

## HMRC TRANSFER PRICING GUIDANCE UPDATE

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HMRC has updated the transfer pricing (TP) section of its International Manual pertaining to “Operational guidance: real time working of transfer pricing issues (excluding thin capitalisation) [INTM480540]”. Specifically HMRC has added the following wording to the guidance INTM480540: “On no account should a low-risk opinion or any other indication as to the perceived level of risk in the TP arrangements be given outside the APA or TP governance frameworks”. As such the updated guidance removes the possibility of an informal risk assessment in relation to TP risk.

HMRC has made it clear that it will only engage in discussions and/or provide comment on TP issues under the Advanced Pricing Agreement (APA) process or when those issues are under enquiry. Therefore where a TP issue is not suitable for an APA, nor does it warrant an enquiry, the Customer Relationship Managers (CRMs) and case teams will not engage with customers in discussions on such issues.

Previously it was possible for a taxpayer to seek an informal TP risk assessment from a CRM by disclosing documents concerning the proposed TP treatment of an anticipated transaction or simply discussing proposed changes to a TP method. This was most commonly used by taxpayers on a prospective basis to gain some measure of confidence that their plans wouldn't come under challenge. This meant that taxpayers didn't have to go through an APA, which can be lengthy and expensive, to gain certainty. Taxpayers will now only be able to gain certainty on TP matters in one of two ways:

1. Through an APA; or
2. Through an enquiry/litigation.

From HMRC's perspective the revised procedure is likely to reduce the risk of HMRC agreeing transfer pricing assessments on a unilateral basis, which may cause a conflict with other tax administrations with respect to cross border transfer pricing arrangements and thereby increase the risk of double taxation. Furthermore, the revised procedure is likely to lead to a rise in bilateral and multilateral discussions between tax administrators.

The revised procedures potentially free up HMRC resources and may also be an unintended consequence of BEPS Action 14 (in relation to making dispute resolution mechanisms more effective) in that HMRC is likely to see an uptick in APA numbers and unresolved disputes.

Businesses that previously relied on informal risk assessments for their TP assurance will have to re-visit this strategy and make the difficult decision to either go for an APA (which may take years) or suffer through an enquiry in order to gain certainty. TP is necessarily fact specific and this makes the determination of an effective strategy quite difficult.

If you are faced with such a decision then you could potentially benefit from a complimentary discussion with our TP team who would be happy to walk you through the main TP considerations to help inform your decision. Please contact our Head of TP, Batanayi Katongera using the details below:

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This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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