

# Transfer pricing – New challenges

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**Dr. Alina Lavrentieva,  
PwC,  
Chairperson of the AEB  
Taxation Committee**

*Opening remarks*

# Ilarion Lemetyuynen KPMG

*Grouping of transactions for transfer  
pricing notification purposes*

## FNS requirements

*Detailed disclosure of each operation on List 1B*

+ In line with FNS's expectations

- Significant costs to comply, especially for operations with goods

- Potential risk of making errors

## MinFin's clarification\*

*Aggregation of transactions on List 1B is allowed for profitability-based methods*

+ Decreased costs for preparing TP notification

- Risk of 5000 RUB penalty

- Risk of TP audit

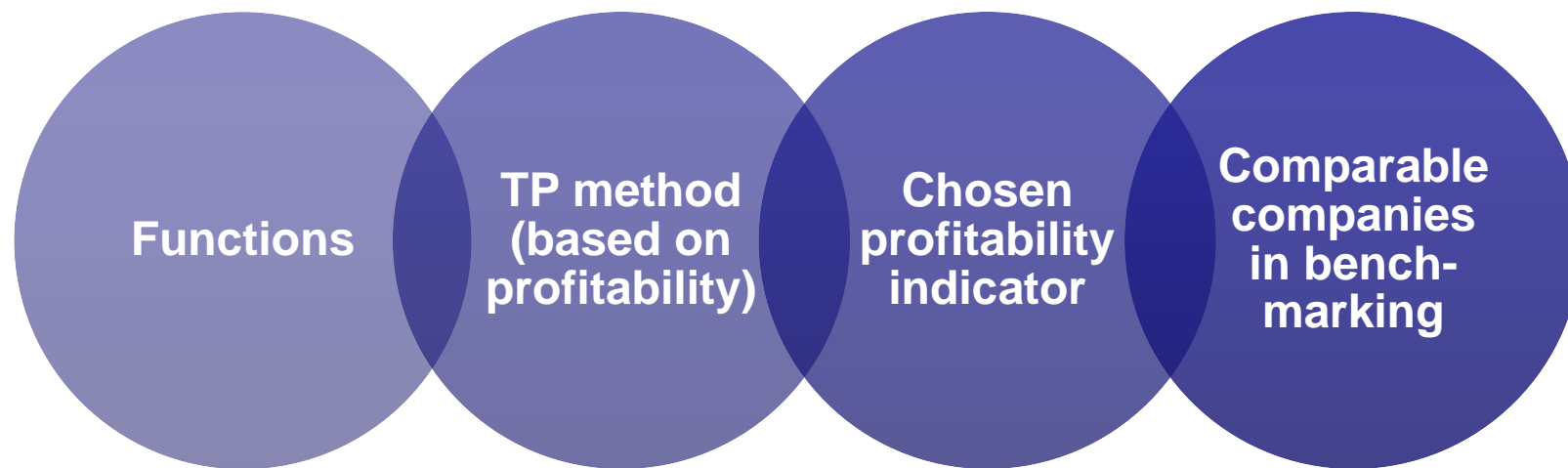
- Practical difficulties to fill in the form - see next slide

\* Per Letter of the Ministry of Finance "Regarding application of concept "Group of similar transactions" # 03-01-18/33520 dated on 16.08.2013

Example - import of (1) tomatoes from Italy and (2) import of bananas from Ecuador

Issues to consider	Detailed filling		Filling with aggregation	
	Import of tomatoes	Import of bananas	Import of tomatoes	Import of bananas
Quantity of List 1A	List 1A	List 1A	List 1A	
Quantity of List 1B	List 1B	List 1B	List 1B	
<i>TNVED Code</i>	0803001900	0702000006	?	
<i>Number and date of the Contract</i>	Contract #1 dated on 01.01.2012	Contract #2 dated on 02.02.2012	?	
<i>Code of origin (OKSM Code)</i>	380	218	?	
<i>Price per kg</i>	50 RUR	30 RUR	?	
<i>Date of operation</i>	05.05.2012	06.06.2012	?	
<i>Place of dispatch</i>	Italy	Ecuador	?	

*“Group of similar transactions” can be formed if the following factors are similar (per MinFin’s Letter):*



### ***Outstanding issues not covered***

- *Portfolio approach in case of business strategy (e.g. low-margin goods & value-added services)*
- *Aggregation of similar transactions with different parties*

## Next steps

- ✓ *Track TP developments in relation to grouping of transactions*

### *For AEB*

- ✓ *Suggest MinFin / FNS to consider*
  - *amendments in TP Notification form*
  - *additional cases when grouping of transactions is allowed (referring to OECD TP Guidance)*

# Thank you!



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# Dinko Dinev

## PwC

*Treatment of start-up (or product line) losses for Russian Trading Companies*

## Main themes

The *Mazda* and *Suzuki* cases in Russia – setting the scene for controversies

Can routine trading companies be allowed to recognize losses and if so – for how long?

The impact of the BEPS initiative

# Challenges and solutions

Interquartile ranges do not tolerate losses – is there room for some flexibility?

Decreasing import prices creates customs issues – are there viable alternative options?

Transaction-focused analyses catch product line losses – could aggregation be a solution?

# Looking ahead

More dialogue and guidance, less rigid rules

Clarity on making TP adjustments to compensate losses

Integrating customs and TP treatment of import prices

# Questions?

# Arseny Seidov Baker & McKenzie

*Acceptability of foreign benchmarking studies when testing the profitability of foreign parties*

## Selecting tested party - when a foreign party should be tested?

- **Priority of CUP over other methods:**
  - ✓ no need to choose tested party
  - ✓ only comparability of transactions is relevant
- **Selecting tested party under other methods:** role of functional analysis
  - ✓ Art. 105.12.6 of the Tax Code
  - ✓ Letter of the Federal Tax Service No. OA-4-13/14433@ dated August 30, 2012 (in line with the OECD Transfer Pricing Guidelines)
- **Comparability criteria** – why foreign comparables should be chosen:
  - ✓ properties of goods / services in question
  - ✓ functions of the parties
  - ✓ material terms of agreements
  - ✓ markets and industries
  - ✓ business strategies

# Applying foreign benchmarking studies

- **No “*secret comparables*”**: tax authorities, with limited exceptions, are required to use only publicly available data (Art. 105.6 of the Tax Code)
- Taxpayers may provide ***other information*** supporting the prices (Art. 105.15 of the Tax Code)
- Russian Ministry of Finance clarifications (Letter No.03-01-07/5-14 dated November 28, 2011):
  - ✓ documents confirming arm's-length nature of prices charged by a foreign company may be provided as "other information" under Art. 105.15 of the Tax Code
  - ✓ for cross-border transactions, "***internationally adopted approaches***" to application of the relevant transfer pricing method should be taken into account



# Sustainability of taxpayer's arguments

- ***Foreign transfer pricing study:***
  - ✓ not admissible source of information *per se*, ***however***
  - ✓ source of references to relevant public databases
  - ✓ source of analytical approaches corresponding to the "internationally adopted approaches"
- ***Sources of information in foreign TP studies and their admissibility in Russia:***
  - ✓ financial accounting of foreign companies
  - ✓ foreign / international databases
  - ✓ *professional publications and commentaries*
  - ✓ *internal database(s) of advisor that conducted the study*
- ***Compatibility with Russian TP rules***

## Acceptability of foreign benchmarking studies when testing the profitability of foreign parties

### Q&A

# Dmitry Volvach, Federal Tax Service,

*Expert Opinion*

**Andrey Kizimov,  
RF Ministry of Finance**

*Expert Opinion*

# Gennadiy Timonichev, Pepeliaev Group

Valuation of intangibles for the TP  
purposes:  
OECD approaches and Russian realities

## OECD approaches

- 1) CUP method and profit split method are generally applicable (p. 163 RDD).
- 2) A special databases such as Royalty Stat, KtMine, Royalty Source (p. 148 RDD) and valuation techniques (p. 163 RDD) are useful tools.
- 3) For the purposes of CUP method application **offers** to independent companies are relevant (p. 6.23. OECD TP Guidelines) as well as a profit split analysis can be based on **projected** revenues and expenses (p. 167 RDD).
- 4) Valuation of intangibles used for internal business operations can be based on the costs of their development (pp. 160-161 RDD).

# Russian Realities

- 1) CUP method treats as a first priority.
- 2) Use of valuation techniques is possible in respect with occasional transaction.
- 3) How profit split method as it is described in Russian Tax Code works with intangibles valuation?
- 4) Previous judicial practice: from Afanasii beer case to OBI and Letoile cases.
- 5) OECD positions.

# Till action 8 of Plan on BEPS is unrealized...

Genius lies in simplicity

OR

Simplicity is worse than robbery?



# Questions?

# Steven Cawdron

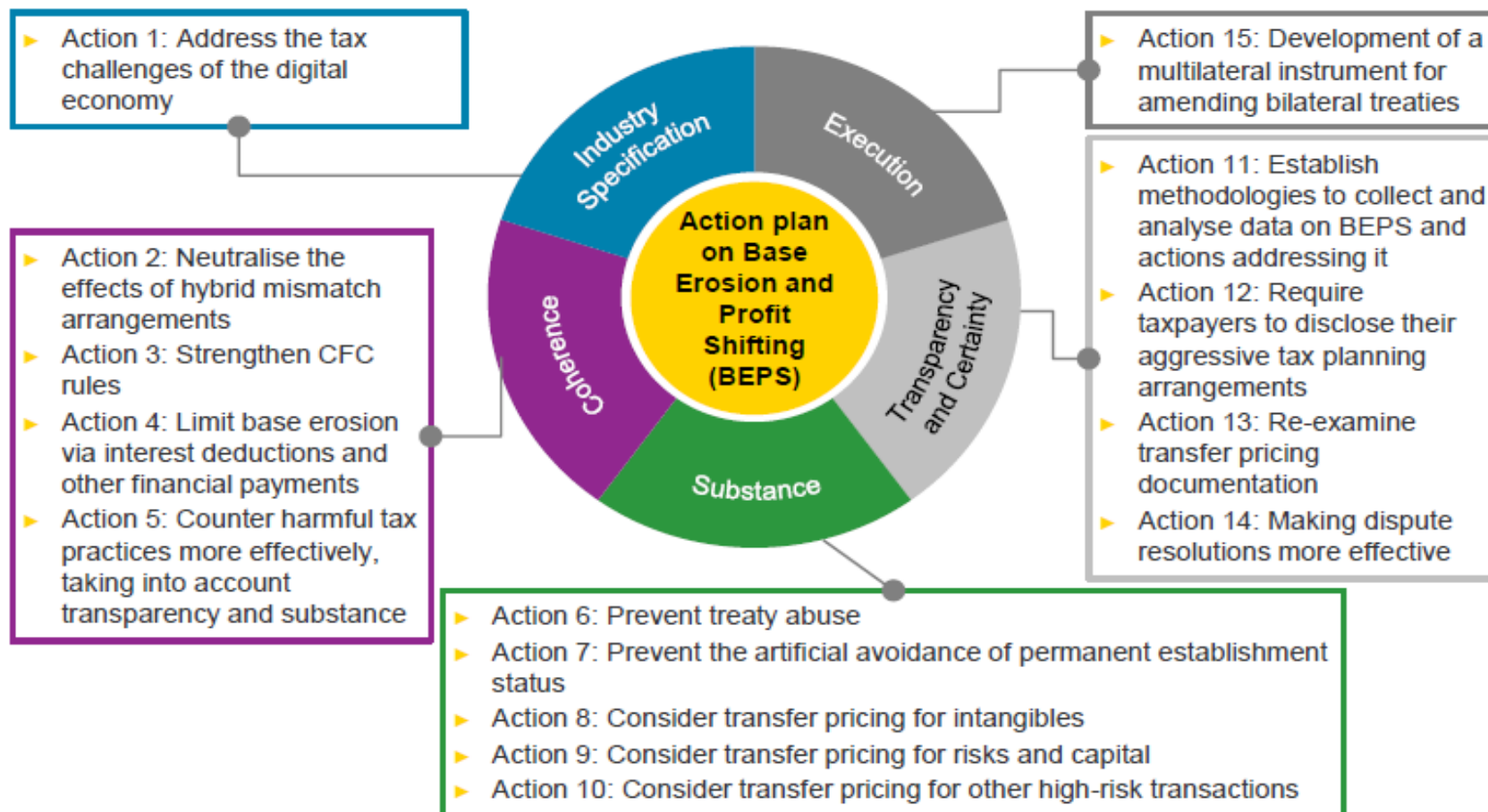
## EY

*BEPS report and transfer pricing – is it time for a big change?*

## Background to the BEPS report

- Global budget pressures
- Highly public concern regarding tax avoidance by multinationals
- Step change in fiscal authority audit approach is directly impacting sector MNCs
- BEPS report is different from typical OECD programme
- BEPS report has multilayered impact

## BEPS Action plan – changes to the international tax landscape



## What are we already seeing

- Changes to fiscal authorities approach to transfer pricing
- Increased scrutiny of facts surrounding transactions
- Reduced APA access in developed countries, enhanced APA access in developing

## Likely impact

- Greater disclosure requirements
- Changes to international treaty provisions
- Changes to transfer pricing

# Questions?

# Aggelos Benos

## Deloitte CIS

*Risk assessment for transfer pricing purposes  
Are you ready to meet your transfer pricing auditor?*

**Transfer pricing disputes are typically resulting from audits initiated by the tax authorities. BUT, may also arise in the following situations:**

- Request for reopening of tax years/corresponding adjustments
- Advance Pricing Agreements
- VAT audits etc.

**The dispute may deal with a variety of issues, including the “hot topics”:**

- Functional & Risk profile of taxpayer
- Use/sharing of intangibles (patents/trademarks) among members of an MNE group
- Intercompany financial guarantees
- Procurement structures & Cost Sharing structures

**Typically, tax authorities will be looking for ways to increase the taxable income by claiming for example:**

- Operating losses will indicate that the company is an entrepreneur and going forward should be allocated substantial profits
- The company is a low risk entity and the transactions should be adjusted to reflect this



## Transfer pricing audits will often include questions like:

- Purchasing – how are goods and services purchased from related parties and 3<sup>rd</sup> parties
- Invoicing – which entity invoices the customer, the terms of the invoice, and the invoicing of the related transaction
- Warranty – which entity bears the risk of product warranty or service warranty
- Ownership of patents and other IP – which entity owns the intellectual property
- Pricing – which entity determines the pricing and how is the pricing determined;
- Financing – where are the primary sources of capital, loans, what are the arrangements/guarantees, and which entity bears any FX risk
- Decisions related to operational as well as strategic issues taken by whom within the group

**The following points are critical to address in order to minimize audit risk and risks of a TP adjustment:**

- **Solid transfer pricing documentation**

Support the functional and risk profile of the company and that actual profitability is in line with the arm's length principle – challenge of TP method applied

- **Mismatches between substance and form**

Intercompany agreements should be aligned with the actual transactions undertaken or vice versa. High quality contracts are becoming increasingly important

- **Mismatch in the allocations of risks across the group**

Can cause the tax authorities to question the commerciality of the group's arrangements

**Transfer Pricing – Not only a matter of paying taxes anymore...  
(The Starbucks case / Google's and Apple's "tax shaming" stories)**

# Questions?

# Dmitry Volvach, Federal Tax Service,

*Expert Opinion*

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RF Ministry of Finance**

*Expert Opinion*



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