

What's next for the OECD and BEPS?

APPEA taxation and
commercial conference

Setting the context



Old World

- Information flow slow and not complete
- Compliance driven
- Reliance on local documentation
- Legal form and legal ownership
- Protracted “issue based” litigation in single jurisdictions
- Wait for audit or review before documenting transactions
- Cash boxes



New World

- Increased transparency, fast
- Narrative needs to be supported by evidence
- Local file critical; but important to align with global documentation
- Economic contribution and focus on the drivers of value creation (people, DEMPE)
- Increased MAP / APA ? Part of the Strategy?
- Strategy on managing multiple disputes and revenue offices critical
- Transactions and deals need to be “papered” in real time – or the narrative is lost and too hard to prove

Evolution of the resources industry & relevance of BEPS

- MNEs more sophisticated in their approach to enhancing and delivering value including, among other things:
 - streamlining and centralising functions, assets and risks
 - increasing cooperation and synergies between functions
 - growing exploitation of marketing and technological intangible
 - developing new markets or redefining old one
 - engaging in new types of third party and inter-company transactions
 - exploring opportunities in restructuring parts of their business.
- From a transfer pricing perspective this means that:
 - Resources companies have to contend with increasingly complex supply chains, management and reporting lines, contractual terms and conditions etc
 - important people that are responsible for making key decisions move to or spend most of their time in places other than where contractually they reside (eg traders needing to be on the ground)
 - historic returns for certain activities may no longer be appropriate as profits and losses may shift and / or become spread across the value chain;
 - there is an increasing risk of challenge for older approaches to comparability and testing TP policies.
- New guidance from the OECD on intangibles, business restructuring, profit splits, documentation, etc.

In summary, key transfer pricing issues:

- a) What is the right profit attributable to hubs (eg treasury, financing and procurement)?
- b) What are the right terms, conditions and pricing for debt funding?
- c) Has group intangible property been appropriately identified and rewarded (eg technology and marketing IP)?

Tax Strategy – Treasury

What's happening next?

- Working party 6 issuing the financing paper in 2018?
- Do we really need to wait – we know substance is coming ... but the question is how far.
- We are going to have to change the way we document funding and financing – particularly if there is a local GAAR



Details

- Cash boxes – no
- Exotics - maybe?
- Currency/commodity risk – yes
- Credit spreads – yes
- Guarantees – maybe a must do?



Tax certainty?

Rely on APA / MAP? This is a long path, wouldn't it just be easier to document the treasury function?

After all if you have substance – why not use it?



Beware

- Security
- Implicit support
- Complexities of syndication for large licks



Strategy

The old arguments may still work – they need to be evidenced now



Tax Strategy

Tax Strategy and corporate reputation: ~~a tax issue~~, a business issue

Compliance and audit



- Different countries will interpret differently despite global guidance. Hence critical to have a global view for local documentation
- Use of tax technology

Tax certainty

Rely on APA / MAP



Tax advocacy

Participate in framing sound tax policies



Let's talk

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