documentation and with negotiating advance pricing agreements with the IRS as well as with foreign tax authorities. Alston & Bird's extensive experience with APAs dates to August 1990, when the firm filed the second-ever such agreement in the US on behalf of Japan's Panasonic. The firm also represents clients in audits and appeals to the IRS and in court.

Deloitte has a full-service transfer pricing practice comprising more than 230 professionals across the country. **Todd Wolosoff** is Deloitte's US and global managing tax partner for transfer pricing. In New York, **Rob Plunkett** leads the firm's financial services group, which provides transfer pricing services to investment banks and other financial institutions. **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 and Dallas practice, led by **Randy Price** and **John Wells**, mainly services multinational oil & gas companies. **Mark Nehoray**, head of transfer pricing in Los Angeles, has a clientele of mostly media and entertainment companies. The San Francisco practice, led by **Ron Saake**, deals almost entirely with transfer pricing for tech companies in Silicon Valley. The Washington team, headed by **Arindam Mitra**, is particularly strong in audit defense and in negotiating competent authority and advance pricing agreements (APAs).

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 practice comprises 200 professionals and is led by **D. Clarke Norton** in the New York office. **Alan Winston Granwell** is in charge of transfer pricing at the Washington, DC, office, while **David Colker** leads transfer pricing operations in San Francisco and Palo Alto. Recent personnel changes include the promotion of Palo Alto's **Joy Dasgupta** to principal economist. The firm is representing a publicly traded retailer of children's clothing in competent authority negotiations between the US and Canada. It is also representing a life sciences company in negotiations for the first bilateral APA between the US and Ireland.

EY has one of the largest transfer pricing practices in the US, with 48 partners. The practice provides services for all four "pillars" of transfer pricing: 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 clients, including Apple, Hitachi, Limited Brands, Adaptec and DHL either before the IRS or in state or 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, with 19 partners and 301 fee earners. 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. Through its "operational transfer pricing" approach, KPMG helps clients to set, maintain and adjust their transfer pricing structures and build processes to automate them, creating efficiencies throughout the company. The practice is assisting a manufacturer and supplier of high-tech products to automate the monitoring and adjusting of transfer prices using transaction-level data "mined" from source systems.

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 skill as a litigator. The practice advises multinationals on transfer pricing strategy, negotiates advance pricing agreements (APAs) and guides them through the competent authority process. In the last two years, Miller & Chevalier has helped resolve 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.

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 economists to prepare contemporaneous documentation. The firm also negotiates competent authority issues and advance pricing agreements (APAs) with the IRS and other national tax authorities, and represents clients in transfer pricing disputes at both the administrative and judicial levels. **Hal Hicks** is Skadden's national leader for transfer pricing.

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.

Sullivan & Cromwell focuses on transfer pricing for large financial institutions and non-US multinational companies. Clients are advised on which transfer pricing strategies to adopt, and on what corporate restructuring is required to implement these strategies. The firm also advises clients on documenting transfer pricing compliance, but consults with an economist who reviews calculations. The firm takes a proactive approach to controversy, by negotiating bilateral and multilateral APAs with the tax authorities of different countries. The firm is representing a multinational client in a significant transfer pricing dispute involving cost-sharing/cost-contribution agreements in which the OECD and US transfer pricing rules are arguably in conflict. **Don Korb**, a former IRS Chief Counsel, leads the transfer pricing practice. Other partners include **Andy Solomon** and **S. Eric Wang**, who have significant first-hand knowledge of the issues that the IRS and other tax authorities raise in transfer pricing disputes.

Led by **George Gerachis**, **Vinson & Elkins**' transfer pricing team comprises attorneys located in the firm's Austin, Dallas, Houston, Washington and London offices. 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 Transocean in tax disputes concerning the company's 2006 to 2009 federal income tax returns. The IRS is asserting the existence of intangibles arising from the performance of technical and engineering services between and among Transocean subsidiaries, as well as hundreds of millions of dollars in income adjustments related to the value of deep water drilling services. The total value of the adjustments in the case is about $1 billion.

Tier 2

Alvarez & Marsal – Taxand is a full-service transfer pricing firm working with US and foreign clients in a variety of business segments, including consumer goods, oil & gas, IT, advertising and pharmaceuticals. As head of international operations, CEO **Robert Lowe** is also in charge of transfer pricing, although **Steve Labrum** oversees the firm's US and UK transfer pricing operations on a daily basis. In the past year, A&M Taxand assisted a client – a provider of next-generation data centre solutions – to set up a cost-sharing arrangement in conjunction with a procurement entity and then relocate major procurement functions and interaction in Asia to a new procurement company in Singapore. The firm is also assisting a client in the advertising industry to manage and deploy newly developed intangible property as advertising continues to move from a service-oriented delivery system to a technology-based platform.

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. The firm is also negotiating several APAs, including two bilateral APAs – one between the US and Mexico, and the other between the US and Canada – for a larger retail company.

Led by **Ricardo Rosero**, **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. The firm provides transfer pricing services to 350 clients in 14 countries, including major businesses from virtually every economic sector.

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 Caplin & Drysdale for over four decades. **David Rosenbloom**, who frequently serves 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. New hires include **Elan Keller**, former managing director and tax director for US operations at Macquarie; **Pete Lowy**, a prominent litigator; and **Richard Skillman**, a former acting chief counsel of the IRS.

Duff & Phelps established its transfer pricing practice in October 2012, after acquiring Ceteris, the largest independent transfer pricing firm in North America. The practice 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 defense 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.

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 14 partners, is led by **Joel Williamson**, who is the firm's lead trial attorney in tax litigation. Williamson has served as trial counsel for Mayer Brown in several landmark transfer pricing cases brought before US courts. Previously, he represented the US government as Special Trial Attorney for the IRS.

In the last year, Mayer Brown successfully represented Eaton in the US Federal District Court in the first case to address the right of the IRS to cancel an APA, and whether the burden of proof regarding the need to cancel an APA belongs to the IRS or the taxpayer. An October 2012 decision resulted in a tax savings of $75 million and the cancelation of $52 million in penalties. Summary judgment motions regarding the burden of proof are pending.

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. It is negotiating competent authority cases with the tax authorities of the UK, Italy, Japan and the Netherlands. It also does a brisk business in APAs, which include both bilateral and multilateral. A fourth partner, **John Woodruff**, advises on transfer pricing strategy.

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** is head of the practice.

White & Case employs seven lawyers focused on transfer pricing in the US, including practice leader **Brian Gleicher**, who has over fifteen 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 over 25 years of experience advising on transfer pricing matters, including the new cost-sharing regulations. **Michael Quigley**, partner of counsel, advises White & Case on transfer pricing in multiple jurisdictions. 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 federal appellate courts. Much of the firm's transfer pricing business originates in Japan, India and Korea, and **Gary Thomas**, who leads the global tax practice from Japan, also assists in some transfer pricing matters. The firm is advising a multi-billion dollar Korean distributor on transfer pricing issues arising from related party sales, and is representing a US manufacturer and its Japanese subsidiary in the competent authority process to resolve a transfer pricing assessment from Japan's tax authority.

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.

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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)

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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 2013 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 17 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.

Four Fenwick tax partners appear in Euromoney's Tax Controversy Leaders (2013), and four appear in Euromoney's Worlds Leading Transfer Pricing Advisors (2013).

Euromoney Legal Media Group has, for the seventh time running, named Jim Fuller, one of our tax partners, as one of the top 25 tax lawyers in the world in 2012. Six Fenwick partners, including our tax practice group leader, David Forst, Jim Fuller, Ron Schrotenboer, Jennifer Fuller, Michael Solomon, and Walt Raineri have appeared in *Euromoney's* World's Leading Tax Advisors.

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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.

Uruguay

Tax authorities

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LEADING FIRMS

1	Ferrere
	Grant Thornton
	Guyer & Regules
2	Deloitte
	KPMG
	PwC
3	EY

Tax rates at a glance

(As of September 2013)

Corporate income tax rate	25%
Capital gains tax	25%
Branch tax	25% (a)
Withholding tax	
Dividends	7% (b)
Interest	3% 5% 12% (c)
Royalties	12%
Branch remittance tax	0%
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.
c) The withholding tax on interest paid to nonresidents is 12%, which may be reduced to 3% or 5% (depending on the period of the loan) if paid by a Uruguayan financial institution.

Transfer pricing is relatively new to Uruguay, with the country's first transfer pricing rules implemented in July 2007. Transfer pricing audits began four years later, and have steadily grown in number ever since.

This increase in audit activity is largely due to the country's economic performance, which grew 3.9% in 2012 and is expected to grow 3.8% in 2013, driven by a resurgent Brazil.

As a result, "Uruguay is becoming a more integrated country from a tax perspective," said Nicolas Piaggio, of Guyer & Regules. For evidence, he cited the double taxation treaty Uruguay is negotiating with Brazil.

Piaggio added that "we will see more work in the transfer pricing area" as the Uruguayan tax authority grows "more sophisticated as the years elapse," due to greater transfer pricing experience.

Yet there is also an upside to a more effective tax authority, said Piaggio. "A more intelligent authority, capable of more precise analysis, helps clients by providing clearer guidance on effective and compliant transfer pricing strategies," he said.

Nevertheless, some of Uruguay's transfer pricing professionals believe that the rules comprising their country's transfer pricing regime could use some clarification. "There has been lots of discussion about which regulations need improvement," said Rafael Sanchez, of Grant Thornton.

"Companies want standardised and clear guidance on transfer pricing, especially with respect to commodity transactions, which are vital to the country's economy," Sanchez said.

Sanchez added that, like his peers, his practice has benefitted from the expanding market for transfer pricing services. "We are really confident about the market and our firm's development in particular," he said.

Tier 1

Led by Gianni Gutiérrez, **Ferrere**'s transfer pricing team advises on the implementation of transfer pricing strategies, documentation and audit defense. In December 2012, Ferrere assisted Cementos Artigas, Uruguay's largest cement producer and a subsidiary of Spain's Cementos Molins, in the implementation of its transfer pricing policy for its imports of raw materials and exports of finished products to related parties.

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. Led by **Rafael Sanchez**, its transfer pricing team takes a multidisciplinary approach that brings together economists, lawyers and accountants, with senior transfer pricing professionals routinely assigned to other Grant Thornton firms in the region for training. In February 2013, the firm successfully defended a Cargill subsidiary in an audit that involved forwards contracts, swaps and other complex hedging instruments. The tax authority had sought $423 million in income tax adjustments.

Led by **Juan Albacete** and **Nicolas Piaggio**, **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. Clients include some of the largest domestic and foreign companies doing business in Uruguay, including HSBC, Ford, Grupo Fiorucci and Mulimotors. In the past year, Guyer & Regules prepared transfer pricing studies for one of Uruguay's leading agricultural exporters, to show that the interest rate of a loan granted to a related Argentine company was at arm's-length.

Tier 2

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. The practice is led by **Gonzalo Lucas**, who is also head of Deloitte's tax department.

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. Last year, KPMG successfully negotiated one of the first advance pricing agreements (APAs) in Uruguay, for a multinational cellular phone manufacturer. The practice is led by **Alejandro Horjales**.

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 advance pricing agreements (APAs), and was 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.

Venezuela

Tax authorities

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LEADING FIRMS

1	Deloitte
	D'Empaire Reyna Abogados
	EY
2	KPMG
	Mendoza, Delgado, Labrador & Asociados
	PwC

Two years after Venezuela set price controls to stabilise its economy, consumers are enduring shortages of everything from food to housing, while its transfer pricing professionals are witnessing unprecedented audit activity.

The Law on Fair Costs and Prices allows the government to set prices for nearly all goods and services imported or traded within the country. The law is intended to reduce what the government believes are excessive profits earned by multinationals importing into Venezuela.

The new law, which took effect in December 2011, does not apply to financial institutions, which are subject to preceding regulations. All other companies doing business in Venezuela are subject to the law, however.

The law created a new government agency, the National Superintendence of Costs and Prices (Sundecop), which sets permissible prices for goods and services.

These prices are determined based on companies' unit costs, unit prices, financial statements, raw material invoices and pricing methods. Companies were required to turn over this information to Sundecop when the law went into effect.

Soon afterward, price ranges were set, beginning in April 2012 with personal hygiene, food and household products. If Sundecop determines that a company must reduce its prices, the result is a lower profit margin and possibly a transfer pricing adjustment.

Opponents of the law have said it does not place any limits on what Sundecop may consider a fair price. If the government sets prices too low, not only do profits suffer, but so does income tax and VAT collection.

Also, opponents warn that lower profit margins mean fewer imports, causing scarcity. Venezuela's strong dependence on imports – they comprise 60% of its food stocks – is one of the reasons the country has such high inflation in the first place.

Two years after the Law on Fair Costs and Prices went into effect, the Venezuelan government has issued more than 500,000 price edicts. Prices for some items, such as bread, have plunged so far that their scarcity has created black markets.

While prices are falling, transfer pricing audits are rising, in terms of both their frequency and their cost. One of the most substantial ongoing audits is of Coca Cola Femsa, which D'Empaire Reyna Abogados is defending against an $80 million assessment related to transfer pricing.

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 prac-

Tax rates at a glance

(As of September 2013)

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

tice 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 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.

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 are representing Coca Cola Femsa de Venezuela in its appeal of a $30 million transfer pricing assessment.

EY 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. The practice is led by **Luis Vegas**.

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.

The transfer pricing practice of **Mendoza, Delgado, Labrador & Asociados** is recommended by clients for the quality of its work involving supply chain management and customs and international trade. The practice also has a very strong litigation practice, particularly among pharmaceutical companies. It is led by **Maria Calvino**, **Carolina Nadal** and **Luis Benitez**, who are widely recognised by peers for their extensive experience in transfer pricing.

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 led by **Elys Aray**.

Vietnam

Tax authorities

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LEADING FIRMS

1	Deloitte
	EY
	KPMG
	PwC
2	Grant Thornton

Transfer pricing is top of the agenda in Vietnam, with the introduction of the 2012 to 2015 period action plan for transfer pricing management and the advance pricing agreement (APA) system starting from July 2013. Officials from the both tax and non-tax departments came together to form a special transfer pricing task force in 2012.

"Currently, transfer pricing in Vietnam is one of relatively focused regulations, but poor compliance and mediocre enforcement," Tom Prescott from Grant Thornton noted. Richard Irwin of PwC added: "The transfer pricing regime in Vietnam is still very basic, the tax offices do not really understand it."

Additional efforts have also been taken to train provincial tax officials to more adequately cope with increasingly complex transfer pricing issues. The action plan, up to 2015, is to further develop provincial authorities' understanding of the subject, refine regulations and improve the legal framework and to develop a tax database supported by electronic filing. However, specific audit procedures are still not in place and regulations remain unchanged since its latest update in 2010.

Generally, taxpayers who come across transfer pricing in the country face two obstacles: Although the transfer pricing regulations generally follow the OECD rules, the implementation and application is ambiguous.

"The regulations were first introduced in 2006, but there is still lack of guidance specific to how to implement concepts," said Thomas McClelland from Deloitte.

Moreover, documenting transactions is burdensome.

"In some cases the arm's-length position, as adopted by the taxpayer, may be arbitrarily dismissed by the authorities regardless of the facts and circumstances specific to that taxpayer," Prescott said.

Having said that, tax disputes continue to be an issue for most taxpayers. Small and medium size enterprises are influenced the most, because they are in a weak position to appeal decisions imposed by the tax authorities. However, the market hopes with the launch of the APA scheme, this problem should be eased as more certainty is granted.

Tier 1

Deloitte is one of the market leaders in Vietnam in the sphere of transfer pricing service provision. **Thomas McClelland** leads the team of 13 dedicated professionals. The transfer pricing has ensured all documentations are prepared on a standard format which meets the local tax authority's requirement. The team has people with lengthy experience in corporate tax audit, as well as former General Department of Taxation officials who were instrumental in the development of Vietnam's transfer pricing regulations. That means the unit knows what the

Tax rates at a glance

(As of September 2013)

Corporate income	25% (a)
Capital gains	25%
Branch tax	25%
Withholding tax	
Dividends	5%
Interest	5%
Royalties	10%
Technical service fees	5% (c)
Branch remittance tax	0
Net operating losses	
Carryback	0
Carryforwards	5 years (d)

a) Reduced rates (10%, 15% or 20%) apply to investment in encouraged projects. Corporate rate applicable to enterprises conducting prospecting, exploration and exploitation of petroleum and gas and other rate and precious natural resources is 32%-50%, depending on project.

b) A withholding tax of 5% (corporate tax) and 5% (value added tax) generally applies to technical service fees paid to a nonresident. The corporate tax may be exempt under a tax treaty.

c) Losses must be carried forward consecutively in full to taxable income for up to a maximum of the 5 years after the year in which the losses are incurred.

tax authority expects and can get clients better prepared.

McClelland and **Dinh Mai Hanh** have just finished assisting the country's first transfer pricing audit case in the real estate industry. The duo helped with preparing supporting documents before and during the audit on the biggest real estate project in Hanoi and negotiated with the tax authority upon technical issues.

Although the APA regime has just started, the team has equipped itself by hiring APA specialist **Imai Shimpei** from Deloitte Japan in June 2013. Four other local specialists also joined since last year, and further enhanced the practice.

EY is a leading transfer pricing firm in Vietnam, led by **Christopher Butler**. The practice has a wealth of experience providing relevant support to clients. At the same time, it often advises the tax authority about transfer pricing trends and policies, leveraging off its global network.

KPMG operates one of the oldest and largest transfer pricing practices in Vietnam. The practice of 26 professionals is active in transfer pricing planning and has seen an increasing number of multinational clients from outside Vietnam. Led by **Hoang Thuy Duong** and **Warrick Cleine**, KPMG was the only firm to assist the GDT on capacity building and developing the APA system under the newly issued legislation. Hoang and **Nguyen Huong Giang** worked with specialists from the OECD and a foreign tax authority under the project, delivering a one-year training course to a team of 20 Vietnamese tax officials. Hoang and Cleine are helping a leading fast-moving consumer goods company with its early stage APA negotiation in Vietnam, which is a pilot case under the new regime.

The firm not only gets head starts in new issues, but also maintains a leadership position in traditional service offering. Hoang and **Tran Dong Binh**, for instance, are advising a multinational's Vietnamese operation with the country's first transfer priicng dispute. The duo has passed the burden of proof to the tax authority and raised an appeal over the audit by challenging the tax authority's administrative procedure.

David Fitzgerald heads the transfer pricing team of 12 members at **PwC** Vietnam. Benefitting from the PwC global network, a number of transfer pricing partners and directors from its Thailand and Malaysia practices have been seconded to the Vietnamese firm. The global network has supported the practice through an inbound secondment programme, training and delivery of innovative solutions on global or regional engagements. **Matt Gulbis**, transferred from Australia in April 2013, has further enhanced the firm's international outreach.

The practice works closely with the GDT and the Ministry of Finance on a number of matters, including the development of the APA programme and providing training to tax authority staff. The close working relationship has provided the firm with a seat at the table to key policy issues. The firm is piloting an APA application for a world-leading consumer product company in Vietnam.

During the past year, the team has been active assisting clients with audit defence. One remarkable example involved a multinational car manufacturer whose selling price to its dealers was challenged by the tax authority. The transfer pricing team assisted the client to prove the price was in line with the arm's-length principle and eliminated the potential adjusted income tax of $1 million.

Tier 2

Tom Prescott leads the small yet dedicated transfer pricing team of three at **Grant Thornton** in Vietnam. The firm's international network has ensured the quality and outreaching of its service provision. Professionals have international qualifications and great insights with regards to the local market. The firm delivers functional and economic analyses, risk reviews and innovative solutions to TP issues in Vietnam, Cambodia and Malaysia, with significant sector expertise in education and manufacturing. It prepares clients' transfer pricing documentation and liaises with the tax authorities where necessary. In addition to design and practical transfer pricing systems for the companies, the team also trains the in-house team to operate and maintain the systems, which reduces on-going risks and the cost of compliance.

Prescott and **Van Nguyen** are undertaking a transfer pricing study for a US multinational's Vietnamese subsidiary. The duo tests several selected inter-group transactions, address risks and optimises the client's documentation for meeting compliance requirements in Vietnam.

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