



Transfer pricing documentation: Companies prepare for more stringent, standardised record keeping

WHITE PAPER

The signs are clear that companies need robust transfer pricing documentation practices and tools to keep pace with greater compliance demands and scrutiny from tax authorities in the UK and beyond.

To start, in the spring of 2021 the UK government published¹ tax policies and consultations intended to shape its 10-year tax administration strategy. One of the new consultations addresses transfer pricing documentation — exploring potential changes to record-keeping requirements for large companies and a new tax filing requirement for all businesses affected by transfer pricing regulations.²

EY described³ this development thusly: “The consultation document⁴ considers the case for updating and strengthening current transfer pricing documentation requirements with the objective of providing greater certainty for UK businesses, **supplying HMRC with better quality data to enable more efficient and targeted compliance interventions**, and aligning the UK’s practice more closely with the transfer pricing documentation requirements of comparable tax administrations and the Organisation for Economic Co-operation and Development’s (OECD) Action 13 Final Report.”

HM Revenue and Customs generally does not now mandate specific records that UK businesses must prepare or the format of their transfer pricing documentation, (although many multinational enterprises, or MNEs, comply with the format called for under the OECD’s BEPS Action 13.)

Under changes proposed in the transfer pricing consultation, however, HMRC would require companies to keep certain information in standardised formats — which would likely have an **impact on transfer pricing processes and practices at many companies**. The direction HMRC looks to be heading provides clear indication that companies currently operating in the UK without a clear documentation strategy would be advised to consider a more proactive approach. With the Covid-19 pandemic not yet under control, governments continue to look at ways to generate some much-needed revenue.



Details from the UK transfer pricing consultation

EY described⁵ the proposed changes as follows:

- UK businesses would be required to extract operational information from their records and present it to HMRC promptly and consistently.
- Within the country-by-country (CBC) reporting regime, HMRC would require MNEs to provide copies of their master and local files on request and within 30 days.
- Also, under consideration: Requiring businesses to maintain an evidence log similar to the one prescribed in the Profit Diversion Compliance Facility Process. “This is a great deal more comprehensive than the Action 13 standard and, if introduced, is **likely to represent a significant additional compliance burden**,” EY noted.

The government also is exploring whether to require all UK businesses subject to transfer pricing laws to file an International Dealings Schedule reporting details of cross-border, intragroup transactions in which the counterparty is located in another territory. Information that could be required includes:

- Details of financial dealings, restructurings, and transactions (including counterparty identities and country locations.)
- Information on transfer pricing methodologies used along with supporting documentation.
- Corporate group information (so that entity-level data could be combined and attributed to a particular group within an MNE.)

¹ [Tax policies and consultations](#) (Spring 2021), HMRC, March 23, 2021.

² [UK issues new consultation on transfer pricing documentation](#), EY, April 6, 2021.

³ [UK issues new consultation on transfer pricing documentation](#), EY, April 6, 2021.

⁴ [Transfer pricing documentation](#), HMRC, March 23, 2021.

⁵ [UK issues new consultation on transfer pricing documentation](#), EY, April 6, 2021.



A transfer pricing game-changer in the U.S.

The U.S. Internal Revenue Service recently prevailed over the Coca-Cola Co. in a decade-long, multi-billion-dollar dispute with implications for other MNEs' transfer pricing determination and documentation activities.

The IRS claimed that Coca-Cola's transfer pricing methodology "overpaid" the company's foreign manufacturing affiliates and thereby shifted taxable income from the U.S. parent group to other jurisdictions.⁶ The licensees were located in Brazil, Chile, Costa Rica, Egypt, Ireland, Mexico, and Swaziland, and distribution affiliates and bottlers were located in various countries in Europe, Africa, and Latin America.⁷

Ultimately, the U.S. Tax Court agreed with the IRS assertion that Coca-Cola should have based its transfer pricing on the "comparable profits method" which would have assigned earnings to the foreign affiliates comparable to those of unrelated bottling companies. The court allocated Coca-Cola's U.S. parent an additional \$9 billion in income, increasing its tax burden approximately \$3.4 billion.⁸

The ruling is a cautionary tale for the professionals responsible for managing transfer pricing compliance and reporting.

"The victory will likely embolden (the IRS) to take on more transfer pricing-related court cases," the U.S. CPA firm BKD concluded.⁹ "The IRS has been **increasing staffing in certain key audit initiatives**, including the Large Business and International division. It is doing a better job selecting cases to pursue in tax court and is now having success with those cases."

"At a minimum," the law firm Taft¹⁰ advised, "U.S. taxpayers should ensure that their intercompany arrangements are properly documented and that the parties to such arrangements are compensated in a manner consistent with the arm's-length standard.

Advisory firm Duff & Phelps¹¹ offered this guidance: "It is clear from this ruling that maintaining thorough intercompany agreements that accurately reflect the outcomes desired from transfer pricing planning and strategies is crucial to tax planning and transfer pricing. From a practical perspective, taxpayers should take an opportunity to assess intercompany transactions," Duff & Phelps noted. "Even taxpayers (who are) party to advanced pricing agreements, which are agreements intended to provide tax certainty, should take care to review the critical assumptions of their agreement and **assess whether those have changed to avoid unexpected challenges.**"



Transfer pricing operational challenges

On a recent episode of the Tax & Tech Talks podcast¹², London-based transfer pricing specialists from KPMG and Thomson Reuters® talked discussed the operational challenges and scrutiny that transfer pricing faces in this volatile environment. Andrea Tolley, a partner at KPMG UK, said many corporate tax teams are **hampered by finance systems and data management processes that weren't designed to support transfer pricing documentation, calculation, defense and reporting.**

Many large companies manage transfer pricing with Excel spreadsheets, Tolley said, resulting in siloed data, more human error, over-dependence on the individual who created the spreadsheet, and difficulty managing the large volume of data needed to execute increasingly complex transfer pricing policies. Many companies also operate with decentralized tax teams and multiple, disparate ERP systems that generate data in different unharmonised formats.

6 [New Coke Isn't the Same as Old Coke: How the IRS's Adjustment To Coca-Cola's Related-Party IP Royalties Resulted in Billions of Dollars of Additional U.S. Tax](#), Taft Law Bulletin, December 14, 2020.

7 [U.S. IRS prevails in Coca-Cola transfer pricing dispute over intercompany royalties](#), by J. Harold McClure, MNE Tax, November 23, 2020.

8 [New Coke Isn't the Same as Old Coke: How the IRS's Adjustment To Coca-Cola's Related-Party IP Royalties Resulted in Billions of Dollars of Additional U.S. Tax](#), Taft Law Bulletin, December 14, 2020.

9 [IRS Wins Transfer Pricing Case Against Coca-Cola](#), by Elizabeth Hazzard, BKD, January 29, 2021.

10 [New Coke Isn't the Same as Old Coke: How the IRS's Adjustment To Coca-Cola's Related-Party IP Royalties Resulted in Billions of Dollars of Additional U.S. Tax](#), Taft Law Bulletin, December 14, 2020.

11 [Coca-Cola Tax Ruling Offers 5 Lessons for Multinationals](#), by Justin Radziewicz, Duff & Phelps, March 3, 2021.

12 [All About Operational Transfer Pricing](#), Tax & Tech Talks, Thomson Reuters, December 21, 2020.

“All of this adds to the complexity the tax department has to deal with,” Tolley said, “and also what the local financial controllers need to understand when they are faced with a transfer pricing audit.”

Before deploying technology solutions to automate largely manual transfer pricing activities, tax teams should:

- Document their current transfer pricing operations — including data flows and processes supporting documentation, harmonisation, and policy monitoring.
- Set clear priorities and objectives, rank needs based on risk, and create short- and long-term technology plans.
- Build a compelling business case and work closely with stakeholders in finance. “Remember, you don’t have to do everything at once,” Tolley said.

Isabel Becerra-Foster, a transfer pricing solution specialist at Thomson Reuters, added:

“Transfer pricing can change over time. Businesses change over time. That means policies need to adapt over time. Tax teams should think about adopting systems that can adapt to those changes, has the ability to manage the data required, and has the audit trail to help you when the tax audit comes.”



Technology takeaways

The world of transfer pricing documentation is fraught with regulatory change and uncertainty, greater scrutiny, heightened risk, and increasing data volumes. To keep pace and keep their companies in good stead with tax authorities in this challenging environment, tax teams need to automate their operations to efficiently and effectively:

- Compile data, find comparable transactions, and perform benchmark analyses of intercompany dealings with the use of industry standard data sources.
- Access a trusted database of private and public company records curated specifically to support transfer pricing benchmarking and defense.
- Prepare customised global transfer pricing documentation reports (master and local files.)
- Provide centralised and consistent local file and master file documentation.
- Use the cloud and centralised processes that enable colleagues around the globe to collaborate in real-time.
- Enable the consistent analysis of the arm’s length nature of related party transactions.

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