

Addressing the COVID-19 impact on Transfer Pricing

An overview

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Agenda



What is the
COVID-19 impact
on operations and
RPTs



Guidance from
OECD issued in
December 2020



Adequately
documenting the
COVID-19 impact



Defending transfer
pricing positions
adopted

Impact on operations and RPTs

Treatment of losses and unusual one-time charges

- Lowering compensation for services /prices of goods – cost-to-cost recovery for certain transactions
- Identify, allocate or exclude abnormal/ exceptional / non-recurring operating costs
- Unused capacity/lower sales

Changes in operations / functional profile

- Entities exposed to additional risks may impact their usual characterisation – COVID-19 hazard risks & its interplay with economically significant risks – also supported by OECD guidance
- Changes in TP models and outcomes
- Applying force majeure clause or amending intercompany agreements
- Business restructuring owing to movement of function, risk and profit potential

Impact on operations and RPTs

Financial transactions

- Renegotiation of existing arrangements in light of lowered market rates, moving to a floating rate
- New loans / guarantees / intercompany financing such as cash pooling
- Temporary moratorium, delayed outstanding receivables
- Impact of thin capitalisation

Intragroup Service payments - Royalty, management cost

- **Royalty**
 - On hold for impacted entities
 - Renegotiate royalty drawing reference from market trends
- **Management support for response to COVID**
 - Evaluate whether shareholder function
 - Basis of allocation – linked to risk

Guidance available from OECD – Dec 2020

Use of contemporaneous information

- Change in sales volumes, industry impact
- Capacity utilized for related / unrelated transactions
- Incremental or exceptional costs borne by parties
- Government grants and interventions

Addressing information deficiencies

- Reasonable commercial judgement
- Allow for arm's length outcome testing approach
- Use of more than one method
- Comparables – review set, loss making

Budgeted financial information

- Detailed P&L analysis with explanation for variances
- Profitability adjusted to outcome without COVID
- Rationale / evidence for increased allocation of costs or reduced sales

Period of data used to evaluate arm's length pricing

- Use of multiple year data and averages remain applicable
- Separate testing periods
- Interrelation of Methods – comparables – testing periods

Guidance by other jurisdictions on documentation

Key transfer pricing areas	Singapore	Hong Kong	Australia	Canada	Czech Republic	New Zealand
Loss-making comparables	✓	✓			✓	✓
Receipt of government assistance	✓	✓	✓	✓	✓	✓
Block or term testing	✓	✓			✓	✓
Functional, Asset and Risk profile pre- and post-covid	✓	✓	✓			✓
Analysis of COVID-19 hazard risk interplay with economically significant risks		✓			✓	✓
Limited risk bearing entities may incur losses	✓	✓			✓	✓

Assessment and dispute resolution



Dispute mitigation/
resolution mechanisms

01

Advance Pricing Agreement

- For existing APA: Whether critical assumptions continue to hold good including realization period, timely intimation to authorities in case of defaults if any.
- For APA under negotiations: Reconsider whether APA is suitable, negotiate for exceptional terms for COVID-19 impacted period

Unilateral APAs:

- 240 concluded with an average time of 32.50 months.
- Cases concluded in FY 2018-19 took an average time of for FY 2018-19 45.22 months
- 14 industries and 29 type of transactions covered

Bilateral APAs:

- 31 BAPAs concluded at an average processing time of 44.32 months
- 51.82 months is the average time taken for APA cases concluded in FY 2018-19
- BAPAs covered 24 type of transactions in 5 industries

APA guidance from OECD & other jurisdictions



OECD

- Uphold unless condition leading to revoke, cancel or revise
- Potential outcomes of breach: Revise / Revoke / Cancel



Singapore

- Explain why the terms have been breached and suggest the next course of action
- For ongoing APAs, discuss alternatives - putting the case on hold or terminating



Australia

For existing APAs, possible outcomes considered: (i) continue, (ii) renegotiate for demonstrable period impacted, (iii) suspend or modify for a set period.



Malaysia

- For ALP determination, pre-COVID conditions would be considered.
- Taxpayers to choose either to continue or withdraw applications
- Term testing may be considered on case to case basis.

Assessment and dispute resolution



Dispute mitigation/
resolution
mechanisms

02

Safe Harbour Provisions

- For FY 2020-21, validity of rules announced in 2017 extended
- Expectations: rationalisation of safe harbour margins, widening the coverage, upward revision in thresholds

Grant Thornton Bharat
and FICCI Report on
Indian transfer pricing
safe harbours in the
post COVID-19 era

**03**

Routine course of assessment

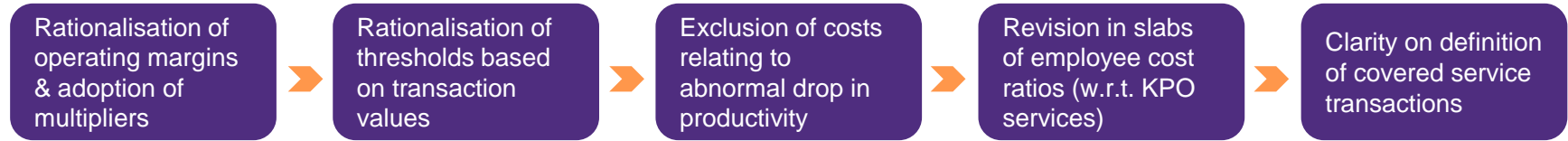
- Risk parameters for reference to transfer pricing officer
- Guidance for field officers to deal with Transfer Pricing audits for COVID affected years



FICCI – Grant Thornton report on safe harbours in post COVID-19 era, November 2021

FICCI – Grant Thornton report on safe harbours in post COVID-19 era

Provision of services: expectations for FY 2022



Financial transactions

- Relaxation from mandatory credit rating requirements for loan transactions
- Rationalising rate of guarantee commission
- Widening the scope to include availing loan / receipt of guarantee
- Moratorium where AE is incurring losses due to COVID-19
- Consideration to phasing out of LIBOR



Include LRD entities, marketing sales support entities. Cover TP litigative areas of business support & investment advisory services



Exemption from certain documentations and certification



Cover specified domestic & deemed international transactions

Thank you!