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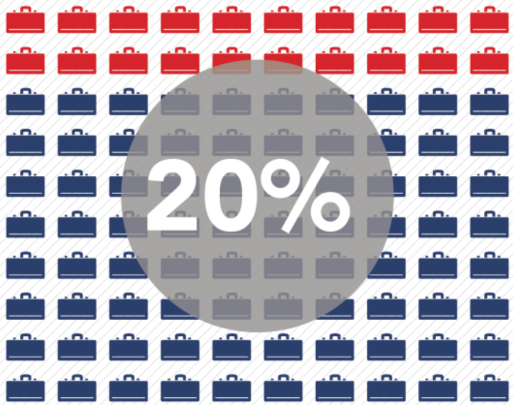
MTC Arm's Length Adjustment Conference

October 6, 2014

Agenda

- Introduction to WTP Advisors
- MTC objectives
- Global transfer pricing landscape
- Leading practices
- Poor practices / targets for states
- How we can help you

WTP: Global Resources



WTP's client list features the world's most prominent companies, including 20 percent of the Fortune 100.

WTP Advisors has grown into a full-service consultancy with 40 offices in 29 countries around the globe.

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Our resources

- Economists
- Valuation / mediation specialists
- International tax and SALT specialists
- Data management and analysis capabilities
- WTP foreign affiliates

The Transfer Pricing Specialists

Amsterdam, Brisbane, Cologne, Eindhoven,
Genoa, Ho Chi Minh City, Hong Kong, Jakarta,
Kuala Lumpur, Shanghai, Singapore, Sydney, Zurich

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MTC objectives

- Ability to evaluate whether companies are under-reporting tax through non-application or misapplication of the arm’s length standard
- Differentiate between high-risk and low risk transactions
- Efficient use of State resources
- Prioritize targets
- Develop compelling cases to facilitate fair settlements
- Identify solutions
- Training
- Identify and adopt leading practices

International vs. Inter-State transactions

- Which transactions have the biggest impact on State tax returns?

Today’s economic environment

- Businesses are competing in a global marketplace
- Intangibles are a key driver to value and increasing shareholder wealth
- Intangibles are increasingly developed and exploited across the globe
- Legal agreements are often an important factor in intercompany transactions and intangibles
- Today’s economy presents unique opportunities to strategically locate assets and high value functions

Risks and opportunity factors

- Business growth
  - Entering new markets
  - Launching new products or lines of businesses
  - Changing value chain components
  - Executing mergers and acquisitions
- Intangible property (IP) changes
  - Uncertainty / ambiguity regarding the legal entity level ownership of IP
  - Changing R&D activities (scope, products, locations)
- Business restructurings
- Centralizing or decentralizing activities
- Recognizing losses in certain jurisdictions and profits in others

Examples of jurisdictions / tax rates[1]

Jurisdiction	Tax Rate
United States	35% - 39.6%
Brazil	34%
France	33.33% - 38%
Canada	25% - 31%
Australia	30%
Mexico	30%
Germany	30% - 33%
China	25%
United Kingdom	21%[2]

Jurisdiction	Tax Rate
Luxembourg[3]	29.22%
The Netherlands[3]	25%
Switzerland[3]	18% - 24%
Singapore[3]	17%
Hong Kong	0% – 16.5%
Ireland	12.5%
Cyprus	10%
Barbados	1% – 2%
Cayman	0%

[1] This table is for illustrative purposes only. Effective tax rates vary based on facts and circumstances. Statutory rates routinely change over time.
[2] This rate will drop to 20 percent in 2015. Also, the U.K. offers an attractive Patent Box Regime
[3] Country offers possible opportunities to negotiate lower effective tax rates.

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Additional considerations

- Tax incentives (reduced or eliminated taxes)
  - Tax holidays / negotiated rates
  - Special tax regimes (e.g., UK patent box)
- Leverage
- Losses

Global transfer pricing Landscape

- Trends
  - Concerns about multi-nationals moving profits to favorable tax jurisdictions
  - More entrenchment in positions
  - More litigation
- OECD Base-Erosion Profit Shifting (BEPS) Initiative
  - Intangibles
  - Country by Country “CbC” reporting

OECD's CbC reporting discussion paper

Transfer pricing documentation objectives

1. Provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment

2. Ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices … and in reporting the income derived from such transactions in their tax returns

3. Provide tax administrations with the information that they require in order to conduct an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction

Areas of potential controversy

- Intercompany services
  - Are service provider entities undercharging for services?
  - Are service charge recipient entities overpaying for services?
- IP migration /cost sharing / buy-in payments
  - Is IP being transferred below arm's length value?
  - Are the entities that funded up front R&D costs appropriately remunerated for the risks they undertook?
- Guarantee fees
  - Are parent companies appropriately charging out guarantee fees in situations when subsidiaries benefit from favorable credit ratings?
- Supply chain restructurings
- Permanent establishments / Nexus
- Appropriate characterization of transactions (services, debt, equity)
- Uncertain tax positions (UTP)

How can WTP assist States in adopting leading practices?

- Support team / process development
  - Provide ongoing coaching and guidance
  - Training (e.g., webinars)
  - Hosting taxpayer seminars
  - Develop risk assessment tools and approaches
  - Assist with prioritization / allocation of resources
- Provide case by case support
  - Evaluate the arm's length nature of intercompany transactions
  - Provide economic / benchmarking studies
  - Valuation studies
  - Arbitration / Mediation

Transfer pricing process

Collect and Aggregate Data

- Surveys
- Information requests
- Financial systems
- Time tracking
- Management dialogue
- Interviews
- Financials
- Internal comparables
- External comparables

Analyze Data

- Data analytics
- Functional analysis
- Comparables analysis
- Best method analysis
- Profit split analysis

Update Documentation

- Business Unit
  - Global
  - Regional
- Country specific

Focus attention on the data and analysis. Organize analysis and ensure more efficient process of review.

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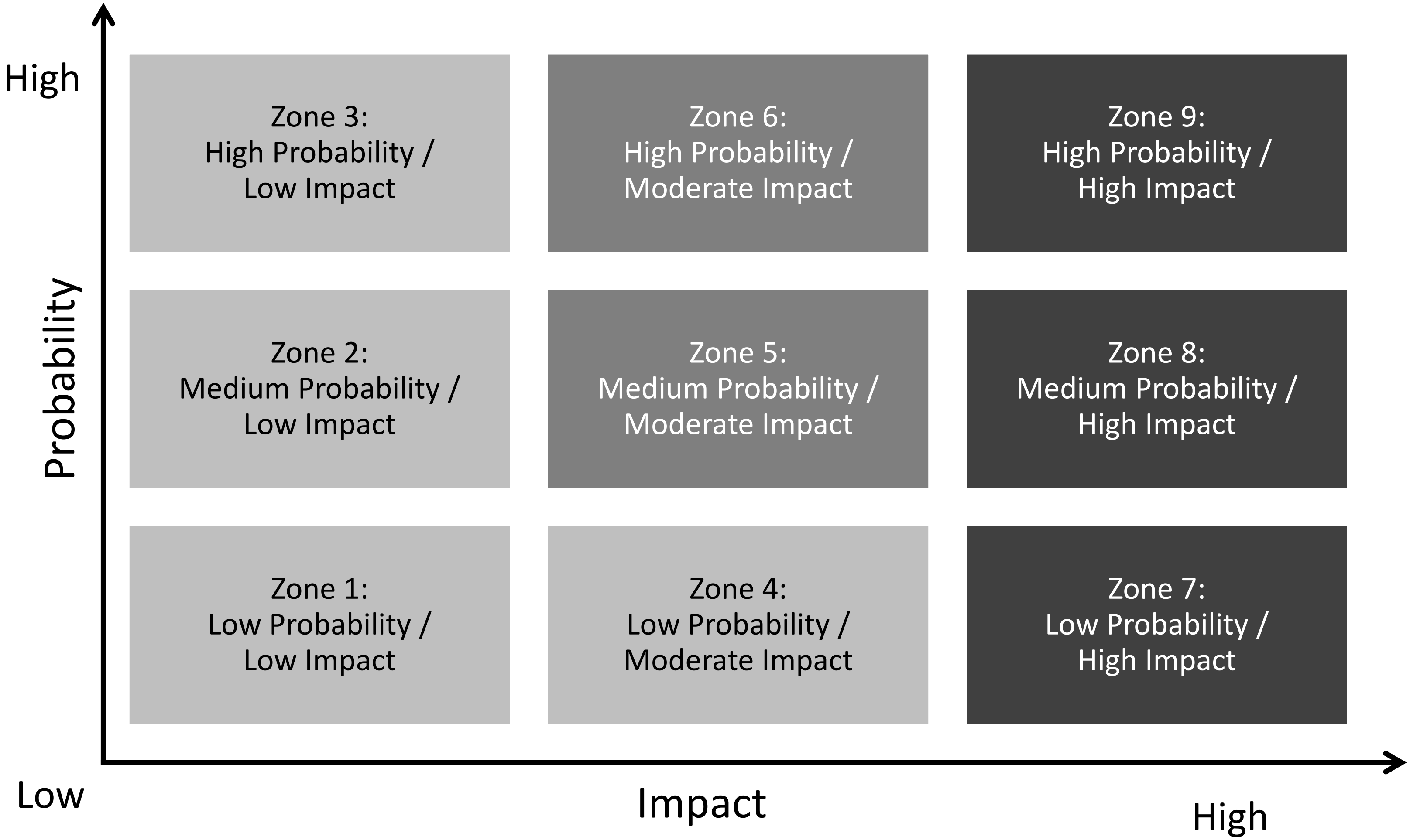
Risk and opportunity analysis

- Factors used to evaluate the potential level of scrutiny:
  - **Jurisdiction**: The level of attention that countries involved in the tested transactions place on transfer pricing. Higher levels of attention generally translate to higher risks.
  - **Audit History**: Relationship and history with each tax authority.
  - **Flow**: The flow of charges from "high-risk" countries. Financial flows that reduce taxable profits in a high-risk country would more likely generate additional scrutiny than financial flows that increase taxable income.
  - **Variance**: The degree of change in the charges over multiple years. A higher variance could generate additional scrutiny by tax authorities.
  - **Complexity**: The relative complexity of the transaction. Generally, high complexity translates to higher risks.
  - **Size**: The greater the charges associated with the transaction, the greater the potential for scrutiny. The size of the charges associated with the transaction is the strongest indicator of the potential impact of an unfavorable adjustment.

Risk analysis - Rankings



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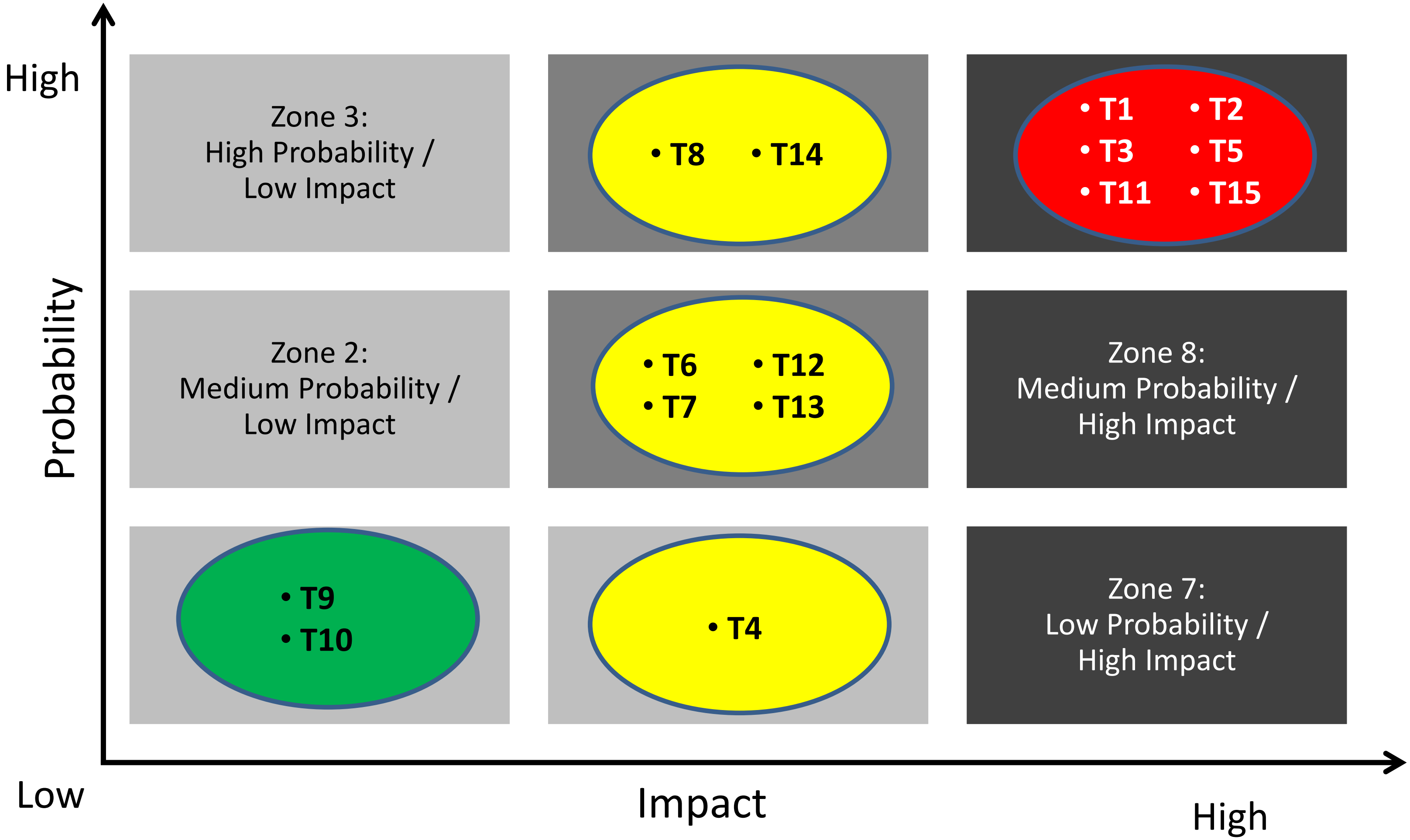
Risk and opportunity analysis – Transaction risk map

Illustration



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Company profiles

- Category 1: Obtuse
  - Ignoring transfer pricing regulations and conducting intercompany transactions that are not arm's length
- Category 2: Aggressive planners
  - Developing and implementing global effective tax management policy – taking aggressive positions that push the limits of the arm's length standard
- Category 3: Prudent planners
  - Developing and implementing comprehensive global effective tax management policy –taking a prudent or conservative approach with robust documentation and support
- Category 4: Compliance-oriented
  - Focused on adhering to the arm's length standard. Their primary objective is to avoid controversy

ADR framework and tools

- Alternative Dispute Resolution (ADR) is any method of resolving conflict other than by litigation
- In general, ADR includes early neutral evaluation, negotiation, conciliation, mediation and arbitration
- Even though the most common forms of ADR are mediation and arbitration, there are several ways to mediate, depending on the mix between facilitation and evaluation
- The objective of ADR is avoid the high costs of litigation, under which both parties suffer costs: economic (cost of lawyers, time, etc.), social (public and private relations), moral (credibility), etc.
- Contrary to a Win/Loose outcome of a litigation, under ADR, both parties are encouraged to voluntarily strive for a Win/Win agreement

Mediation process – Five steps

1. Orientation
2. Information Gathering
3. Framing Issues and Identifying Interests
4. Generating Options
5. Closing

Discussion / Q&A

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