



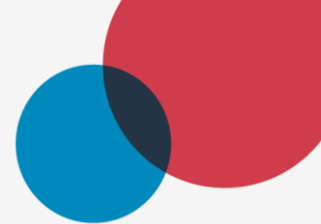
TAX AUDITS

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9 November 2017

Your global tax partner

SPEAKERS



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AGENDA

1. Introduction
2. Tax Transparency
3. Procedures
4. Topics
5. Dispute Resolution
6. Prevention
7. Questions & Answers



1. INTRODUCTION

THE TAX AUDIT CIRCLE





2. TAX TRANSPARENCY

2. TAX TRANSPARENCY



- ❖ Significantly increased level of international tax transparency
- ❖ OECD BEPS Project
 - Action 5 – Harmful tax practices (exchange of information on tax rulings)
 - Action 12 – Disclosure of aggressive tax planning
 - Action 13 – Transfer pricing documentation (Master file, local file, CbCR)
- ❖ EU initiatives

2. TAX TRANSPARENCY

Exchange of information on tax rulings (BEPS Action 5)

Multilateral Convention
on Mutual Administrative
Assistance in Tax Matters
(MAC)

Federal Act on Tax
Administrative Assistance
(TAAA)

Tax Administrative Assistance
Ordinance (revised) (TAAO)

- ❖ OECD Minimum standard
- ❖ Five categories of rulings, covering
 - preferential regimes
 - unilateral APAs with cross-border effect
 - base erosion beyond commercial balance sheet with cross-border implications
 - (non-)existence of and profit allocation to permanent establishments
 - transfer companies
- ❖ OECD-designed model
- ❖ Amended TAAA / TAAO effective 1 January 2017
- ❖ First exchange of information on tax rulings as from 1 January 2018 for rulings issued after 1 January 2010 and still applicable 1 January 2018.

2. TAX TRANSPARENCY

Master file, Local file, Exchange of (information on) tax rulings (BEPS Action 13)

Master file:

“A **list and brief description** of the MNE group’s existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.”

Local file:

“A **copy** of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions.”

- ❖ No OECD minimum standard
- ❖ List and brief descriptions of all unilateral APAs and other tax rulings available to tax authorities in all countries where Master file has to be filed => taxpayer in charge of providing that information
- ❖ A copy of all APAs and other tax rulings pertaining to documented transaction that local jurisdiction is not a party to has to be provided
 - Tax authorities will get access to further information on transaction and pricing in other countries
 - Inconsistencies in pricing in defense of same transaction will immediately become obvious => consistency is key!
- ❖ Definition questions
 - Meaning of APA
 - Meaning of “all other rulings”

2. TAX TRANSPARENCY

Exchange of information of OECD CbCR (BEPS Action 13)

Multilateral Convention on
Mutual Administrative
Assistance in Tax Matters
(MAC)

Multilateral Competent
Authority Agreement on the
Exchange of CbCR
(CbC MCAA)

Federal Act on the International
Automatic Exchange of CbCR
("ALBA" Law)

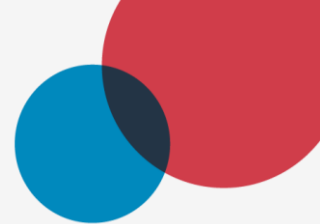
Ordinance on the International
Automatic Exchange of CbCR
("ALBA" Ordinance)

- ❖ OECD minimum standard
- ❖ CbC MCAA and respective Federal Act / Ordinance on the International Automatic Exchange of CbCR of Multinationals will enter into force on 1 December 2017
- ❖ In Switzerland, multinationals in scope of the CbC MCAA will be obliged for the first time to file with SFTA a CbCR with respect to fiscal year beginning on or after January 1, 2018 within 12 months after fiscal year end
- ❖ First exchange of CbCR between Switzerland and partner states expected to take place during the first half of 2020
- ❖ Earlier filing requirement(s) in foreign countries to be observed



3. PROCEDURES

3. PROCEDURES



- ❖ Local audits
- ❖ Coordinated audits
- ❖ Joint audits
- ❖ Developments in local jurisdictions
 - Switzerland
 - Increased number of local audits
 - No participation in joint audits
 - Germany
 - Other jurisdictions

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4. TOPICS

4. TOPICS



Topics arising in tax audits depend on taxpayer's function.

Entrepreneur

Value driver
Typically (Legal) IP Ownership
Financing activity
Highly profitable

Tax audit topics in Entrepreneur's jurisdiction

- ❖ Exit taxation
 - Corporate income tax / Tax holiday claw back
 - Withholding tax
- ❖ Underrecoveries
- ❖ Other

Sales entity / Manufacturer / Service provider

Limited value creation
Limited profit

Tax audit topics in the local jurisdiction

- ❖ Base erosion by means of non arm's length transfer pricing, e.g.
 - Royalties (aligned with DEMPE functions? See next slide)
 - Interest
 - Service fees
- ❖ Transfer pricing documentation
- ❖ Substance in Entrepreneur's jurisdiction
- ❖ Permanent establishment of entrepreneur in the local jurisdiction

4. TOPICS



Intangibles DEMPE Analysis

Development


Enhancement

Maintenance

Protection

Exploitation

- ❖ BEPS Action 8 includes rewording OECD transfer pricing guidelines (2010).
- ❖ Update considered as mere clarification rather than change of rules.
- ❖ Thorough analysis of all functions related to Intangibles.
- ❖ Substance over form approach

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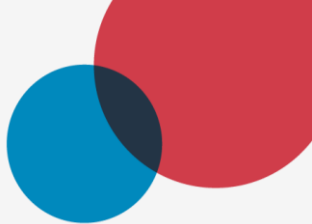
5. DISPUTE RESOLUTION

5. DISPUTE RESOLUTION



- ❖ OECD BEPS Action 14 (More effective dispute resolutions)
- ❖ Tools provided by double tax agreements (article 25 OECD-MC)
 - Amendments to mutual agreement procedure (MAP) (OECD minimum standard)
 - No requirement to achieve mutual agreement
 - Inclusion of arbitration mechanism (no OECD minimum standard)
- ❖ MAPs and arbitration procedures gain increasing importance internationally (in particular in transfer pricing cases)
- ❖ Increased number of procedures

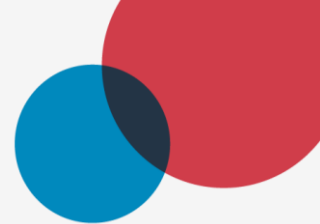
5. DISPUTE RESOLUTION



MAP Germany

- ❖ MAP in line with DTAs serve as instrument to mitigate conflicts of taxation. According to Art. 25 (2) & (3) of the OECD Model Tax Convention
 - No requirement to reach an agreement
 - Competent authorities only have to demonstrate best efforts to eliminate double taxation
- ❖ Arbitration as an alternative to MAPS, either according to the DTA or EU-Arbitration Convention
 - Mandatory DTA arbitration (e.g. Art 25 (5) DTA Germany-Austria / Art. 25 (6) DTA Germany-US / Art. 26 (5) Germany-UK / Art. 26 (5) DTA Germany-Switzerland)
 - Mandatory DTA arbitration (e.g. Art. 25a DTA Germany-France / Art. 25 (6) DTA Germany-Canada / Art. 41 (5) DTA Germany-Sweden)
 - EU arbitration according to EU Arbitration Convention according to Art. 293 EC Treaty
 - Both MAPS and arbitration (under a DTA or EU Arbitration Convention) are reactive instruments to avoid conflicts of taxation (as opposed to APAs, which are preventative)

5. DISPUTE RESOLUTION

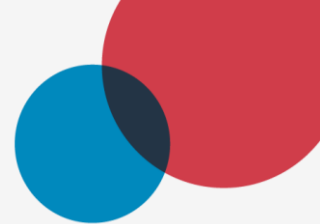


MAP Switzerland

- ❖ All DTAs entered into by Switzerland contain MAP clauses and approximately 20 Swiss DTAs contain arbitration clauses, e.g. the DTAs entered into with Germany, France, UK, Luxembourg, Netherlands and Austria
- ❖ Several treaties contain a mandatory DTA arbitration (e.g. Art 25 (5) DTA Switzerland-Netherlands / Art. 24 (5) DTA Switzerland-UK / Art. 26 (5) DTA Germany-Switzerland)
- ❖ Increased importance of MAPs in Switzerland (source: OECD)

New procedures	2014: 109	Pending procedures	End 2014: 271
	2015: 148		End 2015: 328
- ❖ The competent authorities issue a mutual agreement on the basis of the arbitration
- ❖ The experiences are positive, including those with Germany

5. DISPUTE RESOLUTION



MAP Switzerland (cont'd)

Relevance / relationship of MAP and arbitration proceedings compared with national legal remedies

- ❖ MAPs can be initiated regardless of whether legal remedies in or outside of Switzerland have been taken
- ❖ The application for MAP is usually to be made within 3 years of receiving notice of the measure that leads to double taxation
- ❖ The application has to be lodged in the jurisdiction of residency
- ❖ The taxpayer is not a party to the negotiations
- ❖ The procedure is free of charge
- ❖ MAPs are generally to be preferred to local litigation

Is the mutual / arbitration agreement formally or factually binding for the future?

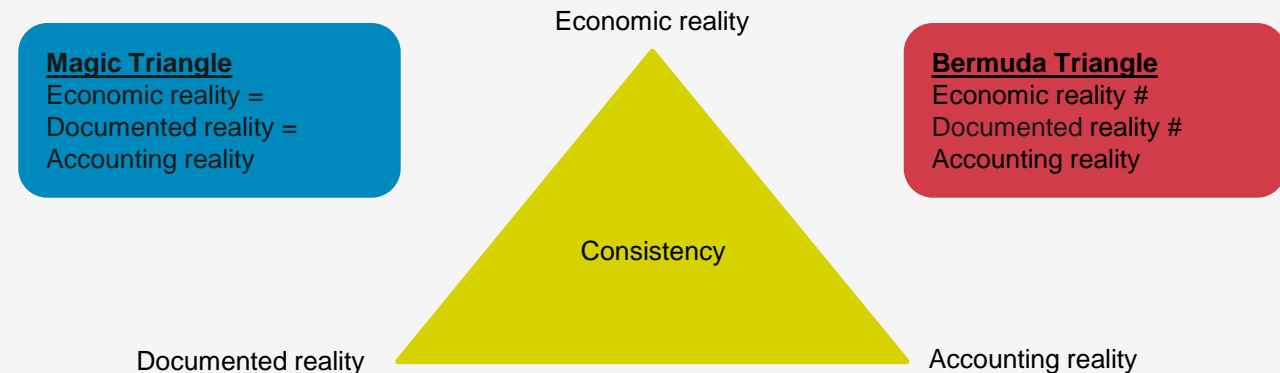
- ❖ Only binding for years under review



6. PREVENTION

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- ❖ Strong focus on delineation of transactions (risk taking, control)
- ❖ Align transfer pricing to value creation (aim for Magic Triangle)



6. PREVENTION



- ❖ Obtain legal certainty by means of
 - Update of Transfer Pricing policies / Documentation
 - Tax rulings
 - APA
 - Other measures



APPENDICES

COUNTRY PROFILE - SWITZERLAND

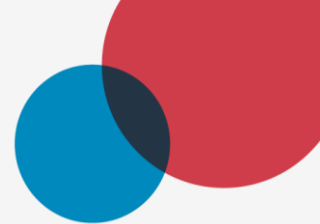


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The knowledgeable and experienced members of the team strive to develop creative, well devised and, if necessary, unconventional solutions in all areas of tax law for corporations and private clients in a wide range of industry sectors.

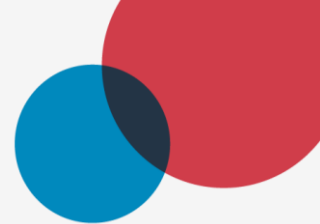
COUNTRY PROFILE - GERMANY



TAXAND GERMANY

Taxand Germany is Flick Gocke Schaumburg. Founded in 1972 and with offices in Bonn, Berlin, Frankfurt, Munich and Hamburg, FGS is an independent law firm that has established itself as Germany's leading practice for tax-focused legal advice.

As well as national and international tax law, FGS specialises in corporate/M&A, real estate, competition and employment law, private wealth, company succession and trusts as well as criminal law and criminal tax law. In addition, they provide auditing and business valuation services.



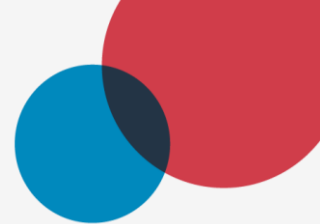
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Alberto Lissi is based in Taxand Switzerland and has been a Partner at Tax Partner AG since 2012. He is an attorney at law and a certified tax expert. Alberto has gained extensive experience over the last 20 years as an advisor for national and international taxation at Arthur Andersen and later as a Partner at Ernst & Young.

His broad experience covers national and international tax planning and reorganizations as well as all tax aspects in the banking and financial sectors. Alberto Lissi is a frequent speaker and lecturer at selected important Swiss tax seminars and post graduate master studies and has published various articles on international and national tax law.



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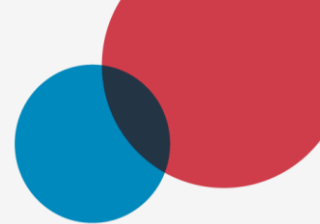
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Markus is based in Taxand Germany, where he is a Partner at Flick Gocke Schaumburg in Munich. He has been a Partner since 2007, and a certified tax advisor since 2003.

He studied business administration in Marburg and Gießen (1997 Diplom-Kaufmann, 2001 Dr. rer. pol.) and has been a guest lecturer at the Bundesfinanzakademie (German Federal Finance Academy).

Markus is a member of both the Schmalenbach-Gesellschaft für Betriebswirtschaft and the Licensing Executives Society.



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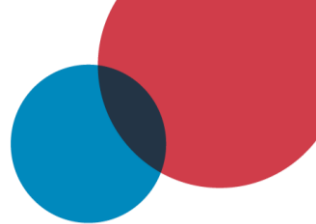
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Hendrik Blankenstein is based in Taxand Switzerland and has been a Partner at Tax Partner AG since 2016. Hendrik leads the transfer pricing team of Tax Partner AG. He has been providing transfer pricing advice for more than 15 years to Swiss and foreign multinational clients in a variety of industries, covering design of transfer pricing systems as well as negotiation and conclusion of unilateral / bilateral APAs.

ABOUT TAXAND



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