



Strategies and opportunities in the changing ASPAC transfer pricing environment

20 November, 2008

TAX

Evolving transfer pricing environment in Asia

- Key trends across Asia
 - China and Hong Kong
 - Japan
 - Australia
 - Singapore
 - India
- Business restructures
- Strategies for dealing with tax authorities' enquiries in Asia

Overview of transfer pricing environment in Asia

Current transfer pricing environment is still very fragmented in Asia

Countries in various stages of transfer pricing development

- Developed jurisdictions: Australia, Japan, Korea
- Emerging jurisdictions: Indonesia, Malaysia, Philippines, Thailand
- “In-between”: India, Taiwan
- “Headquarters”: Hong Kong, Singapore

Key transfer pricing trends

TP Week's Toughest Tax Authorities for Transfer Pricing	
1	Japan
2	Germany
3	US
4	Australia
5	France
6	India
7	Korea
8	China
9	Canada
10	UK

Global transfer pricing rules and enforcement



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China

Transfer pricing trends in China

- **Increases in audit adjustments**
- **New CIT rules**
- **SAT has indicated that new draft rules will contain some stricter requirements, including extensive contemporaneous documentation and limits on APAs**
 - But new options as well, such as CSAs
- **Thin capitalization**

Hong Kong

Transfer pricing trends in Hong Kong SAR

- **No real transfer pricing regime**
- **No active enforcement from transfer pricing perspective**
- **Profits tax enforcement however very active and that has transfer pricing implications**
- **IRD is known to raise enquiries about transfer pricing studies and comparables**
 - Attention towards TP is increasing

Transfer pricing trends in Hong Kong SAR

- **No APA regime**
- **Transfer pricing adjustments: problem given the low number of DTAs**
- **DTA between China and Hong Kong likely to trigger IRD to address the issue**

Japan

Transfer pricing trends in Japan

- **Financial services industry is one of the strong focus areas of NTA**
- **Strong focus on functions (relative to risks)**
 - Need to watch whether the historical preference on profit split method remains unchanged regardless of recent market conditions
- **Audits intensive and tend to also override global policies**
- **Financial institutions in Japan have become active in APAs to better control the risk**
- **Relatively sophisticated authorities: contentions about technical approaches to profit splits common**
- **“Made in Japan” intangible**

Australia

Transfer pricing trends in Australia

- **Balancing of risk reviews/audits vs. APAs**
- **Preparedness to litigate**
 - The Roche case
- **Specific transaction focus**
 - IP and royalty arrangements
 - Business restructures
 - Intra-group financial loans and guarantee arrangements

Singapore

Transfer pricing trends in Singapore

Transfer pricing overview

- Singapore's main transfer pricing guidance was first released in 2006. This was followed by two additional transfer pricing circulars and a consultation paper in 2008
- Transfer pricing guidance applicable to all related-party transactions (domestic and cross-border):
 - goods, services, intangible property, etc.
 - between legal entity/PE and legal entity/PE
 - transactions within Singapore and of course, cross-border
- Since 2006, some transfer pricing challenges. Audit interest seems more on distribution and intra-group services

Transfer pricing trends in Singapore

Transfer pricing consultation

- In August 2008 IRAS publicized its initiative to foster transfer pricing compliance
- Under the initiative:
 - IRAS will send questionnaire to selected taxpayers
 - based on the response, a Transfer Pricing Consultation (TPC) may be undertaken
 - this involves a field visit by the IRAS to hear the taxpayer out and if need be, to conduct a physical review of documentation
 - following, IRAS will provide the taxpayer with its opinion on the taxpayer's transfer pricing approach and documentation
- If taxpayer's transfer pricing deviates from IRAS' opinion of arm's-length pricing, the matter will be taken up further

Transfer pricing trends in Singapore

IRAS' questionnaire (annex 1)

Tick the most appropriate column to indicate the extent of the Company's documentation according to the detailed description in Annex G of IRAS Transfer Pricing Guidelines 2006.

(a)	General information on the Group	None	Partial	Complete
(i)	Worldwide organisational structure			
(ii)	Group's line of business, etc			
(iii)	Group's business models & strategies			
(iv)	Principal business of each party			
(v)	Business relationships of related parties			
(vi)	Consolidated financial statements			

(b)	Information on each Related Party in Singapore	None	Partial	Complete
(i)	General information			
(ii)	Entity's line of business, etc			
(iii)	Entity's business models & strategies			
(iv)	Entity's functions, risks and assets			
(v)	Financial statements			

(c)	Transactions between Company and all Related Parties	None	Partial	Complete
(i)	All transactions with related parties			
(ii)	Contracts & agreements			
(iii)	Segmented financial accounts			

(d)	Transfer Pricing Analysis	None	Partial	Complete
(i)	Choice of tested party & reasons			
(ii)	Comparables & screening criteria			
(iii)	Comparability analysis			
(iv)	Adjustments to achieve comparability			
(v)	Transfer pricing method chosen & reason			
(vi)	Computation of arm's length price/margin			
(vii)	Reasons for arm's length range			

Transfer pricing trends in Singapore

October 2008 public consultation paper

- IRAS Supplementary Circular (draft) released in October 2008
- IRAS proposed viewpoints for taxpayer's commentary on:
 - intra-group loans
 - intra-group services
 - cost pooling
 - pass-through costs

Transfer pricing trends in Singapore

Observations

- Transfer pricing is on the IRAS' radar – reflected by the number recent circulars, including three over the past three months
- Increasingly, tax audit challenges contain transfer pricing focus
- Documentation goes a long way – demonstrate compliance and shifts burden of proof back to IRAS

India

Transfer pricing trends in India

Increased Focus by Administration

- Steep expansion of administration (from 18 to 70 officers)
- Creation of special TP Administration at appellate levels
- Duration of audit scrutiny increased (from 33 months to 45 months)

Recent Assessment Experience

- High margins assessed for captives - 25-30% NCP
- Use of non-contemporaneous data
- Use of multiple year data disallowed
- Exclusion of loss-making companies
- Disallowance of comparability adjustments

Transfer pricing trends in India

Recent tribunal rulings

Philips Software (Bangalore)

- Intent of tax avoidance or shifting of profits
- Significant differences in risk profile of captives vs. entrepreneurial units
- Use of contemporaneous data
- Rejection of comparables with any related party transactions
- Confirmed comparability adjustments (Risk and working capital)

Sony India (Delhi)

- Rejection of comparables with significant related party transactions
- Confirmed the benefit of the +/- 5 percent range.
- Use of marginal cost pricing in cases of surplus or idle capacity
- Disallowed re-characterization of expenses by TPOs

Transfer pricing trends in India

Lessons learned

- **Perseverance and Patience with India's Judicial system pays!**
- **Robust Functions, Assets and Risks analyses**
- **Strong economic analyses**
- **Robust Documentation study and back-up documentations**
- **Up-front comparability adjustments**

Business restructures

- **OECD discussion draft**
- **ATO discussion papers**
- **Approach to business restructures in Asia**

Strategies for dealing with tax authorities' enquiries in Asia

- **Power of relationships**
- **Communication strategies**
- **Persuasiveness of information**
- **Appeal processes and settlement negotiations**
- **Availability of APAs/MAP**

Transfer pricing audit statistics in China

Year	Number of Cases	<i>TP Adjustments to Taxable Income</i>
1998	470	Approx. 1.2 billion RMB
2001	1190	Approx. 3.1 billion RMB
2004	1050	Approx. 4.1 billion RMB
2007	192	Approx. 9.8 billion RMB

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Transfer pricing audit statistics in India

Financial Year	TP Audits Completed	Cases with Adjustments Made	% of Cases Adjustments Made	Value of Adjustments (USD million)
2001-02	1061	239	23%	305
2002-03	1501	337	22%	572
2003-04	1768	471	27%	858
2001-2004 Totals	4330	1047	24%	1735

* Figures are estimates compiled from various sources of information

Transfer pricing audit statistics in Japan (billions of yen)

■ Total Assessment Amount ↗ Average Assessed Amount per case



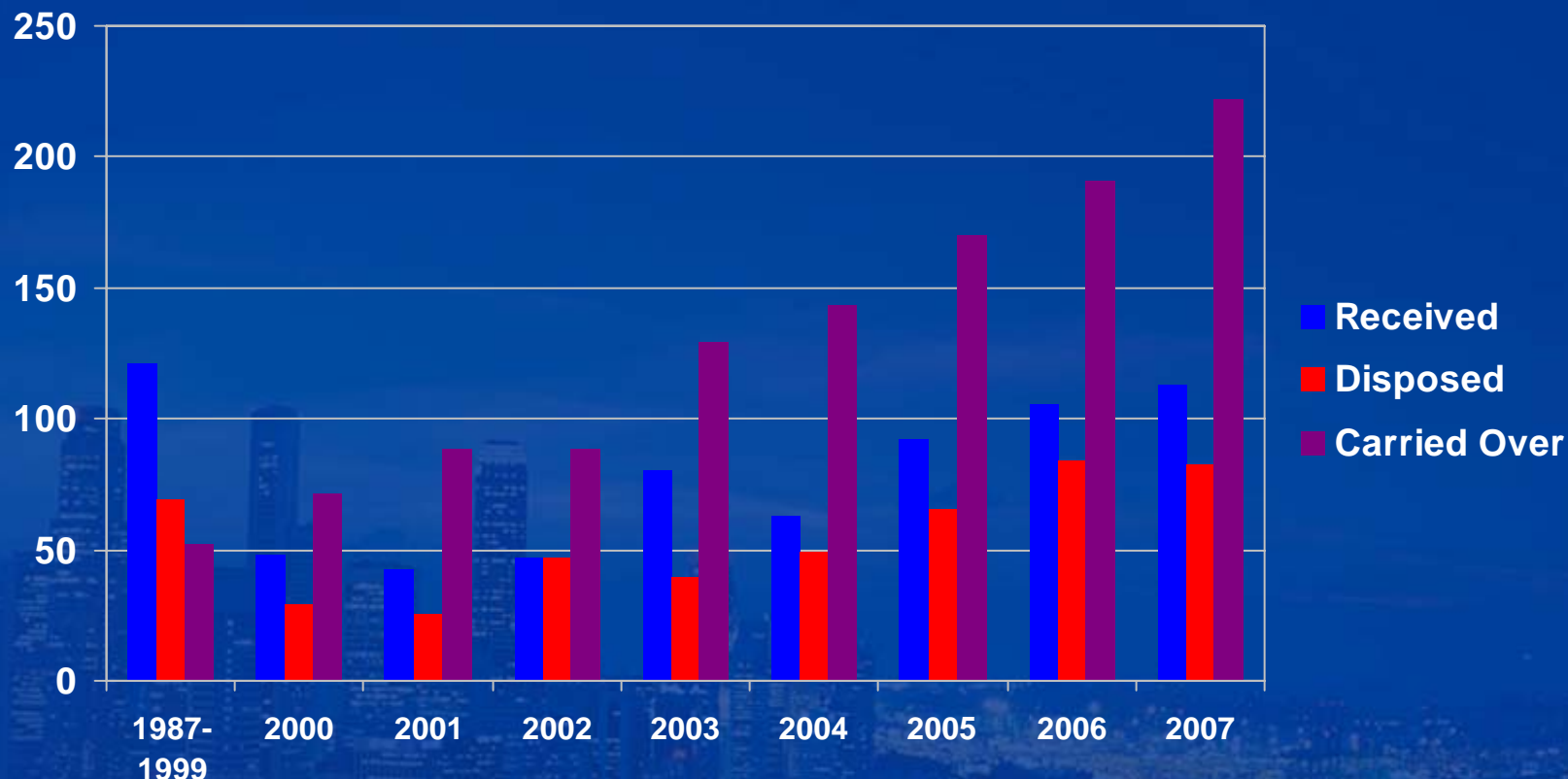
Total Number

Of Cases:

59	38	39	43	62	62	82	119	101	133
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APA and MAP statistics in Japan

Cases received, disposed and carried over



Source: APA Program Report issued by the NTA.

Note 1: Number of settlements includes both those completed and those ultimately withdrawn.

Note 2: Japanese financial year is from July 1 to June 30. FY2006 stands for the fiscal year starting July 1, 2006

APA and MAP statistics in Australia

Cases conducted and completed

