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Final report

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# Transfer pricing in the Asia-Pacific: The SME experience

March 2024



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Final report

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## **Contributors**

We would like to sincerely thank participants for their generosity in responding to the survey, participating in the discussion sessions and for their willingness to express their views.

## **About CPA Australia**

CPA Australia is one of the largest professional accounting bodies in the world, with more than 172 000 members in over 100 countries and region.

CPA Australia provides thought leadership on local, national and international issues affecting the accounting profession, business and the broader public interest. We engage with governments, regulators and industries to advocate policies that stimulate sustainable economic growth and have positive business and public outcomes.

Find out more at [cpaaustralia.com.au](https://cpaaustralia.com.au)

# Summary

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This report summarises the experience of Asia-Pacific small and medium-sized enterprises (SMEs) with transfer pricing. The report reflects the results from a survey of transfer pricing practitioners from across the region and interviews with some of those respondents.

Participants were generally of the view that transfer pricing laws and their application take little account of the differences in capability, capacity and risks between SMEs and large multi-national enterprises (MNEs). This leads to SMEs facing disproportionate costs in complying with this regime.

Adding to the complexity and cost is the divergent approaches between jurisdictions. Despite the OECD releasing [Transfer Pricing Guidelines for MNEs and Tax Administrators](#), each jurisdiction's adoption, application and interpretation of these guidelines can differ greatly. That is, inconsistent legislation, definitions and application of transfer pricing rules across jurisdictions adds to compliance costs.

Participants noted that the main transfer pricing issues SMEs grapple with are how to comply, the cost of compliance and difficulties in benchmarking. Participants observed that many tax authorities pay limited attention to these issues facing SMEs. For example, many SMEs must undertake benchmarking studies that are excessive relative to the tax revenue at risk.

Improving the transfer pricing experience for SMEs in the Asia-Pacific will encourage entrepreneurship, improve productivity and support growth. CPA Australia therefore suggests:

- governments from across the region seek a SME-focused consensus on transfer pricing simplification and alignment
- tax authorities should offer practical avenues for SMEs and their advisers to engage with them on transfer pricing issues
- transfer pricing guidance be differentiated by size of business and level of risk
- transfer pricing legislation be supported by an effective Mutual Agreement Procedure (MAP) and mechanisms enabling efficient cross-jurisdictional resolution of transfer pricing issues
- greater coherence between transfer pricing laws and other taxes and duties, such as customs duties
- transfer pricing simplification through safe harbours, exemptions for small transactions and simplified audit frameworks. To be effective, such simplification for SMEs would need to be global and consistently administered. One-sided concessions are not necessarily acceptable by counter-party jurisdictions
- taxpayers seek proper benchmarking advice to determine the correct approach from the outset, as well as for their anticipated business structure.





# 1. Introduction

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This report provides an overview of responses from a survey into transfer pricing and small and medium enterprises (SMEs) undertaken by [CPA Australia](#).

The study examines current transfer pricing issues facing SMEs in the Asia-Pacific region and the factors that may impact their experience.

The study was conducted via an open survey of transfer pricing practitioners, corporate tax managers and academics between November 2021 and February 2022. Preliminary findings obtained from the survey were followed by seven in-depth Think Tank panel sessions of selected survey participants during October and November 2022.

The survey aimed to identify SME-related issues in the tax transfer pricing in the Asia-Pacific. These were:

1. **Adoption** of transfer pricing rules is determined by the needs of the government of each jurisdiction
2. **Enforcement** of transfer pricing rules is determined by the proactiveness of the tax authority of each jurisdiction
3. Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines are **designed** for large multinational enterprises (MNEs) and are not suitable for SMEs
4. High compliance **costs** are more prohibitive for SMEs than MNEs
5. Transfer pricing **simplification** measures are most favoured by SMEs.

## 2. Perceptions of government

### Key points

- Specialists in transfer pricing perceive that revenue protection and compliance are the main drivers for governments adopting transfer pricing laws.
- Participants observed that each jurisdiction's adoption, application and interpretation of the OECD's transfer pricing guidelines can differ greatly. This makes compliance more difficult.
- Transfer pricing legislation should be supported by an effective Mutual Agreement Procedure (MAP) and mechanisms to enable efficient cross-jurisdictional resolution of transfer pricing issues.
- Greater coherence between transfer pricing laws and other taxes and duties, such as customs duties is recommended.
- A SME-focused regional consensus on transfer pricing simplification and alignment will encourage entrepreneurship, improve productivity and support growth.

### Discussion

Governments around the world have progressively introduced transfer pricing rules into domestic legislation over preceding decades. The recent actions under the OECD's Base erosion and profit shifting (BEPS) project continue to enhance the transfer pricing rules and drive legislative changes globally.

### Revenue protection and strong rules are the main drivers of government policy

Our survey shows that revenue protection and compliance supported by strong rules are the main drivers for governments when adopting transfer pricing legislation. Jurisdictions are at varying stages of implementation and for those who have introduced rules more recently, revenue protection is the primary driver.

Changes have also been made to thresholds, reporting requirements and penalties to enhance existing transfer pricing regimes.

### Government approach to transfer pricing



Strongly disagree = 0. Strongly agree = 5.

‘Transfer pricing rules, including BEPS Pillars 1 and 2 are driven or influenced by politics and mindset as much as anything else.

The international tax and profit shifting related measures that come in during periods of budget deficits and increasing government debt commitments should not be overlooked.

There is a definite correlation between the appetite of governments to enact tougher transfer pricing measures and the state of the country’s budget.’ **Think Tank participant**

### High variability in the application of the OECD principles by jurisdictions

Overall, survey respondents found that transfer pricing rules are adopted by governments in a manner broadly consistent with the OECD guidelines. However, participants observed that, in practice, each jurisdiction’s adoption and application of OECD guidelines can differ greatly due to the way in which the OECD rules are adopted and articulated in law.

Participants observed that while the take up of the OECD principles is high across the Asia-Pacific, the interpretation and application can vary significantly.

The differences in the interpretation and application of transfer pricing legislation by revenue authorities was a consistent theme in the survey and think tanks. These include whether to include thresholds and challenges with the application of the principles-based rules. Regardless of size, multinational enterprises (MNEs) are required to navigate the legislative and administrative complexities of the various jurisdictions in which they operate.

‘The five transfer pricing methods on the surface appear the same as the OECD, but the conditions to apply each transfer pricing method is quite different from the OECD. And that is the issue. While it might look consistent, when you unpack it, the result is quite different.’

**Think Tank participant**

‘That’s where it gets really complicated, because it’s those differences that the MNE is required to navigate. Advisers are the link to explaining how things work in one jurisdiction versus another. Transfer pricing goes around the world across a myriad of corporate tax, customs and indirect tax elements. In the end, the different behaviours between jurisdictions create the extra burden, or the extra complication in terms of managing the transfer pricing environment for MNEs.’

**Think Tank participant**

Examples of the various challenges faced by MNEs and their advisors include:

- The need to learn the new rules of each jurisdiction and then reach agreement with the tax authorities. Many jurisdictions have the elements, but the issue is consistency
- Differing availability of exemptions or concessions such as related party dealings thresholds or safe harbours
- Differences between tax authorities in the characterisation of debt and equity for the same transaction
- Differences in the hierarchy of transfer pricing methodologies used by tax authorities
- The use of risk-based products and tools by tax authorities to establish lower-risk benchmarks or limitations on the treatment of international related party dealings that are less flexible than in other jurisdictions
- MNEs being generally expected to use local comparables in the first instance and varying degrees of acceptance of these comparables amongst revenue authorities.

Where jurisdictions stick closely to the OECD guidelines and domestic legislation does not supersede them, there are fewer inconsistencies observed.

### **Inconsistent definitions make compliance confusing**

Jurisdictions differ in their definition of related parties and related party transactions. Where the scope is more expansive, definitional issues arise and objective tests are required for clarity. Examples include where third-party marketing expenses or transactions with an independent bank are related parties due to the expansive definition.

'There are differences in the definition of related parties, what transactions are covered and the level of materiality. One jurisdiction is selective in the transfer pricing rules chosen for implementation. Some jurisdictions have reporting thresholds while others don't. There isn't any consistency, even within small groups of countries.' **Think Tank participant**

Furthermore, the definition of an SME varies significantly between jurisdictions meaning that eligibility for reporting thresholds, simplified methods or safe harbours will differ. For example, Australia has a AU\$2 million reporting threshold while it's SG\$10 million (AU\$11.3 million) for Singapore. This poses a challenge for SMEs and their advisers who are dealing with different definitions depending on the jurisdiction.

### **Need for effective Mutual Agreement Procedure (MAP) and dispute resolution mechanisms**

Significant disputes can arise that require a MAP because of differences in tax authorities' approaches at a granular level or disagreements about how the rules are implemented.

While many tax cases deal with the more mechanical aspects of taxation laws or the application of legal procedures, transfer pricing litigation is more uncertain with the court being required to consider factors such as economic characterisation, pricing methodologies and comparables. Litigation is therefore rare due to the costs, uncertainty and risks for all parties in the proceedings. The cases that do go through the courts can result in judgments that lead to inconsistencies between jurisdictions.

As a result, transfer pricing legislation should be supported by effective MAP and mechanisms to enable bi- or multi-lateral resolution of transfer pricing issues in an efficient way. This reduces costs for tax authorities and taxpayers and provides certainty.

### **Coherence with other taxes and duties**

When designing transfer pricing legislation, participants also observed the need to consider the interaction between transfer pricing rules and other regimes. Challenges include:

- Customs duty consequences from transfer pricing arrangements, such as adjusting customs duty when transfer prices for goods are amended
- Determining the customs value of goods such as whether licenses or royalties should be included
- Flow-on impacts from transfer pricing adjustments on value-added taxes and withholding taxes
- Reporting requirement to notify customs authorities of transfer pricing adjustments even where there is no change to the amount of duty payable
- Interaction and differences between World Trade Organization (WTO) arms' length rules used for customs purposes and OECD transfer pricing rules used for tax purposes.

## Global and regional approaches to transfer pricing are required

Participants were clearly in support of a regional approach to transfer pricing, particularly for SMEs. A SME-focused regional consensus on transfer pricing simplification and alignment will encourage entrepreneurship, improve productivity and expand regional growth.

A lack of consensus between jurisdictions makes efforts to simplify or streamline transfer pricing more challenging because taxpayers can comply with a safe harbor in one jurisdiction, but all the related parties in the other jurisdictions do not have an obligation to recognise it.

OECD guidelines on low value-adding intra-group services<sup>1</sup> are a positive effort but require a greater number of jurisdictions to adopt the approach to be effective. The biggest issue for SMEs is not the development of simplified approaches, but rather the mutual recognition of that simplification across jurisdictions. In the absence of a global consensus, regional agreements would assist taxpayers, especially SMEs, to set consistent arm's length prices with certainty, reduce the need for audits on covered dealings and reduce disputes between jurisdictions.

'In a perfect world, all revenue authorities, not just regional but global, would apply rules in a consistent manner. One of the issues we obviously face is that this doesn't happen. We see that the way that transfer pricing rules are applied in some cases, they are done so on a self-interest basis because the revenue authority is trying to protect their own tax base.'

**Think Tank participant**

Participants recommended leveraging existing plurilateral groups such as ASEAN, APEC, Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) to discuss regional approaches to transfer pricing with a focus on SMEs. Opportunities exist for governments to establish a committee or working group to progress the alignment of transfer pricing rules across the Asia-Pacific.

The relationship between transfer pricing and customs duties should also be considered by the OECD Forum on Tax Administration (FTA), World Customs Organization for customs duties and the WTO for valuations. Regional discussions that seek to develop consensus on transfer pricing approaches can then also inform tax treaties and trade agreements between jurisdictions.

<sup>1</sup> OECD, Low value-adding intra-group services, Chapter VII: Intra-group services, [OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022](#), p. 326, January 2022.

## 3. Perceptions of tax authorities

### Key points

- Tax authorities have varying approaches to transfer pricing compliance, making it more difficult for SMEs and their advisers.
- Tax authorities should offer practical avenues for SMEs and their advisers to engage with them on transfer pricing issues.
- Many SMEs grapple with the challenge of how to properly comply with transfer pricing requirements without incurring significant costs.
- Tax authorities should provide dedicated transfer pricing guidelines for the SME market, and to take a differentiated compliance approach commensurate with the level of risk.
- Transfer pricing issues should be administered from both corporate tax and customs perspectives as much as possible.

### Discussion

Tax authorities are responsible for interpreting and enforcing their jurisdiction's transfer pricing rules. The design and detail of transfer pricing legislation often requires tax authorities to develop further interpretive guidance and methodological hierarchies to support their administration of the legislation.

Our survey respondents indicated that tax authorities across the Asia-Pacific understand the importance of transfer pricing to the revenue and actively enforce those rules. However, consistent application was given a poor score and our participants provided examples of the highly varied approaches taken by tax authorities to their administration of transfer pricing rules.

### Perceptions of tax authorities



Strongly disagree = 0. Strongly agree = 5.

## Differing approaches by tax authorities make things difficult for SMEs

Tax authorities with strong transfer pricing capabilities bring a highly technical approach to enforcement. They are seeking to thoroughly test the pricing methods chosen by the taxpayer. This means that MNEs require high-quality and comprehensive transfer pricing documentation to satisfy any enquiries.

Tax authorities have varying approaches to transfer pricing compliance. Participants observed that some tax authorities are less principled in their transfer pricing adjustments than others, noting 'it feels more like a tax grab sometimes'. While jurisdictions are motivated to protect their tax base, tax authorities with long-term relationships and strong capability will achieve a bilateral resolution based on a principled view most of the time.

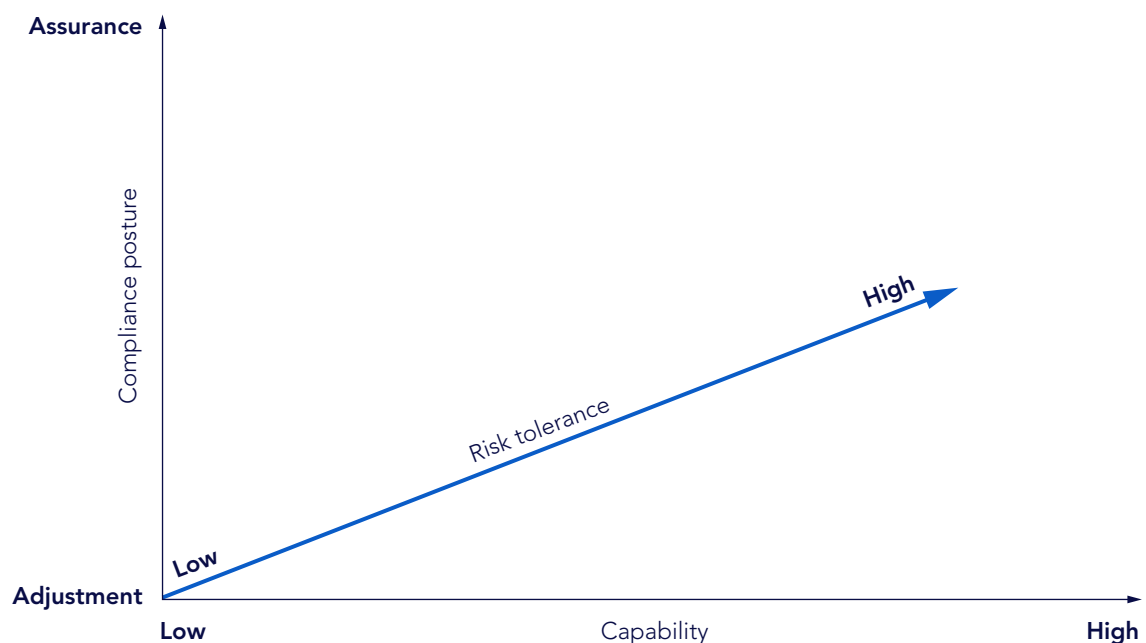
For example, one jurisdiction might prioritise the use of internal comparable uncontrolled prices (CUPs) followed by external CUPs then the transactional net margin method (TNMM). Another jurisdiction may instead prefer TNMM as the primary methodology, even for relatively simple distribution entities and manufacturing operations.

Information from tax authorities is important to provide certainty and reduce the cost of compliance. Participants encouraged tax authorities to better promote their messages and guidance for SMEs to ensure broader awareness and encourage compliance. Examples of helpful guidance include:

- Interpretive products that set out the tax authority's view of the law and its application
- Risk-based information that provides guidance on the level of risk associated with related party dealings and certainty in relation to low-risk arrangements
- Accessible safe harbours or simplified approaches including the use of published statistical benchmarks.

Participants observed the challenge in designing accessible simplified approaches while managing risk to revenue. Examples were given where simplified options had so many conditions on eligibility that only a small number of taxpayers were able to use them. This highlights the need to regularly evaluate and refine these initiatives to ensure they are practical and accessible.

Through the lived experience of participants, it was observed that the behaviour of tax authorities tended to be driven by their compliance mindset, risk management approach and capability.



## Engaging with SMEs pragmatically

SMEs operate at a different scale to the largest MNEs and their businesses can often be more dynamic and less structured in their affairs. SMEs are highly dependent on their tax advisors to inform them of their tax obligations including transfer pricing.

Some tax authorities are clearly willing to work with taxpayers and their advisers in a pragmatic and engaging manner. This may include safe harbours or reduced documentation requirements. MNEs may be able to directly engage with the tax authority to obtain certainty on particular arrangements, or to receive guidance as part of an assurance engagement.

However, due to the lack of consistent rules across jurisdictions, MNEs may still be subject to the full range of transfer pricing compliance obligations including benchmarking in the counter-jurisdiction. Currency fluctuations and differences in definitions may also give rise to changing obligations across multiple jurisdictions.

In some jurisdictions, there is limited engagement between tax authorities, SMEs and advisors. This is often due to a lack of trust. This can limit the ability to provide public guidance, resolve audits and improve capability. To address this, we suggest tax authorities have an area or person that taxpayers or their advisers can have a confidential and pragmatic conversation with on transfer pricing. This will help both taxpayers and the authority get to the heart of issues, and for the authority to give feedback. This will only work if taxpayers can initiate such conversations without the fear of an audit.

Think tank participants expressed a preference to work constructively with tax authorities. They see that consultation and discussion enhances understanding and establishes transparent and informed administrative approaches.

Many SMEs grapple with the challenge of how to properly comply without incurring significant costs. To them, compliance obligations are a cost that requires the investment in a lot of personnel and resources to maintain the required level of transfer pricing documentation. Start-ups in new industries or rapidly expanding businesses are often growing their operations, testing new markets and products, evolving their structure or pivoting the business. This can give rise to transfer pricing complexity in particular areas such as intangibles or financing, which are challenging for the largest MNEs, let alone for SMEs.

Further, the ever-changing transfer pricing landscape requires ongoing campaigns by the tax authorities to inform and educate SMEs and their advisors, and to provide additional lead time and tailored approaches to support their adoption of new requirements.

## Requirements should be proportional to the risk

The tax authority's perception of risk is a key driver in their approach to transfer pricing. Safe harbours and simplified approaches should be nuanced in their design rather than being an 'all or nothing' proposition.

'If there is the potential that there might just be a risk, everything must have millions of criteria because the tax authority is trying to manage every chance that someone might circumvent the system. The tax authority should be coming across with a practical approach when you're dealing with a population as large as SMEs so that they can practically apply the law in a simple way.' **Think Tank participant**

'By trying to manage down to that lowest common denominator, it becomes incredibly impractical and incredibly expensive for SMES to actually try and comply.' **Think Tank participant**



Because tax authorities are often focused on large MNEs, their guidance and alerts are biased towards those enterprises. Many new strategies and risk areas are being addressed by tax authorities and the guidance is often equally applicable to SMEs despite not necessarily having been considered from a SME perspective. Participants emphasised the need for tax authorities to consider the impacts on all taxpayers when issuing guidance, not just large MNEs, and to take a differentiated approach commensurate with the level of risk.

While participants noted the efforts of tax authorities to take differentiated risk approaches, improvements could be made to the categorisation and treatment of low-risk transactions compared to higher risk transactions such as a business restructure dealing with intellectual property, particularly at the higher end of the intellectual property (IP) scale.

Participants also observed that the growth of assurance and risk-based approaches has introduced further complexity and constraints. Examples include different conditions for inbound and outbound transactions or the use of consistently higher margins than might be obtained through a benchmarking study. Not only does this increase the compliance burden for MNEs but may also result in these administrative approaches driving transfer pricing outcomes, inappropriately displacing the arm's length principle as the basis for pricing related party dealings.

### **Tax authority capability evolves over time**

Experienced tax authorities working with long-established legislation and court judgments have, as is to be expected, a more mature perspective. They have greater visibility of the MNE population and have the technical ability to make economic adjustments to account for differences in the business or risk profile.

For jurisdictions with more recent legislation, tax authorities are actively enforcing the rules while concurrently building their capabilities. Training and support for tax officials is needed to develop their understanding of the rules and apply them consistently. This will improve the focus and outcomes of discussions with taxpayers as well as minimise the incidence of protracted audits and avoidable disputes. Participants commended the OECD's Inspectors Without Borders Program and other capability-building initiatives to support tax authorities administer their transfer pricing rules. It was also recognised that capability improves over time and that these are known challenges when implementing new and complex legislation.

The changing profile of workforces globally was also observed to be having an impact on tax authority capability. Participants also commented on the noticeable staff shortages at multiple tax authorities with increasing delays and timeframes for audit cases, Advance Pricing Arrangements (APAs) and MAP.

'The average tax auditor is less experienced now. As such they do not have the ability to differentiate approaches based on taxpayer size. They see a transaction and they go 'Oh, this is how we audit this transaction.' But you do not audit SMEs the same way as large MNEs, and that practical experience is now lacking. Because of these factors, SMEs are going through the same experience as a lot of large MNEs. This does not make sense for the SMEs, for the administrator, for the system or for the community. It's a pure economic inefficiency.' **Think Tank participant**

Capability development within the tax authority may also be impacted by structural factors that can also affect consistency and quality of decisions. These include:

- Different divisions approaching technical development, knowledge sharing and decision-making inconsistently. This results in unexpected variations in outcomes depending on how MNE groups are managed by the tax authority (e.g., by industry, ownership and/or size)
- Establishing a dedicated specialist capability, enables the faster development of expertise which can be leveraged to support generalist audit teams, produce guidance and provide technical advice
- Limited internal sharing of education and experience creating knowledge siloes or inconsistent practices
- Inexperienced tax officials who are required to address transfer pricing in general audits face challenges in identifying and assessing risks and require additional support to properly interpret and apply the rules.

### **Joined-up approach to transfer pricing, customs duties and other flow-on issues**

Transfer pricing issues may often be detected during customs audits, and vice versa, meaning that pricing issues should be administered from both corporate tax and customs perspectives as much as possible. Collaboration between revenue and customs authorities enables the sharing of expertise and the development of efficient joint approaches to the resolution of tax and customs issues.

There is a recognition that transfer pricing is only one aspect of the increasingly complicated international tax system, with the BEPS Actions introducing a multitude of new rules and jurisdictions unilaterally imposing their own (e.g., Diverted profits tax in Australia, Global Anti-Base Erosion (GloBE) in the US). Ultimately, the issues and potential solutions related to SMEs and transfer pricing are broadly applicable to many aspects of cross-border taxation.

## 4. Barriers to adoption

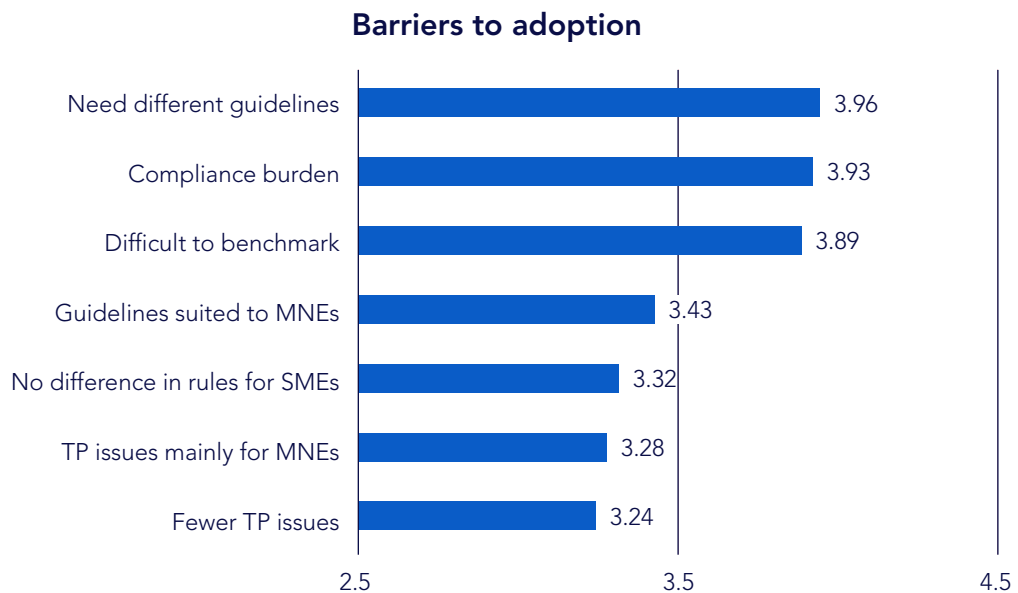
### Key points

- The main barriers to adoption for SMEs are the compliance burden and difficulties in benchmarking.
- There is limited recognition of the higher proportional compliance costs for SMEs.
- Many SMEs are often unaware of or may be reticent to invest in complying with their transfer pricing documentation requirements.
- Tax authorities should communicate directly with SMEs to raise general awareness.

### Discussion

The diversity of SMEs means that these businesses often encounter the same transfer pricing issues as large MNEs and are bound by the same requirements. This creates a significant compliance challenge relative to the scale of their related party dealings. Many SMEs are often unaware of or may be reticent to invest in complying with their transfer pricing documentation requirements.

Our survey respondents reported that the main barriers to adoption for SMEs are the compliance burden and difficulties in benchmarking. They highlighted the need for different guidelines for the SME market, observing that the guidelines are better suited for larger MNEs. Participants observed a limited recognition of the increasing proportional costs of compliance for SMEs particularly due to the low threshold for disclosing related party dealings, if available at all, and the restrictive eligibility for simplification measures.



Strongly disagree = 0. Strongly agree = 5.

### Low transfer pricing awareness amongst SMEs

Transfer pricing awareness is low amongst SMEs. SMEs have less capacity and capability than larger businesses on many issues including tax compliance. Transfer pricing is conceptually difficult and advice to SMEs is often focused on building awareness and an understanding of the rules. The transfer pricing rules don't scale well for SMEs.

In jurisdictions with more recent rules, advisors have found that there is limited or low-impact communications from the tax authorities to SMEs about their transfer pricing obligations. This increases the reliance of SMEs on their advisors or in-house tax functions to update them on changes and to encourage investment in transfer pricing compliance. Participants observed that it would assist if tax authorities more effectively communicated directly with SMEs to raise general awareness and to bolster advisors' efforts to assist business understand their compliance requirements.

Business owners and their internal tax function will need to consider their value chain, undertake a proper functional analysis and obtain third party comparables. The skills required to manage transfer pricing obligations are not readily transferable from day-to-day corporate accounting skills in SMEs. Complying with the transfer pricing rules generally requires an increase in the scale of reporting and building new capability in the corporate tax function.

Often, SMEs have insufficient resources to deal with all transfer pricing requirements and advisors will often need to take an incremental approach.

'Compliance is a complex issue and the corporate tax function has many other taxation issues they need to deal with. In the SME area, it's complicated because teams are under-resourced, or there's not enough budget to deal with all the requirements of the transfer pricing advice as it's costly. So, what we try to do is to approach it as a process and not one that is going to be dealt with in one year.

SMEs need time to get their processes and transfer pricing documentation together, because it's also a learning curve for companies. In the first year, we try to guide the SME in an assessment of all their transfer pricing issues and identify areas of risk. We're looking for anything that comes up as very risky, or that should be taken care of in case of a review. What becomes really expensive is the elements of documentation and then the reports and that type of thing. So, we try to encourage SMEs to deal with the pricing first, making sure that the pricing follows the rules and the methodologies, and then follow with the documentation.

After a few years of guidance, they're often up and running and actually can do it themselves. This can take three to five years or sometimes even 10 years. The advisor is then there as a counsellor, in case there's going to be a transaction or they want assurance that they are following the rules.' **Think Tank participant**

Some jurisdictions have reporting thresholds and SMEs go from 'zero to 100' once they reach the threshold amount as they need to have transfer pricing documentation in place.

'It's very hard because to convince a SME that has transactions just above the threshold to put in proper transfer pricing documentation because it means you have to have a benchmarking study is very difficult. From a practical perspective, there is an overwhelming amount of information that may or may not get you to the arm's length outcome before you even go down that road to transfer pricing documentation. Once the threshold is triggered, it is a massive scale up for the business and their in-house accountants. It is an amazing level of sophistication for what is often a small and simple entity.' **Think Tank participant**

There is the need to educate SMEs that the structuring of the transaction flow in transfer pricing is more important than the legal entity structuring. This is because the big driver of their international tax position and transfer pricing is their transaction structuring and not the structuring of their legal entity. This is something that advisers and other trusted sources of business advice should focus on to increase SMEs awareness, including border tax issues.

## 5. Benchmarking

### Key points

- SMEs face particular challenges when undertaking benchmarking studies.
- It is costly for SMEs to do a comprehensive benchmarking study.
- Developing transfer documentation that provides a reasonably defensible position is time and cost intensive.
- Tax authorities prefer local comparables. This means that the same comparables can't be used for different jurisdictions.
- In some jurisdictions there is little public information and tailoring regional or offshore industry comparables can be challenging when there is limited economic resemblance.

### Discussion

The survey responses and participants' comments consistently highlighted the challenges with benchmarking. As the approach is highly technical and dependent on the availability and tax authority acceptance of comparables, SMEs face particular challenges when undertaking benchmarking studies.

Participants emphasised the importance for governments and tax authorities to understand the practical issues SMEs face. This includes the fact that it is very costly for SMEs to do a comprehensive benchmarking study.

### Benchmarking is expensive

Undertaking a conventional benchmarking study that follows all the requirements is generally costly and extensive. The time, resources and cost to comply often outweigh the benefit when considering the materiality of a SME's related party dealings. This includes requirements in some jurisdictions for simple service entities or loans. There is also the risk that the benchmarking study will not be accepted by the tax authority.

'From a professional's perspective, the software is expensive particularly for advisers outside the largest firms and these costs are passed on to clients. Given tax authorities are using the same information for their risk and compliance programs, it is important that benchmarking is based on this data. However, benchmarking requirements differ across tax authorities so SMEs operating in multiple jurisdictions may need to prepare separate studies for each tax authority, rather than being able to leverage the same approach. Some tax authorities are more willing to accept a benchmarking study prepared for another jurisdiction than others.'

**Think Tank participant**

There's a friction between budget and the quality of the documentation that can be prepared. Even when working with a reasonable tax authority, developing transfer documentation that provides a reasonably defensible position is time and cost intensive. It requires advisors to be able to do a proper analysis as opposed to merely having transfer pricing documentation. This will only satisfy record-keeping requirements but may not necessarily achieve arm's length pricing outcomes. Tax authorities should understand that administrative burden that they're placing on SMEs. Participants recommended that tax authorities develop approaches to either streamline the analysis or minimise the complexity or the requirements to maintain proportionality.

## Benchmarking is all or nothing

A benchmarking study must be done properly regardless of whether the entity is a SME or large MNE and finding the right comparables can be challenging. From the client's perspective, the process to choose comparables is neither art nor science and because the legislation isn't clear. The level of uncertainty remaining after detailed and costly analysis can cause concern or frustration.

SMEs are increasingly being required to undertake benchmarking studies due to a lack of published benchmarks such as industry data. Other reasons include they don't satisfy the narrow eligibility criteria to access simplified record-keeping or streamlined approaches that may be available.

Because the rules apply to all MNEs, the same complexities with benchmarking exist for SMEs as they do for large MNEs, for example, issues such as what comparables can and can't be used. Trying to find pragmatic and simple solutions that are tailored for SMEs requires acceptance by tax authorities which can be a challenge. This is particularly so where tax officials are inexperienced or unfamiliar with transfer pricing. It's a highly technical area that requires a pragmatic mindset, judgment in the practical application of the rules, an instinct about what is sensible (and what isn't) and deep experience across a broad range of cases and issues to come to reasonable decisions. Limited tax authority capability and inexperienced tax officials make discussions on benchmarking more difficult and can delay the resolution of transfer pricing disputes.

## Benchmarking must be done at the local level

Even if not strictly expressed in the OECD rules or legislation, tax authorities prefer local comparables. This means that the same comparables can't be used for different jurisdictions. SMEs are expected to satisfy the comparability requirements of each jurisdiction which will, in most cases, require the use of local comparables. To meet compliance requirements and diminish the prospect of administrative penalties, advisers still undertake a local comparables search, despite the challenge in finding comparable data at the local level.

Not only does that require an understanding of the local financial reporting and accounting requirements, but also qualitative insights about the domestic market and the industry composition. Therefore, a functional analysis and benchmarking study requires significant input from local personnel to tailor the analysis.

The fact that a SME must use local comparables introduces complexity and cost, whether they have multiple transactions or only a couple. SMEs and advisors expend significant effort searching domestically or having to convince the tax authority of the absence of local comparables. This can pose additional challenges for transfer pricing advisors based offshore, particularly for jurisdictions with a limited transfer pricing presence or limited tax authority capability. In some jurisdictions there is little public information and tailoring regional or offshore industry comparables can be challenging when there is limited economic resemblance.

'You need to do country specific benchmarking to keep the tax authorities happy and that's not always easy to do. The whole concept of benchmarking and how much investment is required is a real issue facing a lot of companies and for SMES, it's probably even worse. This is because the benchmarking is the same for a SME, as it is to a large MNE. The cost is similar and how much to invest is a big issue.

If we had consistent and reasonable safe harbours and so forth that SMES could rely on then it makes life a lot easier for them. For example, the Australian Taxation Office's guidance on distributors could become a benchmark for basic distribution around the region. Benchmarking is an ongoing issue that is not going to get any easier or cheaper.' **Think Tank participant**

Tax authorities may also differ in their hierarchy of factors for comparable selection. For example, in one jurisdiction the dominant preference is for local comparables, even if they're not in the industry, whereas another jurisdiction may prefer industry-specific comparables ahead of local entities. As all countries have their peculiarities, there is a challenge in developing regional comparables. Tax authorities can also sometimes be unclear about their preferences, with SMEs and their advisors encountering different approaches or hierarchies depending on the tax official. In some jurisdictions, there is limited or no public guidance on how to approach selection of comparables or what is accepted by the tax authority, especially where foreign comparables are accepted. Tax officials also tend to question offshore comparables in far greater detail than local comparables and may challenge their inclusion.

### **Benchmarking data quality and use is variable**

In relation to the use and availability of benchmarking data, participants observed:

- Financial reporting simplification in some jurisdictions is leading to less data being available while in others increasing requirements are providing richer data
- The quality of data has decreased compared to several years ago
- Essential financial data is not being standardised and because digital reports are not available, data needs to be transferred from PDFs and financials are done manually
- Benchmarking doesn't suit dynamic companies or those facing unusual issues. It is difficult to find or adjust comparables
- Benchmarking in some areas can be inexact. For example, in insurance, 11 brokers will provide 11 highly variable responses
- Tax authorities express a strong preference for local comparables but they don't always exist
- Some tax authorities use 'secret' comparables that are not publicly available
- Tax authorities may challenge the selection of comparables, including removal of lower margin comparables to adjust the range or be highly selective to achieve a pre-determined range.

### **Businesses aren't always profitable**

Participants observed that tax authorities may have the expectation that every business should always be profitable. This is not correct.

There is a tendency to rely on methods such as TNMM that, in practice, are geared towards profit-making cycles. Advisors may also, in anticipation of the tax authority's compliance approaches, adjust comparables to remove loss-making companies which positively skews the range. Participants raised the COVID-19 pandemic and Global Financial Crisis as recent examples of circumstances that disrupted profitability globally. While the OECD release specific guidance on the [transfer pricing implications](#), such effects may occur on a relatively common basis at an industry or regional level without necessarily being acknowledged when establishing benchmarks.

'Profit methodologies are not necessarily correct or incorrect but rather more care needs to be applied in the application of comparability to focus on the simplest transaction with the most information where real comparables of the transaction exist. For example, CUPs may be available but the tax authority will still be checking profitability. This approach should be taken with care, because in many circumstances, companies face challenges and can't always be in a profit. We just need to be careful, not to demonise losses or assume that every loss is a loss due to transfer pricing.' **Think Tank participant**

When SMEs are experiencing losses, there is the need to properly document the loss drivers and ensure sufficient evidence to demonstrate that the losses are not due to transfer pricing issues.

Participants recognised that tax authorities are resource constrained and under pressure to test prices quickly. However, this can result in insufficient care being placed on finding the real economic reasons. This means that beyond the issue of comparability, there is an issue of analysis and data quality when understanding and accepting benchmarks and profit outcomes.

### To benchmark, or not to benchmark?

Therefore, benchmarking is difficult and getting more expensive, especially for SMEs.

SMEs become aware of transfer pricing when advisors inform them that they don't fit within the safe harbour or simplified record keeping requirements. Developing transfer pricing documentation and undertaking benchmarking studies is often a daunting prospect that comes at a high cost.

A particular barrier is that SMEs will often need to resort to TNMM. For example, if it is an interest rate, we benchmark an interest rate, or we take that from the Australian Taxation Office (ATO) simplified guidelines and we include it into the loan. SMEs often have limited access to comparable uncontrolled prices (CUP), resale price method or internal comparables. While TNMM is the most used method around the world, for the average SME, the scale up required to understand the concept is difficult.



#### Example

#### Start up

The investment in compliance is particularly challenging for start-ups and high-growth SMEs. A start-up is unlikely to implement a royalty or licence fee structure for a new subsidiary even if required by transfer pricing rules. Their preference is to wait until the subsidiary is established and the overall business is more stable before determining an appropriate arrangement. Advisors can only highlight the requirements and risks, but ultimately the decision falls to the SME.

Participants also noted that SMEs can often be selected for review several years into their operations. By that stage, these businesses have more structure and documentation in place and a with greater understanding of where the business is going. While advisors and revenue authorities would like them to have a benchmarking from year one, the investment in compliance often occurs when the revenue authority contacts them or when they want to get to the funding or Initial Public Offering (IPO) stage.

### Tax authority capability

The taxpayer and advisor experience differs greatly across revenue authorities. Drivers include capability, structure, culture and capacity.



#### Example

#### Centralised capability in head office with limited knowledge in regional offices

Selected officials in the national office are trained in transfer pricing but regional auditors are not sufficiently knowledgeable or experienced to lead transfer pricing reviews or audits or identify risks. Limited familiarity creates uncertainty both for the revenue authority and taxpayers in terms of consistent application of the rules. No safe harbours or streamlined rules are available to minimise issues on benchmarks or to support auditors and taxpayers to resolve issues.



The increasing volume of legislation, guidance and rules is creating greater complexity and introducing more requirements for both revenue authorities and taxpayers to consider. Some tax authorities are increasingly prescriptive in certain areas, making negotiations and settlements less flexible.

Benchmarking studies can become a big issue when there is disagreement with the tax authority on the commercial database to be used or where the tax authority uses its own internal, non-public data. Tax authorities may not necessarily accept commercial data. In jurisdictions with limited data available for benchmarking, greater access to alternative benchmarks or bilateral data could assist in determining the appropriate margin particularly where there is limited guidance or certainty. This may especially be true in developing economies where the informal business sector is large. The enterprise range is not always accepted and results below the median may be challenged.

The tax authority's approach to penalties and litigation should also be proportionate and reasonable.

Programs such as Inspectors Without Borders are highly beneficial. The inspectors have strong backgrounds from leading tax authorities and provide technical and practical experience.

## 6. Compliance costs

### Key points

- A lack of time, resources and having to bring in external expertise are the biggest compliance costs for SMEs dealing with transfer pricing issues.
- Inconsistent legislation, definitions and application of transfer pricing rules across jurisdictions adds to compliance costs.
- The relative cost of tax compliance for SMEs, including the drafting of transfer pricing documentation is much greater than for large MNEs.
- Many SMEs must undertake benchmarking studies that are excessive relative to the tax revenue at risk.
- SMEs generally do not have the resources to pursue disputes with tax authorities even where they strongly disagree with the tax authority view.

### Discussion

A lack of time, resources and in-house expertise are the biggest compliance costs for SMEs dealing with transfer pricing issues in the Asia-Pacific. A lack of comparables also scored strongly as increasing the cost of compliance.

Respondents indicated that these challenges are compounded by inconsistent legislation, definitions and application of transfer pricing rules across jurisdictions.

The need for specialist advice was not considered to be as burdensome.



Strongly disagree = 0. Strongly agree = 5.

**‘SMES are happy to pay a little bit extra tax to have the headache of transfer pricing go away.’**  
**Think Tank participant**

Participants explained that tax authorities should appreciate that, in general, SMEs do not have the mindset to shift profit to another jurisdiction. Participants indicated that taxpayers would accept a more conservative transfer pricing position if that provided certainty from the tax authority and reduced the need for costly benchmarking studies and transfer pricing documentation.

### **SMEs face a relatively higher compliance burden**

The relative cost of tax compliance for SMEs, including the drafting of transfer pricing documentation is so much greater due to the small, unilateral implementation of various transfer pricing rules with no common approach across jurisdictions.

An example of unnecessary complexity is low value management services where the requirements can vary significantly between jurisdictions.

Part of the challenge is that the rules are generally formulated for large corporations resulting in criteria that are the same regardless of whether the taxpayer is a top 100 global corporation or is just entering into their first expansion overseas.

Only a few countries have de minimis rules when it comes to pricing or they are difficult to access, meaning SMEs are often forced to meet the same standards and requirements as the largest corporations. Because the legislation is the same, it is a question for tax authorities on what they can do to improve the approach for SMEs so that the burden is more proportionate to their revenue.

'In Australia, the fees associated with preparing the International Dealings Schedule are greater than the fees for the rest of the tax return and have nothing to do with how much tax you're going to pay that year. That is a really hard conversation to have with clients. Absent some sort of mechanism which says there's no risk if you don't achieve the same documentation standard as a large multinational, then that SME is required to do exactly the same as MNEs.'

**Think Tank participant**

### **SMEs have less resources and more pressing priorities**

Even for small subsidiaries of a large MNE there can be challenges. A small subsidiary in a jurisdiction of low priority to their parent entity may find it challenging to gain the attention of the global group and the necessary resources to maintain compliance. Even if there's recognition that there may be some risk exposure, there can be limited support to invest in pricing and documentation except if there is a current audit.

A taxpayer will take various elements such as size, complexity, costs and risks into consideration in determining the level of documentation required. However, there remains a lack of certainty as to whether a lower level of documentation would be considered satisfactory in the case of the audit.

### **Compliance is often reactive**

'Not all SMEs appreciate that the transfer pricing is a big risk. It is often only when they get audited and there is a transfer pricing adjustment, that they realise they should have prepared the local file or benchmark, and everything needs to be prepared in a fairly short time – it's a fire brigade approach.'

**Think Tank participant**

Access to the right support is also restrictive as it's the advisers that are best equipped, especially with the benchmarking databases, the latest tools and technical knowledge. The fees for these services can sometimes be prohibitive leading to the SME relying on their local tax advisor. Due to transfer pricing being a specialist skillset, SMEs risk not obtaining proper advice until they are audited, potentially resulting in serious issues for them.

## Reporting requirements and thresholds vary across jurisdictions

SMEs must navigate a multitude of approaches to transfer pricing across the Asia-Pacific including

- Related party dealings reporting thresholds in limited jurisdictions
- Documentation requirements commencing at different thresholds, with many jurisdictions requiring documentation from the first dollar
- Documentation requirements varying from an informal demonstration of an arm's length methodology to a highly detailed and fully benchmarked analysis
- Tax authority guidance varying in clarity and consistency
- Details reported in tax returns vary from a declaration through to detailed disclosure of a range of transactions and issues
- Use of exchange of information agreements to initiate inquiries
- Acceptance of the local file by transfer pricing authorities.

Practitioners need to have practical TP guidelines that are easy to adopt. TP software tools have enabled the centralisation of compliance and enabled consistency and standardisation of TP templated documentation. This aids analysis between jurisdictions, resulting in a reduction of compliance cost. Tax authorities such as in Indonesia are making frequent inquiries for exchange of information and transfer pricing documentation requests.

However, in some jurisdictions, the cost efficiency through centralisation does not work. The TP documentation needs to be prepared from that jurisdiction's standpoint, so if you use TP report of the other party or the best practice of other party, it may not be accepted in another jurisdiction. This duplication increases the cost of compliance because an additional and separate TP documentation is required.

## Engaging with tax authorities

Participants made the general observation that tax authorities do achieve a return on investment from their audits and that industry-based approaches are commonly used.

Capability and compliance posture of the tax authority also drive compliance costs in the event of a review or audit.

Transfer pricing issues are also increasingly considered as part of broader initiatives on tax governance and tax risk management.

## The role of advisors

It can be difficult for business owners to understand their TP risk and the role of the advisor is to quantify that risk for them in a context which they can understand. Advisors need to educate SMEs on transfer pricing and how they price their value chain.

Advisors are increasingly willing to work with in-house accountants to develop documentation and greater participation in review processes.

In the current environment, most SMEs will have to undertake benchmarking studies that are excessive relative to the risk to tax revenue. The level of risks should determine access to simplified approaches, including safe harbours. There is a real inefficiency in the system with the lack of usable and consistent safe harbours.

## SMEs avoid litigation

SMEs generally do not have the resources to pursue disputes with tax authorities even where they strongly disagree with the tax authority view. The cost of litigation can be high compared against the tax adjustment.

## 7. Simplification measures

### Key points

- Respondents most preferred simplification measures are safe harbours, an exemption for small transactions and simplified audit frameworks.
- Transfer pricing exemptions can be helpful and effective way of removing compliance costs for SMEs.
- To be effective, any simplification would need to be global, as one-sided concessions are not necessarily acceptable to the counter-party jurisdiction/s.
- Advisors generally do not recommend their SME clients enter a unilateral APA due to the time, cost and limited benefit.
- Simplification is not only about separate transfer pricing guidelines for SMEs but consistent administration and safe harbours across jurisdictions.

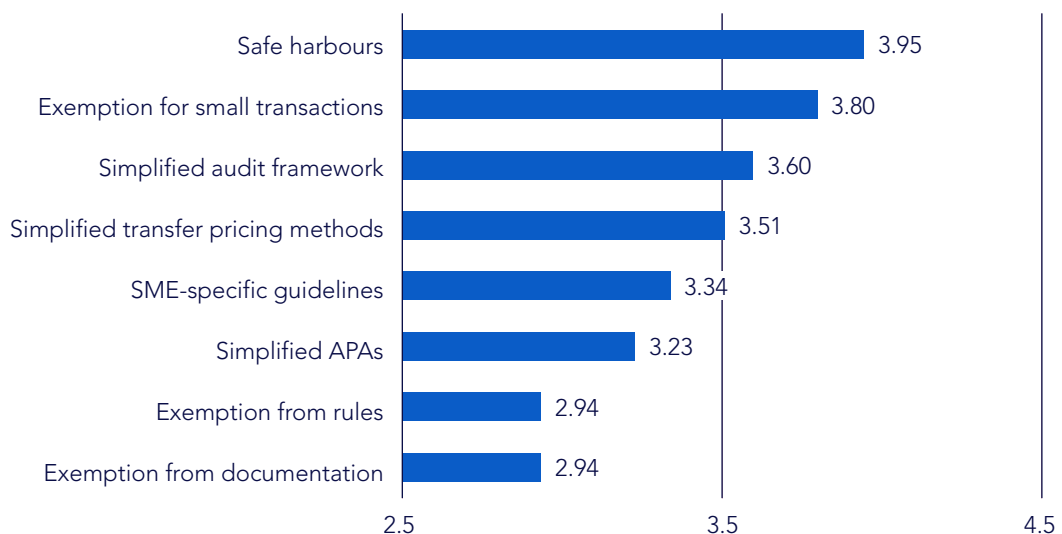
### Discussion

Respondents most preferred simplification measures are safe harbour arm's length range or rate, followed by an exemption for small transactions and simplified audit framework.

Many of the measures proposed in the survey are inter-related and SMEs would respond favourably to having lower thresholds for particular transactions. They would also welcome being exempt from certain TP obligations currently applicable to both MNEs and SMEs. Transaction wise, safe harbours would be the best approach to reducing the compliance and audit burden for SMEs.

Transfer pricing exemptions can be helpful and effective way of removing compliance costs for SMEs. In developing markets, exemptions play a significant role, as tax authorities build up the infrastructure, skills and expertise they need to match what they are expecting taxpayers to do. However, at a point they will experience an increase in disputes as there is disparity between jurisdictions due to the size and the number of exemptions. As such, a simplified framework for agreement between tax authorities and safe harbours, is ultimately better, as they still align with the arm's length principle, unlike exemptions.

### Simplification measures



Strongly disagree = 0. Strongly agree = 5.

To be effective, any simplification of TP rules for SME would need to be global, as one-sided concessions are not necessarily acceptable to the counter-party jurisdiction/s. System design is also important as that helps streamline internal business processes. Participants found there would be substantial benefit in establishing a set of safe harbours and benchmarks between jurisdictions.

Simplified approaches also need to be accessible. Many SMEs become ineligible due to certain requirements such as not being in loss, not undertaking research and development activities or not paying royalties. The dynamic nature of their business can also make it challenging to obtain certainty.

‘Often when there is a transfer pricing review, it’s not about the taxpayer trying to tick boxes and comply as best as possible or calculate taxes. You discover that you’re seeing symptoms of some transfer pricing issue. Very often, it’s something inside the company that we need to sort it out, because compliance is about finding the economic pain points.’ **Think Tank participant**

### Advance pricing arrangements (APAs)

Advisors generally do not recommend their SME clients enter a unilateral APA due to the time and expense with limited benefit. While the concept is well-supported, its execution is mixed across tax authorities. There is no example of a broadly effective APA process for SMEs.

Tax authorities are naturally concerned about protecting the revenue which makes APA discussions highly detailed and intensive. It’s about getting the balance right between the spirit of the APA and providing assurance over tax revenues.

APAs are not necessarily binding, even for bilateral APAs. There are examples where previously agreed APAs come under dispute and the terms of the APA are no longer accepted. Therefore, APAs are not appropriate for mapping mutual agreement procedures (MAP). A binding MAP may resolve the issue of tax authorities overturning an APA.

At a practical level, tax authorities will focus their APAs on risky transactions and complex arrangements which provides mutual certainty for both the tax authority and the taxpayer rather than necessarily providing streamlined service for SMEs. Often SMEs do not satisfy materiality criteria (e.g., stable, low risk business) or are not suited for an APA (e.g., higher risk start-ups with changing operations).

Some jurisdictions are moving forward on APAs and seeking to reduce the time taken to conclude such agreements. This can be an effective approach where there are well-established economic and commercial linkages with common interests between jurisdictions. Participants also observed that bilateral APAs are more easily concluded when there are well-established relationships and consistent positions between tax authorities.

When negotiating an APA, other issues may be identified (e.g., customs duties) so discussions can assist in resolving multiple issues.

With improvements in data analytics, increased information and improved systems, participants believe the compliance burden will reduce. An analytics-based approach would be particularly useful for SMEs to avoid costly audits and lengthy negotiations.

While APAs are considered a voluntary compliance product, in practice, having an APA doesn’t necessarily reduce the compliance burden. Further, in some jurisdictions, when taxpayers apply for an APA, a comprehensive audit is first undertaken, reducing the appeal of the product.

Once in place, participants observed that some tax authorities appear to proactively seek issues to trigger a re-characterisation, therefore it is not a favoured approach. Because the compliance burden remains, irrespective of whether there is an APA, there is limited demand particularly amongst SMEs.

‘Because SMEs will be the new large companies that are going to grow internationally, mechanisms that provide certainty is quite essential and that really is the future. Therefore, while MAP might not be currently used for SMEs, given how connected things are becoming there is no reason why tax authorities would not have a quick process for SMEs because the revenue at risk is much lower, but it gives them that certainty.’ **Think Tank participant**

‘When advisors seek a unilateral APA, they still want tax certainty for both jurisdictions and to ensure there is no double taxation. There is a lot of concern about the time, effort and cost to get parity on both sides. A more efficient way for tax administrations to get to a common agreement would help. One suggestion would be better communications between tax authorities and defined programs. There are also safe harbours to get to a middle ground, or an agreement with the other side without having to cause a lot of time, pain and effort.’  
**Think Tank participant**

As an alternative to APAs, advisors have made voluntary disclosures to tax authorities to discuss scenarios. While this didn’t give formal assurance, the conversations were helpful to understand the tax authority’s view and to obtain assistance. It was a positive, lower-cost experience than seeking an APA.

### Joined-up approach with customs authorities

The issues of customs duty was raised on multiple occasion and the suggestion of a combined transfer pricing customs duty ruling was made. Improvements in cross-agency information sharing and data collection should better enable consistent approaches and pricing from authorities.

### Safe harbours save compliance costs

For common activities such as distribution, safe harbours would provide a significant reduction in compliance costs particularly in developing jurisdictions. Managerial services, routine manufacturing, vanilla financing and low value-added services can also be covered. Creating consistent rules across the Asia Pacific would help encourage compliance, simplify processes and reduce compliance costs.

Tax authorities could produce benchmark ranges or rates for SMEs to use (e.g., reference interest rates or industry profit margins). Participants cautioned that safe harbours should however not preclude the use of alternative methods or constrain negotiations on adjustments or settlements.

Reporting thresholds are helpful and, if exempt from reporting, SMEs should be provided with some relief from documentation requirements. Improved alignment of thresholds across the Asia-Pacific would enhance efficiency however participants recognised that economies differ substantially across the region. Thresholds should also be regularly reviewed and adjusted in line with inflation and risk to revenue.

The intangibles rules are complex and the substantial guidance from the OECD and the tax authorities in addition to the legislation create a significant burden for smaller start-ups early in their operations. Tax authorities should consider safe harbours or simplifications for SMEs in those phases.

‘When we sit down and decide, ‘What are we going to give SMEs safe harbors on?’, it’s not just simple transactions, it’s not just the price of goods we need to consider. There’s a need to explore what are the topics they most need safe harbours on and to comprehensively define that. The problem of SMEs growing into something else also has to be acknowledged because SMEs may only be eligible for a safe harbour for a few years.’ **Think Tank participant**

## Holistic approach

Simplified approaches require agreement on the definition of a SME at a global level so that those safe harbours and other measures are uniformly adopted. Taxpayers need to be able to rely on the safe harbours so it's also important to make safe harbours binding on the tax authority and embed them into dispute processes.

Simplification is not about separate set of TP guidelines for SMEs but consistent administration and safe harbours across jurisdictions. This is where gains can be made, so SMEs who are doing the right thing can do it in a more cost-effective way. Simplification options should be accessible and qualifying criteria kept as minimal as possible to provide greater assurance.



### Example

For example, it is beneficial having safe harbours and simplified recordkeeping guidelines in Australia, where the ATO has outlined how taxpayers can justify their supporting documentation and stay within these risk thresholds.

Reciprocity between jurisdictions should be a common goal, especially between jurisdictions with close economic ties, due to the volume of transactions. The more alignment between jurisdictions, the better for those particular types of transactions that warrant it. There is also potentially an expansion of the types of transactions that currently cannot use the simplification measure, including low-risk royalties or IP transactions.

## Centralised information and data

The concept of a reliable regional database was well-supported by participants. Benefits included:

- Providing certainty for advisors using the safe harbours and benchmarks
- Lower compliance costs due to a reduction in the intensity of benchmarking studies
- Leveraged compliance across the region creating efficiencies for tax authorities and consistent technical knowledge reinforced by programs such as the OECD's Inspectors Without Borders
- Enhanced certainty between tax authorities and more efficient APA and MAP negotiations.



## 8. Conclusions and recommendations

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Transfer pricing can be costly and complex for SMEs to comply with. There is scope for a tax authority to 'informally' accept workarounds such as Australian Bureau of Statistics (ABS) industry data and IBIS World industry reports for calculating ratios for certain small transactions. Another way to help SMEs is to publish some broad-based guidelines for industries which while not perfect if relied upon can help save costs.

SMEs need practical TP guidelines that are easy to adopt, as it can be difficult to find local comparable data for every economy or sector. There is also the requirement to use the same fiscal year data, which is required in Malaysia, when challenged by its tax authority. The same local comparables preference in Indonesia.

It would be beneficial for tax authorities within the region to communicate and collaborate on TP issues. This can ensure that future guidelines do not result in fragmentation between markets.

It is important for governments and tax authorities to understand the practical issues and difficulties SMEs face in meeting their transfer pricing obligations. They need to develop processes and support that reduces unnecessary compliance burdens.

# Appendices

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## Appendix 1: Methodology

The study was conducted via an open survey of transfer pricing practitioners, corporate tax managers and academics between November 2021 and February 2022.

The survey aimed to identify SME-related issues in the tax transfer pricing space in Asia-Pacific.

### Think Tank objectives

Through our Think Tanks panel sessions of selected survey participants during October and November 2022, we sought input from transfer pricing experts to evaluate and provide qualitative insights into the survey results.

We sought to better understand:

- the survey scores in relation to perceptions of government policy and tax administration
- the main challenges faced by SMEs, and
- the most favoured simplification measures.

Views will be obtained through a series of questions with reference to the survey results.

## Appendix 2: Survey respondent demographics

A total of 131 responses were received, with 25 per cent from Australia, and 75 per cent from the rest of Asia-Pacific.

More than 70 per cent of respondents were advisors in a professional practice, with over half specialising in transfer pricing.

Just under two-thirds are in a firm with 200+ employees.

