

CONTRIBUTION RECEIVED FROM IFA KOREA

Issue: COMP 1 – Requirement to perform an analysis of transactions vs. an analysis of third party information gathered at company level

This is a real issue. There are two paid databases and one public website operated by the Financial Supervisory Service showing audited financial statements. The sources provide sufficient overall financial information of a company, but not sufficient for analysis on a transaction-by-transaction basis. However, general business environment gave sense of comparability. Paragraph 1.42 needs to be expanded to provide practical guidance on combined dealing and separation of such dealing into components.

Issue: COMP 2 – Need to rely on transactions that took place between independent enterprises

This is a relevant issue. Often, competing companies' transaction modes or terms are available, whose information are between associated enterprises. Paragraph 1.70 provides clues to dealings in such situations. It should be good to expand the present rules, e.g., "useful information" such as operating income ratio, business strategies, and comparing market share. Information of other MNE group companies may provide an idea concerning the relative level of profitability of the subject taxpayer compared to the profitability of similarly situated MNE group companies.

Issue: COMP 3 – Need to obtain third party information relevant to the review of the five comparability factors

Database or audited financial statements (business segment information), newspaper article, industry analysis provide most of the useful information. Internet environment definitely gives more extensive information on the issues. The terms of an important contract should be disclosed through listing of securities. Analysis of five factors requires an extensive work, but the more efforts one exerts, the more rewarding the outcome should be.

According to our experience, we could not get public information sufficient and accurate enough to apply traditional transaction methods (e.g., CUP, cost plus and resale minus). Public information which allows the use of transactional net margin methods are generally available. In case where a comparable maintains two or more business lines, for the use of transactional net margin methods by each segment, public information per segment is not enough in general.

Issue: COMP 4 – Need to ensure objectivity of the list of external comparables

It is possible that potentially relevant external comparables should not be excluded by having reasonable screening criteria. To achieve this, taxpayers and the tax administration should try to be fair and reasonable.

Issue: COMP 5 – Determination of the years to be covered and use of multiple year data

Use of multiple year data should be the standard, rather than an exception. Under a year-by-year approach, strangely enough, even uncontrolled third parties may not be able to fall within the range for every single tested year. Retroactive adjustment based on the newly available third party information is not acceptable since arm's length principle should be applied in a given situation in a given time. It should be prospective. Absent third party public information, we should delay the adjustments, or make conditional adjustments which condition may be removed when third party comparable numbers were released.

Issue: COMP 6 – Choice of relevant sources of information, including but not limited to commercial database

A commercial database is one of the key sources that support the application of transfer pricing rules. Absent such resources, the arm's length principle may be difficult to sustain. There are also Commercial Code requirements that a joint stock company whose assets exceeds 7 billion won (approximately US\$5 million) should be examined by independent accountants, whose information should be posted to the Financial Supervisory Service's website. This system provides vast financial resources to the public. Improvement, however, is necessary to make a private company that takes the form of a limited liability company, rather than a joint stock company, be subject to similar requirements.

Issue: COMP 7 – Definition of comparability adjustments where they are appropriate

There are a few known adjustments used by taxpayers and tax administration. We think it proper for OECD to officially disclose such adjustments as inventory adjustments or receivable/payable adjustments, under the given circumstances.

Issue: COMP 8 – Interpretation and use of data collected

The answers to these questions may be different depending on the "quality" of the comparables (e.g. in cases where a less stringent comparability standard would be applied by a taxpayer operating in a highly integrated business where it is very difficult – almost impossible – to find independent comparables that fully satisfy the existing comparability standard).

From the database, extreme cases should be able to be discarded from a group of selected comparables. It should be decided depending on the quality of data used. Loss-making comparables should be further examined depending on circumstance involved. Some reasonable adjustments to loss-making comparables may give rise to reasonable outcome.

Issue: COMP 9 – Specific comparability issues when applying transactional profit methods

Is there a need to develop further guidance on specific comparability issues in the context of profit methods? Please comment on both the transactional net margin method and the transactional profit split methods.

It is current trend, undoubtedly, to use transactional profit methods rather than traditional transaction method. The primary reason is the lack of information on transactions of potential comparables. We support the idea of developing further guidance on specific comparability issues.

