



A Conversation with HMRC on Transfer Pricing

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A&M recently sat down with HMRC's new Head of Transfer Pricing to discuss current trends and pass on client concerns.

This issue of *Tax Advisor Update* recounts their conversation about those industries that are most affected, the challenges of litigation, and how the new format of tax returns is expected to raise visibility across industry margins.

A&M: We have seen an increase in the number of transfer pricing audits in 2010. Has there been a focus on increasing the number of transfer pricing cases selected for audit?

HoTP: 2009 was a difficult financial year for many businesses and HMRC applied a light touch to audits. There is no desire to increase the number of audits – they are selected based on risk.

A&M: Please comment on the existence of industry / sector heads in the transfer pricing group (TPG) and whether cases are selected according to industry.

HoTP: Large Business Services (LBS) have sector leads for the purposes of improving HMRC's deployment of resources in servicing businesses. The TPG will link into these sectors when appropriate and where this may assist with particular cases; however, the TPG does not have a distinct focus on sector leads for transfer pricing beyond financial services. There are no "high risk" industries, although some industries, such as pharma, insurance and financial services, are more complex and prone to transfer pricing issues.

A&M: There are often related tax issues that arise from Advance Pricing Agreement (APA) discussions and clients are sometimes concerned about giving this information to the tax authorities. Can we look into developing a "holistic" clearance for transfer pricing and related international tax issues, such as CFCs, chargeable gains, etc.?

HoTP: The involvement of the assigned customer relationship inspector in APA discussions will assist with advanced clearances being obtained in other areas of tax, as they can ringmaster inspectors from the relevant technical divisions. We will always try to offer certainty in other areas of tax law where possible and, in fact, we encourage this.

A&M: It is our experience that HMRC views taxpayers as falling into two groups: those who engage in aggressive tax planning (in the advent of the DSG case this year) and those who make a reasonable effort to comply with the transfer pricing legislation. Would you agree?

HoTP: I agree; however, I don't think that DSG has changed the ball game with respect to how we approach audits. HMRC has limited resources for litigation and will look to settle transfer pricing disputes where appropriate.

A&M: On the subject of litigation, many clients have expressed a concern that even if they have a robust case, the tax authorities will "black mark" them for audits in other tax areas.

HoTP: This is absolutely not the case. HMRC does not operate this way. Litigation will be pursued by us in isolated, specific circumstances and will not prejudice the treatment of taxpayers. Equally, taxpayers who feel that they have a robust position should feel free to litigate. As mentioned, we will try to avoid litigation where there is an opportunity to settle the dispute.

A&M: Apparently there are now 80 Transfer Pricing (TP) specialists at HMRC (based on discussions I had with the international team last year). Has there been a drive to recruit more specialists?

HoTP: I would not have expected this number to change substantially (up or down) in the past year. There is no drive to increase or decrease the number of TP specialists. We are looking at how best to leverage existing resource and empower local inspectors.

A&M: The new XBRL format for submission of tax returns will reportedly provide improved visibility across industry margins. Has the TPG been involved in the roll-out for the purposes of improving access to relevant transfer pricing financials?

HoTP: The TPG were not involved in the selection / roll-out of the XBRL tool. However, given the fact that it has been adopted, the TPG have been looking at how best to use it going forward. The full impact is not certain at this point, as the tool will be rolled out in 2011.

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