
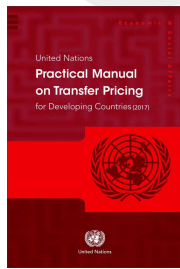
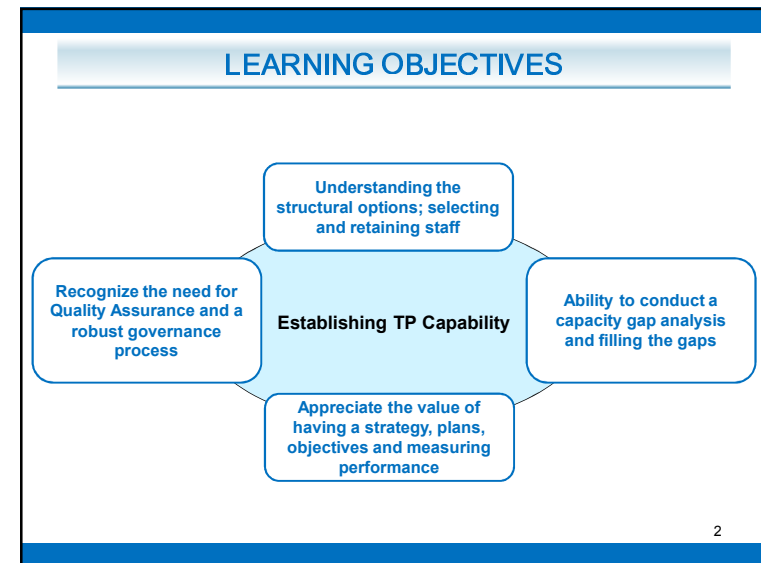

**UN-ATAF Workshop on Transfer Pricing
Administrative Aspects and Recent Developments**
 Ezulwini, Swaziland
 4-8 December 2017


**AFRICAN TAX
ADMINISTRATION FORUM**

**ESTABLISHING
TRANSFER PRICING
CAPABILITY
IN DEVELOPING
COUNTRIES**

**Thursday, 7 December 2017
2.00pm – 3.30pm**

OUTLINE

1. **Preliminary Considerations**
2. **Having a Strategy**, setting the Vision, Mission, Plans, Objectives and Measuring Performance
3. **Establishing a dedicated transfer pricing unit**
 - Structure of the TP unit (including functions, competencies and responsibilities)
 - How to develop and retain staff (expertise)
4. **Undertaking a gap analysis and filling the gaps**
 - Identifying capacity gaps
 - Preparing a plan to fill the gaps
 - Implementing and reviewing the plan
5. **Quality assurance and Governance**
6. **Sources of Information, wrap-up and Q&A**

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1. Preliminary considerations

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PRELIMINARY CONSIDERATIONS

- i. Relationship between Tax Policy/Tax Administration (Manual Section C.5.2)
- ii. Interaction of transfer pricing legislation and other provisions or instruments such as:
 - Tax incentives, holidays or exemptions
 - Thin Capitalization
 - Permanent Establishment
 - Controlled Foreign Corporation
 - Other Tax Avoidance provisions
 - Double Tax Agreements eg Articles 25 and 26
- iii. Degree of political will and commitment to invest in transfer pricing for the medium and long term

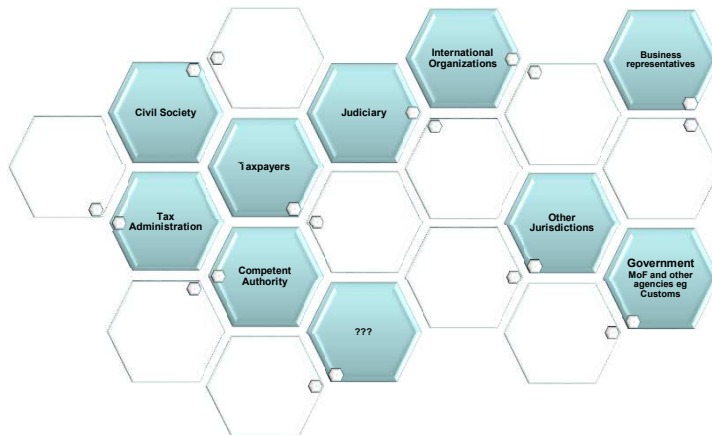
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PRELIMINARY CONSIDERATIONS

- iv. Are all the pre-requisites in place
 - Legislation
 - Dispute Resolution Mechanism
 - Capturing the data (eg via tax return and other sources) and having an effective and efficient business processes eg Robust Risk Assessment
- v. Establish/Reinforce relationship with stakeholders

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WHO ARE YOUR STAKEHOLDERS?



7

2. Having a Strategy: vision, mission, plans, objectives and measuring performance

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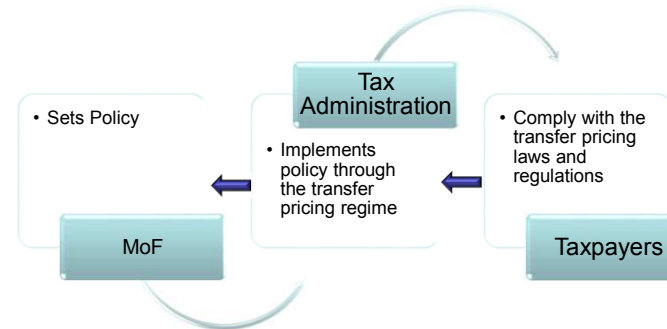
INTRODUCTION

Advantages of staged approach to achieve results

- Costs of compliance for taxpayers
- Costs of enforcement for the tax administration
- Strategy in line with overall government policy and with the Taxpayer's Charter (**Manual Section C.5.4.2**)
- Balanced scorecard can be used as a measurement framework for strategic, operational and financial measures

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EXAMPLE: POLICY FEEDBACK LOOP



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INTRODUCTION

- **Communication** with taxpayers ~ understand their compliance obligations and ramifications of non-compliance
- **Communication**/coordination between related parts of the government eg MoF, Customs, Competent Authority
- **Communication** within the Tax Administration especially with those undertaking Large Taxpayer audits

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EXERCISE: SETTING OBJECTIVES

From a transfer pricing perspective if you were responsible to designing the objectives of a Transfer Pricing team **list your top 6 objectives**

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EXERCISE: MEASURING PERFORMANCE

How would you
measure performance
related to the top 3 objectives

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EXAMPLE: KENYA REVENUE AUTHORITY

- Strategic Theme
- Vision
- Mission Statement
- Core Values

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EXAMPLE: KENYA REVENUE AUTHORITY

Extract from the KRA 2013 Fifth Corporate Plan

TRANSFER PRICING

Strategy
Objectives
Means
Expected deliverables
Measurement of progress
Targets and Measures

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3. Establishing a “dedicated” transfer pricing unit

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STRUCTURING THE TEAM

How to structure the team – decisions must be taken

- i. Structural Options: Centralised, Decentralised, Hybrid, Static, Virtual
- ii. Number of staff (full-time and/or part-time)
- iii. Qualifications, background, experience of staff
- iv. Location of team ~ HO, regional or another combination
- v. Degree of Specialisation eg key economic sectors, MNE size/activities, geographically, emerging topics/new compliance risks

The extent of funding, overall strategy and the available skill set will play a key role in determining the parameters of the team

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CENTRALISED MODEL

(Manual Section C.5.5.2)

Advantages

- Coordination easier in the start-up phase
- Knowledge built up quickly
- Clear lines of authority and communication

Disadvantages

- Risk of an “ivory tower” out of touch with realities
- Risk that over-centralization may reduce transparency
- Opportunities for mismanagement and corruption

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EXERCISE: DECENTRALISED MODEL

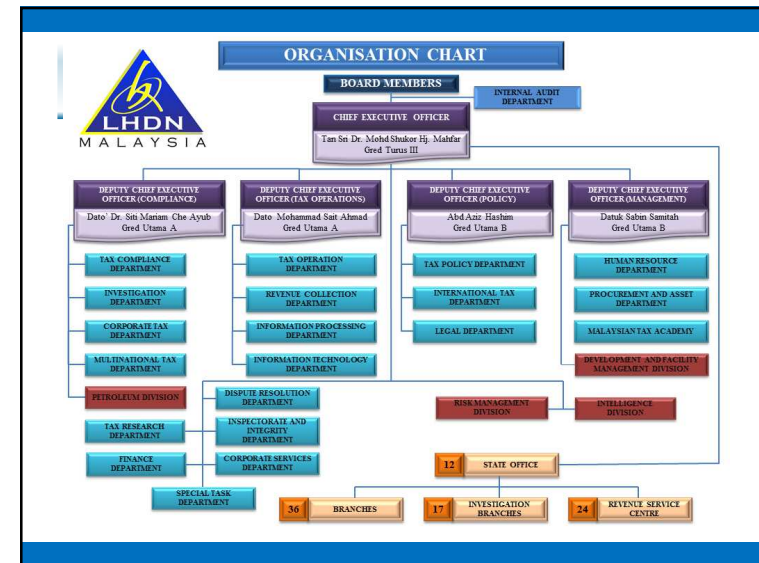
List

2 advantages and 2 disadvantages of a

decentralised model

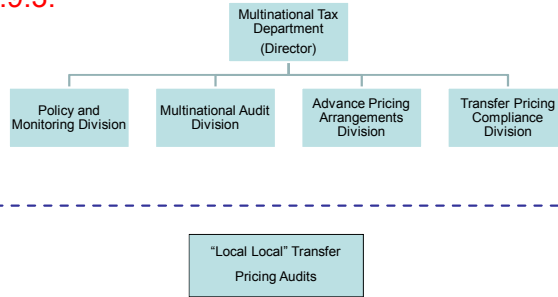
(Manual Section C.5.5.3)

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INLAND REVENUE BOARD MALAYSIA

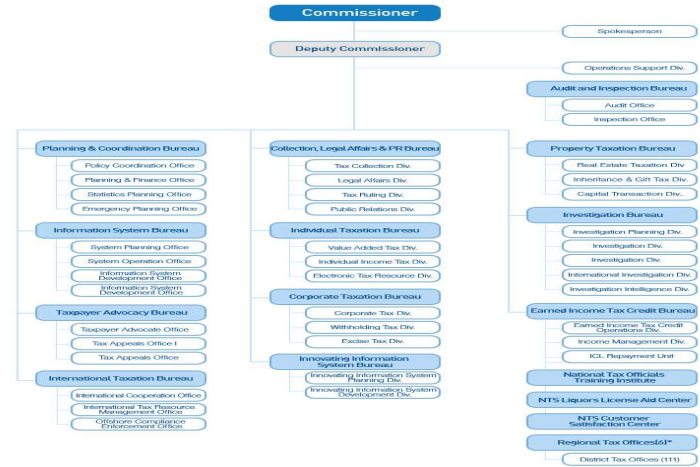
C.5.9.3.



Domestic transfer pricing audits referred to as Local-Local are conducted at the Branch level

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KOREAN NATIONAL TAX SERVICE



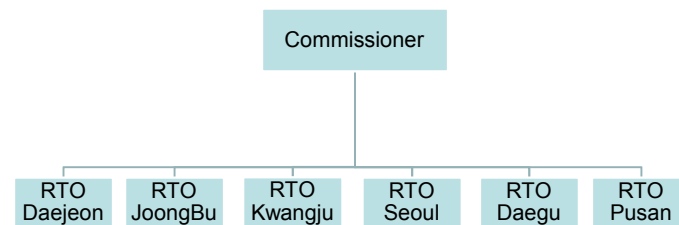
KOREAN NATIONAL TAX SERVICE: HEAD OFFICE



There are 6 departments with regional focus headed by a Deputy Director who has responsibility for transfer pricing (excluding audit), APA, MAP, international cooperation, Commissioner's meetings and education.

23

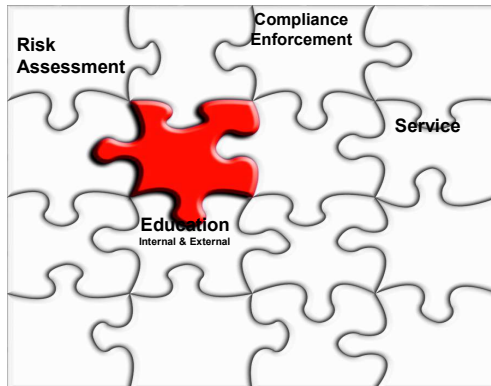
KOREAN NATIONAL TAX SERVICE REGIONAL TAX OFFICES



International tax audits are handled by approximately 200 auditors spread across the Regional Tax Offices. These auditors are responsible predominately for inbound foreign companies (subsidiaries of MNEs) and transfer pricing is one of the main issues but the audits are not limited to transfer pricing.

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FUNCTIONS OF TP UNIT



Exercise: what other functions do you think will be undertaken by the TP unit?

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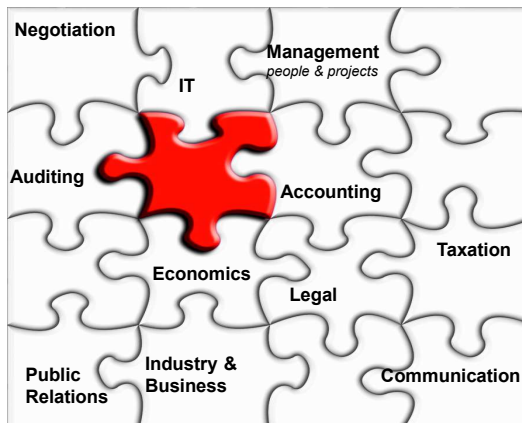
STRUCTURING THE TEAM

How to structure the team - select team members who are:

- Broad perspective, proactive, creative and adaptive
 - Internationally focused
 - Understand and appreciate the relationship between protecting the tax base and having an attractive investment climate
 - Committed to the team for a minimum period
 - Willing to invest in their professional development
 - Strive for excellence

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COMPETENCIES OF TP UNIT



Exercise: how are these skills applied in practice

27

STRUCTURING THE TEAM

How to organise the workflow – decisions must be taken

- i. Type of administrative support
- ii. Access to which resources
- iii. Determine functions and responsibilities – who will do what (inside and outside the transfer pricing team)
- iv. Contact/coordination points throughout the tax administration
- v. How will cases be selected or referred to the team

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EXERCISE: ALLOCATE FUNCTIONS AND RESPONSIBILITIES

Functions and Responsibilities - examples	Priority	TP team manager	TP team members	Field Officers eg Large Taxpayer Auditors	Senior Management	Others - itemise
Set Policy/Strategy, objectives and priorities						
Prepare plans and performance measures						
Develop Holistic Communication Plan						
Conduct risk assessment of MNEs (subsidiaries and branches)						
Select cases for TP review/audit –linked to the plan						
Develop internal referral and governance process						
Design tax return transfer pricing schedule						
Conduct transfer pricing reviews and audits						
Conduct internal and/or external training						
Prepare manuals, procedures and systems						

GOOD PRACTICES

Within the Administration

- Understanding the taxpayer and their business
- Early Dialogue
- Being reasonable, responsive, proportionate and transparent
- Extensive and clear taxpayer education
- Creating public confidence in the integrity of the TP unit
- Risk Assessment , TP Governance, Alternative Dispute Resolution, TP Knowledge Management, TP Training, use of External Experts

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GOOD PRACTICES

Taxpayers

- Being transparent and making full disclosure
- Making voluntary disclosures
- Seeking APAs or advance rulings where pertinent
- Complying with Bilateral Double Tax Treaties

Beware: "playing games" ties up scarce resources

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HOW TO DEVELOP STAFF

- Training different methods/approaches
 - Online
 - Seminars and Conferences
 - Case Study workshops
 - Working Groups
 - Formal qualifications
 - Placements
 - Study tours
- How to access expertise
- Mentoring/Coaching = peer learning on real cases

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HOW TO RETAIN STAFF (C.5.6.1)

- Retaining staff is a problem for all tax administrations, need to think outside the box by motivating and providing incentives for performance:
 - Condition of Employment: **contractual committed** for a specific period of time ~ example India 2-3 years
 - Condition of Employment: **pay off clause** ~ example Netherlands
 - **Life/Work balance** ~ example South Africa and Australia
 - **Quality of work** ~ example Italy

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HOW TO RETAIN STAFF

- Participating in and having an influence on setting the global transfer pricing agenda example UN committee of experts, subcommittees and working groups, OECD Working Party 6, EU Joint Transfer Pricing Forum
- Being at the centre of the international tax community which broadens horizons and creates positive opportunities
- Learning opportunities and learning plan
- Monetary and reward recognition for excellence

Prepare for the inevitable loss of talented staff by having a succession plan and reliable and knowledge management system

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4. Undertaking a gap analysis and filling the gaps

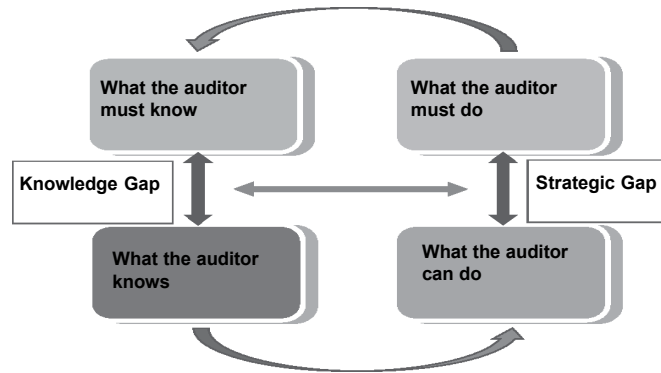
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INTRODUCTION

- Determine level of existing knowledge – factors listed in TP Manual (**Manual Section C.5.3**)
- Developing a learning program need to consider:
 - Environment including culture of the organisation
 - Transfer Pricing knowledge is gained from a mix of theory and experience
 - There will be limitations and hurdles to face including:
 - Legal
 - Timing
 - Information Technology (hardware/software)
 - Poor access or low quality information including the lack of comparables
 - Restricted or insufficient human and other resources

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KNOWLEDGE AND STRATEGIC GAPS



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EXAMPLE: DIAGNOSTIC TO ESTABLISH THE GAP

STEP 1

- Based on transfer pricing regime and after undertaking a TRANSFER PRICING NEEDS ASSESSMENT list and priorities specific areas of knowledge and skills required to undertake the work

STEP 2

- Survey staff – questionnaire (current knowledge and desired future knowledge), interview, tests, employment history
- Prepare summary

STEP 3

- Review Step 1 if required

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EXAMPLE : DIAGNOSTIC TO ESTABLISH THE GAP

STEP 4

- Compare what is required to what is assessed to be available
- Rank importance of each area

STEP 5

- Discuss with management and get their buy-in/agreement on the priority area
- Secure funding and secure resources!

STEP 6

- Prepare action plan to fill gap (include contingency plan)

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STEP 6: LEARNING OR ACTION PLAN EXAMPLE

IMPLEMENTATION PLAN and TIMELINE	Set Priority	TA Provider/s	January 2015	February 2015	March 2015	April 2015	June 2015	July 2015
CAPACITY BUILDING ACTIVITIES								
Risk Assessment Audit Course	1							
Build Knowledge Management system, website or database - Internal	1							
Tax Inspectors without Borders - explore the possibility of an expert being placed	3							
Placements and secondments - outbound	3							
Obtain formal transfer pricing qualifications or build towards formally recognised qualifications	4							
Transfer Pricing Training - more details on the next slide	1							
Industry Training e.g. Extractives, Fishing, Tourism	2							
Tax Treaties including EOI and negotiations	3							
Auditing of MNEs	5							
International Tax General including Permanent Establishments	8							
International Tax Planning and International anti-avoidance measures	9							
Thin Capitalisation	10							

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STEP 6: LEARNING OR ACTION PLAN EXAMPLE

IMPLEMENTATION PLAN and TIMELINE	Set Priority	TA Provider/s	January 2015	February 2015	March 2015	April 2015	June 2015	July 2015
CAPACITY BUILDING ACTIVITIES								
<u>Transfer Pricing Training - example components:</u>								
Advance Pricing Agreements	6							
Business Restructuring	3							
Comparability Analysis incorporate Database training from Thomson Reuters	1							
Conflict Resolution including ADR	5							
Customs Valuation and the relationship with transfer pricing	7							
Dealing with discretion and managing quality audits	3							
Documentation - preparing and/or critiquing	1							
Financial Analysis including PLI	1							
Functional Analysis	1							
Industry and business analysis	2							
Intangibles - transfer pricing	4							
Methods	3							
Risk Assessment, Reviews and Audits including case specific/ industry audit training	4							
Transfer Pricing for judiciary	9							
Valuation techniques	7							41

5. Quality Assurance ~ Governance

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QUALITY ASSURANCE ~ GOVERNANCE

- Integrity issues arise and should be addressed
 - Audit in teams
 - New team composition for a new audit
 - Build in checks and balances eg internal audits
 - Record meetings
 - Have regular peer reviews
 - Rotate officers – timing could be an issue

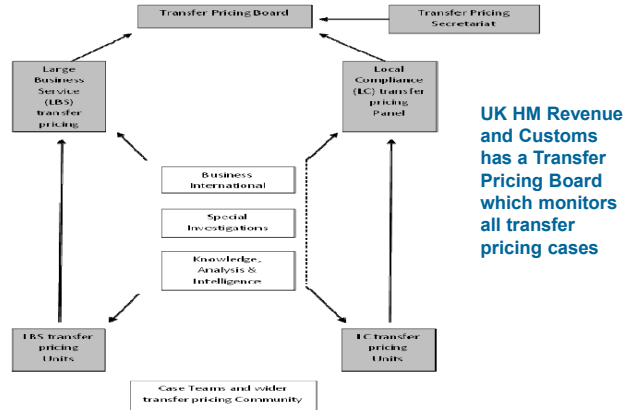
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QUALITY ASSURANCE ~ GOVERNANCE

- All adjustment must be supported by the legal framework and the process managed from the selection of the case right through to litigation
- Transparency and consistency are the key to treat and be perceived as treating taxpayers equally
- Clear guidance for the exercise discretion and a **system of overseeing how cases are handled in practice is essential**

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SYSTEM OF OVERSEEING CASES IN PRACTICE: UK



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SYSTEM OF OVERSEEING CASES IN PRACTICE: CANADA

Canada Revenue Agency **Transfer Pricing Review Committee** is under the International Tax Division (ITD) and reviews all transfer pricing penalties; cost contribution arrangements audit issues that exceed the penalty threshold; and proposed assessments to recharacterize a transaction to ensure fair and consistent application

Committee membership

- Director of the ITD (Chairperson)
- Senior economist from the ITD
- Managers of the International Advisory Services Sections
- Manager from the Transfer Pricing Specialty Section
- Representative from the International Tax Service Team within Legal Services
- Manager from the Aggressive Tax Planning Division
- Senior official from the Tax Policy Branch of the Department of Finance Canada

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6. Sources of Information, wrap-up and Q&A

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SOURCES OF INFORMATION

- Transfer Pricing Databases eg general information such as journals and specific databases for comparables, interest rates, commodity prices
- Taxpayer information eg websites, published reports, proprietary databases
- Tax Administration information eg tax returns, intelligence from other agencies

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SOURCES OF INFORMATION

UN Transfer Pricing Technical Assistance and Capacity Building Resources

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SOURCES OF INFORMATION

Publications/Reports

- **World Bank Group** International Transfer Pricing and Developing Economies: From Implementation to Application
- **CIAT** The Control of Transfer Pricing Manipulation in Latin America and the Caribbean
- **European Commission** Transfer Pricing and Developing Countries
- **OECD** reports including
 - Multi-Country Analysis of Existing Transfer Pricing Simplification Measures
 - Dealing Effectively with the Challenges of Transfer Pricing
 - Draft Handbook of Transfer Pricing Risk Assessment

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SOURCES OF SUPPORT

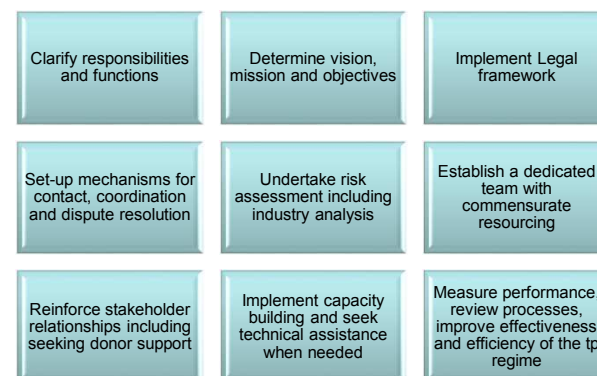
In addition to the UN other agencies that provide support for transfer pricing regimes in developing countries include:

- **World Bank Group**, International Finance Corporation in Asia, Africa and Eastern Europe
- **SGATAR** Study Group on Asian Tax Administration and Research
- **PITAA** Pacific Island Tax Administration Association
- **ATAF** African Tax Administration Forum
- **TIWB** Tax Inspectors without Borders
- **CIAT** Inter-American Center of Tax Administrations
- **OECD Tax & Development**
- **IOTA** The Intra-European Organisation of Tax Administrations
- **European Commission**
- **IMF** International Monetary Fund
- **JICA** Japan International Cooperation Agency

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WRAP-UP SLIDE

UN TP Manual building blocks for the transfer pricing journey



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ARE THERE ANY...



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