



Knowing the Issues: Identifying Transfer Pricing Risk & Opportunity

DLA Piper

2019 Transfer Pricing Masterclass Series



Presenters



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Background & Experience

- Transfer Pricing Technical Lead at World Bank
- Provided transfer pricing technical assistance to African & Asian tax authorities
- OECD/World Customs Organisation TP/Customs interface
- Transfer Pricing Lecturer at IBFD, UK, Swiss, Swedish universities
- EY Australia | Qualified lawyer



Randall Fox
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Background & Experience

- Economist
- APA Team Leader at US IRS
- Led US/Swiss APA negotiations
- World Bank transfer pricing technical training to African and Asian tax authorities
- Independent expert witness in Transfer Pricing Arbitration



Vicki Bales
Director, London
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Background & Experience

- 18 years in-house tax and transfer pricing experience
- SABMiller / AB InBev Global Head of Transfer Pricing
- Extensive operating model planning, implementation and review
- Africa, Latam, Europe transfer pricing audits
- Chartered Accountant



Rachit Agarwal
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Background & Experience

- Economist
- Practiced in India, Netherlands and UK with DLA Piper, Baker McKenzie and Indian professional services firm
- Financial transaction transfer pricing specialist
- IBFD and Maastricht University transfer pricing lecturer



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Background & Experience

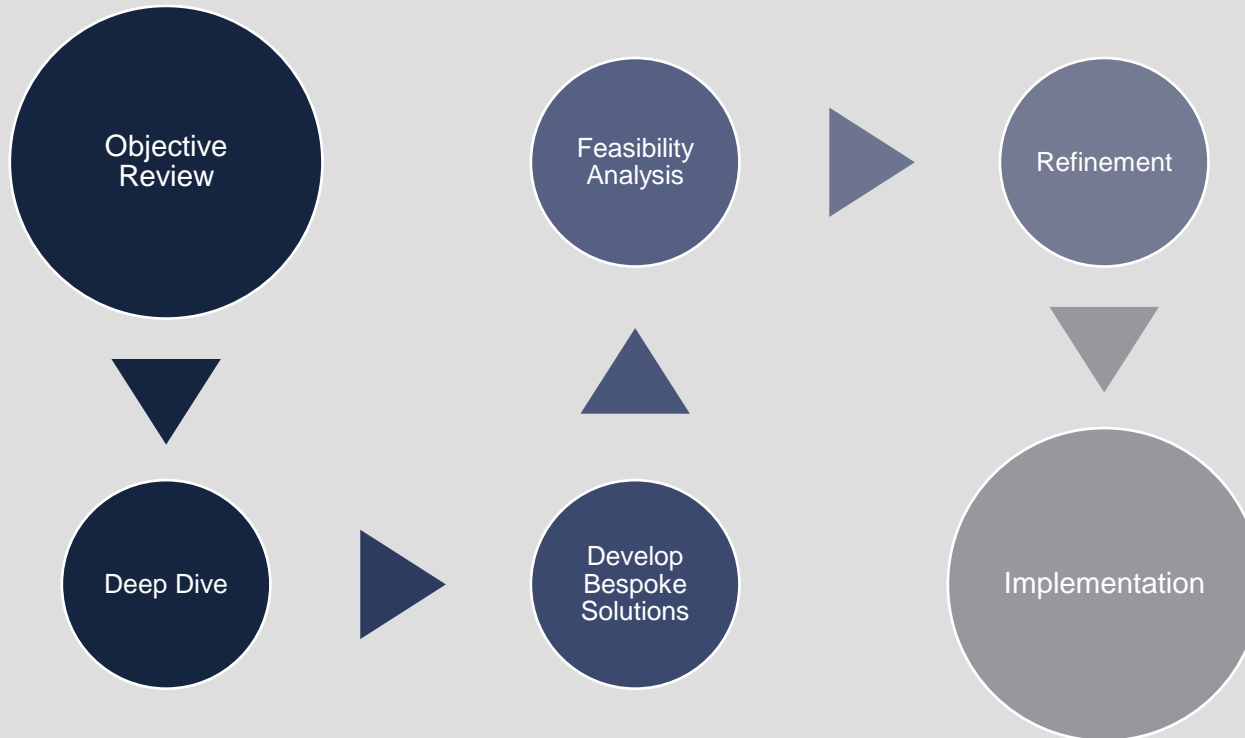
- Economist
- Practiced with corporate finance and valuation US firm and Big 4 US and Netherlands economist teams
- Transfer Pricing Lecturer at Universite de Lausanne
- Trained tax authorities on risk assessment

Agenda

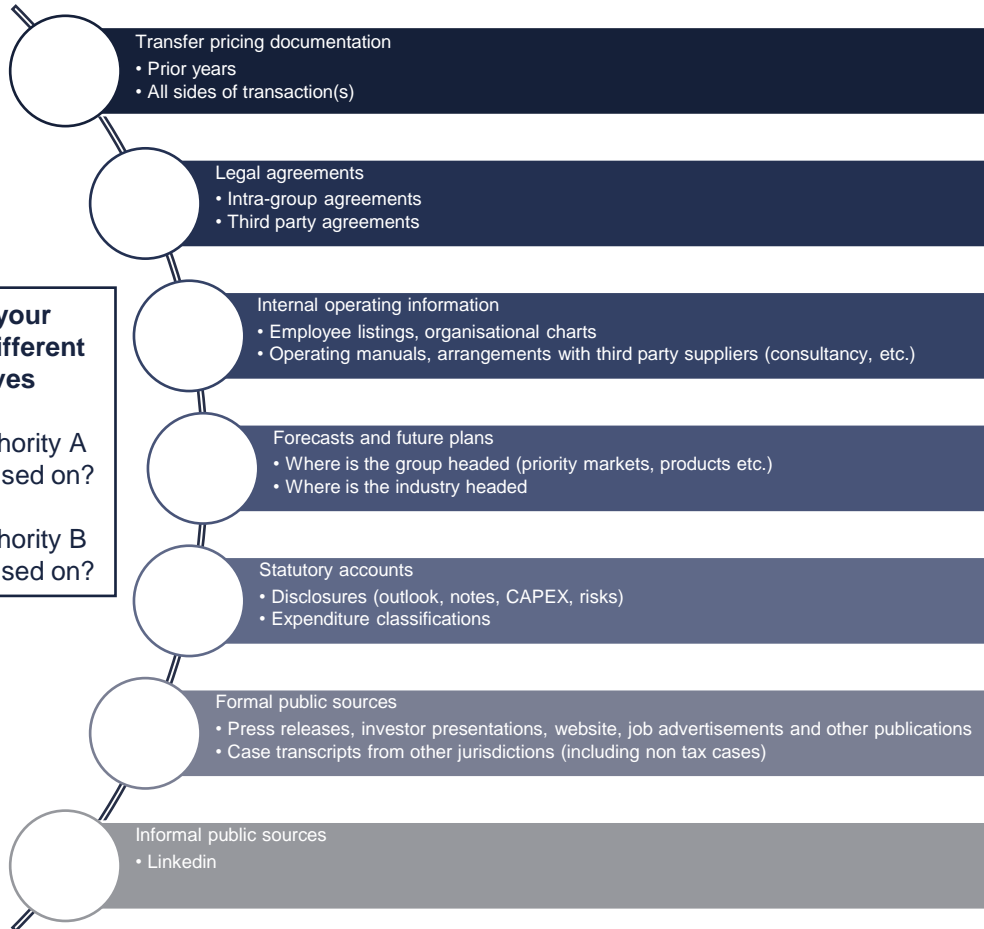
- Identifying opportunities and risks – our approach
 - Phase 1 – Objective Review
 - Phase 2 – Deep Dive
 - Phase 3 – Bespoke Solutions
 - Phase 4 – Feasibility Analysis
 - Phase 5 – Solution Refinement
 - Phase 6 – Implementation & Defence
- Wrap up: Putting it into practice – an in house perspective

Unlocking Opportunities and Addressing Risks

A structured approach



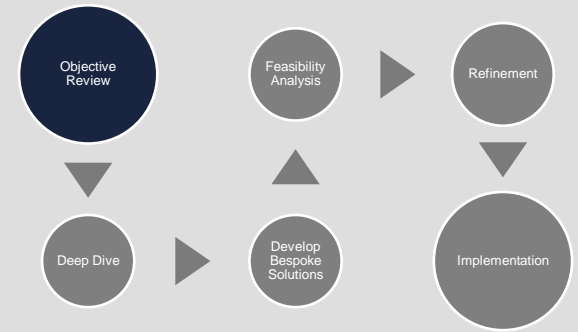
Phase 1 – Objective Review



Undertake your review from different perspectives

What is tax authority A going to be focused on?

What is tax authority B going to be focused on?



Objective:

- Identify potential risks and opportunities for further review

Typical examples:

- Disconnect between DEMPE - IP ownership
- Under (or not) remunerated intangibles
- Cases of "excess / creeping" functionality
- Missing services transactions
- High value services charged as routine

Insight: Tax Authority Toolkit (Distribution)



* Country specific

Phase 2 – Deep Dive

1. Select interviewees

- Objective review of employee lists / org. charts (top earners, notable job titles)
- People from both sides of the transaction

2. Prepare

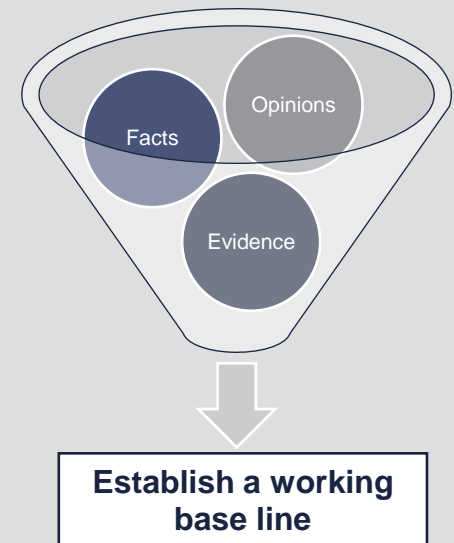
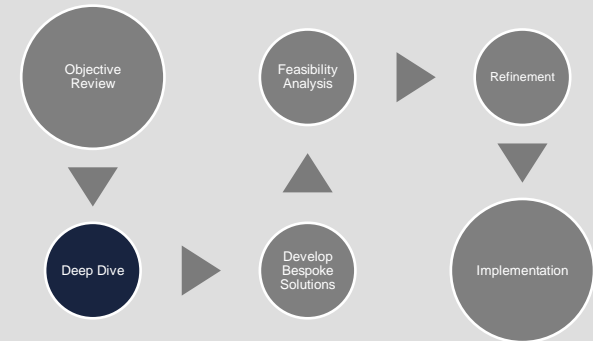
- Employment history
- Responsibilities (directorships, direct reports etc.)
- Specific examples to enquire about

3. Undertake interviews

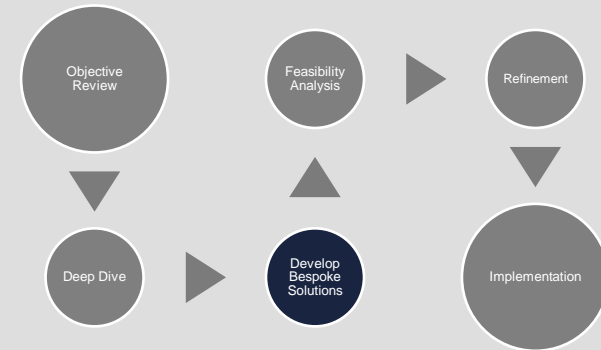
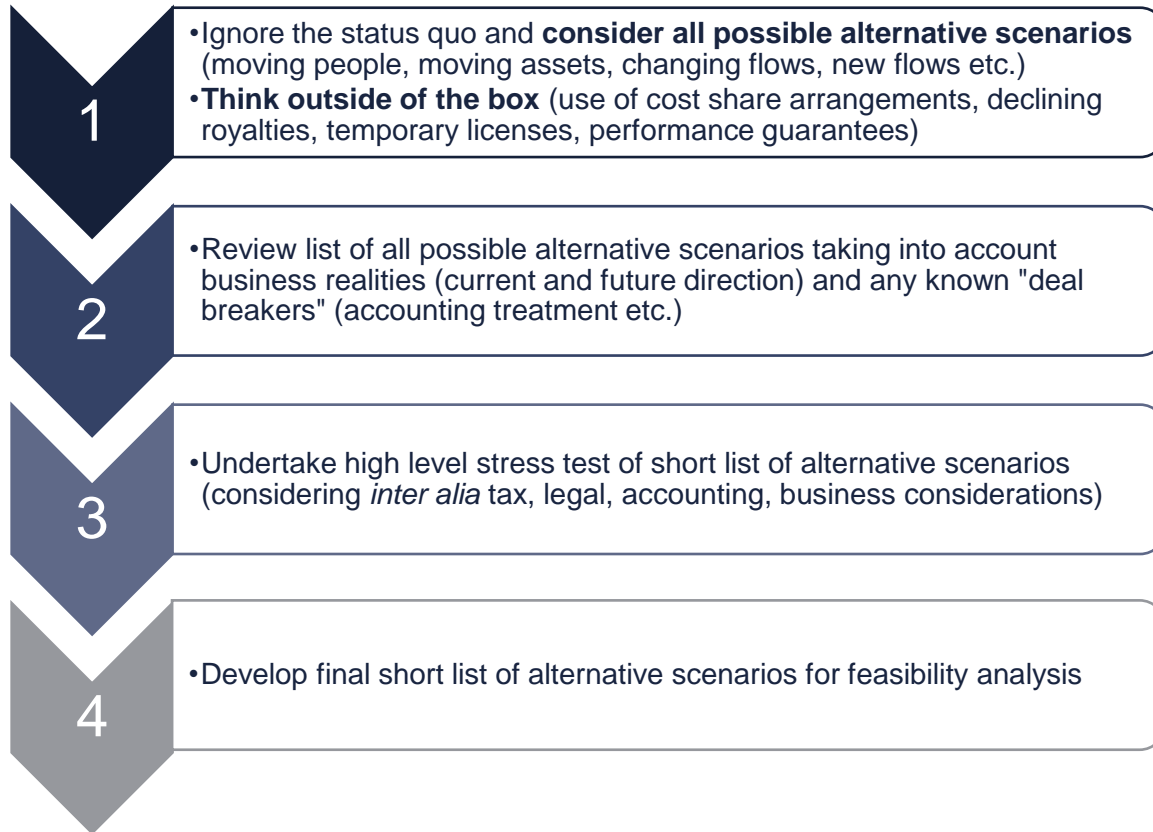
- Have an open mind (interview is to enquire, not confirm)
- Prompt but do not guide (minimal leading questions)
- Anticipate follow up and ask for it
- Ask for directions

4. Follow up

- Request documents, examples, figures, reports (evidence to support assertions)
- Consider legal significance of having interview notes reviewed and signed off

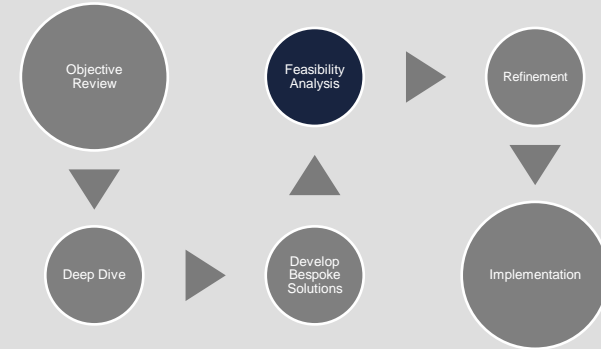
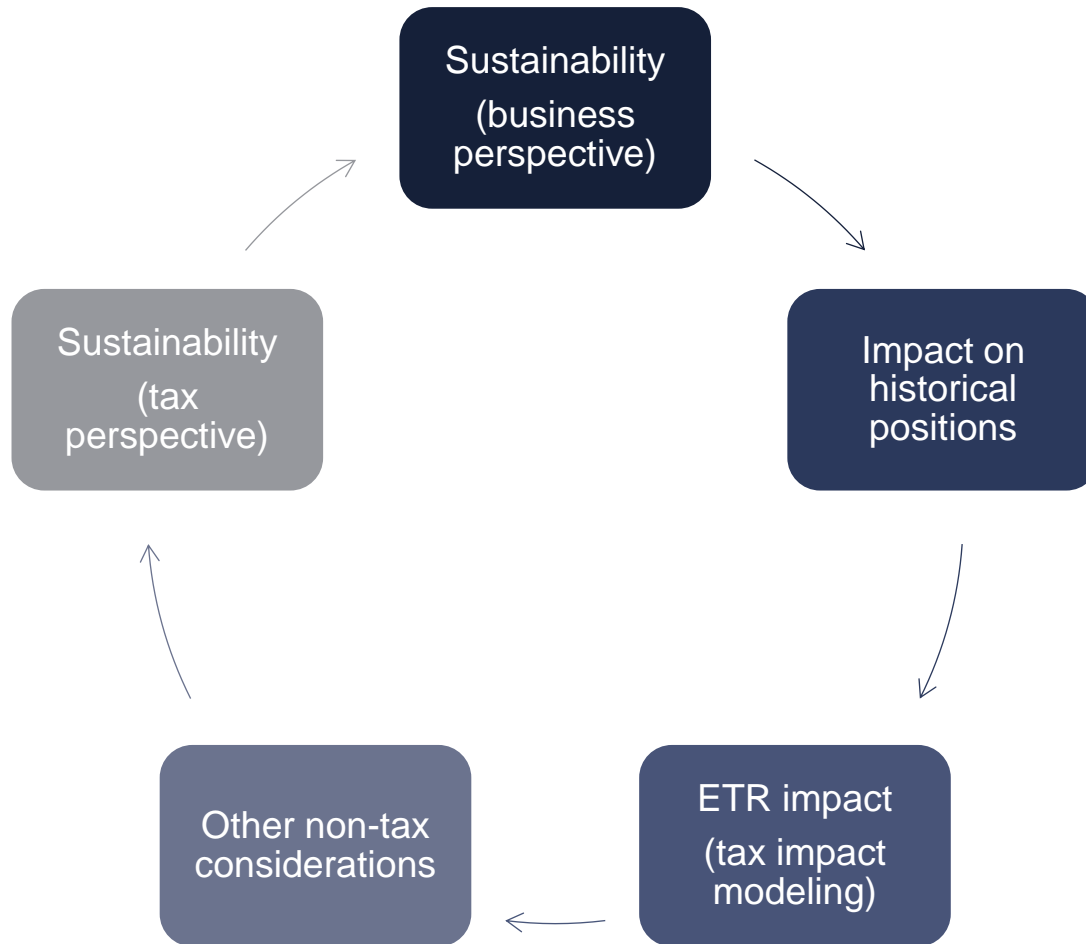


Phase 3 – Bespoke Solutions



Be very careful with assumptions - always stress test them!

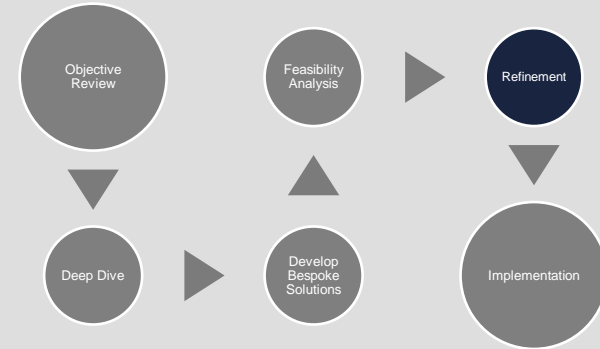
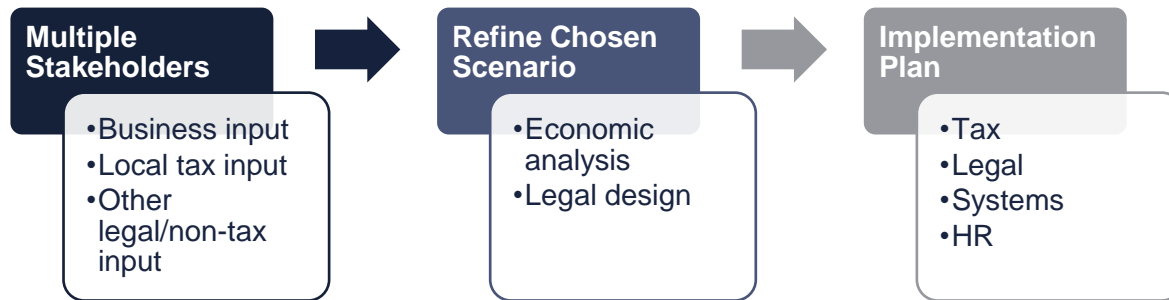
Phase 4 – Feasibility Analysis



Impact on historical positions:

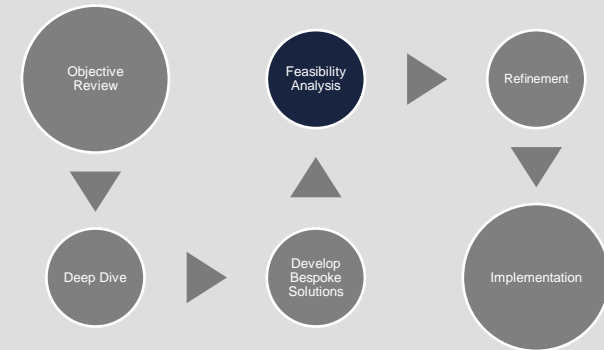
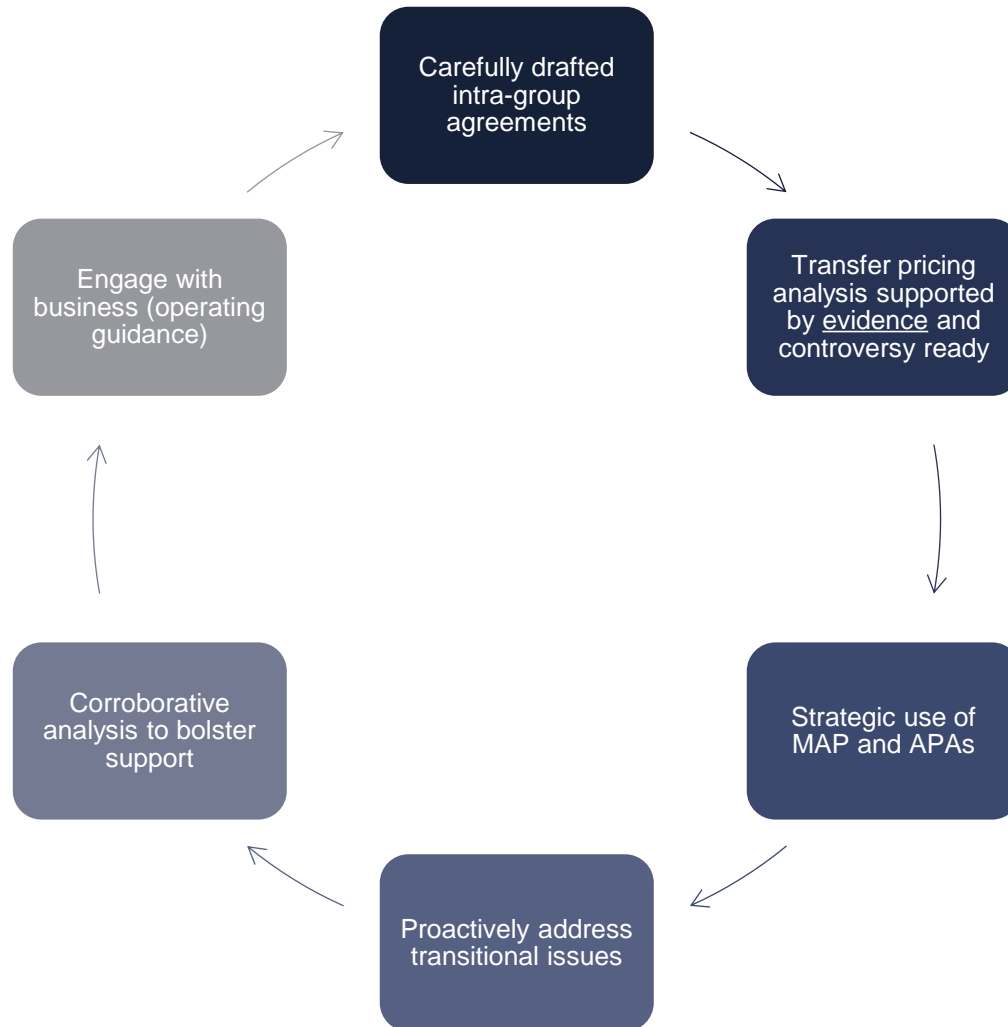
- Business changes
- Regulatory changes
- Personnel changes
- Industry changes
- Phased vs. hard stop

Phase 5 – Solution Refinement



Ensure the solution works for the business, maximising readiness for implementation

Phase 6 – Implementation & Defence



Top tips:

- Do not simply "ignore" unhelpful information
- Always assume full transparency
- Gather evidence now
- Know your weak points
- Ensure business buy-in
- Do not underestimate the importance of agreements

Insight: Taxpayer Toolkit (Distribution)

Tax assessment involving...

Tested party "flip"

Application of profit split

Unrecorded transaction:
marketing or other service

Permanent establishment

Alternative profit level indicator

Alternative comparables

Market premium *

Compliance Documentation

Strategic Evidence-Based
Documentation

Advance Pricing Agreement

* Country specific

Risk and Potential Assessment

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