The 6^{th} method

Exploring the available Transfer Pricing Methods

Building a better
working world

Available Transfer Pricing methods

Traditional Transaction methods:

1. Comparable Uncontrolled Price method (CUP)
2. Cost Plus method
3. Resale Price method

Transactional Profit methods

4. Transactional Net Margin method (TNMM)
5. Profit Split method

Other methods

6. 6th method

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Issues with available Transfer Pricing methods

Related parties may enter into transactions that unrelated parties do not, in particular as regards intangibles: i.e. transfers of (valuable) intellectual property intercompany

Data on comparables may be absent or hard to get: small economies or no system for collecting data on uncontrolled transactions (US SEC/Local Chambers of Commerce);

Potential comparables may have material differences for which reliable adjustments cannot easily be made: i.e. intangibles such as brands/trademarks.

Experience with the 6th method

Argentina developed a form of “6th method” in 2003. It is often viewed as a version of the CUP method by the tax authorities and applied to transactions that are deemed abusive:

Typical Fact Pattern

MNE producing or extracting commodity product (grains/minerals) in Argentina, sells the commodity product to a related agent offshore (in a low tax jurisdiction) (1st sale) without the product actually leaving Argentina. The commodity product is subsequently sold by the offshore agent to a final consumer (2nd sale) for a higher price than the 1st sale and also shipped abroad.

Experience with the 6th method

Argentina addressed this type of abusive transactions by requiring the MNE to apply the commodity* price on the date of *shipment* by the agent to the end customer (pursuant to 2nd sale) to the sale of the product by the MNE producing or extracting the commodity product to the related agent offshore (1st sale). * cereals, oil seeds/other soil products, hydrocarbons and its derivatives, and in general, goods with quotation known in transparent markets

To curb the abuse, this "6th method" requires the use of the market price of the traded goods on the date the goods are shipped – regardless of means of transport- unless the price agreed between the MNE producing or extracting the commodity product and the related agent is higher.

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Experience with the 6th method

In Argentina, this method is mandatory, but has some exceptions:

- It is not required to be applied if the agent has real presence in the place of its residence and its functions, risks and assets are consistent with the transaction volume it conducts;
- The principal business of the agent is not a passive business or trading with Argentine entities or the agent is not an exclusive agent for the MNE;
- The intercompany transactions between the agent and its foreign related parties (other than the related Argentine entity) is no more than 30% of the total activity performed by the agent.

Experience with the 6th method

Concerns raised in practice by MNEs and advisers:

- The publicly traded price for a commodity does not generally consider geography and therefore does not consider the cost of transportation/logistics and related costs;
- The commodity price does not consider the level of the market of the buyer;
- The commodity price is roughly applied and does not consider applicable specific volume and agreement terms, or quality (concentrates) of commodity products.

Other (Latin American) countries following suit

Argentina	2004
Bolivia	Rules issued in July 2014
Brazil	Mandatory in 2013
Costa Rica	2013
Dominican Republic	2013
Ecuador	2009
El Salvador	2010
Guatemala	Mandatory in 2015
Uruguay	2009
Peru	2013

Experience with the 6th method

Possible arguments in support of the 6th method:

- To the extent MNEs can prove and substantiate the arm's length price for the commodities and opt out of the 6th method, the method operates as a safe harbor/audit threshold;
- The method can be seen as a unique developing country "home-grown" approach to tackle transfer pricing challenges;
- To some extent the method can be seen as accommodating the challenge of finding comparables in developing countries for certain specific –commodity- products.

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