The **BEPS** Monitoring Group

Submission on

Revision of Chapter IV of the Transfer Pricing Guidelines on Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes

These comments have been prepared by the BEPS Monitoring Group (BMG) in response to the call for comments by Working Party 6 of the Committee of Fiscal Affairs of the OECD. The BMG is a network of experts on various aspects of international tax, set up by a number of civil society organisations which research and campaign for tax justice including the Global Alliance for Tax Justice, Red de Justicia Fiscal de America Latina y el Caribe, Tax Justice Network, Christian Aid, Action Aid, Oxfam, and Tax Research UK. These comments have not been approved in advance by these organisations, which do not necessarily accept every detail or specific point made here, but they support the work of the BMG and endorse its general perspectives. They have been drafted by Sol Picciotto, with contributions and comments from Suranjali Tandon, Jeffery Kadet and Alexander Ezenagu.

We appreciate the opportunity to provide these comments, and are happy for them to be published.

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SUMMARY

In our view, the main efforts of Working Party 6 should be directed at trying to avoid transfer pricing disputes, in particular by introducing simplified transfer pricing methods. This aspect has been sorely neglected, indeed completely ignored during the BEPS project. Instead, disputes are likely to increase substantially, mainly because the BEPS project outputs under Actions 8-10 on transfer pricing have made the OECD Transfer Pricing Guidelines (TPGs) far more complex and obscure.[1] Recognising this, considerable work has been done on improving the mutual agreement procedure (MAP) for resolving disputes, including the introduction of arbitration. However, this will prove a Sisyphean task in the absence of

[1] Probably the most authoritative account of the BEPS project outcomes on transfer pricing is that by J. Andrus and R. Collier, *Transfer Pricing and the Arm's Length Principle After BEPS,* Oxford University Press, 2017. They trace in detail how the TPGs have been made more complex and unclear on the key points: (i) the notion of control of risk ('very complex', para. 6.35; 'most confusing' para. 7.32; imposing 'only limited burdens on MNEs desiring to transfer risk to tax advantaged locations' para. 7.13, and leaving 'clear potential for heated disagreement' para. 7.16); (ii) the returns which can be attributed to a cash-box entity ('quite mysterious' para. 6.46, 'most confusing' para. 7.32, will 'give rise to substantial amounts of controversy' para. 7.31, and leaving 'a rather confused muddle, at least for now' para. 7.42); and (iii) how to allocate the difference between projected and actual returns from an intangible ('far from clear', para. 7.56, 'manifestly inadequate' para. 7.58). They conclude that the result has been to make the transfer pricing process 'far more complex' (para. 7.70), mostly due to the 'level of factual detail' now required for the functional analysis (para. 7.71).

initiatives to prevent disputes from arising in the first place, especially in relation to transfer pricing.

The introduction of simplified transfer pricing methods could both improve the effectiveness of transfer pricing administration and, if well designed, reduce disputes. This is important for all tax administrations, which are increasingly under resource constraints, but especially for those of developing countries.

On the other hand, we consider it inappropriate to continue to rely on the Mutual Agreement Procedure (MAP), especially as currently operated, and with the addition of arbitration, as a means of resolving transfer pricing conflicts. These conflicts have been increasing for the past 20 years, mainly due to the adoption by the OECD in the 1995 Transfer Pricing Guidelines of an extreme version of the arm's length principle. This requires each affiliate of a multinational enterprise (MNE) to be audited individually based on its 'facts and circumstances' and applying a functional analysis, followed by a search for comparable transactions between independent entities. This approach not only requires significant time and resources of specialist staff, it is also ad hoc and inherently subjective, which is the underlying cause of the increasing conflicts.

In our view it is inappropriate to seek to solve this problem by relying on the MAP, which requires further resources, while also relying on individualised solutions, essentially by bargaining between the parties involved, exacerbated by the extreme secrecy of the procedure. Weaker countries are inevitably disadvantaged by the MAP, and have in our view rightly resisted pressures to make it compulsory and binding through the introduction of what is misleadingly described as arbitration. The procedures which have been developed do not provide independent adjudication with publication of a reasoned decision which could provide guidance for similar cases. Instead, the procedure is totally secret: even the existence of a complaint is considered confidential. Furthermore, the preferred procedure is 'baseball' arbitration, which leaves to the arbitrators only a choice between the 'last best offers' of the parties, reducing the process to one of haggling over amounts.

SPECIFIC COMMENTS

1. Simplified Transfer Pricing Arrangements

The 1995 Transfer Pricing Guidelines (TPGs) adopted an extreme version of the arm's length principle (ALP), which entailed treating all transfers between related entities as transactions to be priced as if they were between independent entities. This included the most highly centralised and core functions of a MNE: research and development (R&D), the allocation of capital, and risk management. Under this interpretation of the ALP even these activities should be treated not as involving joint costs to be shared, but transfers to be priced. This entails an individual audit of the 'facts and circumstances' of each taxpayer based on a functional analysis. This creates an enormous administrative burden, both for taxpayers in providing detailed documentation, and even more for tax administrations, which must try to understand the taxpayer's business model, as well as deciding the most appropriate transfer pricing method.

Section E of chapter IV of the TPGs acknowledged the administrative difficulties and uncertainty created by this approach, and discussed whether it could be 'ameliorated', by adopting 'a simple set of rules under which transfer prices would be automatically accepted by the national tax administration', described as 'safe harbours'. However, the conclusion was that they raise 'fundamental problems', and were 'generally not compatible with the enforcement of transfer prices consistent with the arm's length standard' (para. 4.121 of the

1995 Guidelines). In the next 10-15 years, as an increasing number of countries adopted transfer pricing rules based on the 1995 TPGs, the administrative burdens they created were increasingly sharply felt, and a number of countries introduced safe harbours, as shown in a survey conducted by the OECD in 2011-12. Consequently, revisions were agreed in 2013 to chapter IV-E, expressing a somewhat more positive view of such measures.

Nevertheless, since the ALP is interpreted as being based on analysing the facts and circumstances of each taxpayer, the TPGs continue to adopt a very limited view of safe harbours. They are considered as mainly benefiting the taxpayer, and hence must be voluntary. Most such measures are procedural, e.g. providing exemptions from documentation requirements for smaller taxpayers. Furthermore, to avoid potential double taxation, chapter IV urges that safe harbours should be agreed bilaterally with relevant treaty partners. To facilitate this, an Annex was added to chapter 4 providing sample Memorandums of Understanding (MoUs) for negotiating 'bilateral safe harbours' for common categories of transfer pricing cases involving low risk distribution, manufacturing and research and development functions. These also are drafted in such a way that acceptance of the safe harbours they provide is elective for the taxpayer, the alternative being application of the normal transfer pricing rules of both countries concerned.

The experience of countries adopting substantive safe harbours which are purely voluntary for the taxpayer has not been encouraging. Notably, the safe harbour scheme adopted in India in 2013, for software development, contract R&D for generic pharmaceutical drugs, and manufacture and export of auto components,[2] had very low take-up. Evidently, taxpayers considered the specified profit margins too high, and preferred to submit their own calculations and, if necessary, appeal assessments to the tribunals. A revised version introduced in April 2017, with lower margins and an aggregate transaction limit, seems likely also to have low take-up.

A more successful approach seems to have been Mexico's combination of safe harbours and a sectoral Advance Pricing Arrangement (APA) for its maquila sector. This rests on offering an exemption from Mexico's broad definition of a permanent establishment (PE), which could be applied to treat a maquila entity as the PE of its foreign parent.[3] Since the vast majority of these entities have a US parent, Mexico negotiated a bilateral APA with the USA in 1999, providing for taxation of such entities at the higher of either (i) 6.9% of the assets used in the activity or (ii) 6.5% of operating expenses (excluding financing costs).[4] For taxpayers this also had the advantage of clarifying eligibility of Mexican taxes paid for a foreign tax credit. Taxpayers also had the alternative of applying for an advance ruling under Mexican law.[5]

In 2003, following the decline of the maquilas due to the US recession and a strong peso, Mexico dropped the requirement to seek an APA if the safe harbour was not accepted, and instead specified two alternatives, variations of the Cost Plus and TNMM methods, as well as an additional relief which would reduce the profits tax by half.[6] Following the sector's subsequent rapid growth, restrictions were reintroduced in 2014, including limitation of the

[2] Income-tax (16th Amendment), Rules. Central Board of Direct Taxes.

[3] Morrison PD. (1993) The U.S.-Mexico Tax Treaty: Its Relation to NAFTA and Its Status. *United States-Mexico Law Journal* 1: 311-319; Schatan R. (2002) Régimen tributario de la industria maquiladora, *Comercio Exterior.* Bancomext 52: 916-926.

[4] This is mentioned in Annex I to chapter IV, added in 2013, as a precedent for the model Bilateral Safe Harbour MoUs that it provides.

[5] McLees J, Bennett MC and Gonzalez-Bendiksen J. (1999) Mexico and the United States Reach an Agreement on Maquiladora Taxation. *Tax Notes* 8 November, which provides the text of the agreement.

[6] OECD. (2003) *Peer Review of the Mexican Transfer Pricing Legislation and Practices*.

PE exemption to income deriving wholly from export of products resulting from imported inputs, and ending the additional relief.[7] The tax authority also began closer scrutiny of claims to maquiladora status.[8] The transfer pricing rules were revised to introduce methods based on all five of those in the TPGs, and the only alternative to the safe harbours became applying for an APA, based on these methods. The resulting rapid rise in APA applications produced a backlog reaching 700 by 2016. The Mexican tax administration therefore negotiated with the US IRS a 'framework agreement' establishing an agreed APA methodology. This aims to provide 'fast track' approval for APAs, as an alternative to the safe harbours agreed in 1999, which remain in place.[9] The APAs will be issued and monitored by Mexico, but the US announced that the outcomes will be accepted by the IRS.[10] It seems that the Mexican administration will offer the arrangement to taxpayers it considers eligible, perhaps excluding large firms.

Another example which has been partly publicised is the approach adopted by the Dominican Republic to its all-inclusive or package hotel sector. This was based on revisions made in 2006 to the arm's length provisions in the tax code, empowering the tax administration to assess affiliates and PEs of foreign TNCs on the basis of the proportion of their gross revenues to those of the TNC as a whole, or in relation to their assets, and to adjust transfer prices with related entities by applying the independent entity principle. The 2006 changes also made specific provision for the tax administration to negotiate an Advance Pricing Agreement (APA) for the all-inclusive (package) hotel sector, to be represented by the National Association of Hotels and Restaurants. The sector was selected because of its use of related marketing companies located in low-tax jurisdictions, although local financial statements and tax returns showed continued losses; the guest per night rate declared was often lower than operating costs, while the rates advertised on marketing sites were over 100% higher than these declared rates. The tax administration requested taxpayers in that sector to submit sworn affidavits, which were then subjected to verification. Where the submitted data seemed unreliable, assessments were issued, based on a methodology developed by the administration. Through this process, 73 audits, of 33 taxpayers, were carried out in 2009-11, for fiscal years 2005-10, representing half of all the registered all-inclusive hotels, mainly in zones A and B, and accounting for 83% of the revenues in the sector.[11] Taxpayer objections to these assessments were rejected on administrative review, and they were again upheld on appeal to the Superior Administrative Tribunal.[12] The administration's victory in this case enabled it to put pressure on all taxpayers in the sector to fall into line with the APA. However, it is not clear whether an APA was formally signed with the Association; if so it does not seem to have been published. The Dominican

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[7] Leon-Santacruz R and Lujan F. (2014) Implications for maquiladoras of the 2014 Mexican tax reform. *International Tax Review*, April.

[8] UN Manual 2017: 615

[9] Servicio de Administracion Tributaria, Mexico (2016). México y EU acuerdan nuevo mecanismo para evitar doble tributación en industria maquiladora. http://www.sat.gob.mx/sala_prensa/comunicados_nacionales/Paginas/com2016_094.aspx .

[10] US-IRS. (2016) IRS Announces Position on Unilateral APA Applications Involving Maquiladoras. https://www.irs.gov/newsroom/irs-announces-position-on-unilateral-apa-applications-involving-maquiladoras

[11] CIAT. (2013) El Control de la Manipulación de los Precios de Transferencia en América Latina y el Caribe/ The Control of Transfer Pricing Manipulation in Latin America and the Caribbean, p. 62. Dominican Republic. (2012) Transfer Pricing Law and Practice in the Dominican Republic. Direccion General de Impuestos Internos; http://www.dgii.gov.do/publicaciones/estudios/Documents/LegislacionPracticaPreciosTransferencia.pdf

[12] Inversiones Coconut, S. R. L. (Hotel Bahia Principe Punta Cana) v Dirección General de Impuestos Internos. Sentencia nº 175-2012 de Tribunal Superior Administrativo de 5 de Octubre de 2012. Tribunal Superior Administrativo, Republica Dominicana.

legislation also authorises a similar approach to other sectors with significant foreign ownership, such as insurance, energy and pharmaceuticals.

A system which has also been effective is Brazil's fixed margin method, which has operated since 1996. The Brazilian approach clearly has the advantages of simplicity, ease of application, and providing predictability and certainty for the taxpayer. On the other hand, it is a very broad-brush approach, which takes little account of differences between industry sectors or business models,[13] and ignores the actual profitability of the company concerned. However, some leeway is allowed for the taxpayer, since it can choose which method to apply and how to do so,[14] although this choice must be supported by documentation. In addition, the law provides for the Minister to authorise application of a different profit rate, in justified circumstances. These rules must also be understood in the wider context of Brazil's international tax rules, including strict limitations on deductions of royalties and fees, and strong rules on controlled foreign corporations.[15] The system seems to have been highly effective in largely eliminating transfer pricing disputes, while not deterring inward investment.

A good case can be made that the Brazilian methods are compatible with tax treaties, although not with the TPGs. In February 2018 Brazil agreed a 15-month work programme with the OECD to 'assess the potential for Brazil to move closer to the OECD's transfer pricing rules, which are a critical benchmark for OECD member countries'.[16] We would strongly urge that this should be a mutual learning process. Some suggestions for modifications to the Brazilian rules which could make them sufficiently compatible with the approach in the TPGs have been made, and these should be taken seriously.[17] This is especially important since the TPGs now have a practical effect in many countries around the world, far beyond the OECD.

These examples suggest that simplified methods can be appropriate and effective, especially for sectors with many entities operating a similar business model. However, success depends on creating significant inducements or pressures for taxpayers to accept the prescribed methodology: for example, exemption from a strong PE provision and negotiation of a bilateral sectoral APA (Mexico), or the threat of application of a profit apportionment methodology (Dominican Republic).

Chapter IV currently does refer to the possibility of 'other administrative simplification measures that use presumptions to realise some of the benefits discussed in this Section', although it states these may not be fully compatible with its description of safe harbours. It mentions in particular that 'a rebuttable presumption might be established under which a mandatory pricing target would be established by a tax authority' (para. 4.104).

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[13] The 2012 revision introduced three profit margins for different economic sectors (20%, 30% and 40%), on the resale price for imported items subject to processing. For details on application of the rules see UN Practical Manual on Transfer Pricing 2017: Part D1; Valadão MAP and Lopes RM. (2013) Transfer Pricing in Brazil and the Traditional OECD Approach. *International Taxation* 8: 31-41.

[14] The taxpayer's right to choose the applicable statutory method has been upheld by decisions of the Administrative Taxpayers' Council, which ruled inapplicable an administrative regulation attempting to curtail such a choice: see Ilarraz M. (2014) Drawing upon an Alternative Model for the Brazilian Transfer Pricing Experience: The OECD's Arm's Length Standard, Pre-fixed Profit Margins or a Third Way? *British Tax Review*: 218-235, at p. 223.

[15] Rocha SA. (2017) *Brazil's International Tax Policy*: Editora Lumen Juris.

[16] OECD Press Release 28/2/2018 http://www.oecd.org/tax/oecd-and-brazil-launch-project-to-examine-differences-in-cross-border-tax-rules.htm .

[17] See UN Practical Manual on Transfer Pricing 2017, Part D1.9.7, and Schoueri LE. (2015) Arm's Length: Beyond the Guidelines of the OECD. *Bulletin for International Taxation* 69: 690-716.

Adopting methods using a strong presumption establishing a benchmark for the local affiliate's profitability would avoid the need for a detailed audit based on functional analysis and attempting to identify comparable independent firms. One such proposal, put forward by Michael Durst, would require the local affiliate to earn a profit margin in proportion to that of the corporate group as a whole.[18] A merit of this method is that it focuses on the actual profits, or indeed losses, of the specific firm concerned. In this respect it is very different from the Brazilian fixed margin method, which applies a single yardstick to all firms, on a broad sectoral basis. This 'simplified net margin method' (SNMM) is therefore based on the ability to pay principle which many consider foundational. However, its focus is on the profitability of the TNC as a whole, and it does not factor in the contribution of the specific local entity. For that reason, the proposal suggests applying a relatively small fraction of the firm's global profit rate in calculating the local entity's benchmark profit margin (Durst suggests 25%). This is based on experience of attempting to apply the TNMM to a wide range of distributors, manufacturers and service providers. The fraction is chosen to arrive at a profit allocation which could be acceptable to both the revenue authority and the taxpayer. This suggested method would require a minimum level of income, consistent with group-wide profitability, disregarding all intra-firm related party payments such as interest, royalties and fees, which are a major cause of base erosion. It would generally prevent the very low requirements of income that under current practice tend to be ascribed to 'risk-stripped' subsidiaries. This is put forward as a pragmatic solution, aimed mainly to provide developing countries with a method which is easy to administer and could adequately protect their tax base.

We also have recommended, in our previous submissions to the OECD, expanded use of the profit split method (PSM) with standardised concrete allocation keys and weightings for common business models. Such expansion and standardisation of the PSM would allow easy application for tax authorities and taxpayers alike. The principal reason for this is that solely objective factors (e.g. personnel, assets, etc.) are used to apportion profits. This approach would ignore internal group-controlled and tax- motivated arrangements such as intercompany contractual terms. It would also dispense with the need for subjective value judgments, greatly reducing the potential for conflict and uncertainty.[19]

If Working Party 6 chooses not to consider this standardised approach on a multilateral basis, the path is left open for individual countries to take this approach on a unilateral basis. We recommend that Working Party 6 consider adding some guidance within Chapter IV to influence the approach that individual countries might adopt.

The Invitation for Comments states that Working Party 6 considers that there is 'no need at this stage to revise or supplement the current guidance on safe harbours'. This is regrettable, in our view, given the urgency of the need to establish methods for allocating profits which can be easily administered and provide predictability for both taxpayers and tax administrations. As currently drafted, chapter IV seems to discourage such methods, despite the suggestion in paragraph 4.104. In our view it would be very worthwhile for Working Party 6 and the OECD Secretariat to devote significant time and resources to the issue of simplified methods.

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[18] Durst MC. (2016) Developing Country Revenue Mobilisation: A Proposal to Modify the 'Transactional Net Margin' Transfer Pricing Method. International Centre for Tax and Development, Working Paper 44.
[19] See Kadet J. (2015) Expansion of the Profit Shift Method: The Wave of the Future", *Tax Notes International*, 77: 1183,

2. APAs, Dispute Resolution and Arbitration

In our view, without simplification, the dogmatic application of the OECD interpretation of the TPGs will continue to create enormous administrative burdens, many disputes, and serious uncertainty for business and governments alike. Neither individual APAs nor stronger dispute resolution procedures can resolve these problems. This is because these procedures depend on individual consideration of each and every taxpayer, and the application of rules which are, by their nature, ad hoc and subjective.

This can be seen from the experience of India, which revised its transfer pricing rules in 2001 to bring them into line with the OECD TPGs. Over the first seven years of application of these rules, their enforcement resulted in adjustments totalling about $16 billion. Of this amount, the fiscal year 2007-2008 adjustments were about $9 billion.[20] In 2014-15, more than half of the transfer pricing audits conducted in that year resulted in adjustments.[21] Since this approach to transfer pricing is fact-intensive it required specialist staff to audit the calculations submitted by the taxpayer's tax advisers. In 2014-15, there were an estimated 50 to 60 transfer pricing officers across India, auditing more than 70 cases each.[22] The main issues have been the choice of comparables, the use of multiple year data, and the application of economic adjustments to inexact comparables.[23]

This seems an effective result at least for the government, although perhaps less so for taxpayers. Predictably, therefore, the result was also an explosion of tax litigation, resulting in an estimated backlog of 3,000 cases before the Tribunals by 2012, and Indian cases were estimated to account for 70 percent of the world's transfer pricing litigation, by number of cases.[24] A digest of tax court decisions published by an Indian advocate contained 2,000 cases for the year 2017 alone, 1,200 of which concerned transfer pricing.[25] This plethora of transfer pricing litigation is an issue for both taxpayers and the government, with the government making periodic statute changes that attempt to address this increasing problem. As mentioned in the previous section, the introduction of safe harbours has done almost nothing to staunch this, since in compliance with the OECD approach the safe harbours are elective for the taxpayer.

In the light of the rising disputes and their pendency, an alternative dispute resolution mechanism was set up: the Dispute Resolution Panel (DRP).[26] The assessee is given the choice to appeal to the DRP against a draft order issued by the assessing officer (AO), or to appeal to the Commissioner Income Tax (Appeals) against a final order of the AO. Thus, the DRP was an alternative dispute resolution mechanism that was also part of the assessment process. The DRP must complete the hearing and give its final directions within 9 months from the sending of the draft order to the assessee. However, the number of cases referred to the DRP has remained static.[27] In 2012 the Revenue was allowed to appeal against the decision of the DRP, but since this was criticised by

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[20] Supekar D and Dhadphale A. (2012) Indian Tax Tribunal Establishes Special Benches for Transfer Pricing Cases. *Tax Notes International* 69: 339-340.

[21] Ministry of Finance, Annual Report 2014-15

[22] Deloitte-Tax Sutra, Transfer Pricing Trends, p. 15.

[23] India Transfer Pricing Survey, PwC, 2015

[24] Supekar and Dhadpale, note 20 above.

[25] Lala SM. (2018) Digest of Important Judgments on Transfer Pricing, International Tax and Domestic Tax. http://smltaxchamber.com/wp-content/uploads/2018/02/Digest-of-2000-Important-judgments-2017.pdf

[26] Comprising of three commissioners income tax not associated with the assessment of the taxpayer

[27] Deloitte-Tax Sutra, Transfer Pricing Trends, p. 12

taxpayers, the earlier provision that the Revenue cannot appeal against the order of the DRP was restored, but the impact of this has yet to be seen.

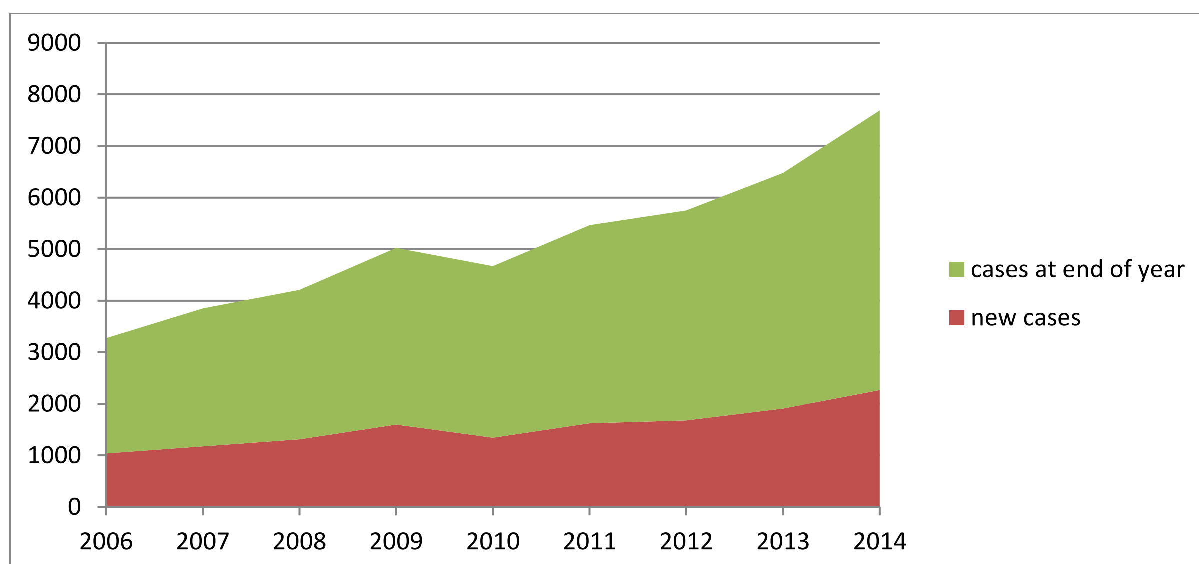
To further remedy the rise in transfer pricing litigation, in 2012 the Central Board of Direct Taxes (CBDT) was given the power to enter into Advance Pricing Agreements (APAs) with taxpayers for a maximum period of 5 years. Further, in 2014, roll-back provisions were announced that were applicable for a maximum of four years prior to the first year of the APA period, thus offering taxpayers certainty for a total of 9 years.

In the 5 years to the end of March 2017, 815 applications had been filed for APAs. Of these, 706 were Unilateral APAs and 109 Bilateral APAs, although only 11 bilateral APAs had been signed.[28] In terms of time taken, India outperforms most countries: For example, processing an APA takes 28.93 months as compared to 34 months taken for UAPAs in the USA.[29]

Such an APA program requires considerable resources: in India there are now two dedicated APA teams, operating in three locations.[30] This has little impact on the administrative burden, since individual agreements must be negotiated, and in addition there must be some checking of compliance with their terms. The main beneficiaries of this type of individual APA program seems to be the large tax advisers which specialise in drafting and negotiating them.

India's experience confirms that of other countries which adopted rules based on the TPGs since the late 1990s. OECD figures show a continuing rise both in the number of disputes and the time taken to resolve them (Figure 1).

Figure 1 Growth of MAP cases between OECD countries



In response, there has been the introduction of mandatory binding arbitration. So far, only 26 signatories of the MLI have indicated their choice to apply arbitration, so it will apply to 178 agreements out of 1,225 matched agreements.[31] Of the 26 only 5

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[28] Advance Pricing Agreement of India, Annual Report, CBDT 2016-17. The report observed (p.4) that since the US Competent Authority was not admitting bilateral APA applications into its APA programme, 'Indian subsidiaries of US-based companies (who are present in large numbers in India) were forced to seek certainty on their international transactions through unilateral APAs'.

[29] Advance Pricing Agreement of India, Annual Report, CBDT 2016-17. p. 16.

[30] Delhi, Bangalore and Mumbai. These cities are where maximum Transfer Pricing litigation is reported

[31] http://www.austaxpolicy.com/evaluating-multilateral-legal-instrument-developing-country-perspective/

developing countries have opted for arbitration. These are Andorra, Curacao, Fiji, Mauritius and Singapore, the latter two of which are treaty hubs.

The MAP is essentially an administrative procedure, and is kept completely confidential. Arbitration adds a spurious objectivity, since the procedures are remote from any notion of adjudication or due process. In fact, they are designed to put pressure on tax administrations to reach a compromise within the stated time limit. This will inevitably place further pressures on the weaker and less well-resourced tax authorities.

Thus, we urge Working Party 6 and the members of the Inclusive Framework to reject the pressures of some of the OECD countries to continue along this path that leads only to increased complexity and disputes. It should by now be clear that the TPGs adopted in 1995 involved a wrong turn, and should be re-evaluated. In the meantime the enormous administrative difficulties they create, recognised in chapter 4, call for a serious examination of possibilities for both simplified methods and a standardised profit split method utilising concrete allocation keys and weightings for common business modelsfc.