



# **BDO International Global Transfer Pricing Seminar**

Friday, December 9, 2005



## Hendrik Swaneveld

### Partner, Transfer Pricing & Competent Authority Services



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#### **Experience**

Hendrik has over 25 years of experience in dealing with multinational corporations and related tax issues. He has extensive experience in various facets of the Transfer Pricing practice. He provides transfer pricing planning and consulting, dispute resolution with the CRA, and has developed defensible transfer pricing strategies and policies assisting in negotiating with Competent Authority. Hendrik has success – fully negotiated a number of competent authority cases to the CRA.

#### **Areas of Specialization**

Transfer Pricing of private and publicly held multinational companies with particular expertise in CRA dispute resolutions for cross border transfer pricing *Income Tax* issues. As well his experience includes *Customs* transfer pricing dispute resolutions.

#### **Professional Designations and Involvement**

C.A., 1981, Ontario

One of 5 Canadian representatives on an International Task Force (27 members) on Transfer

Pricing which makes recommendations to the OECD/WTO  
Chairman of the BDO International Transfer Pricing Centre of Excellence Committee

Diploma in Dispute Resolutions, 1995, Ontario



BDO Dunwoody LLP

**Dr. Gerhard Engler**  
**Partner, Head of BDO's German International Tax**  
**Competence Center**



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**Position**

Partner, co-head of BDO's Frankfurt office  
Head of BDO's German International Tax Competence Center  
International tax coordinator of BDO Germany

**Experience and areas of specialisation**

Gerhard Engler has over 25 years of practical tax consulting experience for medium-sized and big multinational clients, particularly in the area of international taxation. His area of specialization is in tax planning and consultancy for restructuring of international companies, particularly with respect to transfer pricing, corporate mergers and acquisitions. He is a frequent speaker in transfer pricing seminars and co-author of the leading German transfer pricing commentary "Handbuch der Verrechnungspreise" published by C.H. Beck-Verlag.

Gerhard Engler became attorney-at-law in 1978 and tax consultant in 1983.

He joined BDO in 1996, after several years of working as a consultant for Big Six accounting firms and in a multinational corporation.

**Education**

Studied law at the University of Frankfurt am Main; Doctor of Laws.

**Professional Affiliations**

Member of Frankfurt Chamber of Lawyers (Rechtsanwaltskammer Frankfurt)  
Member of Hessen Chamber of Tax Consultants  
(Steuerberaterkammer Hessen)



**BDO Deutsche  
Warentreuhand AG**

## Norbert Rosmalen

### Partner, International Taxes



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Belastingadviseurs B.V.  
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#### **Experience**

Norbert is a tax lawyer and has been working in the field of international taxes since 1991. Norbert specialises in transfer pricing and international tax law, with extensive experience in servicing (quoted) multinational groups, mergers and acquisitions and cross-border reorganisations. Norbert Rosmalen has been with BDO since 1992 and a partner since January 1, 2004. Norbert has been advising on international (corporate) tax issues of Dutch and non-Dutch clients for many years and has intensive contacts with his colleagues of BDO International.

#### **Education**

Norbert Rosmalen graduated from the Leiden University in 1989. He holds a degree in tax law and a post-doc in EU tax. He gained his experience also outside the Netherlands, i.e. in the United Kingdom and in Canada.

#### **Affiliations**

Norbert is a member of the professional body for the Dutch tax advisors ("Nederlandse Orde van Belastingadviseurs"). He is a member of the BDO International Transfer Pricing Center of Excellence and is responsible for the Dutch transfer pricing work of BDO.



**BDO CampObers Accountants  
& Adviseurs**

**Ruth Steedman**  
**Transfer Pricing Director – United Kingdom**



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**Position:**

Director of Transfer Pricing Practice for BDO Stoy Hayward

**Experience and Areas of Specialization:**

Following a year of metallurgical research at BP, Ruth joined the tax division of Arthur Andersen in 1989, becoming a chartered accountant in 1993 and a chartered tax advisor in 1994. She spent thirteen years as a UK corporate and international tax advisor with Arthur Andersen, becoming a partner in September 2001. Ruth joined BDO as a Director in transfer pricing in 2002, where she has worked on a large number of projects in a wide variety of industries. Ruth has extensive experience with Pan European, transatlantic and global transfer pricing projects both as lead co-ordinator and as UK country input provider.

Ruth works directly with economists and overseas transfer pricing specialists to develop innovative but commercially-driven transfer pricing solutions from inception through to full implementation.

**Education:**

Ruth graduated in 1988 from Imperial College, London with a first class degree in Metallurgy. Ruth won the Bessemer medal for the top metallurgy degree of the year, the Convocational Prize for the top engineering degree in the University of London and the Young Metallurgist of the year award from the Institute of Metallurgy.



**Roxanna Nyiri**  
**Director, Transfer Pricing**



**Experience**

Roxanna started her career in tax at SARS in 1990 after having worked in commerce for several years. She was a primary initiator of the transfer pricing department at KPMG in Johannesburg and a pioneer in the successful establishment of a transfer pricing department at the SARS Corporate Tax Centre, now the SARS Large Business Centre, in Sunninghill. She spent two years marketing and selling business solutions in the UK and Germany. At BDO Spencer Steward her focus is on consulting to multinationals on all aspects of transfer pricing, international tax and corporate tax consulting.

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**Education**

Bachelor of Commerce, University of the Witwatersrand

Masters in Commerce (Tax-transfer pricing), University of the Witwatersrand

Higher Diploma in Tax Law - University of the Witwatersrand



**BDO Seidman LLP**  
**Accountants and Consultants**

**Per H. Hasenwinkle**  
**Partner, International Tax Services**



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**Experience**

Per has more than 13 years of intercompany pricing experience with domestic and multinational companies, covering a broad range of economic, financial, and business issues across a variety of industries. He provides practical and strategic recommendations to public and closely held companies, to develop or support inbound and outbound pricing structures for tangible and intangible property, as well as pricing of related-party services and loans. His transfer pricing consulting experience includes:

- Global and state tax minimization studies
- Planning and compliance analysis
- Expert testimony and litigation support
- Audit defense and dispute resolution
- Advance Pricing Agreements (“APAs”)
- Intangible asset valuations

Per’s consulting experience also comprises litigation support for assessing damages from patent infringements, valuation appraisals of technology investments and trademarks divestitures, lobbying assistance concerning executive compensation, and economic and effective tax-rate analyses for the life insurance, bank, and thrift industries.

**Education**

M.A., Applied Economics, University of Michigan  
B.A., Business Administration, University of Michigan

**Professional Affiliations**

National Association for Business Economics  
American Economic Association



**BDO Seidman LLP**  
**Accountants and Consultants**

# Agenda

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1. **Introduction**
2. **Germany** by Gerhard Engler
3. **Netherlands** by Norbert Rosmalen
4. **United Kingdom** by Ruth Steedman
5. **South Africa** by Roxanna Nyiri
6. **United States** by Per Hasenwinkle
7. **Canada** by Hendrik Swaneveld
8. **Questions & Answers**



**Chartered Accountants  
& Advisers**

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# **Transfer Pricing Developments in Germany**

**By**  
**Dr. Gerhard Engler**



BDO Deutsche  
Warentreuhand AG

## **Reasons for Transfer of Production**

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- Low wages, low tax rates
- Subsidies, cash grants
- Accelerated depreciation
- Avoidance or mitigation of custom duties or trade restrictions
- New additional markets
- Others



## **Transfer of Existing Production**

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- Transfer of full production to NewCo
  - Whole business or partial business (product line)
  - Transfer of tangibles / intangibles
  - Old business (partly) closed
- Capital gain on transfer
  - Market value of the (partial) business
  - Valuation based on profit expectations (e.g. DCF method)
  - Possible disallowance of closing costs
- NewCo generates all future profits / losses



## Constitution of New Production Plant

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### Additional production

- New capacities or new production line
- NewCo penetrates new markets
- Existing production plant continues business

### No capital gain on “transfer”

- No transfer of customers
- Normally royalties become due for use of patents, trademarks, know-how, etc.
- Capital gain only if transfer of tangibles or intangibles



## **Transfer (Outsourcing) to Contract Manufacturer**

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- Transfer of production, but
  - Contract Manufacturer (C.M.) assumes limited functions and risks
  - Product Manager (P.M.) keeps intangibles, product development, market risk, customers, etc.
  - P.M. obliged to take over all goods for an agreed price
- No transfer of intangibles
- If tangibles and intangibles are used by C.M., no royalty necessary
- Cost Plus Method applicable



# Transfer (Outsourcing) to Contract Manufacturer

## Influence of Location Savings

	Manufacturer	Contract Manuf.		Principal	
		Alt. 1	Alt. 2	Alt. 1	Alt. 2
Material	400	200	200		
Salaries/Wages	400	200	200		
Other Cost	<u>200</u>	<u>100</u>	<u>100</u>		
Subtotal (Manufacturing Cost)	1000	500	500		
<b>Location Savings (50%)*</b>			<b><u>250</u></b>		
Total			750		
Profit Mark-Up	<u>200</u>	<u>50</u>	<u>75</u>		
Sales Price	1200			1200	1200
Transfer Price		<u>550</u>	<u>825</u>	<u>-550</u>	<u>-825</u>
Profit				<u>650</u>	<u>375</u>

\* non-binding opinion in literature



## **EU Masterfile Documentation**

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- Masterfile for information and documents relevant to the whole European group
- Country-specific documentation for each EU member state
- Reasons e.g:
  - reduction of cost
  - reliance, i.e. less penalty risks
  - transparency

## **EU Masterfile Documentation**

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- Master File, e.g.
  - description of group
  - business, business strategies
  - general TP policy
  - functions and risks
  - APAs, rulings

## EU Masterfile Documentation

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- Standardised country-specific documentation, e.g.
  - description of enterprise
  - country-specific transactions
  - comparability analysis
  - justification of TP method

# Transfer Pricing Regulations in Germany

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- Taxing Authority
  - German tax authorities
- Regulatory Overview
  - German tax laws and regulations allow the German tax authorities to allocate income or deductions between related entities
- Transfer Pricing Penalties
  - Surcharge of 5 – 10 percent on income adjustments (minimum surcharge of 5, 000 Euros) if no useful documentation is available
  - Late filing penalty of up to 1 million Euros (minimum penalty of 100 Euros per day of delay) if submission later than 60 days after tax authorities' request
  - Interest is assessed on tax payments
- Documentation Requirements
  - Contemporaneous documentation requirements exist only as regards exceptional business transactions
  - However, it is strongly recommended to prepare documentation contemporaneously



# Transfer Pricing Regulations in Germany

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- Deadline to Prepare Documentation
  - Corporations, partnerships – within six months of year-end
- Deadline to Submit Documentation
  - Must be submitted within 60 days upon tax authorities request
- Statute of Limitations on Transfer Pricing Assessments
  - Same as statute of limitation on tax assessments (normally 4 years after submission of tax return)
- Audit Risk / Transfer Pricing Scrutiny
  - High risk of transfer pricing audits
  - New documentation requirements are expected to attract more attention in tax audits than in the past
- APA
  - Generally available, but restricted to “big” cases, due to the German tax authorities reluctant attitude toward APAs



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# **Transfer Pricing Developments in the Netherlands**

**By**  
**Norbert Rosmalen**



**BDO CampObers Accountants  
& Adviseurs**

## **Dutch Transfer Pricing Legislation**

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- OECD Transfer Pricing Guidelines
- OECD Model Convention
- General articles in Tax Acts
- Case law (June 2002)
- Legislation as per 1 January 2002
- Netherlands interpretation of guidelines (2001 and 2004)



## **Dutch Transfer Pricing Legislation**

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Specific article 8b about transfer pricing in Corporation Tax Act:

- Associated companies
- Information on how transfer prices were established
- Conditions applied as between independent parties in the open market



## **Dutch Transfer Pricing Legislation**

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Documentation requirements (article 8b Corporation Tax Act):

- No substantial increase of administrative burden
- Other countries' domestic law
- Benchmark study not obliged
- Advance Pricing Agreement



## **Dutch Transfer Pricing Legislation**

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Documentation requirements (article 8b Corporation Tax Act):

- Available at time of transaction
- Categories of documentation: business and company overview, functional analysis, description of transfer pricing method (no ‘best method’ rule) and resulting transfer price



## Dutch Transfer Pricing Legislation

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What if conditions are *not* met:

- Adjust to arm's length conditions
- Shift of burden of proof to tax payer
- Interest and fines
- 5 or 12 years back
- Secondary adjustments



## **Dutch Transfer Pricing Legislation**

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### **Advance Pricing Agreements:**

- Unilateral and bilateral APA's
- All types of transactions
- Pre-filing meeting and case-management plan
- Assistance for SME's (benchmark)



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# **Transfer Pricing Developments in the United Kingdom**

**By**  
**Ruth Steedman**



BDO Stoy Hayward

## **Overview of New UK Transfer Pricing Rules**

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- Applies from 1 April 2004, for UK-UK and UK-overseas transactions
- SME exemption
  - Less than 250 employees; and
  - Either turnover less than €50m or gross assets less than €43m (EU definition)
  - Provided qualifying double tax treaty
- Large groups under increased audit risk as 95% of UK business are tax exempt
- Medium groups can be asked to apply transfer pricing where “substantial” tax is at stake



## **Transfer Pricing - HMRC New Financing Approach**

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- From March 2005, new rules for financing transactions
- TP rules apply where persons who collectively control a company or partnership have ‘acted together’ in relation to the financing arrangements of that company or partnership
- Guidance on risk assessment highlights setting up of joint venture companies, private equity transactions and vendor loans



## **Transfer Pricing - Share schemes – History of law and guidance**

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- Waterloo plc Special Commissioners case
- Tax Bulletin 63
- Guidance in International Manual
- Schedule 23
- New guidance for accounting periods beginning on or after 1 January 2005

## Summary

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- UK transfer pricing rules only apply to large groups
- Can apply to medium groups where “substantial” tax is at stake
- From 1 April 2004, applies to UK - UK transactions
- From 4 March 2005, additional financing arrangements
- From 1 January 2005, revised approach to share schemes



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# **Transfer Pricing Developments in South Africa**

**By**  
**Roxanna Nyiri**



**BDO Spencer Steward  
(Jhb) Inc**

## **South African Transfer Pricing Legislation**

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- Transfer Pricing Legislation in Tax Act (1995)
- OECD Transfer Pricing Guidelines –Practice Note 7 (1999)
- No case law
- No APA 's
- Amendment to Practice - 2005

## **Approach of the South African Revenue Service to transfer pricing**

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- Substance v form
- Source/deemed source
- CFC legislation (pre and post Residence Basis of Taxation)
- Residence (post RBT)
- Transfer Pricing
- General anti avoidance

## **Approach of the South African Revenue Service to transfer pricing**

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Adjustments made primarily in respect of the following transactions:

- Interest free loans
- Services: management fees, technical fees, administration fees
- Profit sanctuary companies

## **Approach of the South African Revenue Service to transfer pricing**

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Effect of an adjustment:

- Tax of 29% on adjustment
- STC of 12.5% on adjustment
- Penalties of up to 200%
- Interest

May be applied retrospectively to 1995

## **Approach of the South African Revenue Service to transfer pricing**

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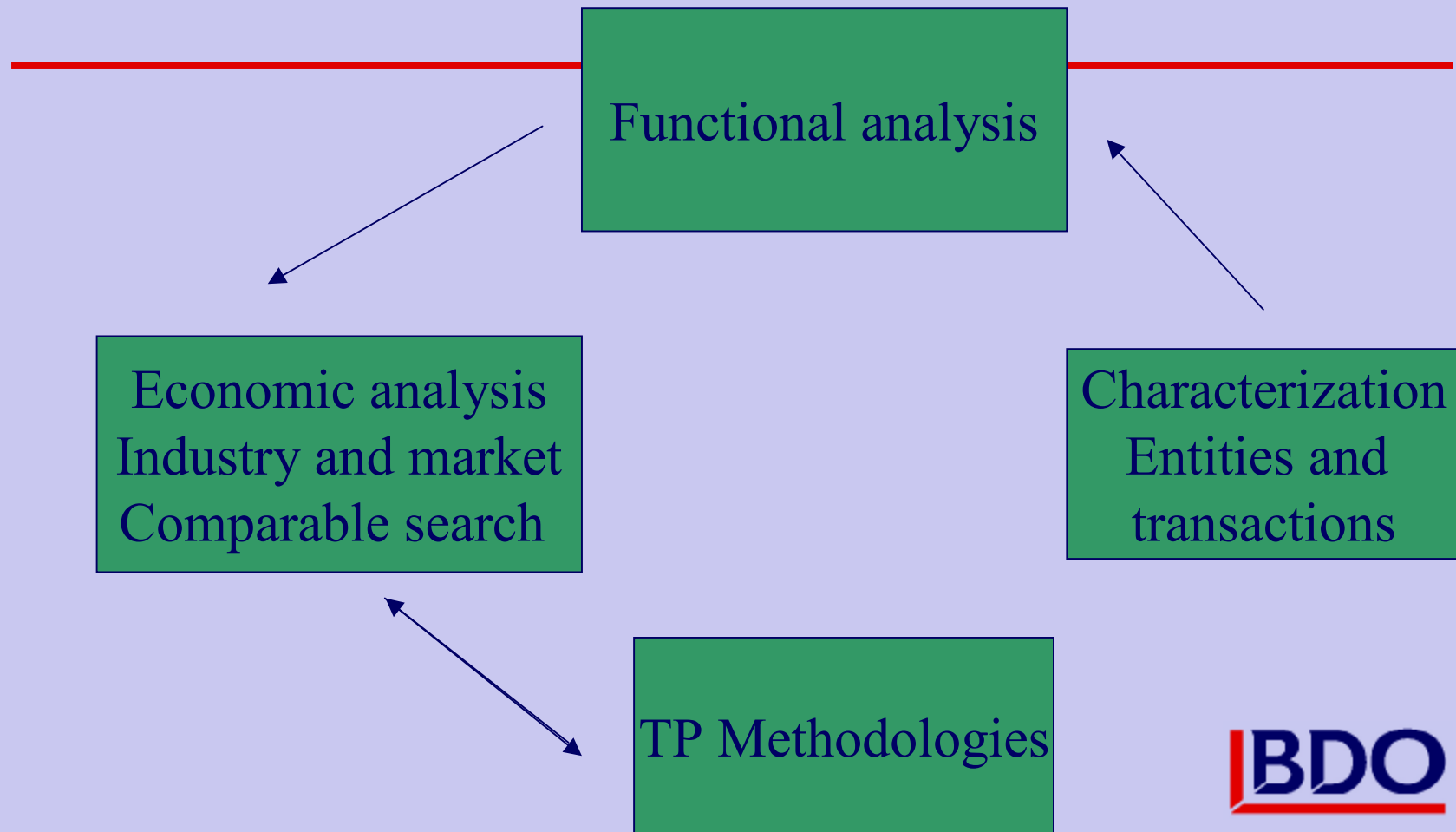
- The Alternate Dispute Resolution Process ('ADR')
- Taxpayer may choose ADR
- The Commissioner has a discretion and must let taxpayer know within 20 days of acceptance/rejection of ADR.

## **Approach of the South African Revenue Service to transfer pricing**

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- The Facilitator's objective is to seek that the taxpayer and the Commissioner reach a fair, equitable and legal resolution of the dispute.
- On conclusion the Facilitator will record the terms of any agreement reached by the parties, failure to reach agreement and a report shall be delivered to both parties in 10 days.
- Most transfer pricing disputes are settled by ADR.

## Documentation requirements



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# **Transfer Pricing Developments in the United States**

**By**  
**Per Hasenwinkle**



**BDO Seidman LLP**  
Accountants and Consultants

## **Transfer Pricing Developments in the United States**

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- Regulatory and Compliance Issues
- Litigation Environment
- Advance Pricing Agreements (“APAs”)
- State Tax Considerations



## **Regulatory and Compliance Issues**

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- The Sarbanes-Oxley Act explicitly allows for auditors of public companies to conduct transfer pricing studies
  - Audit committee approval is necessary
  - Big-4 public clients often bring BDO Seidman in to conduct these analyses
- The IRS has increased focus (“chief target”) on mid-size corporations that may have escaped scrutiny in the past



## **Regulatory and Compliance Issues**

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- **The American Jobs Creation Act**
  - New Section 199 deduction for income attributable to US production activities is not dependent on product exports, and applies to all manufacturers
  - Effective for tax years beginning after December 31, 2004
  - Lowers effective taxes by as much as 3 percent
  - First broad-based tax cut since the TRA 1986
  - Domestic rate cut may affect international tax planning



## **Regulatory and Compliance Issues**

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- **Circular 230**
  - Transfer pricing documentation is unlikely to be “covered opinion”
  - Standards for reliance and marketed opinions are less stringent



## **Regulatory and Compliance Issues**

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- US Customs rejected the CPM to establish transfer prices for customs purposes
  - Setback to harmonize customs valuation and transfer pricing rules from US perspective
- The IRS has begun using software to identify abnormal customs pricing to test selected taxpayers' transfer prices



## **Litigation Environment**

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- 17 new Federal and 7 state transfer pricing cases filed during 2004
- \$8.4 billion in transfer pricing adjustments challenged by taxpayers in US Federal tax court
- An IRS report determines that its auditors only requested transfer pricing documentation in 55 percent of cases
- IRS agents told to request studies before assessing adjustments' materiality



## **Advance Pricing Agreements (“APAs”)**

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- The IRS completed 70 APAs (39 bilateral and 31 unilateral) in 2004
- Cumulatively 562 APAs closed from the APA program inception
- The IRS 6<sup>th</sup> annual APA report shows that the IRS is reducing the time to advance APA cases
- Repercussions imposed for missing deadlines by the APA program



## State Tax Considerations

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- Anti-PIC legislation
  - Business purpose and economic substance are key considerations to support interstate transfer pricing structures
  - Add-back of royalty and interest charges
  - Increased state-driven audit and litigation efforts
- Delaware promulgates new headquarter support legislation to create economic substance



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# **Transfer Pricing Developments in Canada**

**By**  
**Hendrik Swaneveld**



BDO Dunwoody LLP

## **Transfer Pricing Developments in Canada**

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- The CRA has recently proposed APAs for Small Multinational Enterprises
- Traditional APA process includes numerous stages, e.g.:
  - Numerous planning meetings
  - Site visits
  - Both functional and economic analysis
  - Amount of time depends on whether unilateral, bilateral or multilateral APAs



## Transfer Pricing Developments in Canada

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- Mini APAs for Small Multinational Enterprises address the following past criticism of the regular APA program by:
  - Keeping it simple
  - Improving timing
  - Reducing costs



## **Transfer Pricing Developments in Canada**

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- Process proposed to take up to one year
  - No site visits
  - Unilateral APAs
  - No rollbacks will be considered
  - Up-front fee of Cdn\$5,000

## **Transfer Pricing Developments in Canada**

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- Transactions must be simple
- Therefore only tangible goods (which have not been bundled with non-routine intangibles) and routine services will be covered



BDO Dunwoody LLP

## **Transfer Pricing Developments in Canada**

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What size multinationals qualify under the mini-APA program?

✓ Taxpayers must have gross revenues of Cdn < \$50 million;

OR

✓ A proposed covered transaction of Cdn < \$10 million



BDO Dunwoody LLP

## **Transfer Pricing Developments in Canada**

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- Under the small business APA program, the taxpayer must provide the CRA with a functional analysis (“FA”)
- The CRA will take this FA and will perform its own economic analysis based on both the FA provided as well as responses to supplemental questions
- The CRA will base its conclusions on only this economic analysis regardless of whether the client also provides their own economic analysis



## **Transfer Pricing Developments in Canada**

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To be noted in particular is the following:

“Taxpayers applying for the small business APA program must accept the procedures in their entirety and cannot opt out of one or more procedures in favour of the approach taken under the traditional APA program”



BDO Dunwoody LLP

## **Transfer Pricing Developments in Canada**

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For SMEs considering the mini-APA program, because the CRA will NOT negotiate a Mini-APA it is strongly recommended they first determine the potential risk exposure in proceeding with a mini-APA by:

- Having an economic analysis performed to avoid CRA dictating the appropriate price; and
- Depending on the range determined by the 3<sup>rd</sup> party economic analysis, decide whether to go with the mini-APA route or the traditional APA route



BDO Dunwoody LLP

# BDO Global Transfer Pricing Seminar–9 December 2005

**Q&A**

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BDO Seidman LLP  
Accountants and Consultants

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# **Addendum: Transfer Pricing Regulations by Country**



**BDO Seidman LLP**  
Accountants and Consultants

# Germany

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- Taxing Authority
  - German tax authorities
- Regulatory Overview
  - German tax laws and regulations allow the German tax authorities to allocate income or deductions between related entities
- Transfer Pricing Penalties
  - Surcharge of 5 – 10 percent on income adjustments (minimum surcharge of 5, 000 Euros) if no useful documentation is available
  - Late filing penalty of up to 1 million Euros (minimum penalty of 100 Euros per day of delay) if submission later than 60 days after tax authorities' request
  - Interest is assessed on tax payments
- Documentation Requirements
  - Contemporaneous documentation requirements exist only as regards exceptional business transactions
  - However, it is strongly recommended to prepare documentation contemporaneously



## Germany

---

- Deadline to Prepare Documentation
  - Corporations, partnerships – within six months of year-end
- Deadline to Submit Documentation
  - Must be submitted within 60 days upon tax authorities request
- Statute of Limitations on Transfer Pricing Assessments
  - Same as statute of limitation on tax assessments (normally 4 years after submission of tax return)
- Audit Risk / Transfer Pricing Scrutiny
  - High risk of transfer pricing audits
  - New documentation requirements are expected to attract more attention in tax audits than in the past
- APA
  - Generally available, but restricted to “big” cases, due to the German tax authorities reluctant attitude toward APAs



# Netherlands

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- Taxing Authority
  - Dutch tax authorities
- Regulatory Overview
  - Article 8b of the Dutch Corporation Tax Act
- Transfer Pricing Penalties
  - Tax may be increased with a penalty varying from 0 – 100 percent of the additional tax, depending on the degree of intent to avoid tax or the degree of the taxpayer's negligence
  - Interest on additional tax will be due as well
- Documentation Requirements
  - Information showing transfer prices have been established
  - Documentation must also include information that would enable Dutch tax authorities to assess whether the taxpayer's transactions were concluded under arm's-length conditions
  - Reference is made to following the elements expressed in the OECD Guidelines
- Deadline to Prepare Documentation
  - Expected to be available at the time when the taxpayer enters into transactions

# Netherlands

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- Deadline to Submit Documentation
  - Minimum of four weeks to a maximum of three months, depending on complexity of transactions
- Statute of Limitations on Transfer Pricing Assessments
  - Same as statute of limitation on tax assessments
- Audit Risk / Transfer Pricing Scrutiny
  - High risk of transfer pricing audits
  - Transfer pricing is an important issue in an audit
  - Sharp focus on services, intangible property and characterizations in terms of alignment of functions and risks
- APA
  - Unilateral and bilateral APAs are available



## United Kingdom

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- Taxing Authority
  - Inland Revenue
- Regulatory Overview
  - Schedule 28AA and “Guidance Notes” in the Inland Revenue Tax Bulletins
- Transfer Pricing Penalties
  - Up to 100 percent on filing an incorrect return due to fraudulent or negligent conduct
    - ✓ Failure to have a policy documented as “arm’s length” may be seen as negligent
  - A flat penalty of £3,000 for failure to keep proper records
- Documentation Requirements
  - Guidance is set out in the pre-Budget report Dec. 2003
  - Further guidance is set out in a Technical note
- Deadline to Prepare Documentation
  - Documentation should be in existence when the accounts are prepared and the return is submitted
  - Evidence of an “arm’s length” pricing need not be available to the Inland Revenue until a request has been made



BDO Stoy Hayward

## United Kingdom

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- Deadline to Submit Documentation
  - At the request of the Tax Inspector, who has the power to request information within 60 days notice
- Statute of Limitations on Transfer Pricing Assessments
  - Discovery Assessments
    - ✓ Six years after the company's accounting period ends but extended to twenty-one years where the misstatement is due to fraudulent or negligent conduct by the taxpayer
  - Determination
    - ✓ Five years from the date of the filing
- Audit Risk / Transfer Pricing Scrutiny
  - High risk of transfer pricing audits
  - Pressure to maximize taxes and transfer pricing is known to be a top priority as seen by increased aggressiveness in audits by Inland Revenue
- APA
  - Unilateral and bilateral APAs are available
  - Bilateral APAs are preferred



BDO Stoy Hayward

## **United States**

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- Taxing Authority
  - Internal Revenue Service (“IRS”)
- Regulatory Overview
  - Internal Revenue Code (“IRC”) Section 482
- Transfer Pricing Penalties
  - 20 percent and 40 percent for underpayment of tax
- Documentation Requirements
  - Extensive contemporaneous documentation required
- Deadline to Prepare Documentation
  - By filing date of the income tax return
- Deadline to Submit Documentation
  - Within 30 days of the IRS examiner’s request



## United States

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- Statute of Limitations on Transfer Pricing Assessments
  - General statute of limitations applies, which is three years from the later of:
    - ✓ The tax return due date, or
    - ✓ The date the return was actually filed
  - For substantial restatements, statute is extended to six years
  - No statute of limitations for fraud
- Audit Risk / Transfer Pricing Scrutiny
  - High risk of transfer pricing audits
  - A recent directive on enforcing contemporaneous documentation violations indicates that scrutiny will increase
- APA
  - Unilateral and bilateral APAs are available



# Canada

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- Taxing Authority
  - Canadian Revenue Agency (“CRA”)
- Regulatory Overview
  - No regulations in effect
  - Information Circular 87-2R outlines CRA current administrative practices
  - Statutory requirement Section 247 of the income tax act which also defines contemporaneous documentation
- Transfer Pricing Penalties
  - 10 percent penalty on total transfer pricing adjustments, plus non-deductible interest
- Documentation Requirements
  - Contemporaneous documentation required
- Deadline to Prepare Documentation
  - Corporations – within six months of year-end
  - Partnerships – within five months of year-end
  - Trusts – 90 days after year end
  - Individuals – April 30<sup>th</sup> (general) or June 15<sup>th</sup> (self-employed persons) of the following year

## Canada

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- Deadline to Submit Documentation
  - Within 90 days from the date of services of a written request from the CRA
- Statute of Limitations on Transfer Pricing Assessments
  - Individuals, trusts, and Canadian-controlled private corporations – six years from date of initial assessments; other corporations – seven years
- Audit Risk / Transfer Pricing Scrutiny
  - High risk of transfer pricing audits
  - Transfer pricing audits routinely included in audit scope.
  - Issues of particular risk include: service fees and intangibles
- APA
  - Unilateral and bilateral/multilateral available under Circular 94-4R (March 2001), but bilateral/multilateral preferred



BDO Dunwoody LLP

## **Notices:**

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