

## *Chapter 4*

### **Governance arrangements**

*This chapter looks at the governance arrangements that tax administrations put in place to ensure effective oversight of their transfer pricing programmes. It includes some practical examples and a discussion of the project management of transfer pricing audits and enquiries.*

Getting cases off to a good start lays the foundations for an effective and successful programme of transfer pricing audits and enquiries. But transfer pricing audits and enquiries are complex and resource intensive. For this reason they benefit from regular oversight at a senior level. The precise arrangements that tax administrations put in place are necessarily tailored to suit the scale of their transfer pricing programmes and the size of their organisations. Some countries have put in place management and governance arrangements that are specific to transfer pricing. Generally speaking these arrangements all aim to give senior managers a good overview of the current status of transfer pricing audits and enquiries that are underway and the opportunity to intervene at key stages. It also makes it easier to ensure that there is a consistency of approach to transfer pricing issues. Examples of different approaches to governance are shown in Boxes 4-6.

#### **Box 4. Transfer Pricing Governance Arrangements in Denmark**

In Denmark, SKAT have recently created a transfer pricing board to oversee their programme of audits and enquiries. The board comprises the heads of the audit units and the head of the central transfer pricing team. It is responsible for reviewing all complex and material cases. The most complex cases will go on the board twice. The review of the case will generally be based on a 1-3 page paper that is prepared by the audit team, but in simpler cases the review can also be based on an oral presentation from the head of the audit team in question. Based on these reviews, cases will be prioritised; specialists brought in, cases progressed or closed. The board replaces a central approval system under which all transfer pricing income adjustments had to be approved by the central transfer pricing office. In consideration of time constraints of the board, very simple and straightforward cases are not presented to the board, but in order maintain an overview of the case portfolio. SKAT also maintains a complete list of all working cases to ensure that they are subject to review and oversight at the right time.

#### **Box 5. Transfer Pricing Governance Arrangements in Canada**

In Canada there is no transfer pricing board but there is a central committee that is tasked with the oversight of cases involving “re-characterisation” of transactions undertaken, which involves a specific provision in the Canadian code. This committee reviews a case 3 times. In the 1<sup>st</sup> stage, a case is approved and guidance is provided regarding audit steps. In the 2<sup>nd</sup> stage, the case is reviewed again centrally as the taxpayer must be informed that the provision is being invoked at this stage. Senior managers from the tax avoidance team are brought in at this stage, as the provision is regarded as having some of the features of a General Anti-Avoidance Rule. In the 3<sup>rd</sup> stage, a final determination is made to re-characterise transactions and lawyers will be involved in this stage of the process.

### Box 6. Transfer Pricing Governance Arrangements in the UK

- HMRC introduced a new governance system for transfer pricing enquiries with effect from 1 April 2008.
- The primary aims of introduction of the new system were to achieve:
  - more focused case selection through effective risk assessment,
  - faster and more effective working of cases, and
  - greater consistency in how cases are worked and in decision making.
- The three stages of HMRC's mandatory TP Governance are:
  - making sure the selection of a case is appropriate,
  - ensuring there is effective progress in a case, and
  - reaching the appropriate conclusion in a case
- A business case must be made by the relevant case team to HMRC's Transfer Pricing Panel or Board for approval prior to an enquiry being commenced. The business case must detail the extent of risk assessment undertaken and the conclusions drawn.
- Regular reviews are required to ensure that cases are actively progressed and any factors causing delay are tackled.
- Finally prior approval is required from the Transfer Pricing Panel or Board of any settlement proposals, before they are agreed with the taxpayer, or for a decision to litigate.

Central oversight of all its transfer pricing cases in this way allows HMRC to closely monitor its own performance and obtain robust management information

When cases become stalled, good governance ensures that managers are aware of this and can intervene. It is often easier for them to reach the conclusion that a case does not merit further pursuit, or should be narrowed in its scope, than it is for the audit or enquiry team itself to make the decision. Internal appeals processes can also be of value when the process of enquiry, or more usually negotiation, about any adjustment that is being suggested has ceased to progress. Further consideration of ways in which tax administrations are able to tackle delay is covered in more detail in Chapter 5.

### Project management – a transfer pricing audit or enquiry plan

Governance arrangements of the sort described above usually include the requirement for a project plan to be agreed at the outset of an audit or enquiry and also help to ensure adherence to such a plan.

For example, in HMRC it is mandatory to have an action plan, although the exact nature of the plan will vary according to the circumstances of the case. Where the issues are straightforward and fact-finding and analysis limited, a simple plan may suffice. By contrast, in a complex case where there are several different strands of enquiry moving at different paces, with different team members or specialists involved, a more detailed plan will be needed.

Whatever the size of the case, however, key features of an effective audit or enquiry plan will often include:

- Initial scope of the audit or enquiry

- Resource planning: details of the team and the anticipated requirement for specialists/experts – internal and external
- Process and timetable: for detailed fact-finding, obtaining information and supporting documentation and interim analysis
- Process and timetable: for detailed review of findings, development of arguments and exchange of views with business and reaching decision point

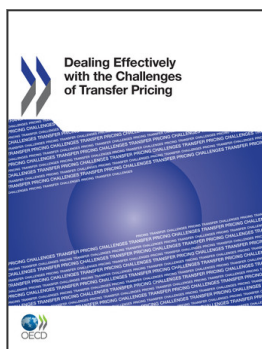
Each stage of the audit or enquiry should have a clear timetable and an expected completion date. These include the date by which the tax administration will take the decision not to seek any further information and will proceed to form a view on the basis of the information it already has, the date by which the tax administration will prepare a resolution review and finally the planned date of settlement.

Such action plans usually operate as living documents and scoping and timelines are updated as the case progresses but at all times act to help maintain momentum in a case.

The most effective action plans are those that are drawn up and agreed jointly by both the tax administration and the business and their advisors so that all are tied into the process. Even where tax administrations are unable to agree their plan with the taxpayer, they still find it useful to share the plan and the timetable, informing the business how and when, if necessary, they plan to use their information powers to force co-operation. Whatever the level of engagement with, or co-operation by, the business a project management approach to the management of cases is considered by tax administrations, business and their advisors to help to maintain progress.

### **Key thoughts for the chapter**

Good governance arrangements ensure that the right issues are picked up for audit or enquiry and that senior manager have appropriate oversight to ensure the progress of cases. Robust and transparent governance arrangements also provide assurance to business that there is consistency of approach in transfer pricing cases.



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