

Transfer Pricing

Any organization with related party transactions, whether domestic or international, needs to consider whether such transactions are arm's length in nature. Such a need is becoming more common in Asia's various tax jurisdictions with tax authorities implementing transfer pricing regulations and increasing their resources in order to enforce the arm's length principle as part of their anti-avoidance provisions.

In view of the Base Erosion and Profit Shifting ("BEPS") Action Plan, depending on the sophistication of the tax office as well as the complexity of the transfer pricing regulations, tax authorities in the Asia Pacific region may:

- Require the whole gamut of transfer pricing documentation consistent with the BEPS requirement; or
- Require that regular transfer pricing reviews are performed and reported; or
- Rely on the self-assessment process for taxpayers to proactively manage and ensure their related party transactions are compliant with the arm's length standard.

The increased scrutiny on related party transactions suggests that transfer pricing will be a leading issue in the years to come.

Through Crowe Global's network of firms, we have extensive resources worldwide to assist clients with their transfer pricing needs, both from a local and a foreign jurisdiction perspective.

Our approach is primarily a collaborative one where we work with our clients' in-house finance and tax teams to ensure that an appropriate solution is developed to meet the needs of our clients. In this post BEPS era, we will also ensure that there is alignment between the tax and operational models of the company.

We aim to develop and offer tailored solutions to meet the needs of our clients. Our focus is on delivering the highest quality work product, strategic solutions and a best-in-class client service.

To meet the increasing sophistication of tax authorities with respect to transfer pricing regulations and penalties, we provide consulting services in a number of specific areas, as follows:

- Transfer Pricing Risk Review
- Transfer Pricing Documentation
- Transfer Pricing Planning and Policy Setting
- Transfer Pricing Audit Support and Dispute Resolution

Transfer Pricing Risk Review

With an increase in scrutiny by tax authorities in Asia on taxpayers' related party transactions, organizations need to be proactive in managing their transfer pricing risk.

In undertaking a transfer pricing risk review, we will:

- Understand the nature and scope of related party transactions entered into by the taxpayer
- Determine whether the group's business objectives are being supported by reasonable transfer pricing practices. In doing so, we will rely on professional experience in dealing with similar situations, in similar industries
- Evaluate the impact of changing transfer pricing regulations on the pricing of these transactions
- Identify areas of transfer risk which includes incongruent transfer pricing models
- Provide guidance on how such transfer pricing risk can be mitigated through either restructuring the related party transactions/providing advice on the commerciality of the related party transactions, and ensuring that adequate transfer pricing documentation support exists.

Transfer Pricing Documentation

In line with the BEPS Action Plan 13, transfer pricing documentation consists of:

- The Masterfile
- The Local file
- Country-by-country reporting ("CbCR")

Based on the individual circumstances of the taxpayer, as well as the adoption of BEPS Action Plan 13, taxpayers may be required to prepare one, if not all, of the above transfer pricing documents. It is almost a given that most taxpayers will be required to prepare the local file on an annual basis in the key Asia Pacific markets.

With experience in preparing transfer pricing documentation across various tax jurisdictions, we can help you with preparing:

- A coordinated transfer pricing documentation approach that ensures a consistent application of transfer pricing policies, where relevant and in consideration of local regulations
- A relevant functional and industry analysis in a thoughtful and strategic manner
- A benchmark analysis that ensures that the transfer pricing method selected and applied is technically robust.



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Transfer Pricing Planning and Policy Setting

An organization that is expanding its business or restructuring its operations to improve efficiency will have new related party transactions or may wish to amend existing related party transactions.

Getting the transfer price right from the start is worth more to the business than being in a position where it is required to justify it retrospectively. Furthermore, most tax authorities increasingly require taxpayers to demonstrate that the principle of arm's length has been given due consideration in the establishment of the transfer price.

We can assist you in helping you set your transfer prices by:

- Undertaking benchmarking studies, which will provide third-party references, to help demonstrate compliance with arm's length. We will use benchmarking databases that are acceptable to the local tax authorities in countries that are involved in the transaction
- Prepare transfer pricing policy documents that will convert the results of the benchmarking studies to explaining how transfer prices will be set and to outline exceptional circumstances where deviations from established transfer prices may be possible
- Prepare intercompany agreements to outline the terms and conditions of the related party transactions.

In addition, we are also capable of assisting you in negotiating and concluding unilateral/bilateral Advance Pricing Arrangements to obtain certainty on the pricing of these related party transactions.

Transfer Pricing Audit Support and Dispute Resolution

Transfer pricing audits are on the rise. Many tax authorities in the Asia Pacific region have issued transfer pricing audit guidelines that detail the typical information required in transfer pricing audits and the conduct of such transfer pricing audits.

In this regard, we can assist you in:

- Developing defensible positions and cogent arguments, founded not only in transfer pricing principles, but also in consideration of the commercial decisions that have been made historically, the industry practices and legal restrictions or regulations that are in place at the time. In addition, we will advise of the tax impact of the positions, weighing in on the pros and cons
- Identifying and gathering the relevant evidence that is crucial in supporting claims and statements made
- Representing you in discussions with the relevant tax authorities
- Assisting you in Mutual Agreement Procedures to resolve incidences of double taxation.