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Transfer Pricing: The target for Base Erosion & Profit Shifting

27 - 29 January 2015 | Kuala Lumpur

MEET THE COURSE LEADER



Robert Feinschreiber

Mr. Feinschreiber is among the best known transfer pricing experts in Asia. He began his transfer pricing in Asia in the late 1970's with the Toyota audit and the ensuing litigation. Mr. Feinschreiber is known for applying creative responses to transfer pricing audits responses to achieve creative solutions. He has been quoted as being a tax authority by the United States Tax Court, by Business Week, and by Forbes. With Margaret Kent, Mr. Feinschreiber is the co-author of John Wiley & Sons' definitive guide to transfer pricing in Asia, the Asia-Pacific Transfer Pricing Handbook published in Singapore and the Transfer Pricing Handbook – Guidance for the OECD Regulations. Mr. Feinschreiber simultaneously graduated from Yale School and the Columbia Graduate Business School.



Margaret Kent

Margaret Kent has been a tax attorney for 30 years, focusing on law and international taxation. She defends clients in response to information document requests and protests for clients pertaining to these audits. With Robert Feinschreiber, Margaret Kent is the co-author of John Wiley & Sons definitive guide to transfer pricing in Asia, the Asia-Pacific Transfer Pricing Handbook published in Singapore and the Transfer Pricing Handbook – Guidance for the OECD Regulations.

THE SITUATION

Transfer pricing began cautiously and imperceptibly eighty years ago, affecting just a few major countries, and without having any enforcement mechanisms against the recalcitrant taxpayer. Now, transfer pricing has become a dominant financial force among all significant economies throughout the world. The OECD and the G20 have acted in concert to use transfer pricing remedial mechanisms to preserve and strengthen their economies. The OECD has developed a relatively complex program called the Base Erosion and Profit Shifting (BEPS) Actions to empower governments seeking to curtail taxpayers' transfer pricing abuses. The taxpayer, then, has the obligation to interpret, analyze, and follow-through concerning these BEPS provisions. Nothing is off limits as taxpayers are facing new compliance responsibilities.

WHO SHOULD ATTEND

- Tax professionals
- Chief financial officers
- Intergroup transfer pricing managers
- Internal auditors
- Compliance officers
- Attorneys
- Customs representatives
- Business financial planners
- Operations managers
- Cost accountants
- Economists
- Tax Departments of Multinational Companies
- Anyone under transfer pricing audit

ASIA-PACIFIC TRANSFER PRICING HANDBOOK - ENDORSEMENTS

Feinschreiber and Kent offer an especially useful guidebook-Asia Pacific Transfer Pricing Handbook. The comprehensive information is seasoned with refreshing insights and practical tips essential for international businesses. Eduardo Goldszal, Director Taxes NCR Corp.

This book will be a valuable and handy resource for all stakeholders-professional, revenue authorities, and multinational enterprises. It is extremely timely considering the next decade(s) of growth from Asia and consequent increase of flow of goods, services, funds and intangibles. The transfer pricing regime is also evolving in many Asian countries with focused examination of cross-border transactions by revenue authorities and this book will assist in navigating the same. Samir Gandhi, Partner, Deloitte Haskins & Sells, Mumbai, India

This book brings a timely and fresh look at the rapidly changing transfer pricing landscape in the region. Whether you are implementing a new business model in Asia, documenting your intercompany transactions, or are in the middle of defending your historical filing positions, Asia Pacific Transfer Pricing Handbook will help you understand local rules and procedures and provide you with valuable and practical insights. Horacio Pena, Partner & Senior Economist, U.S. & Americas Transfer Pricing Leader, PricewaterhouseCoopers, LLP

Once again Mr. Feinschreiber has provided us with a go-to guide for transfer pricing. This time it's a guide to the Asia-Pacific region with an abundance of useful and practical information for the transfer pricing practitioner. Stuart Simons, Partner, International Tax, Deloitte Touche Tohmatsu, Bangkok, Thailand

Robert Feinschreiber and Margaret Kent continue to provide comprehensive add up-to-date guidance in the complex and dynamic transfer pricing field. In this book, they focus in a very concrete and useful way on what is certainly the most economically explosive region of the world-Asia. Michael Kliegman, Partner, PricewaterhouseCoopers, LLP

This book provides practical solutions and guidance to assist multinational corporations (MNC) to effectively mitigate transfer pricing tax exposure. It provides practical solutions with examples that demonstrate the use of "allocation keys" under the Transactional Profit Split method that can provide equitable and consistent results in connection with allocating MNC global profits to affiliates in different tax jurisdictions. I believe the information provided by Feinschreiber and Kent's book will be valuable to business executives, tax professionals, and tax administrative officers. Alexander Pan PhD, MBA, MBT, CPA Partner (retired), PricewaterhouseCoopers, LLP; University of California.



COURSE BENEFITS

During the course, participants will learn about

- Impending worldwide tax enforcement
- Protecting your company from the tax authorities
- How taxpayers have been shifting profits to low tax jurisdictions
- Avoiding double taxation
- How the OECD and the G20 interface
- Minimizing tax risk situations
- Preparing for international pricing documentation
- Coordinating business needs with lawyers, accountants, and economists
- Planning for intangibles and intellectual property
- Transfer pricing impacting countries in selected countries
- How audit results in one jurisdiction can adversely affect taxes in other jurisdictions
- Taxing electronic commerce

COURSE METHODOLOGY

Training style is expository, interactive, and participative. The training focuses on learning by doing, and by exchanges among participants. We illustrate by industry examples, focusing on practical fact patterns, practical training, networking, and experience sharing.

Day 1

8:30 Registration

9:00 ▶ Session 1 **How Transfer Pricing Impacts International Businesses**

- What activities, exactly, constitute “transfer pricing”
- Understanding transfer pricing’s rapid worldwide growth
- “Profit shifting” and “base erosion”- the essence of transfer pricing
- Customs and taxation – how their transfer pricing provisions relate
- The arm’s length principle and the arm’s length range
- The role of accountants, cost accountants, economists, and lawyers in transfer pricing
- Ascertaining who, within a company, should have ultimate transfer pricing responsibility

10:30 Morning Coffee and Networking

11:00 ▶ Session 2 **How Governments Impact the Transfer Pricing Process**

- How each government can impact a multinational transaction?
- Impact of the OECD and the United Nations on the transfer pricing process
- Double taxation: conflicts between governments regards to a transaction
- The quest for transfer pricing universality across multinational jurisdictions
- Future plans for tax enforcing intercompany pricing mechanisms
- Governments’ penalties and enforcement techniques

12:30 Luncheon

13:30 ▶ Session 3 **Transfer Pricing Mechanisms under the BEPS Regime**

- Transfer pricing mechanism one-sided and two sided alternatives
- Ascertaining the situations when the resale pricing methods might apply
- Developments in ascertaining costs within the cost method
- The future of profit-sharing techniques for multinational corporations
- The OECD’s response to global formulary apportionment techniques
- Viability of the transactional net margin method and profit indicators

15:00 Afternoon Coffee and Networking

15:30 ▶ Session 4 **How Businesses Select Their Transfer Pricing Mechanisms**

- Ascertaining the functional analysis and functional analysis amounts
- How should you manage transfer pricing risk functions
- When should you select a database service provider
- Effective methods of contesting database results
- Defending your choice of transfer pricing method to the tax authorities
- Consequences of loss transactions

17:00 Wrap-up Day One

Day 2

9:00 ▶ Session 1 **Being Prepared: Meeting the Documentation Requirements**

- Complying with various “contemporaneous documentation” requirements
- Master file and the local file: The OECD adopts the EU approach
- Applying the reporting template by jurisdiction and by constituent entity
- Preparing your “best method” audit defense
- The transfer pricing report and its timing requirements
- Diverse language translation requirements challenge the practitioner
- PATA and country-by-country documentation rules

10:30 Morning Coffee and Networking

11:00 ▶ Session 2 **Breadth and Scope of the Intangible Transfer Pricing Provisions**

- Defining the definition, character, and attributes of intangibles
- The role of the OECD draft concerning intangibles
- The importance of legal ownership and contractual arrangements
- Remuneration for developers and exploiters of the intangible

12:30 Luncheon

13:30 ▶ Session 3 **Complex Intangible Issues**

- Ascertaining where risks belong in the intangible transfer pricing context
- Valuation uncertainty plagues intangible approaches
- Location savings and other market features
- The role of “workforce in place” in assessing transfer pricing valuation

15:00 Afternoon Coffee and Networking

15:30 ▶ Session 4 **How the Digital Economy Impacts the Transfer Pricing Regime**

- Renewed emphasis of the 1998 ministerial conference
- Impact of BEPS Action 1's final BEPS report
- The "neutrality" requirement between electronic and other products
- Impact on VAT and other consumption taxes on electronic commerce
- Impact on international tax arrangements on electronic commerce

17:00 Wrap-up Day Two

Day 3

9:00 ▶ Session 1 **Defending Intra-group Services Fees**

- Determining service costs
- Safe harbor strategies
- Shareholder activities and stewardship activities
- Functional analysis in the services context
- Determining the actual use of the services

10:30 Morning Coffee and Networking

11:00 ▶ Session 2 **Treaty Issues that Affect Transfer Pricing and BEPS**

- How permanent establishment determines transfer pricing concerns
- Avoiding permanent establishment
- Implications for non-treaty arrangements
- Avoiding or complying with the "significant presence" activities requirements
- Determining the scope of the "preparatory and auxiliary" standard
- When can the OECD compel countries to change bilateral income tax treaties
- Attack on treaty shopping

12:30 Luncheon

13:30 ▶ Session 3 **The OECD Challenges Tax Haven Structures**

- Tax haven intermediary structures and their ramifications
- Licensing structures in tax haven countries
- Impact of blacklist and whitelist categorization
- How anti-tax-haven countries challenge artificial tax base reductions
- How assets and functions determine tax haven categorization

15:00 Afternoon Coffee and Networking

15:30 ▶ Session 4 **Conclusion**

- Pitfalls for the Unwary

17:00 Wrap-up Day Three

