



PKF
México



Global Transfer Pricing Insights

Newsletter Series – July – September 2023

PKF Mexico – Centre of Excellence Transfer Pricing Newsletter

Dear Reader,

It is our pleasure to present to you with Second edition of our PKF MEXICO – Centre of Excellence (“COE”) Global Transfer Pricing Newsletter 2023. In this edition of the Transfer Pricing Newsletter.

We provided an update on recently introduced / updated legislations / guidelines / definitions / filing requirements of transfer pricing news curated for you from across the world along with latest OECD updates.

Our global Transfer pricing Insights – Newsletter will be published on Quarterly basis providing you with latest updates.

For any further information on PKF Mexico Transfer pricing Center of Excellence – We provide tailored solutions for global companies on their transfer pricing issues and you can learn about what we do in our Center of Excellence in 5 minutes where our Senior Economist Anand Vemuganti speaks on Centre of Excellence value proposition. <https://www.youtube.com/watch?v=EX2GOVaWP9w>

Kind regards



PKF MEXICO
Jimmy Cruz Camacho
Transfer Pricing Partner – Centre of Excellence Leader



Anand Vemuganti
Senior Economist at the Transfer Pricing Center of Excellence

Transfer Pricing Newsletter

July - September 2023

RECENT OECD AND EU UPDATES:

Tax challenges of digitalisation: OECD invites public input on Amount B under Pillar One relating to the simplification of transfer pricing rules

On July 17, 2023, the Organisation for Economic Co-operation and Development (OECD) released a series of technical documents related to the ongoing OECD/G20 project addressing the taxation challenges arising from the digitalization of the economy, known as the BEPS 2.0 project. One of these documents is a public Consultation Document specifically focused on Amount B within Pillar One. Amount B outlines fixed returns for specific in-country marketing and distribution activities falling within the scope.

It's important to note that the Consultation Document does not yet represent a consensus of the Inclusive Framework on BEPS, as there are remaining unresolved issues. The OECD is seeking input from stakeholders on this document, with a deadline for feedback set for September 1, 2023. This document builds upon developments since the initial consultation document on the same topic was issued in December 2022.

Unlike Amount A within Pillar One and the global minimum tax rules of Pillar Two, Amount B does not impose monetary thresholds, such as a minimum global revenue, for Multinational Enterprise

(MNE) Groups to be subject to its provisions. Amount B is designed to cover various arrangements, including buy-sell and agency arrangements. It intends to exclude significant retail sales and the trading, marketing, or distribution of commodities. However, the Consultation Document suggests that wholesale distribution of digital goods should be included. One key aspect on which feedback is requested is whether there should be an additional qualitative threshold in determining the scope of Amount B.



For pricing under Amount B, the Transactional Net Margin Method (TNMM) is considered the most suitable approach (adjusted by the Berry ratio). Nevertheless, tax authorities and taxpayers may advocate for the use of the comparable uncontrolled price (CUP) method with internal comparables. The proposed pricing-matrix approach for establishing the arm's-length return considers factors

such as industry, geography, functional aspects, and asset intensity. Notably, the previous idea of exempting jurisdictions with local market comparables from Amount B has been replaced with a requirement for jurisdictions to create and publish their own local matrix to apply as part of Amount B. The outcome statement released by the OECD on July 12, 2023, indicates the goal of having the Inclusive Framework approve and release a final report on Amount B by the end of the year. This would enable the incorporation of Amount B into the OECD Transfer Pricing Guidelines by January 2024.

OECD Secretary - General Tax Report to G20 Leaders

This report sets out the latest developments in international tax reform, including the Outcome Statement on the Two-Pillar Solution agreed upon by 138 members of the Inclusive Framework, OECD work on indirect tax, capacity building for developing countries, and major developments in tax transparency efforts, tax administration, tax and crime, tax policy and climate change.

European Commission proposes transfer pricing directive

The EU Commission is proposing a new, single set of rules to determine the tax base of groups of companies, Business in Europe: Framework for Income Taxation (BEFIT) including directive on Transfer Pricing. Important aspects covered include and not limited to below highlighted points:

Introducing the Arm's length principle into EU legislation, Clarifying the role of the OECD Transfer Pricing Guidelines, Ensuring coherent application of the

ALP across the Union and Reduction of double taxation and double non taxation.

COUNTRY SPECIFIC TRANSFER PRICING UPDATES:

Canada - Department of Finance Releases Paper Proposing Reform to Transfer Pricing Regime

On June 6, 2023, the Department of Finance released a consultation paper on Canada's transfer pricing rules with draft legislative amendments, requesting comments by July 28, 2023. The consultation, first announced in the 2021 Federal Budget, proposes amendments to transfer legislation.



The main proposal seeks to amend the transfer pricing adjustment rule in Section 247 of the Income Tax Act, aimed to provide greater clarity on the application of the "arm's length" principle in Canada, and intended to fall more in line with international consensus on this topic. The government's intention is to address transfer pricing rules with a view of protecting the integrity of the tax system while preserving Canada's attractiveness as a destination for new investment and business activity.

Brazil - The reform of transfer pricing regulations and the concept of “Options Realistically Available” (ORA) could potentially lead to forthcoming tax disputes.

The introduction of Law No. 14596/2023 in Brazil signifies a significant shift in the country’s transfer pricing rules, aligning them with the arm’s length standard. This reform is the culmination of a lengthy project initiated by the Brazilian Federal Revenue Office back in 2018, with support from the Organization for Economic Cooperation and Development (OECD) and the United Kingdom (UK). The ultimate goal was to bring Brazil’s transfer pricing regulations in line with the OECD Transfer Pricing Guidelines.

One of the most contentious elements of this new transfer pricing law is the assessment of “options realistically available” to the parties involved at the time of the transaction. Article 7, section 1 of the law stipulates that when determining the parameters of a controlled transaction, the consideration of the “options realistically available” to the parties is crucial. This assessment aims to determine if there were alternative options that could have resulted in more favourable terms for any of the parties involved. It also considers whether



such alternatives would have been chosen if the transaction had occurred between unrelated parties, including the possibility of the transaction not

happening at all.

On July 3, 2023, the Brazilian Federal Revenue Office issued a draft version of a Normative Ruling for public consultation to provide detailed guidance on implementing the new transfer pricing regime. However, concerning the “options realistically available,” Article 10 of the Normative Ruling merely reiterates the wording of the law itself, without providing specific parameters or criteria for replacing or disallowing transactions based on this concept. This lack of guidance could potentially lead to interpretation challenges and uncertainties in its application.

South Africa - released a draft tax legislation concerning advance pricing agreements.

The South African Revenue Service is inviting feedback from stakeholders regarding a draft tax legislation that introduces a new advance pricing agreement (APA) program.

The 2023 Draft Tax Administration Laws Amendment Bill is designed to incorporate the APA program into Part 1A of the Income Tax Act, 1962. The primary objectives of the APA program are to enhance tax predictability and to prevent or reduce instances of double taxation.

The Draft tax law outlines critical aspects of the APA program, including the procedure for submitting an APA application, the criteria for withdrawal or rejection of such applications, the process for reviewing and finalizing APAs, the requirements for submitting compliance reports, and the conditions for terminating an APA. Interested parties are encouraged to submit their comments on this draft tax law by August 31.

Uk – update on Finance (no.2) Act 2023

The Finance (no.2) Act 2023 was enacted by the United Kingdom on July 11th. This act encompasses provisions related to the implementation of OECD Pillar Two measures, which will become effective for accounting periods commencing on or after December 31st, 2023.

On July 19th, the Transfer Pricing Records Regulations 2023 were released, and the International Manual of HMRC has been updated with new guidance concerning transfer pricing documentation requirements in the United Kingdom.

Effective as of July 26th, 2023, entities within the UK are no longer obligated to submit an annual notification for country-by-country reporting (CbCR), specifying the ultimate parent entity responsible for filing the report.

Germany – Federal Ministry of Finance publishes draft BEPS 2.0 Pillar Two implementation bill

On March 20, 2023, the German Ministry of Finance (MoF) published a discussion draft concerning the implementation of the Global Minimum Tax. This draft addresses the implementation of the EU Directive related to the introduction of a Global Minimum Tax (2022/2523), which was endorsed by EU finance



ministers in December 2022. The discussion draft closely adheres to the stipulations of the EU Directive and the OECD Model Rules.

Germany's objective with the Minimum Tax Directive Implementation Law is to ensure the introduction of a top-up tax in accordance with internationally agreed-upon regulations starting in 2024.

The discussion draft encompasses several provisions, including a transitional safe harbor for Country-by-Country Reporting (CbCR) and two permanent safe harbors: the Non-Material Constituent Entity (NMCE) safe harbor and the "Qualified Domestic Minimum Top-up Tax" (QDMTT) safe harbor. These provisions aim to streamline compliance and reduce complexity for specific entities. The legislative process is anticipated to extend well into the latter half of 2023.

Netherlands – New decree on transfer pricing and the interpretation of the arm's-length principle

On July 1, 2022, the Dutch State Secretary of Finance (Finance Secretary) issued a new decree pertaining to transfer pricing and the interpretation of the arm's-length principle in the Netherlands, referred to as the "Decree." This Decree replaces the previous transfer pricing decree issued on May 11, 2018, and incorporates the latest revisions from the Organisation for Economic Co-operation and Development's (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines). Notably, these updates include guidance on financial transactions.

The Decree also includes further details on the transfer pricing considerations

with respect to governmental support, which have been particularly relevant as a result of the COVID-19 pandemic. The Decree provides the formal position of the Dutch Tax Administration, but it does not legally bind taxpayers. The Decree covers, among others, topics such as characterization



and recognition of intercompany transactions, comparability analysis (including relevance of options realistically available), aggregation of transactions, use of arm's-length ranges and multi-year data, impact of government policies, transfer pricing methods, valuations, secondary adjustments, intangible assets (including hard-to-value intangibles), business restructurings, intra-group services, cost contribution arrangements, group procurement functions, financial transactions (loans, guarantees, and cash pooling), group financing entities, captive insurance, transfer pricing documentation requirements, advance certainty, and early consultation with foreign authorities on prevention of possible double taxation.

Cyprus tax authorities issue transfer pricing guidance on the pricing of 'back-to-back' financing transactions

On July 7, 2023, the Cypriot Tax Department released a circular

(referred to as the "Circular") that came into effect on January 1, 2023. This Circular establishes that the Comparable Uncontrolled Price (CUP) method is considered the most suitable documentation method for "back-to-back" financing transactions. Additionally, the Circular specifies that an alternative transfer pricing method may only be employed under exceptional circumstances and with prior approval from the Cyprus Tax Commissioner, which would be granted through the issuance of a tax ruling.

Paraguay - New Transfer pricing documentation requirements

On July 20, 2023, the tax authority of Paraguay, known as SET (Superintendencias de Administración Tributaria), released General Resolution No. 134 dated July 18, 2023. This resolution introduces an exceptional mechanism for the submission of the technical transfer pricing study, referred to as "Estudio Técnico de Precios de Transferencia" or ETPT, along with the supporting working papers used in conducting the analysis.

Portugal - CbC reporting requirement

On August 23, 2023, the Portuguese government issued Decree-Law No. 73/2023, which was published in the Official Gazette. This decree sets forth the criteria and conditions for the public disclosure of country-by-country (CbC) reports by multinational enterprises (MNEs). Decree-Law No. 73/2023 officially became effective on August 24, 2023, and it applies to fiscal periods beginning on or after June 22, 2024.

South Korea – Local file & Master file deadline



On July 27, 2023, South Korea’s Ministry of Economy and Finance (MOEF) unveiled its tax reform proposal for the year 2023. This proposal includes significant changes to transfer pricing documentation requirements. Specifically, it shortens the deadline for submitting the Local file and Master file to just six months. Additionally, for large companies that submit a Local file, there is an added requirement to submit the Statement of International Transaction.

Australia - conducting performance audit on TP management

The Australian National Audit Office (ANAO) is currently conducting a performance audit to assess the effectiveness and efficiency of the Australian Taxation Office’s (ATO) management of transfer pricing (TP) related to loans between related parties. The ANAO intends to scrutinize the following aspects as part of this audit:

- ATO’s strategic framework to manage the use of transfer pricing for related party debt;
- Transfer pricing risks management relating to related party debt; and

- ATO’s effective management of transfer pricing for related party debt

Israel - releases Guidance on MAP and APA procedures

On August 17, 2023, the Israel Tax Authority (ITA) issued Tax Circular No. 1/2023, which offers guidance on the mutual agreement procedure (MAP) and bilateral advance pricing agreement (APA) requests. This new circular supersedes the previous



guidance from 2001 and offers detailed information for Israeli taxpayers who wish to seek relief from potential double taxation using treaty provisions. It provides a comprehensive outline of the different scenarios and situations that taxpayers should consider when pursuing such relief, along with an overview of the application process and the prerequisites necessary for these procedures.



Jimmy Cruz Camacho
Transfer Pricing Partner
Centre of Excellence Leader

jimmy.cruz@pkf.com.mx
Office +52 (33) 3122 2081
Mobile +52 (55) 4350 4131

PKF México SC
Av. Mexico 3040 - Floor 4th
Residencial Juan Manuel.
44680 Guadalajara, Jalisco.

<http://www.pkf.com.mx/>

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