



# Transfer Pricing 2016

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Inland Revenue

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# Agenda

**Robyn Rakete**  
**Principal Advisor**  
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**Inland Revenue**  
**Transfer Pricing Update**

**Kim Jarrett**  
**Partner**  
**KPMG**

**A Practitioner's view: NZ**  
**International Developments**

**Q&A**





# Robyn Rakete Inland Revenue



Inland Revenue  
Te Tari Taake

# Transfer Pricing Update 2016

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# Content

- IR Transfer Pricing Personnel
- BEPS (OECD Transfer Pricing Action Points), Potential Impacts for New Zealand
- IR's Compliance Approach
- Common Issues Encountered



# IR's Transfer Pricing Personnel

- John Nash, International Revenue Strategy Manager
- Sanjiv Weerasinghe, Manager Specialist Advice
  
- Nick Miller, Principal Advisor (Transfer Pricing)
- Robyn Rakete, Principal Advisor (Transfer Pricing)
- Kriti Velji, Principal Advisor (Transfer Pricing)
- Peter West, Principal Advisor (Transfer Pricing)
  
- Supported by:
  - Economist
  - Principal Advisors (Structured Finance)
  - Investigators



# Potential New Zealand Impacts

## BEPS (Transfer Pricing Action Points)

- NZ legislative changes, if any, will follow Generic Tax Policy Process
- Documentation
  - CbC
  - Master and local file
- Low value adding services
- Hard-to-value intangibles
- Risk and recharacterisation



# Risk and Recharacterisation

## BEPS (Transfer Pricing Action Points)

- Ensure outcomes in line with value creation

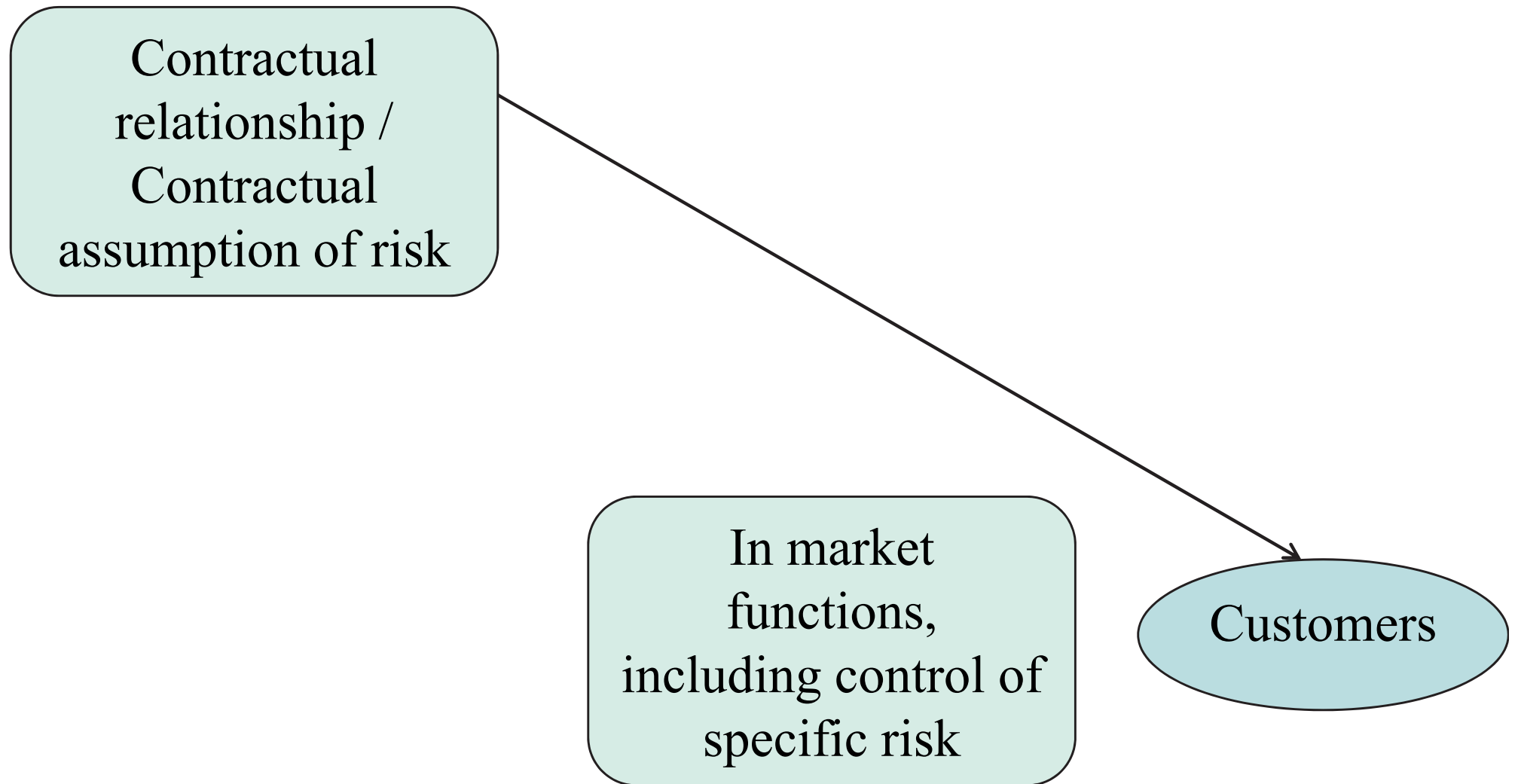
Contract	Does it accurately reflect the transaction and intention of the parties?
Conduct	Is it entirely consistent with the contract?
Control	Does the party assuming the specific risk control that risk?
Financial Capacity	Does the party assuming the specific risk have financial capacity to bear that risk?

If yes to all,  
price the  
accurately  
delineated  
transaction



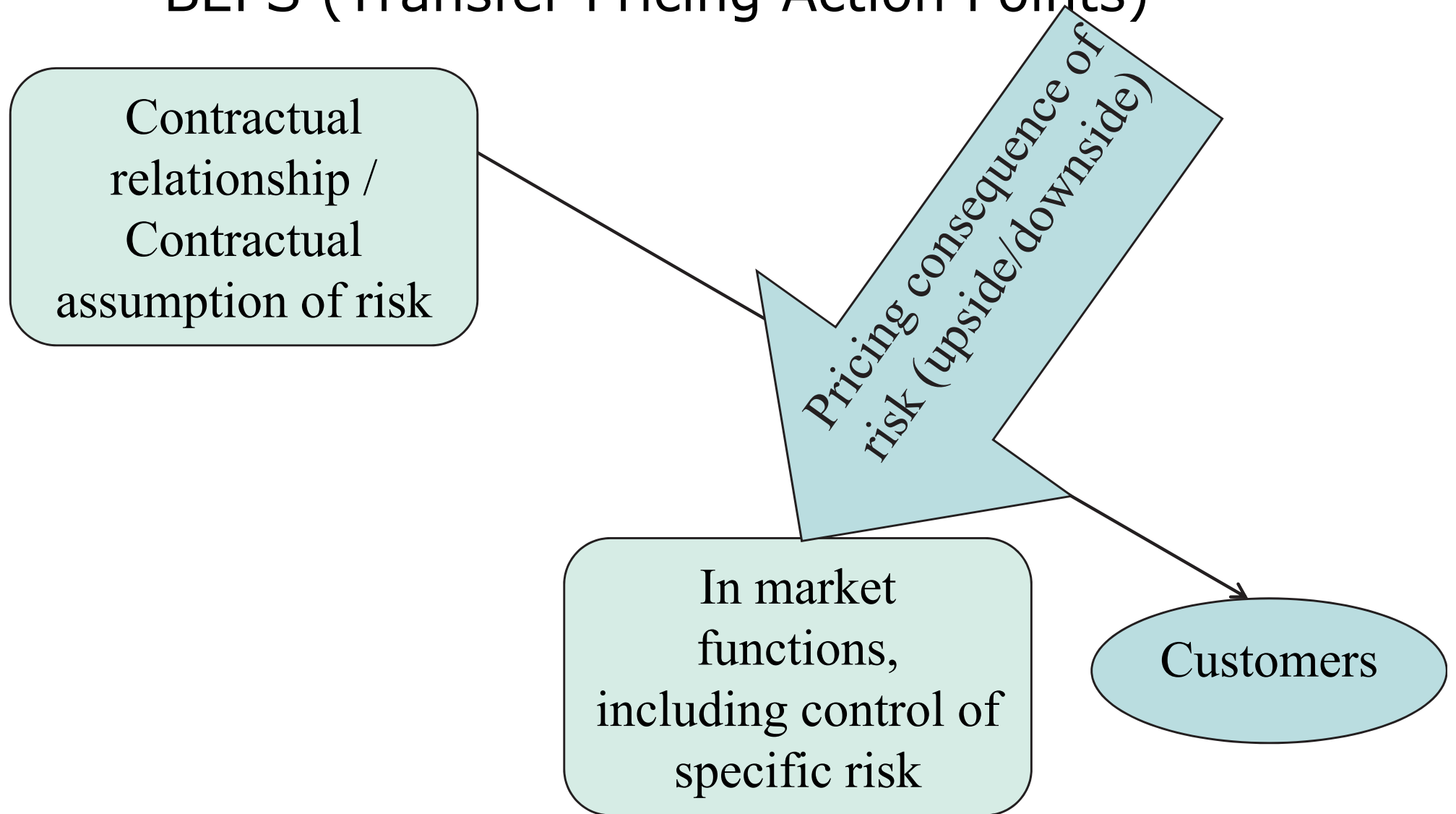
# Risk and Recharacterisation

## BEPS (Transfer Pricing Action Points)



# Risk and Recharacterisation

## BEPS (Transfer Pricing Action Points)



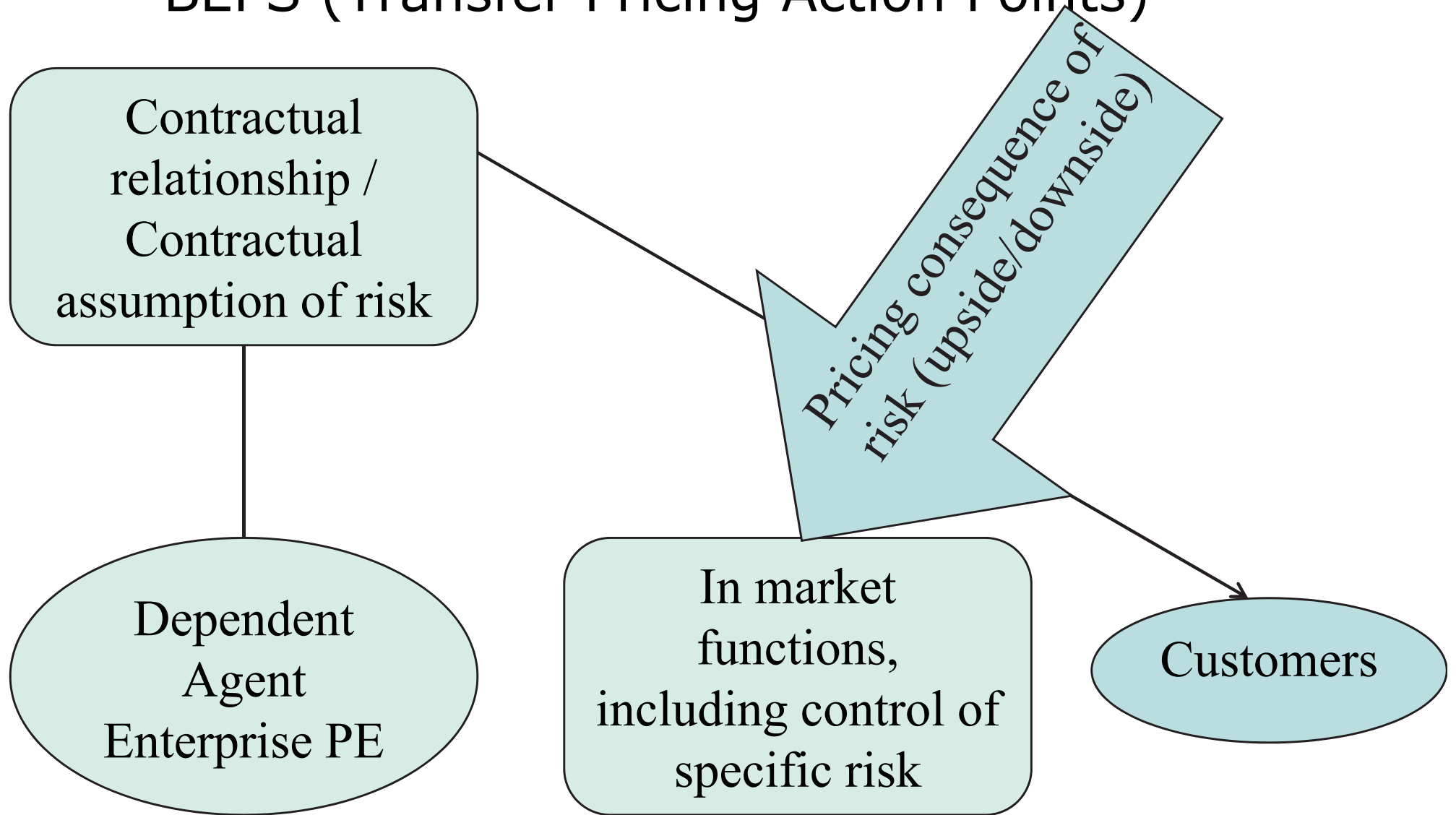
# Profit Attribution to PEs

## BEPS (Other Action Points)

- Action 7 changes to PE definition
  - “plays principal role in leading to the conclusion” vs exercises an authority to conclude
- No new profit attribution guidance necessary
- Observations on interaction between BEPS outcomes for transfer pricing and the PE definition useful
- Discussion draft in progress ...

# Interaction with PEs

## BEPS (Transfer Pricing Action Points)



# Potential New Zealand Impacts

## BEPS (Transfer Pricing Action Points)



# IR's Compliance Approach

- Annual Risk Review
  - Major and high risk enterprises
  - Account managed / Assigned Principal Advisor (TP)
- Basic Compliance Package (BCP) Review
  - Significant enterprises
  - Principal Advisor (TP) on a needs basis
  - Transfer pricing questionnaire and tailored questions
- International Questionnaire Review
- CFC Review
- Transfer pricing questionnaire issued via standard review contact

# 2016 Transfer Pricing Focus

- Unexplained tax losses returned by foreign-owned groups
- Inbound and outbound loans in excess of NZ\$10m principal as well as guarantee fees
- Cash pooling arrangements
- Payment of unsustainable levels of royalties and/or service charges
- Material associated-party transactions with low or no tax jurisdictions including the use of offshore hubs for marketing, logistics and procurement services





# 2016 Transfer Pricing Focus

- Appropriate booking of income arising from e-commerce transactions
- Supply chain restructures involving the shifting of any major functions, assets or risks away from New Zealand
- Any unusual arrangements or outcomes that may be identified in controlled foreign company disclosures

# IRD Compliance Activity - Audit

- Resource intensive, commence if risk identified
- Verification of facts – Functional analysis interviews
  - Talking to people at the coal face – what they do day-to-day
- Broad documentation review (not just TP documentation)
  - Legal agreements
  - Board minutes / correspondence / file notes surrounding issues
  - Profit and loss / balance sheet review / supporting details
  - Other information - web searches, industry analyses, expert opinion
- Disputes process

# IRD Compliance Activity – APAs

## Advance Pricing Agreements

- Proven extremely useful robust up-front answer to complex and / or high risk transactions
  - 139 APAs successfully completed, as at 31 December 2015
  - Co-operative vs adversarial approach
  - Unilateral / bi-lateral / multi-lateral agreement
- Verification of facts – all cards on table
- APA terms include transfer pricing method, profit level indicator, adjustment procedures, critical assumptions
- Annual reports confirming adherence to terms/conditions, including supporting evidence/calculations

# Common Issues:

## In appropriate focus on labels

- Outcomes are determined by factual and economic analyses not “labels”
- If risk is limited, how is it limited?
  - Be specific with factual analysis. Impact on price / profit?
  - Limited risk does not mean no risk.
- Consideration of local factors
  - Goodwill? Local market intangibles? Competition?
- IRD Risk indicators:
  - Guaranteed low profit
  - Fluctuating royalties / service fees to offshore all “non-routine” profit
  - Market support payments
  - Business restructures, where underlying commercial activities essentially unchanged

# Common Issues: Contracts

- Include key clauses (critical to pricing), comprehensive
- Contradictory clauses / Supplementary clauses
  - E.g. Five year term loan that is repayable on demand
  - Provision to review terms at milestone points
- Other relevant documentation at time of contract?
- Adherence to contracts?
  - Consequences of non-adherence?
  - Avoid inappropriate use of hindsight
- Transfer pricing arrangement is a broader concept than a contract

# Common Issues: Documentation

- Quality over quantity
- Accurate reflection of the business and the transactions
  - Focus on key profit drivers / price factors in specific circumstances
  - Provide a context for pricing transactions
- Functional analysis critical
  - Don't forget assets and risks
  - Ensure "entity" responsible is identified
  - Not O.K. to say "limited risk" without further explanation
- Ensure appropriate business personnel are involved in the review and sign-off of documentation

# Questions







Kim Jarrett

KPMG

# New Zealand transfer pricing developments

## A practitioners view

### **Areas of increased review**

- » Legal agreements
- » Functional analysis validation
- » Market support payments
- » Financing arrangements

### **APAs**

- » Information sharing

# International Developments

**Intercompany Finance**

**Changes in enforcement and practical expectations**

**Transfer pricing legislation**

**OECD Plus!**

# US 385 Regs

## Intercompany loans with the US

- » Proposed administrative rule requiring contemporaneous documentation of related party loans
- » Risk all or part of debt re-characterised as equity
- » Final regs anticipated Sep/Oct but proposed effective date of 4 April 2016

# Other US developments

No changes to  
US 482 regs  
(transfer pricing  
rules) at present

Some adoption  
of new OECD  
transfer pricing  
guidelines in  
audit context

# UK - new interest deductibility rules

- » Proposed to apply from April 2017
- » Interest up to \$2m deductible (de minimis rule)
- » Fixed ratio rule – 30% EBITDA
- » Group ratio may increase deduction
- » Overall cap limiting interest deductions to no more than global net third party interest expense
- » Various carry forward provisions

# UK developments

OECD Chapters 1  
(risk) & 6  
(intangibles)  
included in UK  
domestic  
legislation now,  
and retrospective  
in practice

Chapter 5 (CbC,  
Master and Local  
files) not  
legislated but is  
the de facto  
requirement

Transfer pricing  
audits –  
requesting email  
chains and  
historical evidence



# China developments

Has created its own  
15 point action plan

OECD Plus!

Limited risk  
distributors very  
common, must be  
clear they are only  
performing 'routine'  
functions

Chinese intangibles:

How was the  
intangible  
created (e.g.  
implementation  
of marketing plan  
by Chinese based  
employees)

Local market  
intangibles

Is the brand  
'Chinese' (e.g.  
translated)

# AU Developments

**CbC legislated**



**815b ongoing**

- **Commerciality**
- **Re-characterisation**
- **Documentation**

**MAAL (Multinational Anti Avoidance law)**  
**170 "reviews"**

**DPT (Diverted Profit Tax)**  
**proposed**





Thank you