

**IMPLEMENTATION
OF NEW TP
DOCUMENTATION
REQUIREMENTS**

**CONSEQUENCES
FOR TAX DISPUTES**

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**OVERVIEW OF
THE NEW
REQUIREMENTS**

NEW DOCUMENTATION REQUIREMENTS



- ❖ Final Report on BEPS Action 13 published October 5, 2015 resulted in the revised chapter V of the OECD Transfer Pricing Guidelines.
- ❖ Changes aim at **increasing transparency** of transfer prices of multinational enterprises and an **elimination of information asymmetries between taxpayer and tax authorities**.
- ❖ Additionally automatic exchange of information procedures have been implemented (e.g. CbCR, APA)
- ❖ As of today
 - 60+ jurisdictions have already implemented a CbC filing obligation
 - 65+ CbC MCAA signatories
 - 1.000+ bilateral exchange relations active

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NEW DOCUMENTATION REQUIREMENTS



Master file

Organisational structure

Description of MNE's business

Important Drivers of Business profit
Supply Chain
Service Arrangements
Main Geographical Market
Functional Analysis
BR Transactions

MNE's intangibles

Intangible strategy
R&D activity
List of intangibles relevant for TP
I/C arrangements involving intangibles
TP policy for intangibles and R&D
Transfer of interests in intangibles

MNE's I/C financial activities

External financing arrangements
Internal financing arrangements
TP policy

MNE's financial and tax position

Annual consolidated financial statements
APAs and rulings

Local file

Local entity

Local Management structure/
org chart/reporting lines
Local Business strategy
BR and transfer of intangibles
Key competitors

Controlled Transactions

Information required

- Controlled Transaction description
- Amounts
- Related parties to the transaction
- I/C agreements
- Comparability and functional analysis with respect to the I/C transaction
- TP method applied
- Comparable searches
- APAs and ruling

Financial information

Annual local entity financial accounts
Application of the TP method to the transactions – a financial analysis

CbC Report

Tax jurisdiction

Revenues

Profit (Loss) before Income Tax

Income tax paid (cash basis)

Income tax accrued - current year

Stated capital

Accumulated earnings

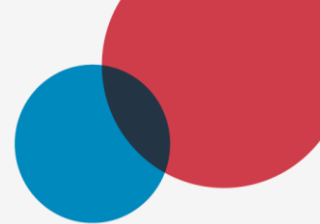
Number of employees

Tangible assets (other than cash and cash equivalents)

Information for tax jurisdiction

1. Constituent entities resident in the tax jurisdiction
2. Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence
3. Main business activity/ies

NEW DOCUMENTATION REQUIREMENTS



Master file:

“A **list and brief description** of the MNE group’s existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.”

Local file:

“A **copy** of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.”

- ❖ List and brief descriptions of all unilateral APAs and other tax rulings will be available to tax authorities in all countries where the Master file has to be filed => taxpayer is in charge of providing that information.
- ❖ A copy of all APAs and other tax rulings pertaining to documented transaction that the local jurisdiction is not a party to has to be provided.
 - Tax authorities will get access to further information on transaction and pricing in other countries.
 - Inconsistencies in pricing in defense of same transaction will immediately become obvious
=> **consistency is key!**



**TRANSFER
PRICING RISK
MANAGEMENT**

TRANSFER PRICING RISKS



- ❖ Transfer pricing on the top of Tax authorities' agenda
- ❖ All MNEs are targeted
 - How many tax audits have been concluded successfully for the taxpayer?
- ❖ Unlike many other tax areas, transfer pricing position safety is (almost) unpredictable. For example:
 - TP is always a matter of facts and interpretation: “same facts, different interpretation”
 - Comparable are very rarely 100% comparable
 - TP is all about proxies for, not the truth of value creation

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TRANSFER PRICING RISKS



❖ Sources of risks

- **Regulatory:** uncertain regulations and their application by tax authorities, tax authority aggressiveness.
- **Technical:** transfer pricing positions, such as a lack of coherence between structural attributes (for example functions, assets and risks of individual entities) and remuneration.
- **System:** reliability/functionality of ERP systems and internal controls that interact with transfer pricing.

TRANSFER PRICING RISKS



Documentation is the first step in the process of mitigating TP risks

Tax audit and tax dispute management will follow

This process requires skilled and trained tax and business people

- ❖ Knowing the business context
- ❖ Acknowledging risks areas
- ❖ Communicating internally
- ❖ Reporting consistently
- ❖ Anticipating tax authorities expectations
- ❖ Developing proper negotiation arguments
- ❖ Learning from experience

CONSEQUENCES OF THE NEW REQUIREMENTS

Increase the risks of potential double taxation and the need for dispute resolution mechanism

- Appropriate use of CbCR
- Uncertainty about local implementation and enforcement
- Existing diverging views on certain topics (e.g. location specific advantages)

Raise concerns regarding compliance costs

- Increased importance of efficient analysis and extraction of data
- Centralisation of disputes management and global documentation preparation

CONSEQUENCES OF THE NEW REQUIREMENTS



Mitigate risks of tax disputes

- New documentation requires to present consistent TP positions across jurisdictions
- Tax administrations will have information enhancing their risk assessment capabilities and their understanding of supply chain analyses

Confidentiality of data

- Proposed Directive on public CbCR approved by European Parliament in July 2017 – next steps very difficult to predict
- Uncertainty regarding the jurisdictions' ability to ensure the required level of confidentiality

CBCR - THREE EXAMPLES

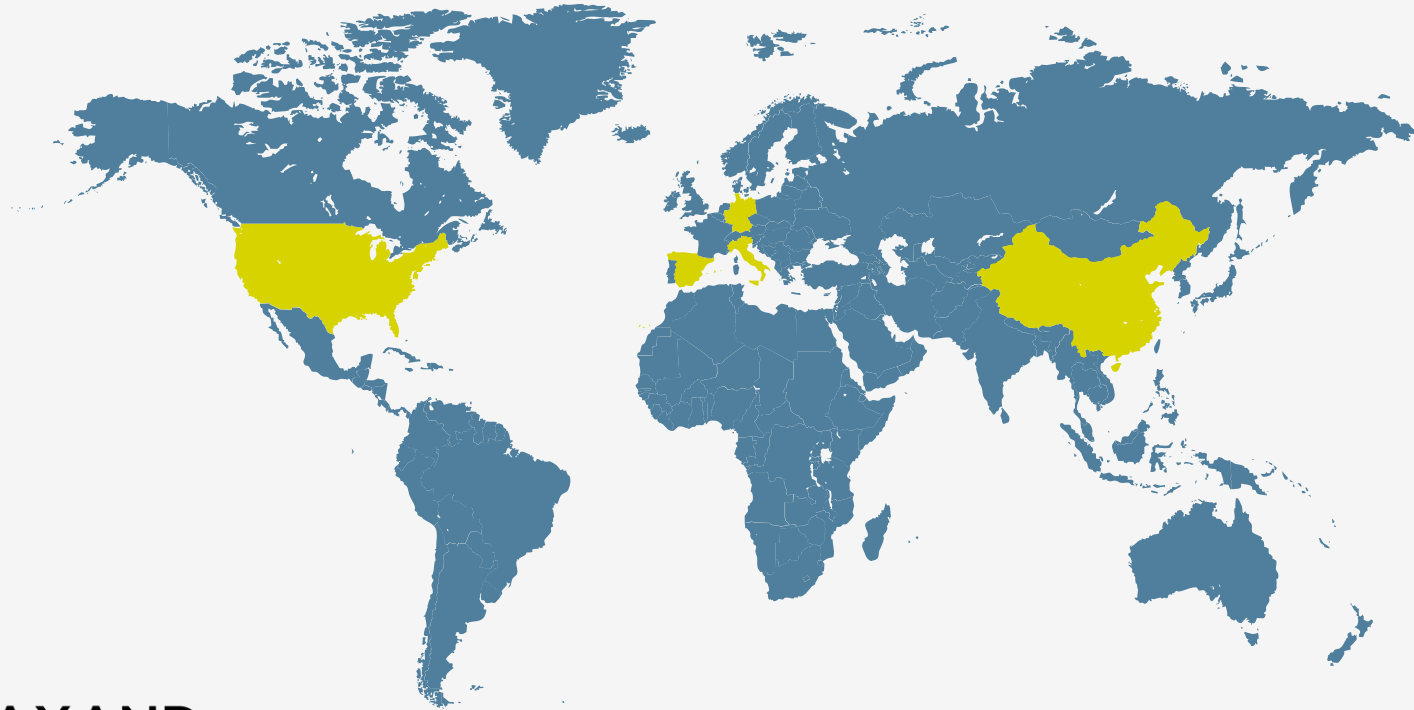


QUESTION	CASE 1 – EU PARENT	CASE 2 – US PARENT	CASE 3 – US PARENT
Performed tests on 2015 data	Yes	No	Yes
Estimated time for 2016 reporting	3 months	12 months	2 months
Resources dedicated	Tax, Accounting	2 global project leaders 30+ Local tax team	Accounting, HR, Tax and Finance
Sources of information	IFRS reporting for consolidation	Tests being performed Global roadshow to decide	Consolidating ERP system (Form 10K)
Critical issues in the process	Manual adjustments (taxes paid; PE data)	Consistency with local TP documentation	Manual adjustments (no single ERP system allows to pull data)
Identified tax risks	No	Possible	Possible
Qualitative information provided	Difficult to manage because figures are aggregated	Will be provided in case of tax audit	Master File will explain to minimise tax controversy



**LOCAL
PERSPECTIVES**

LOCAL TAXAND PERSPECTIVES





**STATUS OF
IMPLEMENTATION:
GERMANY**

GERMAN TAX LAW CHANGES FOLLOWING BEPS ACTION 13



❖ **Changes relating to transfer price documentation** comprised amendments to or the implementation of the following sections:

- Sec. 90(3) General Tax Code (GTC) relating to local and master file (amended).
- Sec. 162(3)/(4) GTC relating to the estimation of transfer prices by tax authorities and penalties in case of non-compliance with Sec. 90(3) GTC (amended).
- Sec. 138a GTC relating to CbCR (implemented).
- Sec. 379(2) no. 1c GTC on sanctions in case of non-compliance with Sec. 138a GTC (implemented).

GERMAN TAX LAW CHANGES FOLLOWING BEPS ACTION 13



- ❖ German legislator implemented changes into the domestic law through so-called **“Anti-BEPS Implementation Act” of December 20, 2016.**
- ❖ **Date of application** of changes:
 - Local/Master file: fiscal years beginning after December 31, 2016.
 - CbCR: fiscal years beginning after December 31, 2015.

LOCAL FILE (SEC. 90(3) SENT. 2 GTC)



- ❖ Includes **documentation of international business transactions with related companies** and PEs according to Sec. 1(4) Foreign Tax Act (FTA).
- ❖ Local file comprises two parts:
 - **Documentation of facts:** Records of type and substance of business transactions with related parties.
 - **Arm's length documentation:** Records of legal and economic basis for the arm's length prices and other business conditions with related parties.

LOCAL FILE (SEC. 90(3) SENT. 2 GTC)



- ❖ Local file requirements altogether **correspond to previous documentation requirements of Sec. 90(3) GTC** in combination with the Profit Allocation Documentation Regulation (GAufzV).
- ❖ Recent revision of the GAufzV published July 12, 2017 implemented only minor changes in comparison to the previous version. E.g., as part of the arm's length documentation the tax payer is now obligated to provide information on the point in time of the determination of a transfer price.

MASTER FILE (SEC. 90 (3) SENT. 3 GTC)



❖ Obligation to prepare a Master file:

- Obligation to prepare a documentation following Sec. 90(1) sent. 1 GTC (= a **local file**).
- **Business income** according to Sec. 15(1) no. 1 Income Tax Act (ITA).
- At least **one business transaction** according to **Sec. 1(4) Foreign Tax Act** (FTA) (= preparing entity is part of a multinational group according to Sec. 90(3) sent. 4 GTC)
- (Unconsolidated) **Turnover** of the preparing entity **exceeds EUR 100 million**.

MASTER FILE (SEC. 90 (3) SENT. 3 GTC)



❖ Master file provides tax authorities with an **overview over worldwide business activities and the transfer pricing system**. Information includes:

- Graphical depiction of organisational structure.
- Short description of business activities.
- Outline of the strategy for the use of immaterial assets within the value chain.
- Description of the company's financing.

COUNTRY-BY-COUNTRY REPORTING (SEC. 138A GTC)



- ❖ Aim of CbCR: **assessment of transfer pricing risks and other BEPS risks. CbCR not intended...**
 - ... as a basis to prove the inappropriateness of transfer prices.
 - ... for global formulary apportionment of income.
- ❖ **Base Case** according to Sec. 138a(1) GTC:
 - Domestic company obligated to prepare group financial statements.
 - Group financial statement includes **at least one non-domestic company or PE.**
 - Consolidated group turnover (previous fiscal year) **exceeds EUR 750 million.**

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COUNTRY-BY-COUNTRY REPORTING (SEC. 138A GTC)



- ❖ Two elements of CbCR (+ information necessary for their understanding (Sec. 138a(2) no. 3 GTC)):
 - Overview including ten key figures (turnover, EBT, no. of employees,...) showing the **distribution of business activities** over different countries (Sec. 138(2) no. 1 GTC).
 - Overview over **core activities** (R&D, Production, Distribution, Management,...) **of all companies** for their respective resident country (Sec. 138a(2) no. 2 GTC).

EXCHANGE OF TAX RULING



- ❖ Final report on BEPS Action 5 proposed – inter alia – an **automated exchange mechanism for tax rulings between tax authorities**. The Council of the EU amended the directive on administrative cooperation in the field of taxation (2011/16/EU) through directive 2015/2376 of December 8, 2015 to transpose the provisions into European (secondary) law. Beginning January 1, 2017, **EU member states are obligated to exchange tax rulings on a six monthly basis**.

EXCHANGE OF TAX RULING



❖ German legislator implemented changes through amendment of Sec. 2, 3, 5, 6 and 7 EU Administrative Cooperation Act (EUAHiG) by the Anti-BEPS Implementation Act of December 20, 2016.

❖ **Exchange includes:**

- Binding Assessments (Sec. 89(2) GTC).
- Binding Commitments (Sec. 204 GTC).
- APAs (Sec. 178a(1) GTC).



**STATUS OF
IMPLEMENTATION:
CHINA**

STATUS OF IMPLEMENTATION



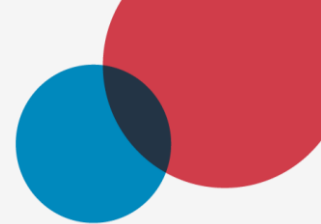
❖ New Form & CbCR

Public Notice No.42 includes the formal templates and filing instruction for the Annual Related Party Transactions Reporting Forms (the "New Forms"). These New Forms entirely replace the previous "nine forms", and increase the total number of forms to fourteen. Overall the information disclosure requirement is increased and the New Forms also include the Country-by-Country reporting form (CbCR).

The CbC Report discloses the allocation of worldwide income, tax payment and location of economic transactions of the entire group.

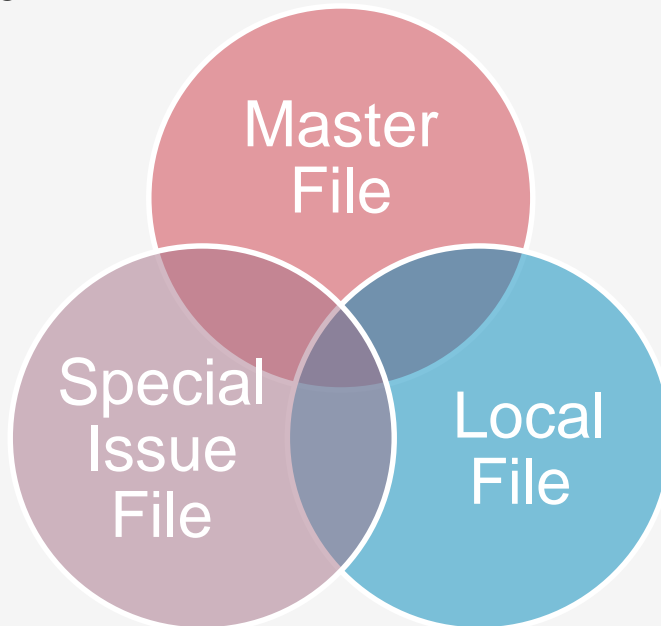
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STATUS OF IMPLEMENTATION



❖ Contemporaneous Documentation

Public Notice No.42 introduces a three tier documentation framework, as set out in the OECD's framework in BEPS Action 13:

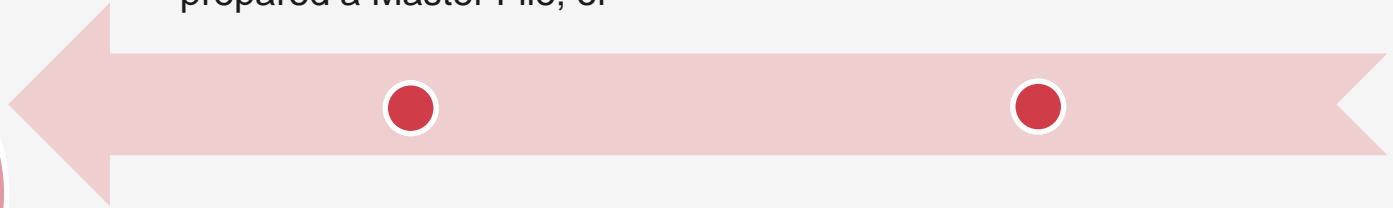


STATUS OF IMPLEMENTATION



The local entity has overseas related party transactions, and the group's ultimate holding company has prepared a Master File; or

The local entity has related party transactions exceeding RMB 1 billion during the year.



Master
File

Organisational chart

Global business

Intangibles, especially R&D facilities

Intercompany activities

Financial and tax positions

Group's existing bilateral APA

Business restructuring

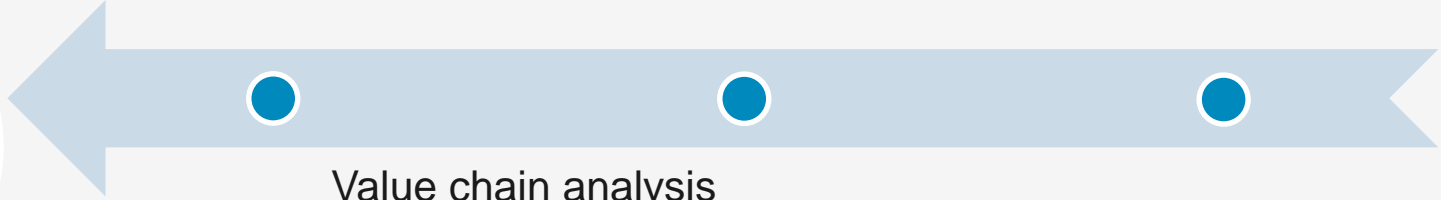
STATUS OF IMPLEMENTATION



The annual sum of related party purchases/sales is exceeding RMB 200 million

The annual sum of related party purchase/sales of financial assets or intangible assets is exceeding RMB 100 million; or

The annual sum of other related party transactions is exceeding RMB 40 million.



Local File

Value chain analysis

Financial data of each type of business

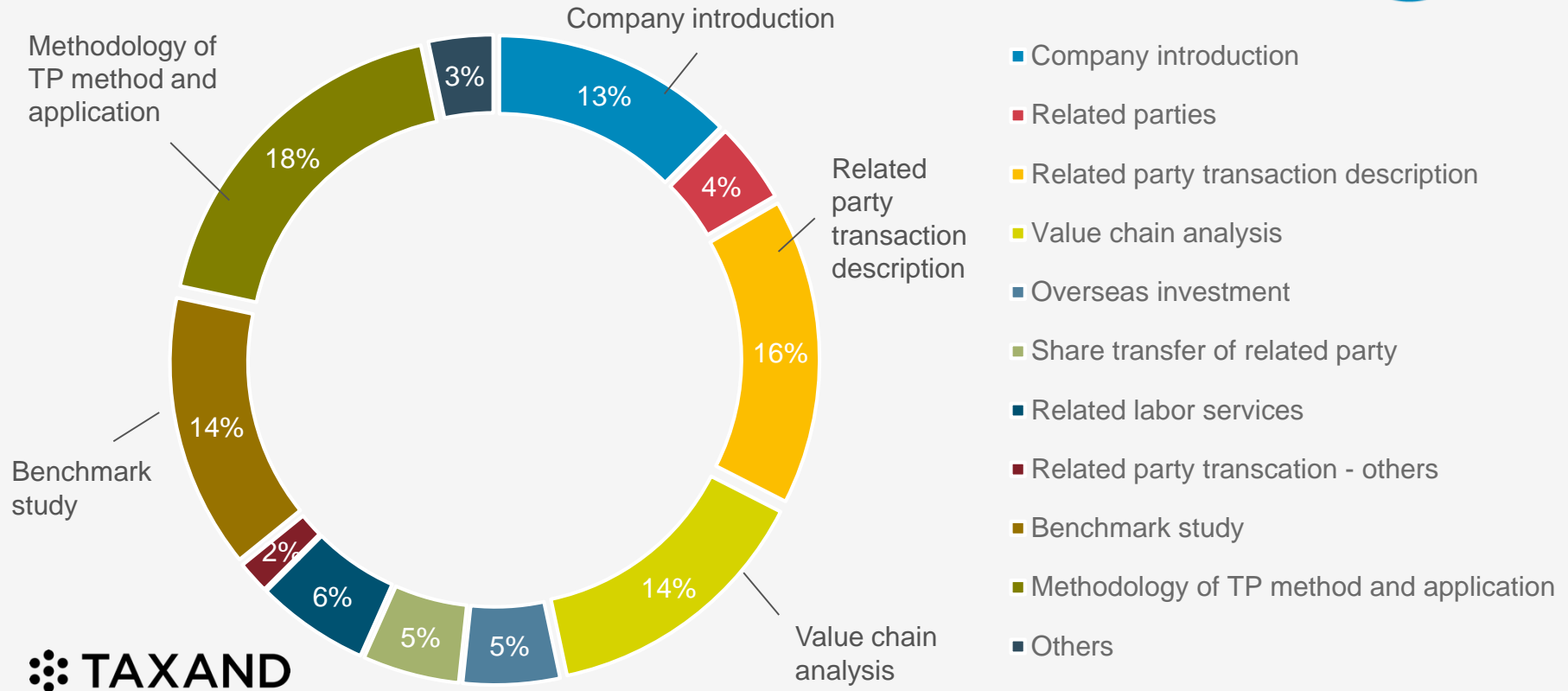
Equity transfer analysis

Related party services analysis

Location specific factors

Global advanced pricing agreements and tax ruling

STATUS OF IMPLEMENTATION

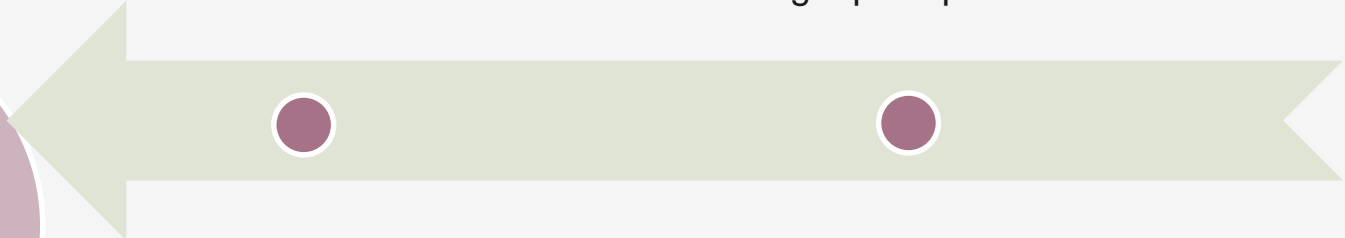


STATUS OF IMPLEMENTATION



The local entity enters or implements CSAs; or

The local entity with debt-to-equity ratio exceeding the threshold need to prove its related party financing's compliance with the arm's length principle



Cost sharing agreement(CSA)

Thin capitalisation

STATUS OF IMPLEMENTATION



Transfer pricing investigations should focus on enterprises with the following situations:

Involves related party transactions with large transaction amount, or varied types of related party transactions;

Incurs long-term losses, low profits or non-linear profits;

Profit is lower than the industry's level;

The profit level does not match the functional risks borne, or the earnings shared do not match the costs shared;

Carries out related party transactions with related parties located at low tax countries (regions);

Fails to declare related party transactions or prepare contemporaneous documentation pursuant to the provisions;

The ratios of debt investments and equity investments accepted from the related parties exceed the stipulated standards;

An enterprise which is established in a country (region) with actual tax burden lower than 12.5% does not distribute profit or reduces profit distribution without reasonable business needs

Implements other tax planning or arrangements which do not have a reasonable business objective.



**STATUS OF
IMPLEMENTATION:
SPAIN**

STATUS OF IMPLEMENTATION



- ❖ Master File and Country-Specific Documentation were already compulsory in Spain
- ❖ From FY 2016, Master File and Local File are fully adapted to BEPS Action 13
- ❖ Now Master File requires relevant Group information (e.g. intangibles, financing information, etc.), irrespective if it does not have any connection with Spanish I/C transactions
- ❖ CbCR is applicable in Spain from 2016. Only for groups which net revenues over EUR 750 million

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STATUS OF IMPLEMENTATION



- ❖ All I/C transactions shall be documented in Local File, except for transactions performed below EUR 250 k and transactions between companies of the same Spanish tax consolidation group.
- ❖ Groups with net incomes below EUR 45 million: Simplified Local File and No Master File required
- ❖ New Form 232 describing the I/C transactions applicable from 2016. First deadline next Nov. 30, 2017.

STATUS OF IMPLEMENTATION



- ❖ Local File and Master File shall be produced annually. They shall be delivered to the Tax Authority only upon express request.
- ❖ CbCR: there are two main scenarios:
 - The Spanish company files the CbCR in Spain: 12 months from fiscal YE
 - The Spanish company does not file the CbCR in Spain: it shall be notified to the Tax Agency the group company in charge of producing the CbCR and the jurisdiction where it will be filed as parent or surrogate. Deadline December 31 of each fiscal year.

STATUS OF IMPLEMENTATION



- ❖ Full penalty protection for TP adjustments if TP documentation obligations have been met.
- ❖ Severe penalties just for not having Local File and Master File.
- ❖ As of now no specific penalty regime for CbCR and 232 Form. General penalty regime applicable.



**STATUS OF
IMPLEMENTATION:
USA**

STATUS OF IMPLEMENTATION



❖ Not yet implemented in the USA

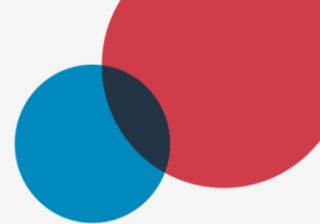
- Clients can choose to draft U.S. documentation in the OECD format.
- OECD format documentation will often contain the ‘ten principal documents’ which are required under Internal Revenue Code Section 6662.
- OECD format documentation generally provides U.S. penalty protection to potential transfer pricing adjustments.

❖ Documentation prepared strictly under the U.S. requirements may not contain all elements required by the OECD Guidelines.

- From a U.S. perspective, a decision should be made on a case by case basis to determine which format a Company’s documentation should take.

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IMPACTS OF SUCCESSFUL DOCUMENTATION



❖ **Penalty Protection**

- Complete, compliant transfer pricing documentation provides protection against penalties, should the IRS impose a transfer pricing adjustment.

❖ **Global consistency**

- Producing consistent global documentation forces a multinational to evaluate its transfer pricing policies to generate greater global consistency.

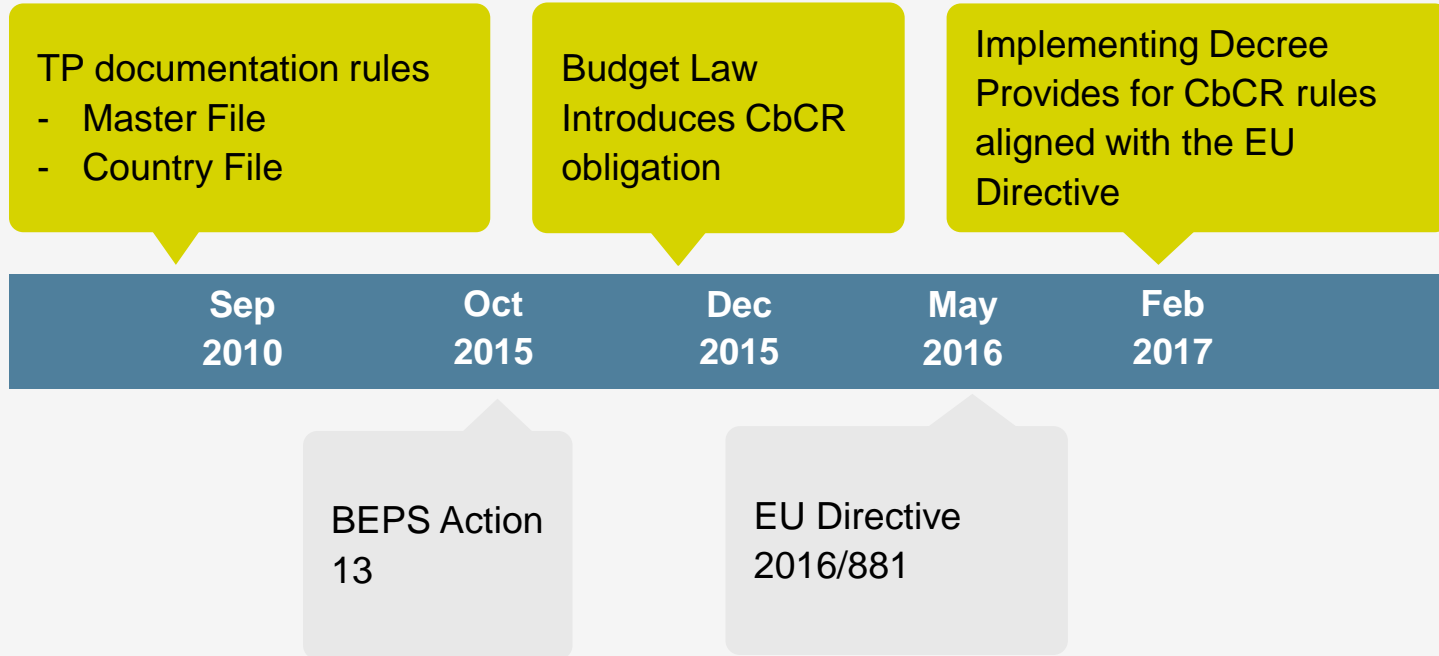
❖ **M&A Diligence**

- Producing timely, coherent and well drafted transfer pricing documentation significantly aids any diligence process, and may increase ultimate sale price achieved.



**STATUS OF
IMPLEMENTATION:
ITALY**

STATUS OF IMPLEMENTATION



STATUS OF IMPLEMENTATION



- ❖ Master File and Country File approach introduced since 2010, in line with the EU Transfer Pricing Documentation standards
 - Optional regime with disclosure in the tax return
 - Minimum content requirements
 - No threshold
 - Penalty protection if TP documentation is properly prepared and timely notice provided in the tax return
- ❖ Endorsement of revised Chapter V requires a new resolution but, in practice, Italian MNEs are already including in the 2016 documentation certain additional information not formally imposed by the existing regulations

STATUS OF IMPLEMENTATION



Country by country reporting

- ❖ Starting from January 1, 2016 - due by
 - Resident parent company if consolidated revenue exceeds €750m
 - Resident subsidiary, if the CbCR due by the foreign parent company is not automatically available for ITA
- ❖ Procedure
 - Communication of the obligation within the tax return filing date
 - Filing of reporting within 12 months after the year end
- ❖ Penalties
 - €10,000-50,000 range (no filing, incomplete or untrue data)

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STATUS OF IMPLEMENTATION



Country by country reporting

❖ Use of information

- Solely for risk assessment purposes
- Economic and statistic analysis
- TP adjustments cannot be based solely on CbCR data

❖ Jurisdictions involved in the exchange of information

- All EU countries (art 8bisbis Directive 2011/16 as introduced in May 2016 by the Directive 2016/881) and
- Countries with qualified agreements in place (Multilateral Competent Authority Agreement on the Exchange of CbC Reports (the "CbC MCAA"))

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**REAL CASES:
GERMANY**

REAL CASES



- ❖ **F GmbH** is resident for tax purposes in Frankfurt and operates in the **automotive industry**.
- ❖ The **goods and products** produced by F GmbH are **distributed in Italy, Spain, the UK and China via local distributors (V Ltd.)**, which are subsidiaries of F GmbH.
- ❖ Transfer prices for the goods and products are based on the resale price method. The gross margins are calculated on the basis of a benchmark study.
- ❖ The automotive industry in Europe and Asia is booming, so V Ltd. has grown exceptionally well. **Having overcome start-up losses** from 2005 to 2009 the **return on sales ratio** – based on the EBIT – is between **15% and 22%**.

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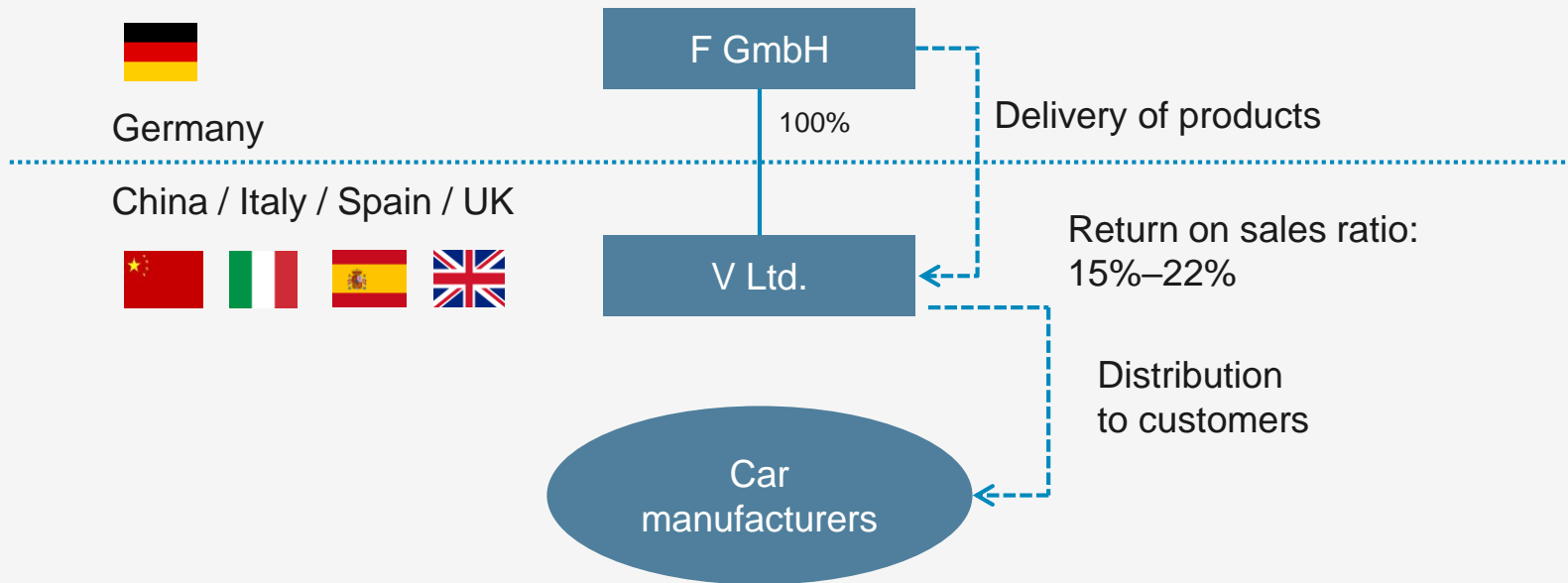
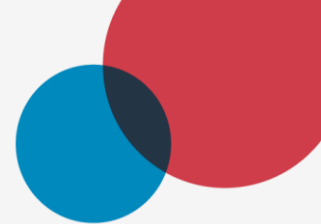
REAL CASES



- ❖ The high return on sales ratios can be explained by enormous **sales growth**, the **excellent local management**, and the **high prices** on the local markets.
- ❖ The **major clients** of V Ltd. are **local car manufacturers** and **large German car manufacturers**.
- ❖ The German **tax audit** challenges the transfer prices for the product delivery to the distribution companies. The auditors' main argument is that **V Ltd. "earns too much"**.
- ❖ The **adjustments** in income are **based on Sec. 1 Foreign Tax Act**, justified by the **return on sales** which is supposedly **too high** at the level of **V Ltd. in each country**.

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REAL CASES



REAL CASES



- ❖ The income adjustment **targets the profit** (return on sales) of V Ltd. Does **Sec. 1 Foreign Tax Act** cover such an **income-orientated adjustment** (note: Sec. 1 Foreign Tax Act refers to a concrete business relationship)?
- ❖ Is it possible to **avoid double taxation** by filing a **mutual agreement procedure** between Germany and China/Italy/Spain/UK if the German tax audit adjusts the income?
- ❖ Is it more reasonable to bring the case before **a tax court** instead of a mutual agreement procedure?
- ❖ Is a MAP possible even if the taxpayer did not cooperate with the tax auditors and the tp documentation was not sufficient?

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**REAL CASES:
CHINA**

REAL CASES



- ❖ The transfer pricing audit process is generally initiated by a request for financial and management information such as statutory accounts, tax computation, pricing information, management accounts and transfer pricing documentation. Based on this information, the tax authority will carry out a review of the documents and decide if a more detailed review is required.
- ❖ TP audit is conducted by the local tax bureau.
- ❖ Due to the foreign exchange control, overseas payment will be rejected if the company triggers TP audit.
- ❖ In China, tax authority is very likely to conduct tax investigation on detailed taxes, such as Enterprise Income Tax, Withholding Tax, VAT, even Individual Income Tax.

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**REAL CASES:
SPAIN**

REAL CASES:

ZERAIN (SPANISH HIGH COURT 19 OCT 2016)



- Ruled in favor of the Spanish Tax Authority
- Relevance of internal comparable even if the volume is not relevant. Lesson: internal comparables are generally better than results obtained from databases (3.27 TP Guidelines). To avoid direct adjustment, it is important to clearly evidence the lack of comparability of these transactions in the Local File.
- “Secret” comparables used by the Tax Agency were accepted.
- The APA agreed between third countries as regards similar I/C transaction audited was not considered.
- The transition from one TP policy to another is always an issue for the jurisdiction losing tax incomes. Comment: A non-tax event should ideally be the triggering event to carry out the transition. APA can be a very useful tool in these cases.
- TP Guidelines do not bind the Spanish Courts. Comment: The TP Guidelines are recognized by the Preamble of the current CIT Act as a source of interpretation of the internal TP legislation provided that they do not conflict with the domestic regulations.

REAL CASES:

MCDONALDS (SPANISH HIGH COURT 2 MAR 2017)



- Ruled in favor of the Spanish Tax Authority
- Spanish Tax Agency consulted Banks on whether the provisions included in the I/C term loans would have been agreed in market conditions.
- The TP adjustment was made using the IR applied to the credit facility granted by a third party to the Company. This internal comparable was considered as the best reference despite the Tax Agency admitted that it had comparability weaknesses.
- The lack of economical rationale of the Company's behavior (it used I/C financing instead using third party financing which IR was lower) was critical to support the TP adjustment. **Lesson: Factual substance is key for TP purposes.**
- I/C financing transactions: general interest rates references (e.g. Spanish legal IR, Euribor, ECB, etc.) are not reliable references. **Lesson: specific benchmarks shall be done to determine I/C IR**

REAL CASES:

PEUGEOT (SPANISH HIGH COURT 31 MAY 2016)



- ❖ Ruled in favor of Peugeot
- ❖ It is not possible to fully disregard I/C transactions based upon TP rules. If the Tax Authority considered that the transaction had not taken place between third parties, it should have used general anti-abuse figures, instead of the TP rules.

Comments:

- New TP Guidelines (post Action 8-10 BEPS) include some cases where I/C transactions should not be disregarded for TP purposes. They may only be disregarded in exceptional circumstances when the I/C arrangement is not commercially rational
- The Spanish context is uncertain. The new Spanish TP regulation seems to open the door to the Tax Authority to be able to re-characterize a I/C transaction (in the past the law referred to the capacity of the Tax Authority to review the TP value, but now this has been reworded establishing that the Tax Agency can generally review whether the I/C transactions)



**REAL CASES:
USA**

REAL CASES



- ❖ Our team was recently engaged to modify a company's transfer pricing documentation in order to defend its intangible development position in multiple jurisdictions.
- ❖ The company engaged Taxand USA to modify the testing mechanism from a traditional TNMM / CPM methodology to a profit split, globally.
- ❖ A key issue (which we ultimately leveraged) is the distinction between the U.S. and OECD DEMPE considerations for intangible returns.
- ❖ Taxand USA implemented OECD - compliant documentation, including a master file, U.S. local file, and other local country files. Given the company's extensive global footprint, OECD - compliant documentation seemed the most appropriate and can be used to defend the companies transfer pricing policy globally.

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**REAL CASES:
ITALY**

REAL CASE



- ❖ **A** is resident in Italy and operates as a manufacturer of semi-finished products for the fashion industry. Its main reference market is Europe.
- ❖ To serve the Far East market, **A** acquired in prior years a Chinese manufacturer, **B**, that produces the same type of products.
- ❖ **A** provides to **B** (i) semi-finished goods that are subsequently employed for further processing and (ii) product development services.
- ❖ Transfer prices for the goods and services are based on the cost plus method. The margins are calculated on the basis of a benchmark study.

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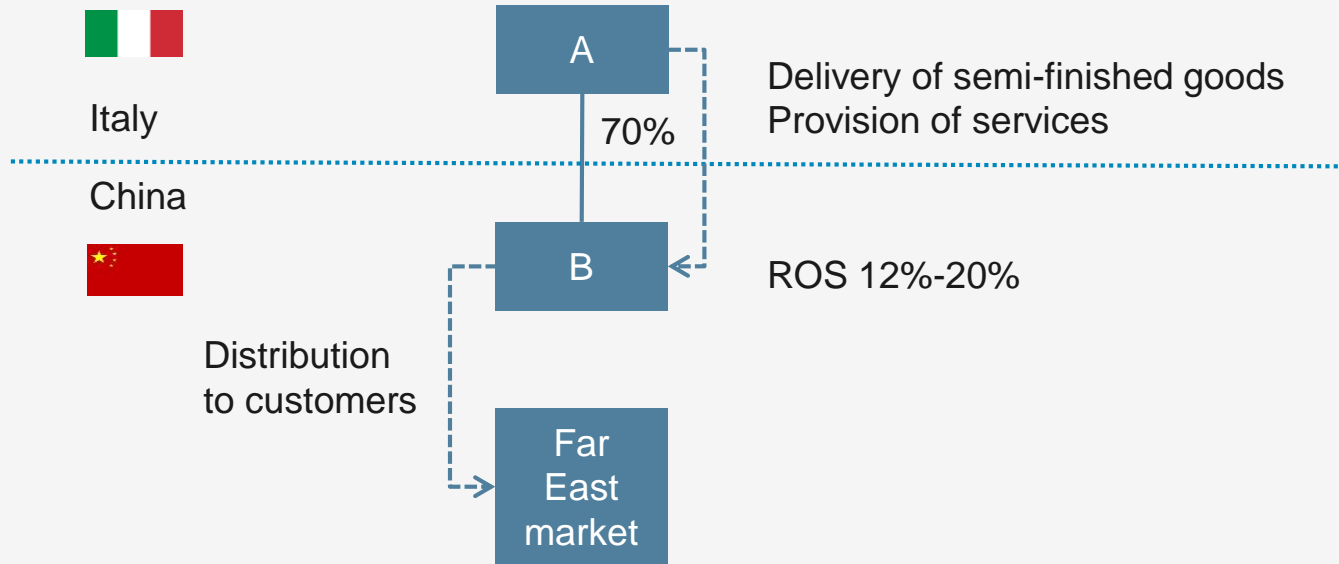
REAL CASE



- ❖ Both **A** and **B** characterise for a similar functional profile (i.e. fully fledged manufacturers):
 - **A** operates a R&D facility mostly for its own benefit
 - **B** historically owns its manufacturing know (local partner)
- ❖ The acquisition of a local manufacturer in China was driven by the need to serve the Far East market with a competitive pricing
- ❖ The Far East market is expanding so that **B** has become exceptionally profitable and the return on sales ratio – based on the EBIT – is between 12% and 20%.

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REAL CASE



REAL CASE



- ❖ The Italian tax administration challenges the transfer prices for the product delivery and the service provision.
- ❖ The auditors' main argument is that the competitive advantage of B in the Far East market (and its high profitability) is mainly due to the value added by the products and services provided by A, which in turn is generated by the R&D activity carried out in Italy.
- ❖ The **adjustment** is based on the **attribution of the entire residual profit of B to the price of goods supplied and services rendered by A.**

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REAL CASE



- ❖ The tax adjustment refers to the **provision of services and delivery of goods** or to the **licensed use of intangibles**?
- ❖ In case of filing for a **mutual agreement procedure** between Italy and China, the competent authorities would decide the case based on the UN or the OECD Guidelines? Would the Chinese competent authority apply his view on location specific advantages?
- ❖ What would have happened if the TP documentation were drafted according to the BEPS Action 13?



**SPEAKER
PROFILES**

SPEAKER PROFILE



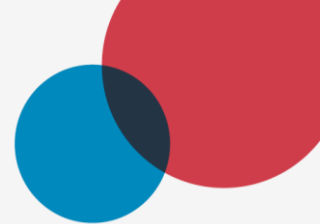
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Eve commences her career as a tax consultant in Hendersen and now has 13 years of professional experience in China tax and business advisory. In addition to her strong tax background, Eve has been specialised in transfer pricing for the last 9 years and has helped many multinational companies in different industries dealing with their PRC transfer pricing issues. Eve has build up valuable experience in the Chinese transfer pricing practice.

SPEAKER PROFILE



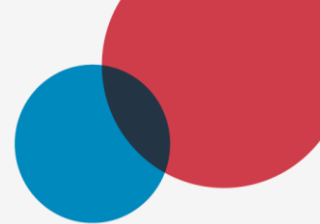
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Xaver is a tax advisor and partner with Flick Gocke Schaumburg in Bonn, Germany since 2004. His practice area covers the taxation of companies and groups in both a national and international context, and he specialises in transfer pricing. Specifically, his work focuses on the defence of TP mechanisms in tax audits, litigation, the documentation of TP systems, the planning and implementation of new TP approaches in existing group organisations, Advance Pricing Agreements (APAs), mutual agreement procedures, and EU Arbitration Convention procedures.

SPEAKER PROFILE



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Stefano Bognandi is based in Milan where he is a partner of Fantozzi & Associati, Taxand Italy.

He is a member of the Institute of Chartered Accountants and Auditors of Milan, and has more than 20 years of experience providing tax advice on both Italian and international tax issues, specialising in transfer pricing and business restructuring.

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Felipe is a tax partner with Garrigues in Spain since 2009. Tax law expert with nearly 20 years of experience in advising multinationals and foreign investors with interest in Spain. He is specialised in transfer pricing. Specifically, he focuses on advising clients in the designing of their TP policy, producing TP documentation and assisting them on TP disputes. He has been involved in several unilateral and bilateral APAs, as well as in many mutual agreement procedures on the grounds of the double tax treaties and the EU Arbitration Convention.

SPEAKER PROFILE



Hendrik Blankenstein

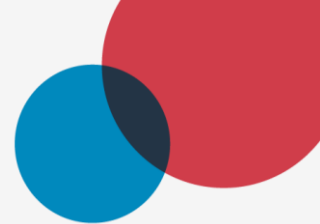
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Hendrik is a partner and head of the Transfer Pricing team in Taxand Switzerland which is Tax Partner AG.

Hendrik Blankenstein is a partner of Tax Partner AG and leads its transfer pricing team. From 1989 to 1995, Hendrik was an international tax consultant at Big 4 firms in both the US and The Netherlands, from 1996-2004 he worked as an in-house international tax and transfer pricing counsel at Nestlé's HQ in Switzerland and from 2005 to 2015 as a Swiss based partner in globally operating transfer pricing boutique consultancy firms.

SPEAKER PROFILE



Kieran Taylor

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Kieran Taylor is a Director with Alvarez & Marsal Taxand in New York. Kieran works within the Transfer Pricing and Tax Efficient Supply Chain Management (TESCM) teams.

Kieran specialises in supply chain restructurings, M&A due diligence, transfer pricing benchmarking and documentation and intellectual property planning and migration.

He received an Bachelor of Laws (Honours) degree from the University of Edinburgh, and is ATT qualified. Kieran is a British National, having grown up splitting time between South Africa and Oxfordshire.