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Transfer Pricing Compliance Choices: In-House Staff, Outside Advisors, and Technology

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Due to increased global reporting requirements and enforcement, transfer pricing has never been more important to multinational enterprises (MNEs). In this environment, MNEs have a variety of options for staffing and managing their transfer pricing compliance efforts, including in-house staffing, outside advisors, and technology. Each option offers potential benefits, and MNEs should view them as complementary rather than competing. Joint delivery of global transfer pricing compliance by in-house and outside transfer pricing professionals, managed through technology, represents the best answer to the twin corporate goals of reduced costs and increased control over transfer pricing issues.

STAFFING DECISIONS OVER TIME

MNE transfer pricing compliance decisions evolved rapidly in 1996 after Congress enacted new

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penalties under §6662.¹ MNEs dedicated additional resources to transfer pricing - most initially choosing to outsource transfer pricing compliance for several reasons:

- Due to the newness of transfer pricing enforcement and documentation requirements, few experienced transfer pricing professionals were available,
- Outside advisors were able to spread the cost of developing standardized documentation across multiple clients, lowering the cost of outsourced transfer pricing documentation relative to in-house documentation,
- Control over and consistency of global transfer pricing documentation was often better in-house, but few governments enforced transfer pricing rules, and
- Little transfer pricing training and global transfer pricing rules updates were available.

Since then, the staffing decisions have gradually shifted. Nearly forty years later, some of the factors that initially encouraged outsourcing have reversed:

- Employees at MNEs, the IRS, and professional firms have gained transfer pricing experience, increasing the availability of experienced transfer pricing professionals,
- Although the cost of individual outsourced transfer pricing studies had decreased due to the standardization of reports and processes, the continuing rise in reporting requirements and increases in the number of countries enforcing transfer pricing has increased the overall cost of global transfer pricing compliance,
- Consistency of transfer pricing documentation has become more important due to the increase in

¹ All section references are to the Internal Revenue Code and the Treasury regulations thereunder, unless otherwise noted.

global transfer pricing enforcement and reporting requirements,

- Recent guidance by the IRS to scrutinize transfer pricing documentation to ensure compliance with §6662 and assert penalties if not in compliance, and
- Transfer pricing training and global transfer pricing reference materials have also become more available.

Overall, the ability of MNEs to develop in-house transfer pricing capability has increased and the cost of inhouse documentation has improved relative to outsourced documentation. Many MNEs have developed significant in-house transfer pricing capability to save costs and maintain control over global transfer pricing determinations.

EVOLVING ROLE FOR OUTSIDE ADVISORS

In-house tax personnel are bearing an increased share of the overall responsibility for transfer pricing compliance, but the need for outside transfer pricing advisers has not diminished. Instead, outside transfer pricing advisers occupy a strategic role in an integrated in-house/outside transfer pricing team that works to define and execute a global transfer pricing compliance and defense strategy. Once the transfer pricing goals and strategy of the MNE are developed, the transfer pricing compliance workload is then allocated among a team of in-house tax personnel and outside advisers based on expertise and availability.

Outside transfer pricing advisers continue to deliver value to MNEs in the following ways:

- Providing global strategic guidance based on technical background and practical experience,
- Advising on the transfer pricing impact of changed transactions,
- Representing or advising MNEs in transfer pricing disputes, including APAs,
- Delivering country- or industry-specific transfer pricing guidance,
- Providing outsourced documentation with respect to new or potentially controversial issues,
- Providing outsourced documentation when internal staffing is occupied with other issues,
- Providing co-sourced documentation opportunities when internal staffing determines certain functions to be more value-add (e.g. functional analysis development),
- Providing access to timely updates on global transfer pricing rules, and

- Providing training for in-house personnel in transfer pricing fundamentals and updates.

ROLE OF TECHNOLOGY

With more powerful technology tools now available to all professionals, technology should be central to managing, reviewing, and storing transfer pricing documentation reports. Technology can be used in many ways in the transfer pricing documentation process, including:

- Delivery of information requests to stakeholders containing necessary financial data,
- Centralizing data collected and automatically following up to stakeholders to collect data,
- Providing visualization options related to inter-company profitability to ensure consistency of transfer pricing policies to prove control is maintained,
- Providing optionality to co-develop the transfer pricing documentation reports in a collaborative electronic environment, and
- Storage of transfer pricing documentation reports and supporting data for in-house transfer pricing groups to easily access in case of tax authority audit.

Further, due to the centralization of this data, planning opportunities are easier to identify and pursue. Dashboards can be developed to provide functional, jurisdictional, and/or regional profitability. Further, levers can be built into the dashboard to allow in-house transfer pricing groups to create scenarios to effectuate the needs of the tax/treasury functions.

CONCLUSION

The Base Erosion and Profit Shifting (BEPS) initiative from the Organisation for Economic Cooperation and Development (OECD) is continuing to drive legislative changes worldwide and has added to MNE transfer pricing compliance and defense burdens. MNEs have begun to address the BEPS-imposed increases by having in-house personnel exercise greater authority over transfer pricing determinations and perform more transfer pricing compliance functions.

MNEs are expected to continue hiring in-house transfer pricing personnel to reduce costs and maintain control over global transfer pricing compliance, especially in light of recent IRS guidance on increased enforcement of transfer pricing penalties. With the increased in-house capability, MNEs will need to pay attention to coordination between in-house staffing and outside transfer pricing professionals. Technology enhances this collaboration by seam-

lessly integrating the workflows between the two. Technology also allows in-house transfer pricing staff to more easily review intercompany pricing and adjust

as needed. MNEs should examine their transfer pricing function to ensure they are leveraging technology, in-house staffing, and outside resources effectively.