PRICEWATERHOUSECOOPERS

FSTP Perspectives

a publication for financial services industry tax and transfer pricing professionals

February 2007

Dear Reader,

It gives me great pleasure to welcome you to this inaugural issue of *FSTP Perspectives*, our bimonthly publication focusing solely on transfer pricing issues for financial institutions.

The area of transfer pricing in the last five to ten years has certainly been anything but dull and static. Considerable evolution at many levels has taken place which has pushed transfer pricing to the fore.

Transfer pricing is increasingly moving out of the pure tax arena, becoming more of a "C-suite level" issue particularly for financial services group's working in a Sarbanes environment and the impact of tax and transfer pricing on shareholder value has become more pronounced through publications such as Citigroup's "Unlocking Tax Value" (2006) and Henderson Global Investors' "Responsible Tax" (2005).

Taxing authorities have also become more focused in the financial services industry. It would have been fair to say that the main taxing authorities in countries such as the UK, US and Japan among others have taken more of a keen interest in transfer pricing issues for the financial services industry. The rest of the world is also increasingly targeting the financial services industry. The very real cost of these adjustments and the increased sophistication of the taxing authorities means that a more proactive management of transfer pricing risk and planning needs to be taken. At the last count, the number of countries with formal transfer pricing rules or requiring transfer pricing documentation or an information return filed with the tax return numbered over 40 countries. For example, Korea which is highlighted in our country focus special, has taken a very aggressive approach to financial services companies which is mirrored by many other countries in Asia and the rest of the world.

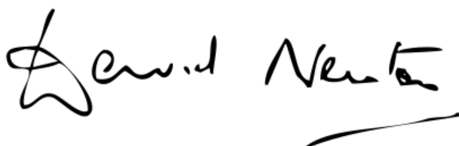
The work of the OECD over the last decade on the attribution of profits to permanent establishments of financial services groups (through the publication of four reports, with three focusing on banks, global trading and insurance) has further elevated the issues facing the financial services industry. The latest drafts of the guidance published in December 2006 have certainly continued the controversy over the practicality, consistency and the ease of implementation of the guidance for most financial services companies. The additional issues raised and lack of clear guidance over the issues such as dependent agent permanent establishments and branch capital have led to further cause for concern. Ally this to the forthcoming release of the re-proposed global trading regulations in the United States in the next few months, and there is not likely to be any let-up on the continued focus on financial services transfer pricing.

The purpose of this publication is to provide an insight into evolving and topical issues in the financial services transfer pricing sphere. Each bimonthly publication will also provide a particular country focus where we will offer an insight into the taxing authority approach to financial services transfer pricing, particular areas or hot topics that they are focusing on in transfer pricing audits and inquiries, and how we believe transfer pricing is likely to evolve in that particular country.

During the preparation of these publications, we will call for input from our dedicated and specialist financial services transfer pricing group located in about 40 countries (contacts for each region are shown on the back page) and which has over 100 personnel who are focused either solely or primarily on dealing with such issues. I believe that the resources we can bring to bear are unrivalled in the industry.

So, I hope you find our first publication relevant and useful to you and your colleagues. Please let us have your feedback as we are always looking to improve. We have decided to produce FSTP Perspectives in order to focus on the very specific and different transfer pricing issues for financial services.

Best Regards,



David Newton, PwC Global Financial Services Tax Leader

PricewaterhouseCoopers' *FSTP Perspectives* is a bi-monthly publication that offers an insight into trends and developments, tax authorities' approaches, and "hot" topic issues in financial services transfer pricing.*

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Attachment: Financial Services Tax Bulletin, January 2007

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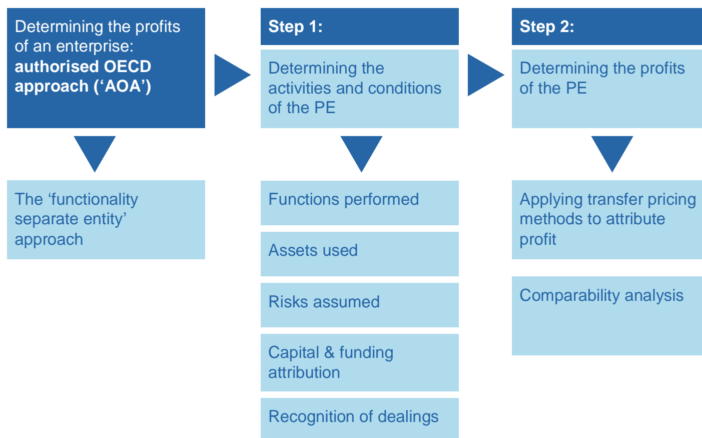
Trends and Developments: OECD - Report on the Attribution of Profits to Permanent Establishments

On the 21st December 2006, the Organisation for Economic Co-Operations and Development ("OECD") Committee on Fiscal Affairs published the new versions of Parts I, II and II of its Report on the Attribution of Profits to Permanent Establishments[1]. The primary aim of this project has been on achieving a greater consensus on the manner of attributing profits to permanent establishments ("PEs") under Article 7 (Business Profits) of the OECD Model Tax Convention and to avoid double taxation. These versions replace all previous drafts, which is said should no longer be considered to reflect the views of the OECD. The OECD will not be seeking any public comment on these versions. It was also announced that work on Part IV (Insurance), published in discussion draft in 2005 is ongoing and that the intention is to publish a new version of Part IV as soon as possible.

In this short article, we summarise the main changes and impact of Parts I-III for the financial services sector. A more in-depth discussion article can be obtained from *January 2007 Financial Services Tax Bulletin* which is attached to this issue.

Revised Version of Part I on General Considerations Update

Part I of the Report is intended to set out the principles which are of general application in attributing profits to a PE. Two key steps are detailed in the authorised OECD approach, resting on the fundamental basis that the PE is hypothesised as a distinct and separate enterprise:



Step one involves a full functional and factual analysis. The economic ownership of financial assets is attributed to the part of the enterprise which performs the significant people functions ("SPFs") or key entrepreneurial risk taking ("KERT") functions. The PE should be considered as assuming any related risks created by, or inherent in, those functions performed by the PE. KERT functions are, broadly, those which require active decisions making with regard to the assumption or management of risks, whether on an individual or portfolio basis. This will give the location performing those KERT functions ("the economic owner") the income and expenses associated with holding the financial instruments or lending them out or selling them to third parties.

Step two requires the profits of the PE to be determined by applying the OECD Transfer Pricing Guidelines ("Guidelines") to the PE as a distinct and separate enterprise progressing the assets and risks and engaging in the dealing identified in step one[2]. Comparability factors relevant under the Guidelines are to be applied directly or by analogy in light of the particular factual circumstances of the PE. It is also necessary to apply by analogy one the Guidelines' traditional or transactional profit methods to arrive at an arm's length compensation for the dealings between the PE and the rest of the enterprise, taking into account the functions performed by and the assets and risks attributed to the PE.

Financial sector companies should be aware that Part I is equally relevant to them as non-financial sector businesses. Of note are the following issues which will have relevance:

(a) **Tangible assets:** The approach to identifying which part of the enterprise should be considered the economic owner is determined solely by Part I. Under this revised approach the general rule is that the place of use of the tangible asset will determine its economic ownership, unless there are circumstances that warrant a different view. Economic ownership of tangible assets may now be located at a place different from the place of performance of significant people functions related to the acquisition and management of those assets.

(b) **Intangible assets:** The Report does not wish to be overly prescriptive on this matter but proposes to focus on the relevant SPFs in determining the situs of intangible property as between PE and home office. The breadth of types of intangible property and the potential subjectivity of any analysis will likely take tax payers and tax authorities into unchartered waters with this issue.

(c) **Documentation:** The OECD considers that a greater degree of scrutiny will be likely on dealings between a PE and home office and as such encourages taxpayers to prepare relevant documentation as a "useful starting point" for the purposes of attributing profit. It is stated that tax administrations will give effect to such documentation although there does seem to be some ambiguity about what documentation will encompass.

[1] Released on 21 December 2006, and available for download at http://www.oecd.org/dataoecd/55/14/37861293.pdf

[2] Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators (1995)

(d) SPFs/KERTs: In Part I, the term KERT has been replaced with SPF. This is explained on the basis that these people functions in financial sector relating to both the ownership of assets and the assumption/ management of risks are very likely to be the same (hence the "KERT" terminology is retained in parts II-IV). In any event, there is little practical difference in what is denoted by the "KERT" or "SPF" label.

Revised Version of Part II – Traditional Banking Activities

Other than the encouragement to tax payers to prepare documentation relating to branch dealing, Part II is the least affected by revisions with only relatively minor changes to the text as discussed below.

(a) Non-KERT functions: The revised text does recognise that there are other functions which are not necessarily low value functions and could involve a whole spectrum of reward level.

(b) Asset/Risk transfer: Various comments clarify that where assets and risks are transferred, the required capital to support the business in such a situation will also be reduced. This applies equally to direct asset transfers as well as other risk transfers, e.g. by derivatives.

(c) Head office and support costs: The new approach requires a profit element to be applied to all service provision and not merely allocating costs. It is an open item as to how taxing authorities will accept head office costs charged on an uplifted basis.

Revised Version of Part III – Global trading of Financial Instruments

Although there are no fundamental approach changes, a number of significant changes have been made as compared to the pre-existing draft.

(a) Scope of Part III: Clarification is provided that the term "global" trading may now refer to the dealing or brokering of financial instruments in customer transactions where some part of the business takes place in more than one jurisdiction, consistent with the definition in the US Proposed Global Dealing Regs $1.482-8(a) (2). To be considered global dealing, the operation need only perform one of the enumerated functions in more than one tax jurisdiction.

(b) Parameter Setting: New commentary of "parameter setting" arrangements reject the idea that such activities can qualify as KERTS on the basis that the setting of such overall limits is done on an infrequent basis. Further, the OECD state that senior management activity is confined merely to setting the parameters which define the potential for assumption of risk, and that a separate trading function which assumes and manages the risk. The discussion queries whether the parameter setting function should be rewarded at all, and refers to the 1995 Transfer Pricing Guidelines to determine whether a chargeable service has been provided.

(c) Dependent Agent PEs: On the topic of dependent agent PEs and the rule of Art 5(5), the Report emphasises heavily that it is neither concerned with nor addresses the point whether a PE exists in respect of a particular global trading activity through a dependent agent. The Report states it does not discuss the PE threshold under Art 5(5) but merely provides guidance on how to attribute profits where a PE is found to exist under the existing rules and interpretations of Art 5(5) and (6). KERT functions are to play no role whatsoever in the dependent agent analysis under Art 5.

(d) Non-recognition of dependent agent PE and the use of transfer pricing: The Report clarifies that recognition of a dependent agent PE lead to taxation of the dependent agent enterprise not only on the profits attributable to the people functions it performs on behalf of the non-resident enterprise (and on its own assets and risks assumed) but also on the reward for the free capital which is properly attributable to the PE of the non-resident enterprise. However, there is no automatic symmetrical relief mechanism in place.

(f) Hedge fund as a comparable: A new section on the applicability of the "hedge fund" model for the purposes of rewarding capital is included. In general the discussion seems more open to the use of the hedge fund comparables in appropriate circumstances, although it seems to indicate that the use of hedge fund models is more appropriate for proprietary trading activities than for market making activities. The comments in the OECD paper however do not address the dependent agent issues which were a previous limiting factor of the applicability of this model.

(g) The treatment of capital in profit splits: The Report expressively emphasises that in profit splits involving associated enterprises the reward for capital only goes to the enterprise(s) that have the capital. However, this has various associated practical issues which may well lead to multiple dependent agent PEs being created.

Work in Progress – Implementing the conclusions of the Report

The working group is adopting a two track strategy:

Track 1 – To supplement the existing Commentary to Article 7 dealing with the attribution of profits to permanent establishments with additional guidance reflected in Parts I, II and II but only to the extent that such additional guidance does not conflict with the existing Article 7.

Track 2 – Prepare a new version of Article 7 and a new Commentary in order to fully implement the new conclusions reflected in Parts I, II and III in a way that removes any uncertainty as to what is the correct interpretation of the provisions of the Article.

It is intended that a first draft of the proposed additions to the existing Commentary and of the new Article and its Commentary will be released for public comment in 2007.

Conclusions

- The OECD is clearly determined to draw the long running work on this project to a close as soon as possible.
- Having regard to **(1)** the various issues on which complete consensus of OECD member countries has not been achieved **(2)** the open issues relating to implementation and **(3)** how the package will be applied in practice, it is not self evident that the goal of the project to achieve a greater consensus with a view to reducing the incidence of double taxation will be achieved.
- The key issues now relate to the two track implementation approach – including for example how the various issues are allocated and dealt with under either Track.
- It remains to be seen to what extent the full package of all measures which follow logically from the hypothesising of the PE as a separate and distinct enterprise (and which are to be encapsulated in the revised Article 7 and Commentary - i.e. the track two approach) will be adopted in tax treaties by states, whether OECD members or not.
- Guidance to such issues as allocation of intangible assets, allocation of capital, dependent agent PEs as set forth in the Report can potentially result in multiple outcomes under the OECD proposed approach, which may lead to increased controversy and double taxation.
- OECD emphasised the importance of documentation to address uncertainties and as a means of managing controversy on a global basis.

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Recent U.S. Transfer Pricing Regulations[3]

Controlled Services Transactions and Related Intangibles

In August 2006, the U.S. Treasury Department and the Internal Revenue Service issued temporary and proposed regulations (“Temporary Regulations”) providing guidance on the treatment of controlled services transactions under Section 482 and the allocation of income with respect to intangibles contributed by a controlled party. The Temporary Regulations take effect for tax years beginning after December 31, 2006, although certain aspects in connection with the new cost safe harbour method have been delayed by one year under a recent IRS pronouncement.

The Temporary Regulations replace existing regulations covering the provision of intercompany services which were issued in 1968. In 2003, the IRS issued proposed transfer pricing services regulations with the intent of bringing such regulations in line with the final transfer pricing regulations governing the transfer of tangible goods and intangible property issued in 1994. The Temporary Regulations address many of the questions raised by transfer pricing practitioners relating to the 2003 proposed transfer pricing services regulations and most taxpayers will likely view these rules as a substantial improvement to those Proposed Regulations.

Several key issues are addressed by the Temporary Regulations, including:

- Introduction of specified methods for analyzing the provision of intercompany services;
- Replacement of the cost safe harbor integral/non-integral test with the Services Cost Method ('SCM");
- Recognition of a Shared Services Arrangement ("SSA") similar to the OECD Guidelines' Cost Contribution Arrangement;
- Treatment of high-value services and embedded intangibles;
- Treatment of stock-based compensation; and
- Global dealing and financial guarantees.

Specified Methods and the SCM

The SCM, a new version of the “cost safe harbor”, evaluates whether the price for covered services is arm’s length by reference to the total costs incurred in providing these services (without a mark-up). Specific services can qualify for treatment

[3] This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding U.S. federal, state or local tax penalties.

under the SCM by one of two ways. First, The IRS initially issued a list of routine services that qualify for treatment under the SCM in IRS Announcement 2006-50 (the "Good List"), and includes (among others): payroll, accounts receivable and payable, general and administrative, public relations, accounting and auditing, tax, staffing, recruiting, legal services, and others. Additionally, Rev. Proc. 2007-13, issued in December 2006, expanded this list of specified low margin covered services. The IRS also reiterated that the Good List is an evolving list and that changes or updates will be made as appropriate.

Second, for low margin services not specifically identified on the Good List, taxpayers are provided an alternative avenue to demonstrate that other services qualify for the SCM. This can be established via an economic analysis that demonstrates that comparable services are performed by unrelated parties at prices yielding a median markup on total costs that is less than or equal to seven percent. Also, certain services are explicitly excluded for SCM treatment, such as manufacturing, research and development, sales and distribution, and financial transactions, including guarantees.

One final condition in applying the SCM: the service must qualify as a "covered service" and therefore may not be a service that contributes significantly to the fundamental risk of business success or failure. This referred to as the "core value" or "business judgment" test and the IRS has clarified in Notice 2007-5 that this test shall apply to one or more trades or businesses of the controlled group, based on all facts and circumstances, rather than a single entity of the taxpayer.

In its issuance of Notice 2007-5 in December 2006, the IRS has also delayed the effective date of the SCM by one year, and will now take effect for tax years beginning after December 31, 2007. However, the business judgment test shall also apply in 2007 to the "integral services" safe harbor test of the 1968 regulations.

Treatment of High-Value Services and Embedded Intangibles

Certain changes and clarifications in the Temporary Regulations appear to address specific taxpayer and practitioner concerns with respect to several of the more controversial aspects of the 2003 Proposed Regulations surrounding intangible property. The Temporary Regulations have amended certain clauses and examples included in the 2003 Proposed Regulations relating to the treatment of "high value" services, the use of the profit split method, and the relationship between economic substance and legal ownership of intangibles, all with a view toward addressing commentators concerns about the ambiguity raised by such clauses and examples. The Temporary Regulations express a strong intention on the part of the IRS to respect taxpayer agreements and the characterisation given transactions by taxpayers, provided such agreements are followed in practice and are consistent with the substance of the underlying transaction.

Treatment of Stock-Based Compensation

In the Temporary Regulations, the IRS clarified their intent that the calculation of total costs of services should include stock-based compensation. Unlike the cost sharing regulations, the Temporary Regulations appear to indicate a preference on the part of the IRS to use a grant-date valuation methodology. In terms of comparables analysis, the Temporary Regulations indicate that it is appropriate to adjust the financial data of comparables to account for stock-based compensation when there is a material difference in accounting for such compensation between the taxpayer and the comparables. Such adjustments could affect the total services costs of the tested party, the comparables, or both.

Global Dealing and Financial Guarantees

Transactions involving the global dealing of financial instruments are explicitly excluded for treatment under the Temporary Regulations. For such transactions, the IRS notes that taxpayers may look for guidance to 1998-issued Proposed Treas. Reg. §1.482-8.

The preamble to the Temporary Regulations states that the Treasury Department and the IRS believe that the provision of financial guarantees requires compensation at arm's length and therefore the Temporary Regulations exclude guarantees from eligibility under the SCM. One can infer from this statement that it is the IRS's view that an arm's length profit element should be earned on guarantee transactions.

Summary

In short, the Temporary Services Regulations bring the treatment of services transactions in line with those of tangible goods and intangible property. Despite increased guidance on the treatment of high value services and embedded intangibles, it remains unclear on how transactions involving such factors will be addressed by the IRS in practice. For financial services taxpayers, it is critical to identify and segregate those transactions that are subject to treatment under the Temporary Services Regulations and those which can be defined as connected to global dealing operations.

This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding U.S. federal, state or local tax penalties

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US Global Dealing Regulations

The U.S. Treasury and IRS are planning to issue, in re-proposed form, global dealing regulations within the first quarter of 2007. These regulations are not expected to address the question of determining a threshold for permanent establishment (PE), but will deal with the attribution of profits to PEs together with transfer pricing between associated enterprises. Furthermore, the new rules will address the issues of sourcing and pricing of guarantees.

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Country Focus: Korea

A regular feature of this publication will be a country focus where we will seek to provide an insight into emerging issues, taxing authority approaches and "hot topic" issues for a country where transfer pricing is becoming increasingly more relevant and important as part of your overall strategy on managing transfer pricing from a risk and planning perspective.

This publication's country focus is Korea and is presented by Shin-Jong Kang.

Shin-Jong Kang heads up the financial services transfer pricing team in Korea which consists of nine dedicated professionals and is an integral part of PwC Korea's transfer pricing practice. The group is comprised of a multidisciplinary team of professionals with backgrounds in accounting, tax, finance, economics, financial services and law. Many of the senior professionals have previously served with the National Tax Service ("NTS") and other governmental bodies or as external advisors to the Korean Ministry of Finance and Economy ("MOFE") and the NTS on tax policy and regulatory matters, including the development of the current Korean transfer pricing regulations.

Transfer Pricing Legislation in Korea

The Korean transfer pricing regulations are contained in the Law for the Coordination of International Tax Affairs ("LCITA"), which has been in effect since January 1, 1996. Since the introduction of the law, transfer pricing has become the single most significant tax issue affecting multinational companies doing business in Korea, including financial institutions. Over this time, the law has gradually evolved from being a source of general transfer pricing principles into a comprehensive set of regulations that include many advanced provisions and concepts. The LCITA is closely modelled on the OECD Transfer Pricing Guidelines. A Presidential Enforcement Decree was enacted on December 30 1995, which provides further guidance on the interpretation of the law. In addition, a Ministerial Enforcement Regulation was announced on March 30, 1996, which provides details on administrative matters related to the law.

There are basically two categories of transfer pricing documentation:

(i) tax return documentation; and

(ii) tax audit documentation.

Tax return documentation refers to documentation that taxpayers must file as part of their corporate tax return each year which include:

(i) Declaration of Transfer Pricing Method;

(ii) Summary of cross-border transactions; and

(iii) Summary of Foreign Affiliate Income Statements.

Failure to submit transfer pricing documentation requested by the NTS can result in penalties of up to KRW 30 million per instance. A transfer pricing adjustment can result in the following consequences:

- Corporate tax on the amount of the adjustment;
- Penalty taxes on under-reporting of taxable income: 10% of additional tax;
- Penalty taxes on under-payment of taxes: the interest rate at 0.03% per day; and
- Secondary tax treatment of transfer pricing adjustment if not repatriated back to Korea.

Overview of the Transfer Pricing Environment

Although Korea does not have specific rules relating to transfer pricing for the financial services industry, it has become a key area of focus for the NTS as evidenced by recent tax audit activity. A number of factors can be identified as driving this surge in the NTS' interest in transfer pricing in the financial services industry:

- Reduction in barriers to entry – as financial markets have become more liberalised and barriers to foreign investments have been reduced, there has been a significant increase in foreign investments in Korea;
- Increased activity – a sharp increase in the quantum and magnitude of cross-border transactions of global investment banks that have played a significant role in the Korean financial services markets since the economic crisis of late 1997;
- Profit taking - the perception and reality of significant profits realised by foreign financial institutions on

investments made during the economic crisis which soared in value with the recovery of the Korean economy; and

- Domestic pressure – there has been pressure from the government and the general public to assess the proper amount of taxes on foreign financial institutions that have profited from investments into Korea.

As a result, tax audits conducted by the NTS on financial services institutions have become increasingly more in-depth and frequent with respect to transfer pricing.

Recent Areas of Focus on Financial Services Transfer Pricing

Over the last several years, the NTS has taken a focused approach on a number of specific areas of financial services transfer pricing, and accumulated significant experience while adopting relatively sophisticated approaches. The key areas where the NTS have focused their attention are:

Investment Banking Deals - Many of the larger advisory and underwriting deals originating in Korea involve various forms of participation from foreign affiliates, which result in the sharing of revenues/fees. The key issue is whether the proper amount of revenue was reported in Korea. In the past, many foreign investment banks ("IB") compensated the Korean IB entity on a cost plus mark-up basis. The NTS, however, has challenged the appropriateness of this type of arrangement when considering the importance of the origination or deal sourcing functions performed in Korea. An alternative to the cost-plus approach is the application of a profit split or revenue split methodology utilising an allocation ratio based on compensation or an other contribution factor. This approach has been applied by the NTS to individual transactions and generally results in significantly greater revenue allocated to Korea.

Sharing of Brokerage Commissions - Due to local regulations, 100% of brokerage commissions generated in Korea must be booked domestically. Foreign affiliates often perform sales and research activities that contribute to the generation of local brokerage commissions. A few years ago, the NTS conducted desk audits on securities brokerages, including domestic companies which shared brokerage commissions with overseas third parties to review how brokerage commissions are shared. In most situations, a profit split or revenue split method has been utilised to determine a proper transfer pricing arrangement between the domestic entity and the foreign affiliate.

Interest Paid on Bonds issued to related parties – With the introduction of the Asset-backed Securitisation Law, many Special Purpose Corporations ("SPCs") were established/ funded by issuing bonds to foreign affiliates. The SPCs paid foreign affiliate bondholders interest on the bonds and in some cases, additional interest linked to profit (profit-kicker interest). The NTS has focused on whether the interest rate applied to the bonds is made at arm's length principle by conducting the comparable search for the interest rate applied by the comparable companies. In most of cases, the Comparable Uncontrolled Price "CUP" method with the inter-quartile range has been commonly used to challenge the interest rate applied by the SPC.

Head Office Expense and Management Service Fees – While head office expenses and management services fees are permitted, these charges are only deductible if the taxpayer can provide evidential documentation that the services were actually performed/received, provide benefits and the charges were consistent with arm's length.

Offshore Booking - Another interesting development is the interaction between the tax authorities and regulators. The Financial Supervisory Service ("FSS") has recently begun to scrutinise offshore booking arrangements involving related parties of securities companies operating in Korea. Based on the results of FSS audits, there were some cases where Korean taxpayers were instructed to implement arm's length transfer pricing policies. The FSS may also report findings to the NTS for further investigation. Transfer pricing has transformed from being a tax issue to a regulatory issue.

NTS Approach to Transfer Pricing

The NTS has taken a very in-depth and detailed approach to its transfer pricing audits with financial services companies. In addition to tax returns, the NTS may collect information from various other sources, including the news media, internal and external databases (including Bloomberg) and, in some cases, the NTS will obtain information filed with the FSS or Bank of Korea.

In the course of performing an audit, it is common for the NTS to conduct extensive interviews with the front office and key business personnel as well as back office personnel. The in-depth analysis continues with respect to desk-based analysis that the NTS will conduct.

A significant amount of information may be requested by the NTS, and it will often closely review documents such as invoices, service agreements and any supporting documents to determine the nature of the activities being performed between the related parties. In general, the NTS will focus on identifying the high value functions that are being performed in Korea.

With respect to the application of transfer pricing methods to financial services transactions, the NTS will generally favour a profit or revenue split method, except in a few instances, where CUP data may be available and can be utilised. In practice, the revenue or profit split method are most likely to successfully lead to a resolution during a tax audit by the NTS.

Closing Thoughts

With the growing focus and adoption of many of the prevailing principles of the recent OECD draft papers on the attribution of profits to permanent establishments by many taxing authorities (including Korea), allied with the increasing prominence of financial services transfer pricing issues, it is anticipated that Korea will issue financial services transfer pricing guidelines in the near future. In the interim, as a means of securing some certainty about transfer pricing policies and to minimise the risk of potential resource-intensive drawn-out audits, many foreign-based financial institutions are entering or looking to enter into Advanced Pricing Arrangements (APAs). These APAs are primarily unilateral APAs because many of the financial services transactions involve more than one related parties located in various countries and it is difficult to reach an agreement with many foreign tax authorities at the same time. We expect this trend to continue and with the NTS obtaining significant information of the workings of financial institutions and the knowledge transfer to the NTS to increase, leading to more sophisticated approaches by them. Accordingly, for successful transfer pricing within the Korean environment, financial institutions should be focusing on developing a sound local policy consistent with the global framework and supported with robust documentation.

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Future Events: Breakfast Briefings

India, Mumbai, February 21, 2007 – Financial Services Transfer Pricing Breakfast (OECD Developments, Global FSTP trends, Indian tax authorities' perspectives on FSTP).

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Singapore, February 28, 2007 - Financial Services Transfer Pricing Breakfast (OECD Report on attribution of profits to PEs, US Treasury Temporary Services Regulations)

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Future Events: Transfer Pricing Masters Series for Financial Services Professionals

Transfer Pricing Masters Series
for Financial Services Professionals

Our 2007 global Masters Series events for financial services professionals will be held in:

- London (April 19),
- Toronto (May 31),
- Sydney (July 24), and
- Hong Kong (July 26).

The Masters Series is an event dedicated to cutting edge, pragmatic and interactive sessions on the current transfer pricing approach taken by the major OECD member country taxing authorities, led by our financial services transfer pricing specialists and guest speakers.

Breakout sessions will be geared towards specific financial services sectors or dynamic transfer pricing developments relevant to financial services generally. In addition to these discussions, the Masters Series also provides an open forum for tax professionals to share their own experiences about various transfer pricing topics.

Invitations and details on how to participate in the 2007 global Masters Series will be sent out soon. In the meantime, for more information please contact: **Tracy Malyan *(tracy.malyan@uk.pwc.com)***

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