Remaking Transfer Pricing for the Digital Age, Part Two

American Bar Association Fall Tax Meeting
San Francisco, October 3-5, 2019
Panel Members

• Panel Moderator: Lorraine Eden, Texas A&M
• Panelists:
  • Brandon de la Houssaye, Walmart
  • Niraja Srinivasan, Dell Technologies
  • Liz Chien, Ripple Labs
  • Paul Glunt, KPMG

• ABA Transfer Pricing Committee Chair: Jana Lessne, KPMG
• ABA Tax Panel Sherpa: Jenny Austin, Morgan Lewis
Companies of all sizes and across all sectors are already confronting the challenges of transfer pricing in the digital age: applying long-standing principles to the pricing of digital economy transactions, deciphering the details of various forthcoming or proposed digital services taxes, and adapting legacy systems to capture new types of data on a transaction-by-transaction basis.

This panel is the second of two panels on “Remaking Transfer Pricing for the Digital Age”:

- **Panel 1** examined current policy proposals responding to the tax challenges of digitalization.
- **Panel 2** focuses on how MNEs are planning for, and actively responding to, the tax compliance demands of digitalization and current tax policy proposals.
Panel Outline

1. Digitalized Global Value Chains
   • Transfer Pricing Challenges
   • Going Digitals and Born Digitals

2. Practical Issues in Transfer Pricing Compliance
   • Evolving Digital Value Drivers
   • Customers
   • Data
   • Digital & Human Capital
   • Tax and Regulatory Disrupters
“We’re amid the largest era of institutional change in history, a reformatting of the planet’s operating system.”

-LEONARD BRODY discussing the disruptive changes related to technology in traditionally non-tech spaces
"Born" Digitals
Digital business models
Businesses that are digitalized from inception

"Going" Digitals
Traditional "brick & mortar" businesses that are digitally transforming all or parts of their business
I. Digitalized Global Value Chains
  • Transfer Pricing Challenges
  • Going Digitals and Born Digitals

2. Practical Issues in Transfer Pricing Compliance
  • Evolving Digital Value Drivers
  • Customers
  • Data
  • Digital & Human Capital
  • Tax and Regulatory Disrupters
Evolving Digital Value Drivers

• Value drivers/mix of value drivers –
  ➢ How unique are VDs (or combination of VDs) in digital value chain context?
  ➢ How does integration of digital with traditional FAR impact and re-align value drivers? How to apply traditional TP models to new world facts?

• Virtual business processes
  ➢ What are implications for global distribution of MNE profits?

• Routine vs. non-routine
  ➢ What has changed compared to traditional models?
Evolving Digital Value Drivers (cont’d)

• **Characterization**
  - How to segment between intangible and services?
  - Is the so-called “natural ceiling” on services (compared to intangibles) real? If yes, does it apply to SAAS?

• **Hybrid value chains**
  - What is the interplay between digital and “brick/mortar”?
  - When (and how) do we ring fence digitalized and undigitalized components of integrated FAR?

• **Current risk**
  - Does the combination of overly broad language in corporate HQ or IT charge agreements and fast-paced digitalization create immediate risks for MNCs?
Customers

• How do you determine practically who “owns the customers” in the current landscape?

• How does customer experience (CX) drive value, and how (and by whom) do you capture CX?

• How do you attribute value related to digital marketing? What about indirect marketing?
Data

• Does data represent IP or not?

• When people say, “data is the new oil”
  • Is that true from a TP perspective?
  • If yes, what components comprise the value chain for data in an organization and how we do manage that from a TP perspective?

• How are companies dealing with data support activities such as data centers, connectivity hardware, etc?
How do you value digital labor such as:
- robotic process automation (RPA)?
- What about when RPA is combined with Intelligent Automation (IA) and machine learning or complex analytics?

How do you separate the human from digital components of digitally-enhanced human services?

How do human capital trends such as:
- globally distributed workforce and business services
- hubs/centers of excellence
affect digital, including how you support your DEMPE positions? Country by country reporting?
How are transfer pricing professionals responding to tax policy changes and proposals that are designed to deal with the challenges of the digital economy. In particular, how are MNEs responding to tax policy developments and proposals since the BEPS Action 1 Report?

- US Tax Reform
- OECD/G20 Pillars 1 and 2
- Digital Services Tax
For more reading see attached Supplementary Reading Materials.

Questions ? Comments? Thank-you!
Content Disclaimer

• All meeting content, including live, recorded, and written presentations, represents the opinions of the authors and speakers and should not be construed to be those of either the American Bar Association or Section of Taxation unless adopted pursuant to the bylaws of the Association. Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This meeting content and any forms and agreements herein are intended for educational and informational purposes only.

• All rights reserved. No part of these materials may be reproduced, stored in a retrieval system, or transmitted, in any form by any means, electronic, mechanical, photocopying, recording, or otherwise, without the written permission of the American Bar Association.