Day 3, Session 3

Transfer pricing risk management and compliance

From an MNE’s perspective

Dr. Sven Bremer, Head of Group Transfer Pricing

SIEMENS

Agenda

I. Transfer pricing cycle

II. Organization

III. Price setting & controlling

IV. Documentation

V. Controversy

VI. Automation

SIEMENS

Section I

Transfer pricing cycle

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

SIEMENS

How to manage transfer pricing risk and compliance?

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

What are we talking about?

- Transfer pricing is under **increasing scrutiny from tax authorities** globally. New, stricter regulations, coupled with pressure to grow tax revenues for social welfare purposes is continuously fueling new tax/TP developments.
- As a result, companies are often embroiled in tax audits resulting in income adjustments, and additional tax payments.
- And even if tax risks do not materialize, companies might be obliged to **book adequate tax provisions**, which burden the P&L. The developments under various accounting principles for the recognition of uncertain tax positions (e.g. FIN48 under US-GAAP) intensify these requirements.

Supranationals foster the debate

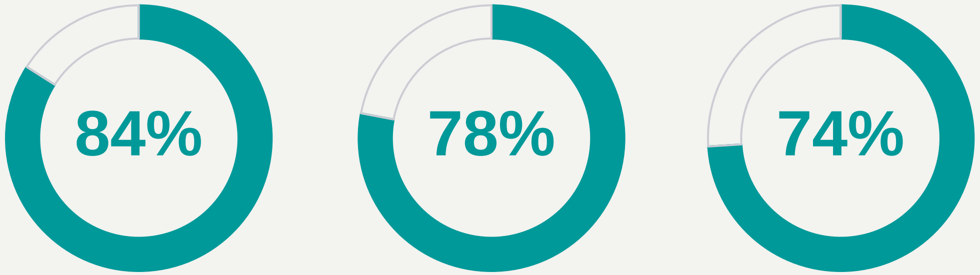
- Much of this growing focus on transfer pricing is driving an increasing amount of work by supranational organizations. This is evidenced by the OECD BEPS project, that has intensified the activity of tax authorities to harmonize their approach to eliminate what they perceive as inappropriate tax avoidance.
- Recently, an **historic agreement for reform** of the international tax rules has been reached to address the tax challenges arising from the digitalization of the economy (**two-pillar approach**). Pillar One aligns taxing rights more closely with local market engagement. Pillar Two establishes a global minimum taxation regime.
- The **increasing involvement of different international organizations** – such as The United Nations (**UN**) – in transfer pricing enforcement – even as they all claim to adhere to OECD standards – has raised **fears** that nations will begin to **apply the arm's-length principle in discordant ways**.
- It remains to be seen whether the **OECD's future tax work** will **reflect consensus** around uniform, consistent international tax rules **or** whether it will end up **divergent country views**.

SIEMENS

The transfer pricing risk and compliance cycle

- It is essential to holistically consider risk management and compliance throughout the TP risk cycle.
- Tax risk management has been identified as the most important factor driving changes to the transfer pricing model, processes and governance.

Biggest sources of risk facing transfer pricing in the next three years.

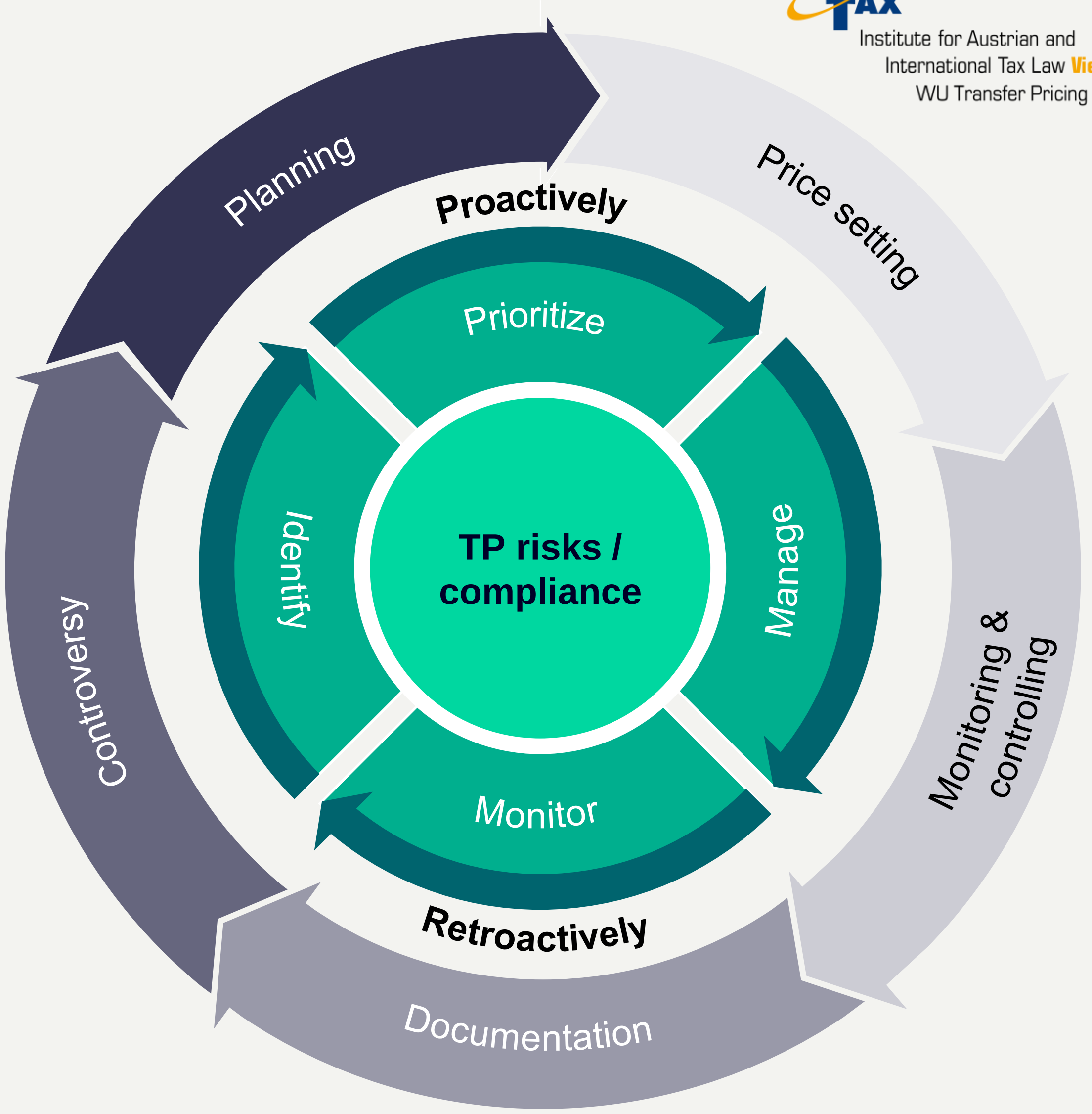


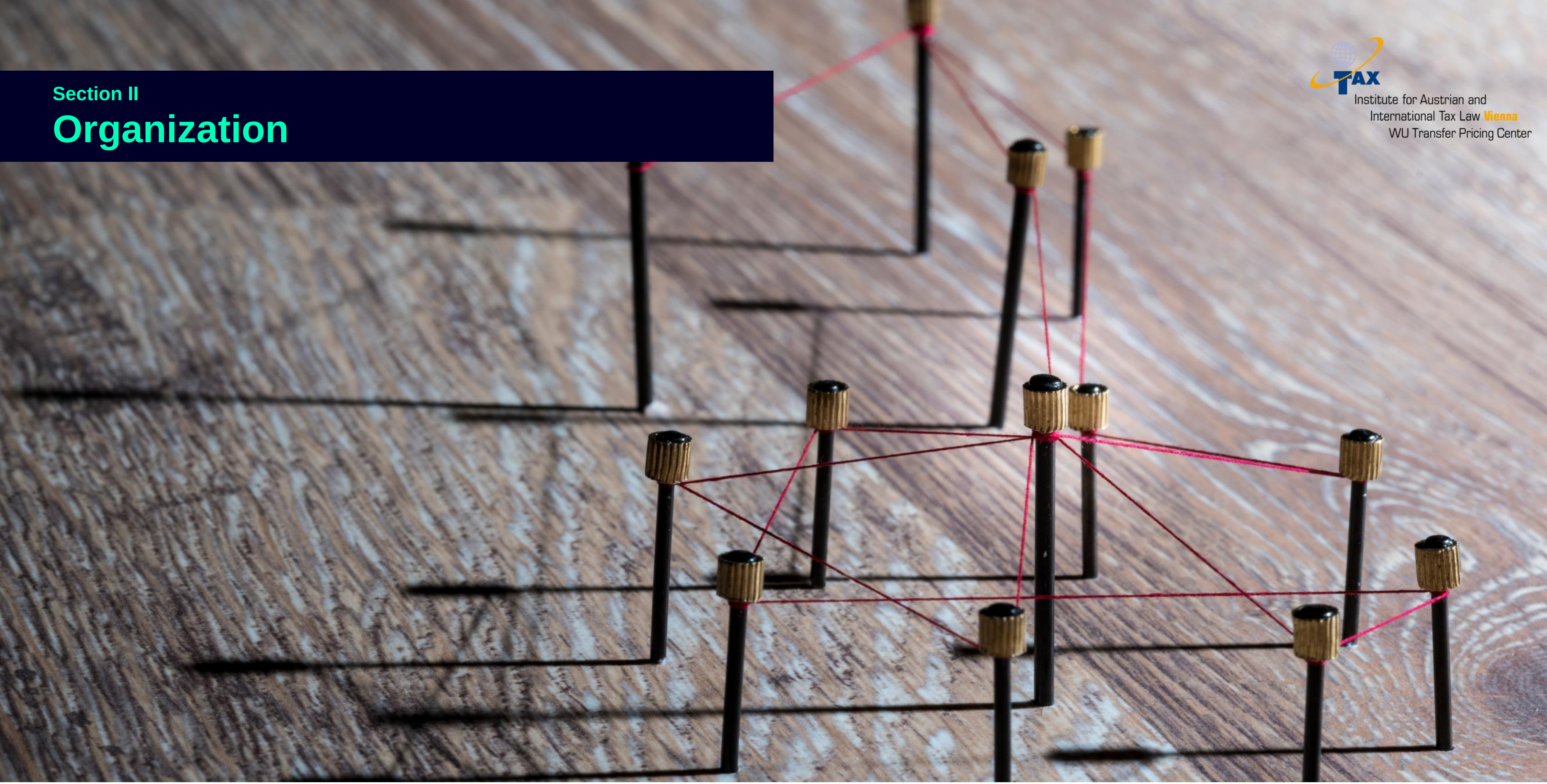
Double taxation in a Pillar I / Pillar II environment	Executing operational transfer pricing	IP – Location and ownership of assets, control of risk

Source: EY International Tax and Transfer Pricing Survey 2024

- Learning from experiences throughout the transfer pricing life cycle and implementing remedial measures is crucial.

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center





Section II

Organization

TAX
Institute for Austrian and
International Tax Law Vienna
WU Transfer Pricing Center

SIEMENS

Take a view of your organization

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Setup for a TP organization

- Direct / non-direct reporting to Head of Tax
- Governance vs. operational responsibilities
- Centralized vs. decentralized execution
- Factoring indirect taxes / customs into the TP equation

Potential areas

- Accounting for controversy and financial statements (MAP / APA, audit support, TRC TP, combined financials support, etc.)
- Planning for the impact and economic analysis (benchmarking, alignment and documentation of business results, etc.)
- Performing TP due diligence for M&A, carve out and integration projects (business transformation)
- Designing / updating and sustaining an operationalizing TP structure (tax-efficient supply chain, international financing, other international projects, etc.)

Digitalization

- Tax functions in digital transformation / opportunities for transfer pricing automation

Clear communication

- Effective operational transfer pricing is underpinned by clear and frequent communication between key departments and relevant stakeholders
- TP guideline(s)
- TP trainings and workshops – learning from case law and following developments
- Transfer pricing officer (TPO) organization
- Standard templates / tools
- Intranet, social cast

SIEMENS

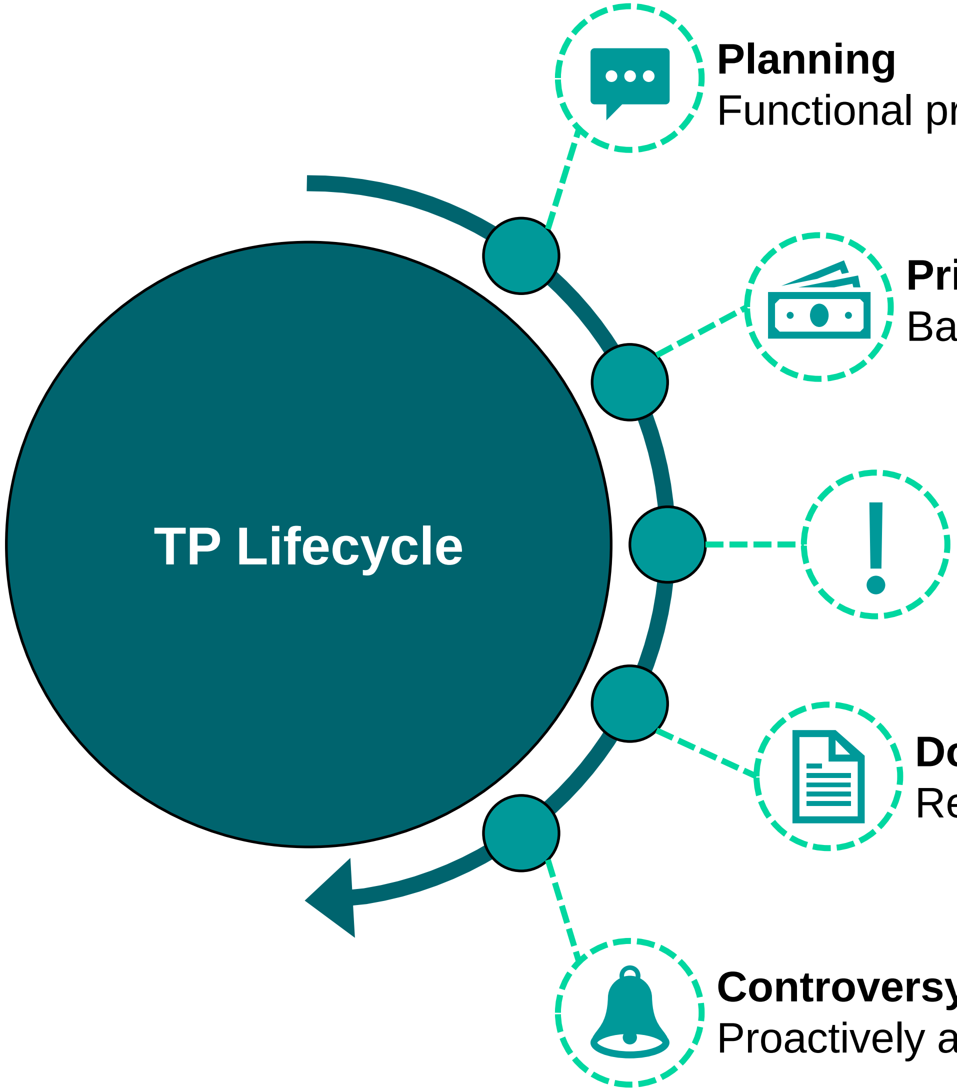
Section III

Price setting & controlling

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

SIEMENS

Price setting & controlling for tangibles / services
TP steering process



Planning
Functional profile; benchmarking; target setting

Price setting
Based on budget

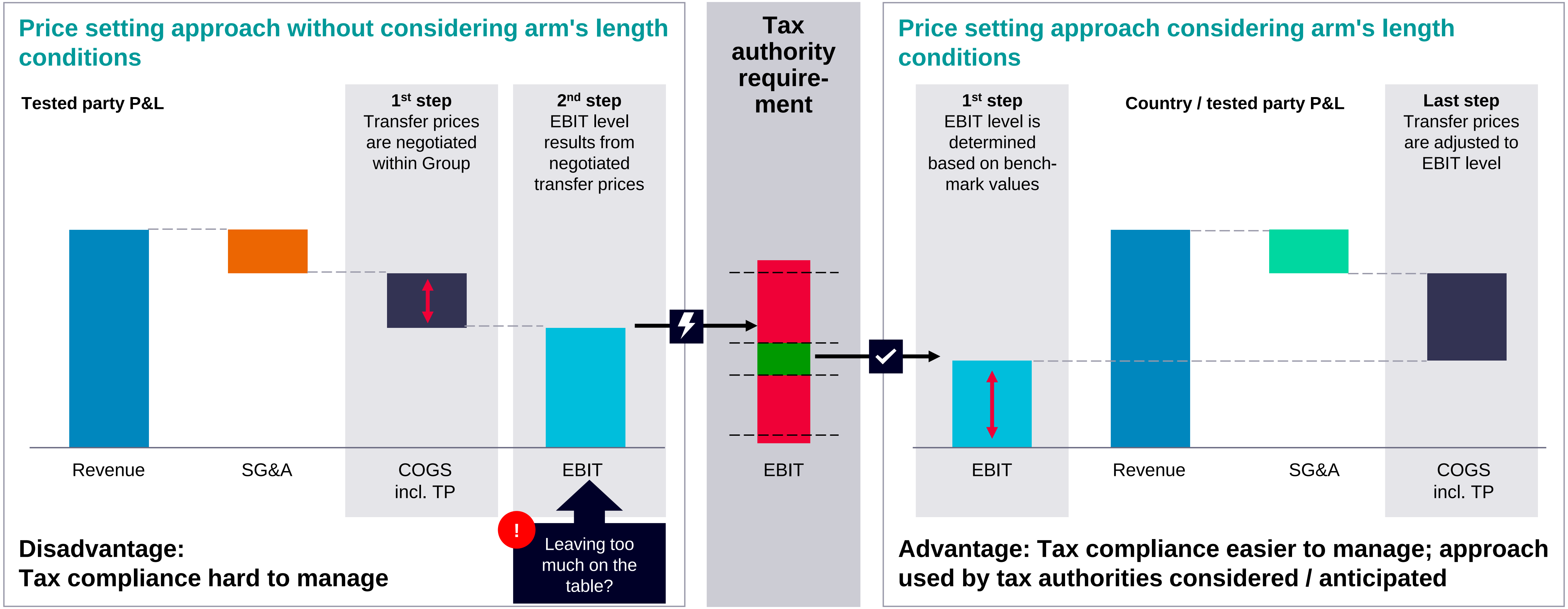
Monitoring & controlling
Monthly / semi-annually

Documentation
Reasons for falling out of the range

Controversy
Proactively and retroactively

Price setting & controlling for tangibles / services
Balancing of business needs with TP requirements

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

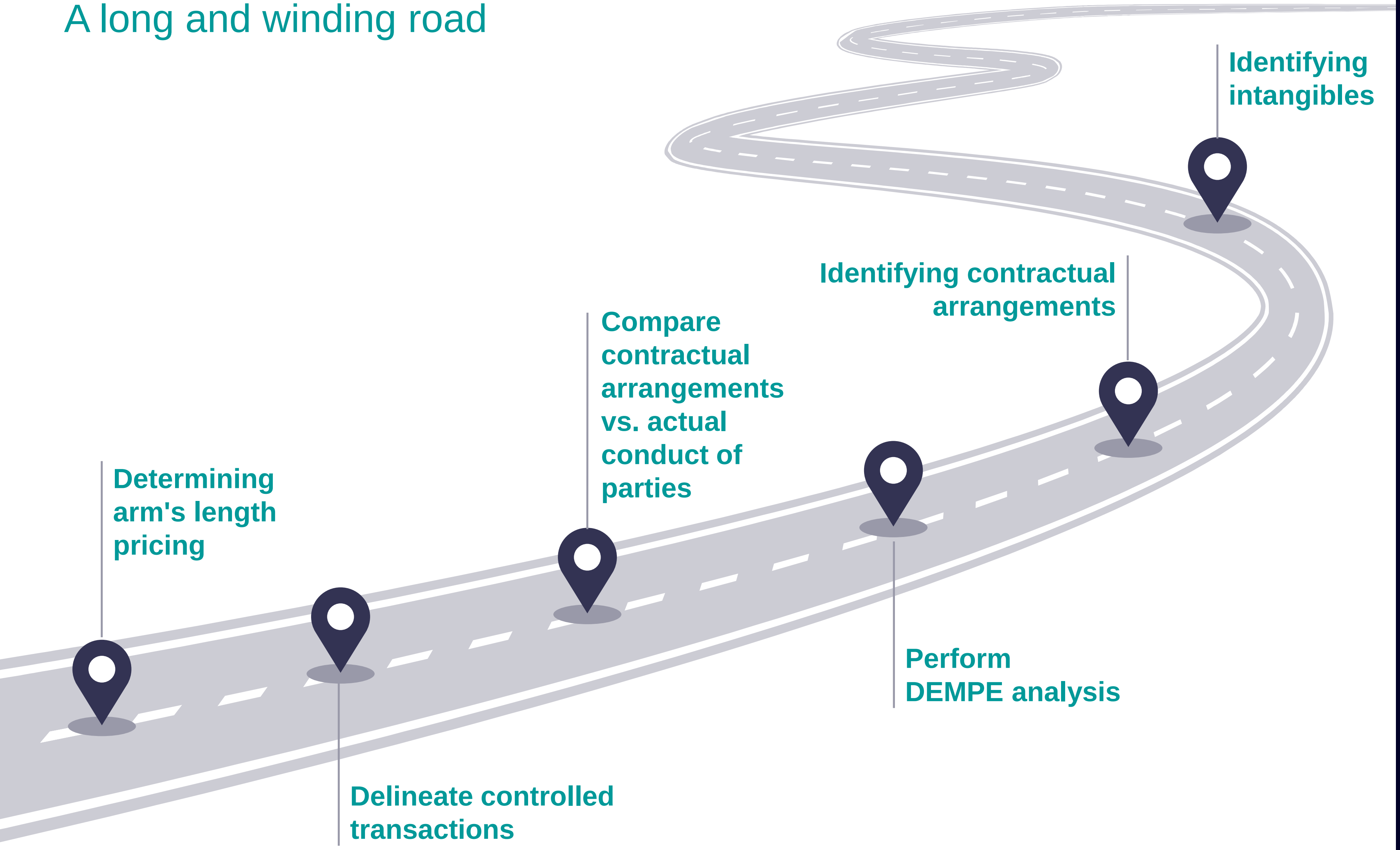


= Dominant parameter

SIEMENS

Price setting & controlling for intangibles

A long and winding road



Institute for Austrian and International Tax Law **Vienna**
WU Transfer Pricing Center

The 2017 edition of the OECD Guidelines came with considerable focus on intangibles.

Since then, the relevance of intangibles has increased significantly. Nowadays, intangibles are frequently the subject in tax audits or in court.

Valuation of intangibles is a critical topic; strong focus on valuation techniques (Sec. 6.153 ff. OECD TPG) given that other methods are subject to various limitations.

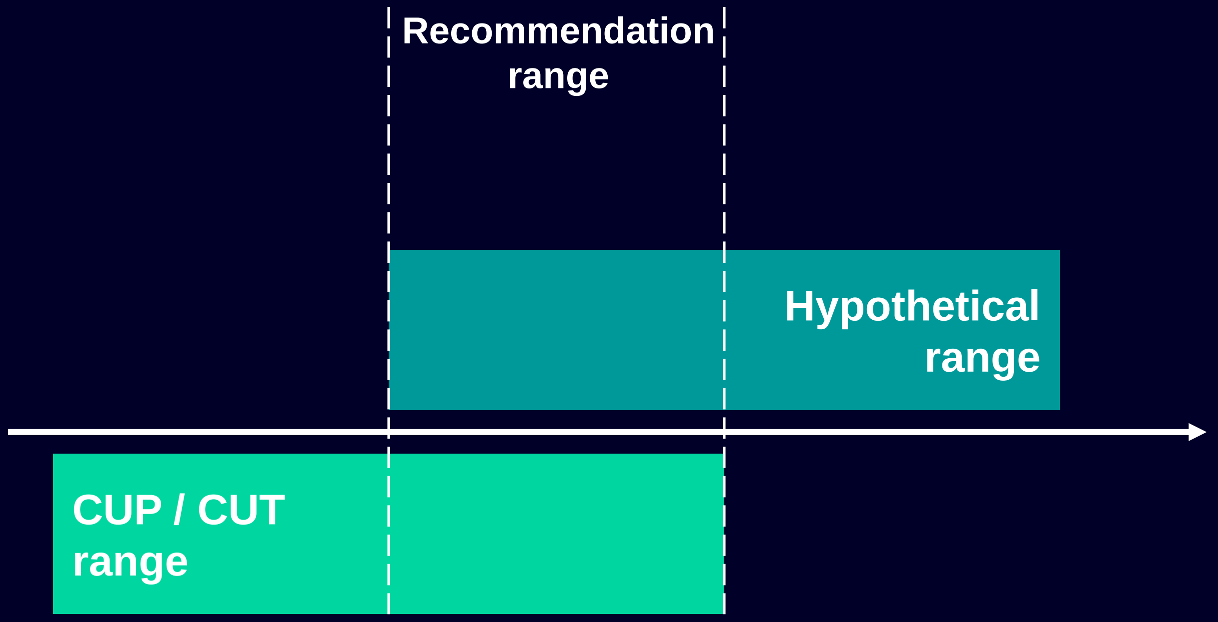
How to deal with hard-to-value intangibles (Chapter VI D.4 TPG)?

SIEMENS

Price setting & controlling for intangibles
Practical insights: royalty rate determination

In light of international trends and audit experience, it is suggested **to use a multiple methods approach**. As such a minimum of two appropriate methods is required. Most appropriate method can be any method, but most likely:

- **Two-sided transfer pricing analysis** should be performed in which the **alternatives of both parties** are considered.
- **Profit-oriented approach (Licensee's perspective)**: Profit trend shall be considered under the income approach. The proposed approach in this regard is to derive the royalty rate based on the value of the technology and to establish profit expectations of the licensee.
- **Cost oriented approach (Licensor's perspective):** The R&D costs incurred for the development of the license shall be considered for the purpose of determining the royalty rate and to reflect a hypothetical minimum profit expectation of the licensor.
- **CUP / CUT Analysis (as sanity check, third party perspective):** Although not suitable as the only method to determine and / or justify a certain royalty rate, CUP / CUT is still useful for sanity check purposes.



Balancing the results of the individual approaches seems to deliver the most defendable overall reasonable result!

Once a royalty rate has been determined, it should be reviewed regularly!

Price setting & controlling for financial transactions
Highly dynamic developments in recent years

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Case law

2009 – **Canada**: Guarantee fee case; **Norway**: Cash pooling case

2013 – **Denmark**: Cash pooling case; **Canada**: Factoring case

2014 – **Switzerland**: Cash pooling case

2016 – **Italy**: Interest free loan case

2017 – **Australia**: Pricing case; **Norway**: Refinancing case

2020 – **UK**: Pricing case

2021 – **Germany**: Two Federal Fiscal Court decisions on financial transactions (among others, TP method and rating)

Guidance

2015 – **OECD**: BEPS Actions 8-10 Aligning Transfer Pricing Outcomes with Value Creation

2017 – **HMRC**: Comprehensive Cash Pooling Guidance

2018 – **OECD**: Discussion Draft Transfer Pricing of Financial Transactions

2020 – **OECD**: Final Report Transfer Pricing of Financial Transactions; **IRS/HMRC**: Guidance on Transition from LIBOR; **OECD**: Guidance on Transfer Pricing Implications of COVID-19 Pandemic

SIEMENS

Price setting & controlling for financial transactions
Pricing approach

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Determine whether a loan should be regarded a loan → Identify the commercial of the financial relation → Choose the appropriate transfer pricing method → Calculate the arm's length interest price

Common issues in tax audits

- Distinction between debt and hidden contribution
- Cash pool structures
- Rating: Stand-alone vs. group rating; applicability of rating tools?
- Transfer pricing method: general preference for the CUP method?

SIEMENS

Price setting & controlling under Pillar I
Competing objectives and different views

Market taxing rights vs. certainty

Additional profits to market jurisdictions
Profits to market jurisdictions without a nexus and beyond that delivered by the ALP

Simplify transfer pricing rules
Demand of developing countries / businesses to simplify complex transfer pricing landscape

DSTs and similar measures
Remove a threat to the stability of the international tax system

Robust tax certainty process
Both for the new taxing right “Amount A” and existing profit allocation rules

TAX
Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Amount A entry into force – It all depends on the US…

- Draft MLC released on October 11, 2023 (not yet open for signature)
- Requires 30 states to ratify and such states to represent 600 points or more as set out in Annex I.
- Annex I lists 18 UPE jurisdictions of companies being subject to Amount A – total of 999 points, 486 of which are allocated to the US.
- Points were potentially determined based on Amount A contribution.
- Will Amount A ever become effective?
  - US fiscal impact?
  - US MNC’s viewpoint?
  - US political situation, esp. upcoming elections?

SIEMENS

Price setting & controlling under Pillar I
The future of profit allocation

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Pillar I succeeds

- Amount A and Amount B are implemented by almost all countries and DSTs are removed.
- New normal where new profit allocation rules will apply to some business but not others.
- Amounts A and B may gradually expand to cover more businesses / activities.

Pillar I largely succeeds

- Amount A and Amount B are implemented by a critical mass of countries and DSTs are removed.
- Other countries retain DSTs / aggressive approaches to transfer pricing.
- Continued uncertainty in some countries for foreseeable future.

Amount B succeeds

- Amount A fails due to inability to agree / ratify MLC.
- Amount B could be introduced without an MLC.
- Some improvements to the transfer pricing environment.
- Ongoing concerns about DSTs and other similar measures.

Pillar I fails

- Neither Amounts A or B are implemented.
- Countries retain / introduce DSTs and other similar measures and adopt more aggressive approaches to transfer pricing.
- Pillar I has legitimized the view market jurisdictions should have more taxing rights, but without agreed limits

SIEMENS

Price setting & controlling under Pillar I
Amount B will come true

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

On February 19, 2023, the OECD released a new report on Amount B which will be incorporated into the OECD Transfer Pricing Guidelines

Optional implementation

Amount B is optional for jurisdictions, that have the option to implement it as a taxpayer safe harbor or mandatory rule that in-scope distributors would be required to apply.

Wholesale distribution of tangible goods

Amount B is focused on the wholesale distribution of tangible goods and so excludes the distribution of services, non-tangible goods, commodities and retail sales above a de minimis.

New approach to pricing

Standardized pricing matrix based on operating asset and operating expense intensity and three industry categories that sets a standardized return for in-scope distribution activities.

Will it simplify your transfer pricing?

Jury remains out. Uncertainty around which jurisdictions will implement Amount B and whether its application will be respected create a real risk of more, not less, complexity.

Irrespective of Amount B being implemented locally, the pricing matrix established by the OECD can be expected to have significant practical implications (e.g., as a reference point for an appropriate distributor remuneration).

SIEMENS

Price setting & controlling – other initiatives
EU Transfer Pricing Directive

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Purpose
Introduce a common set of rules around the application of transfer pricing principles in EU Member States, by:
- Codification of the latest version of the OECD Guidelines into the domestic legislation of all EU Member States
- Consistent application of the arm's length principle and OECD Guidelines in the EU through the definition of common interpretations and practices

Envisaged entry into force
January 2026

Associated enterprises
Entities are considered affiliated with a shareholding of 25% or above (Art. 5).

Corresponding adjustments
When a primary adjustment is made, Member States shall ensure that they make a corresponding adjustment (fast track, without need for MAP, Art. 6).

Arm’s length range
- When a benchmark study is applied, the arm’s length range is generally determined using the interquartile range (Art. 12).
- If results fall outside the interquartile range, adjustments should be made to the median.

Year-end adjustments
- Provision of conditions under which year-end adjustments can be applied and should be accepted (Art. 7).
- No indication of interaction with VAT/customs regulations yet.

Transfer pricing documentation
European Commission is empowered to determine the scope of transfer pricing documentation, including acceptable languages and templates (Art. 13).

Miscellaneous
- Applicable transfer pricing methods (Art. 9)
- Most appropriate method rule (Art. 10)
- Rules for comparability analysis (Art. 11)
- …

SIEMENS

Section IV

Documentation

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

SIEMENS

Documentation risk areas
Consistency as a key matter

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Local File

- Coordination with the CbCR
- Presentation of transfer price-specific information
- Analysis of any local business restructuring
- Use local legal vs. corporate GAAP financial data
- Localization for some countries

Master File

- Coordination with the CbCR
- Presentation of the business model and the value chain
- Focus on IP
- Focus on intercompany financial transactions
- Localization for some countries

CbCR

- Consistency of qualitative and quantitative information in the Master File and Local Files
- Recommendation for multi-year analysis/plausibility checks
- CbCR notification processes differ by country
- New information available to the public through Public CbCR / alignment of CbCR concepts

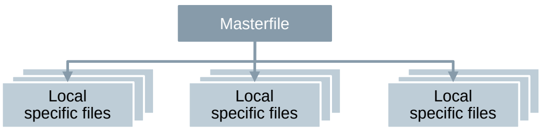
Additional topics

- Consistency with other TP documentation components
- Part of the tax return vs. separate transfer pricing form
- Disclosure of evidence of the existence of Master File and Local File
- Different templates for Master File and Local File

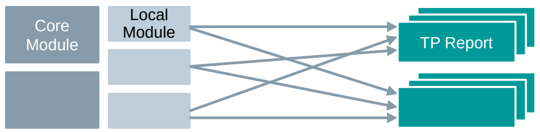
SieDoc 2.0 – Evolutionary process
Continuous adaptation to new challenges

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Masterfile approach



Modular approach



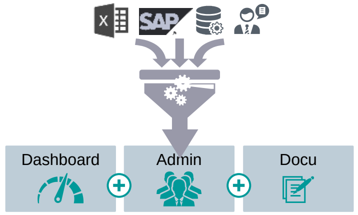
Three-tiered documentation approach

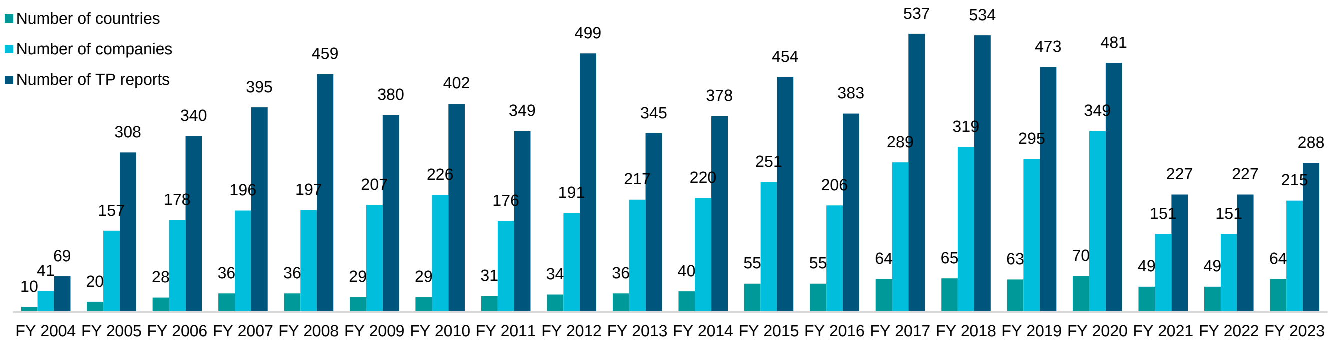
- Automated documentation (Local File) in selected countries with external advisor tool
- Existing modular approach and workflow is an important prerequisite for efficient implementation

BEPS 13

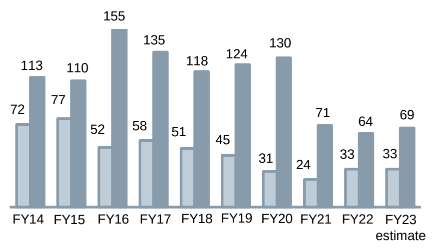
SieDoc 2.0

- Fully automated documentation creation process and automatic transfer of all data
- Pilot of internally developed tool

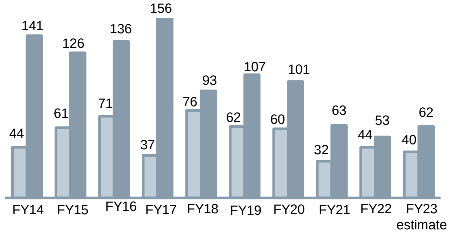




SieDoc benchmarking searches (internal/external)



Development of SieDoc benchmarking searches (financial update/full update)



SIEMENS

Global challenges & approaches

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

01
Content

02
Processes

03
Economic analysis

04
Consistency

Continuing challenges force MNEs to seek sustainable solutions for complying with TP documentation on a global scale to mitigate tax exposure and to fulfill the interests of both taxpayer and tax authorities.

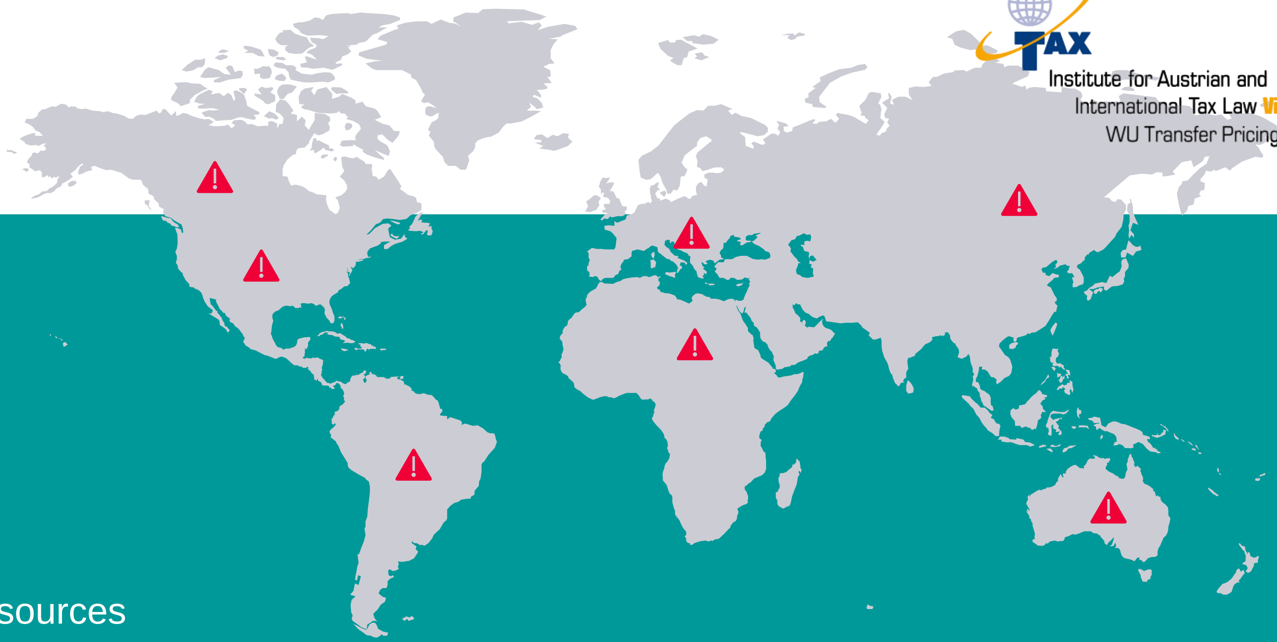
SIEMENS

Section V

Controversy

SIEMENS

Controversy on the rise as TP deemed "high risk"



Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

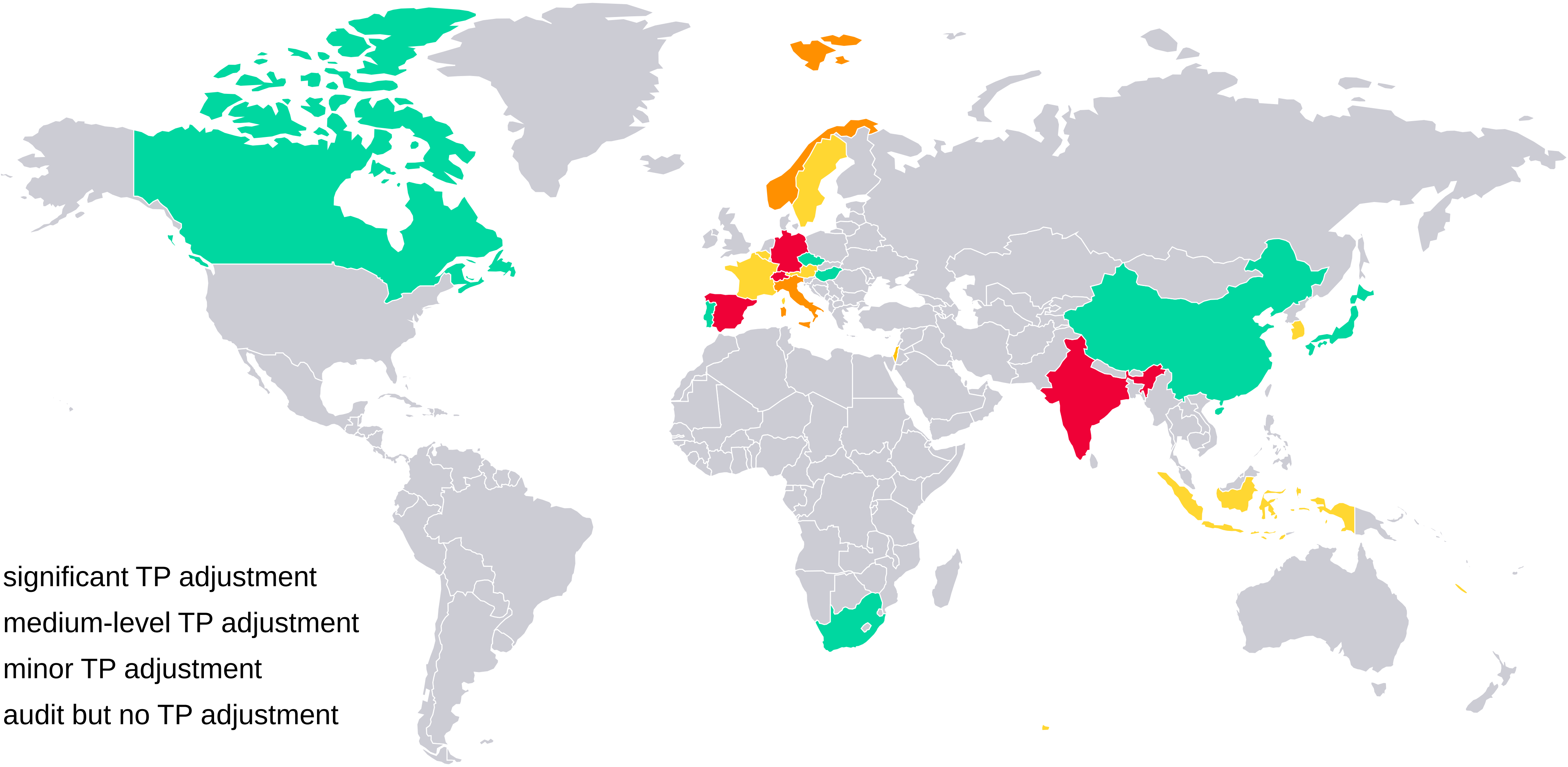
How are tax authorities reacting?

- TP continues to be a **significant source of controversy** between the worlds' tax authorities and MNEs.
- Tax authorities worldwide have **stepped up their enforcement**, and they are paying special attention to TP.
- Tax authorities are continuing **to increase** their transfer pricing resources which in turn are leading to a general increase in the number of inquiries and audits.
- Intercompany pricing issues around **financial transactions** and **IP** rapidly become the "new" arena of transfer pricing.
- The OECD's base erosion and profit shifting **(BEPS)** framework has an **increasing influence** on and reflective of the approach of tax authorities. In particular, its greater demands for transparency, increased information and assessing the performance of key activities related to the generation of profits can indirectly be seen as codifying the current trends of tax authorities regarding the increased use of multi-sided profit- and risk-based assessments when selecting and assessing audit cases.
- This increased focus by tax authorizes on the location of value-driving activities and multi-sided profit assessments is aligned with revised requirements for Intangibles.
- The increase in general information requests also aligns with the revised documentation requirements.

SIEMENS

Controversy – Experiences 1/2
TP audit adjustments

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center



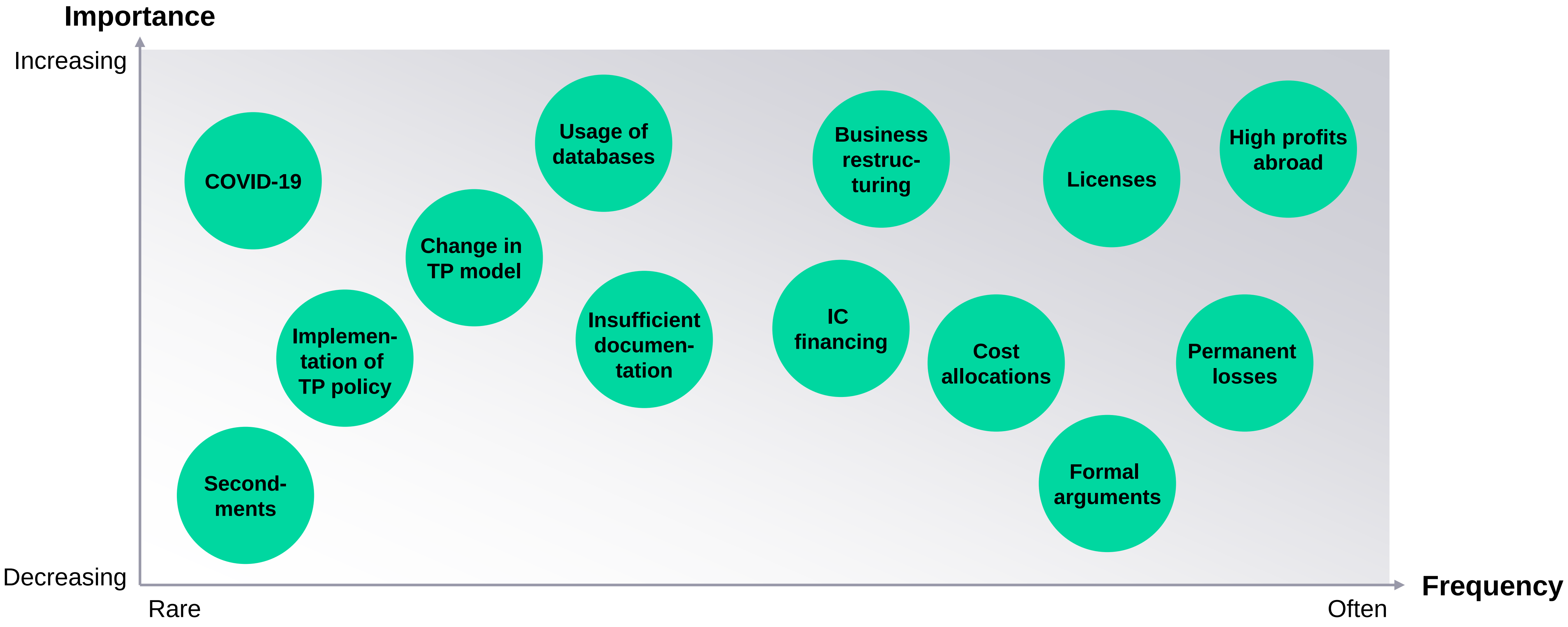
- Country with significant TP adjustment
- Country with medium-level TP adjustment
- Country with minor TP adjustment
- Country with audit but no TP adjustment

SIEMENS

Controversy – Experiences 2/2

Common topics

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center



SIEMENS

Trends towards more tax certainty
Dispute prevention vs. dispute resolution

Fact pattern → Tax assessment → Tax audit → Application for unilateral adjustment → Dispute resolution

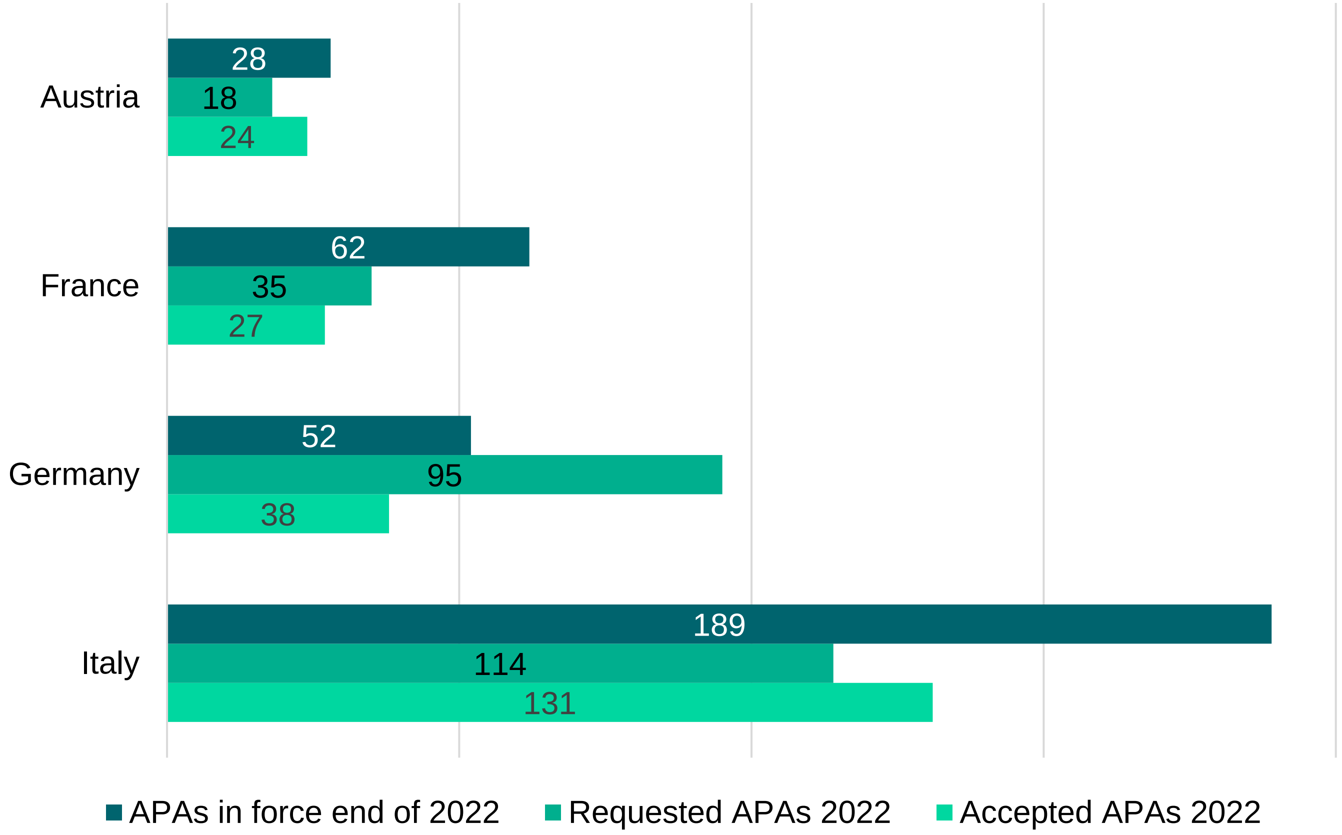
Preventive measures
- APA
- ICAP

Simultaneous measures
- (Simultaneous) Audit
- Joint audit
- Corresponding adjustment

Reactive measures
- MAP / Arbitration
- Litigation

Advance Pricing Agreements (APAs)

EU APA Statistics (figure includes all kinds of APAs)



Source: https://taxation-customs.ec.europa.eu/system/files/2023-12/APAs_2022_FINAL.pdf

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Siemens' experiences

Unilateral APAs

- Relatively quick alignment possible with local tax authorities; however, no cross-border alignment given that ruling is applicable for one country only.
- Audit experience has shown that unilateral APAs are problematic because they trigger audit pressure from the other side.

Bilateral APAs

- Highly formalized process, no tax certainty for complex issues within a reasonable time period.
- In most cases, bilateral APAs are no viable option at all; therefore only limited experience with bilateral APAs within Siemens.

Joint audits (JAs)

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Joint fact finding process

Under-standing of foreign legal frameworks

Different audit approaches / dynamics

Better information quality

~100% Success Rate
Common understanding between tax administrations and taxpayers

- Unilateral audits of bi- and multilateral tax issues simply do not make sense!
- Tax administrations increasingly realize that joint audits are an effective tool.
- The joint fact finding process can be used to enhance the outcome of other tax certainty approaches.

Siemens' experiences

Siemens has participated in various JAs

- Germany-Netherlands: concerning mostly compensation for financing functions.
- Germany-Austria: mostly related to deliveries from Austria to Germany.
- Other countries were approached regarding proposed JAs, but were rejected.

Overall, very positive experiences

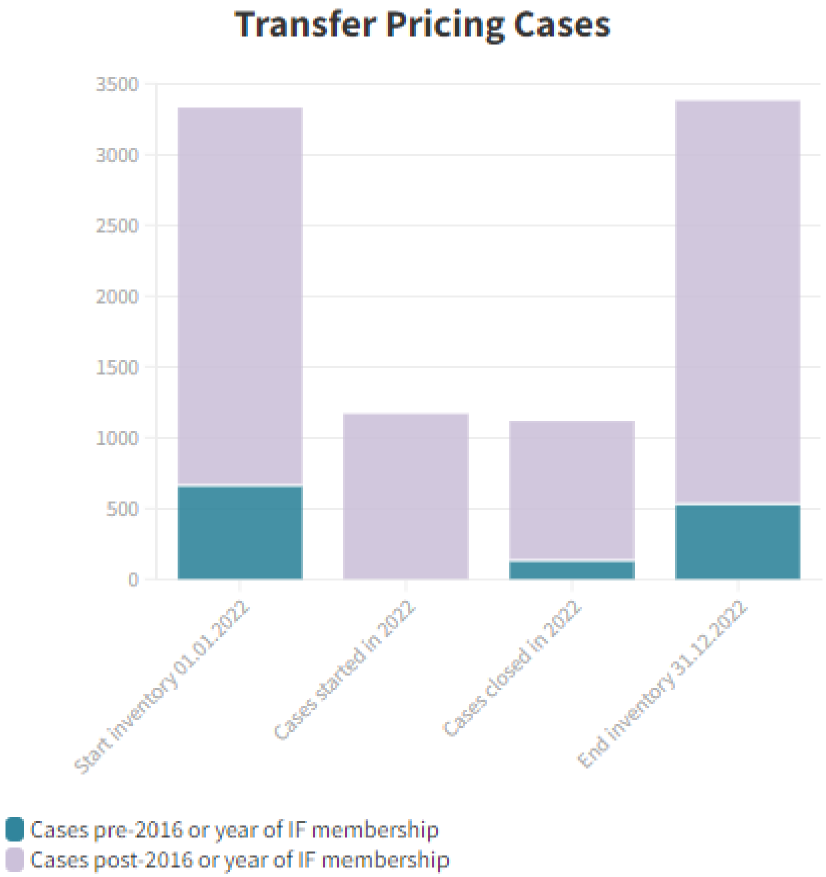
- Double taxation was resolved and / or avoided within less time than experienced for MAPs.
- Field auditors / tax officers were able to discuss and align directly.
- Tax and business functions of Siemens were involved to a high degree.
- Although no formalized certainty, gives a high degree of practical certainty for taxpayers in future years.

SIEMENS

Mutual Agreement Procedures (MAPs)

TAX
Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

OECD MAP Statistics



Type of case	Average time
Transfer pricing cases	28.9 months
Other cases	22.17 months

Source: https://www.oecd.org/ctp/dispute/mutual-agreement-procedure-statistics.htm

Siemens' experiences

- Siemens considers MAPs a suitable instrument to reduce / avoid double taxation and uses them whenever possible.
- However, the duration of such procedures is usually significant.
- MAPs only provide an ex-post solution, with arbitrary results based on negotiations between tax authorities and often no transparency on the basis for those outcomes.
- Resource-intensive without the benefit of binding results for the future, resulting in continuing uncertainty.

Siemens MAPs	Number	Duration (avg.) in months
Open cases	26	3-61 (30)
Closed (last 5 years)	34	8-90 (47)

Section VI

Automation

Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

SIEMENS

Automated Transfer Pricing Process

Increasing trend towards Operational Transfer Pricing (OTP)

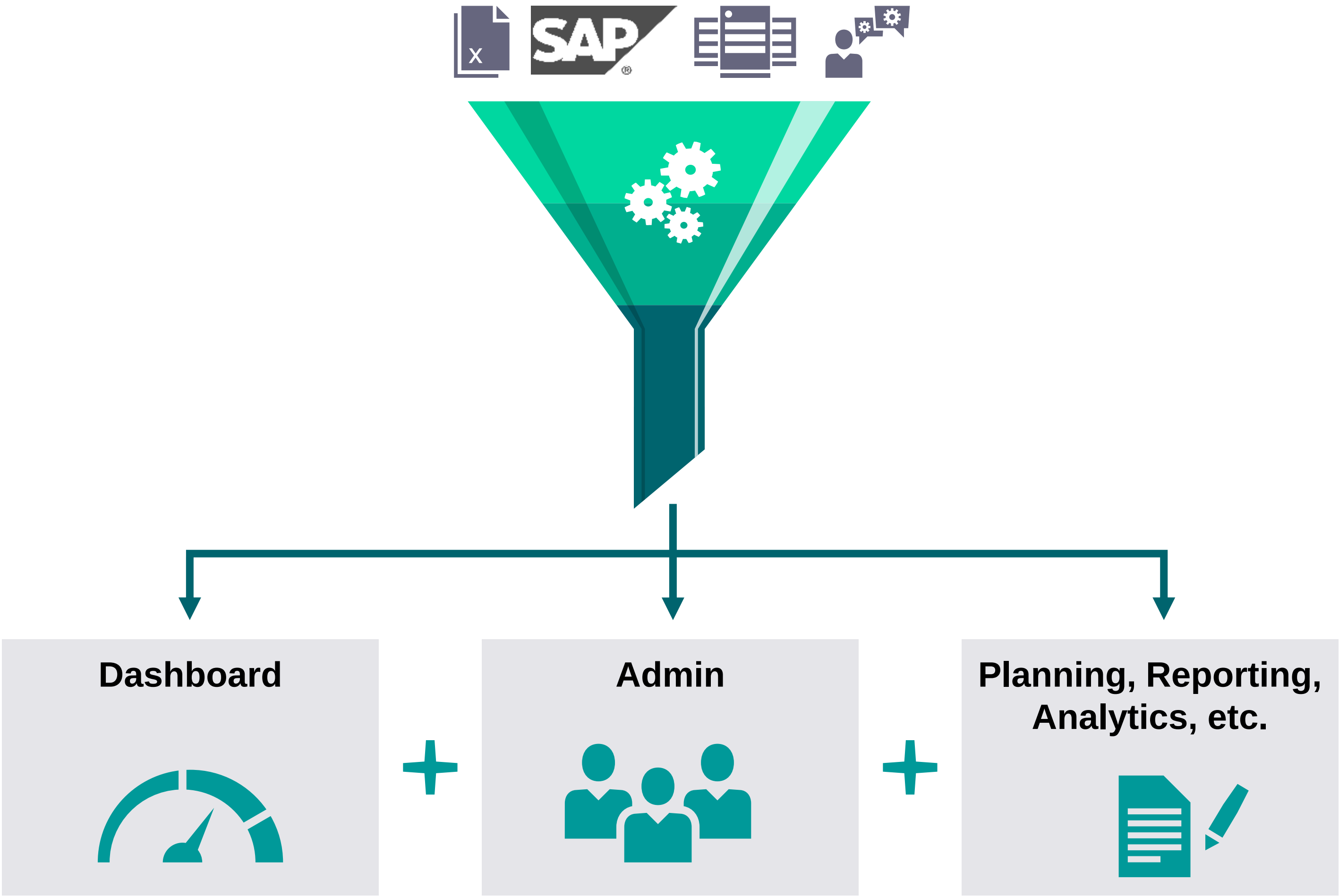
Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

TP adjustments

- TP adjustments can be made prospectively (adjustment of future prices) or retroactively (e.g., year-end adjustment). There is generally an increasing trend towards to acceptance of TP adjustments (see, e.g., EU Transfer Pricing Directive, German Transfer Pricing Circular).
- Best practice: use prospective TP adjustments and minimize retroactive TP adjustments to the extent possible.
- There is no one-size-fits all TP adjustment mechanism largely due to country acceptance and the interplay between Transfer Pricing and VAT / Customs.
- Different TP adjustment mechanisms, however, require different data and reporting capabilities and increase complexity, which can be managed via dedicated OTP technologies.
- ERP master data (e.g., SAP S/4HANA) is an essential factor for a successful implementation of an OTP technology enabling an integrated management of VAT / Customs and Transfer Pricing.

Automated Transfer Pricing Process

Focus on high-value analysis rather than data collection



Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

Siemens Vision

- Fully automated process and automatic transfer of all TP relevant data.
- Through tool and/or ERP embedded solutions:
  - Reporting / documentation for Local File, Master File, CbCR, and others (e.g. DAC 6, Pillar I);
  - OTP for monitoring / testing / adjusting actual margins vs. targets;
  - Data analytics for strategy and decision-making;
  - Risk management to calculate current / year-end risk.

Contact

Dr. Sven Bremer

Siemens AG
Werner-von-Siemens-Straße 1
80333 Munich
Germany

T +49 (89) 780526142
sven.bremer@siemens.com
www.siemens.com