Dundee Student Law Review, Vol. II, No. 5

A Game of Transfer Pricing: An Analysis of the Suitability of the Arm's Length Principle and the Proposed Alternative of Formulary Apportionment

Alex Illiescu

INTRODUCTION

> *"You can't run from them, you can't cheat them, you can't sway them with excuses. If you owe them money and you don't want to crumble yourself, you pay it back."*[1]

Spoken by Lord Tywin Lannister in the fictional television programme, *Game of Thrones*, this statement is surprisingly applicable in the case of the relationships established between a multinational enterprise (MNE) and the various national tax authorities with which it engages. Unfortunately, this often proves not to be the case, especially in the context of a globalised world economy where the international tax planning of MNEs has intensified due to their desire to reduce their worldwide tax burden.[2]

This analysis will focus on the suitability of the "arm's length principle" (ALP). Particularly, some of the flaws that have been identified in relation to the ALP's applicability and its ability to respond to the challenges presented by the way in which MNEs operate and the realities of the globalised economy. Despite the current transfer pricing regime being imperfect in some respects, it

[1] Tywin Lannister, "Game of Thrones", based on George R R Martin, *A Game of Thrones* (Harper Voyager 2011).

[2] OECD, "Bringing the International Tax Rules into the 21st Century: Update on Base Erosion and Profit Shifting (BEPS), Exchange of Information, and the Tax and Development Programme" (Meeting of the OECD Council at Ministerial Level, Paris, May 2014), 2.

should not be completely replaced with a new system and should instead be strengthened to more adequately respond to the trials it faces.

PART 1: AN INSIGHT INTO TRANSFER PRICING

TRANSFER PRICING

In recent years, transfer pricing (TP) has found itself at the centre of many disputes in the landscape of international corporate taxation and has grown to be one of the most significant issues that both MNEs and tax administrations must manage.[3] In the context of an MNE, TP refers to the transfer of goods or services between a corporation and one or more non-resident members of the same group.[4] According to the OECD, "[t]ransfer prices are the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises".[5]

The real danger of TP arises from the potential for the artificial manipulation of these internal prices by the different affiliates of an MNE with the intention of producing a tax advantage.[6] As noted by Miller and Oats, the growing concern in relation to TP stems from the fact that many MNEs are believed to utilise this process in order to shift their taxable profits to lower tax jurisdictions.[7] The success of such practices could potentially be attributed to the fact that the transactions in question occur between connected enterprises that are part of the same group, a relationship that confers upon them the ability to exercise more control over the particulars of each transaction. Consequently, not only would the prices be mutually agreed upon, but would also not be subject to the normal market pressures that would apply to transactions taking place between

[3] OECD, *Dealing Effectively with the Challenges of Transfer Pricing* (OECD Publishing 2012), 9.
[4] McCart andWilkie, "Transfer Pricing As We Will Know It 'BEPS', 'Intangibles' and Evolving Perceptions of International Business Taxation – Seeing the Pattern" (Canadian Lexpert Directory, 17 October 2014).
[5] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (TPG) (OECD Publishing 2010), 19.
[6] Miller and Oats, *Principles of International Taxation* (4th edn, Bloomsbury 2014).
[7] Ibid.

unconnected parties.[8] Furthermore, since MNEs operate as a business unit with a common objective, the agreed transfer prices would work in favour of all of those involved, as they would not be the result of negotiations between parties with competing economic interests.[9] Under these circumstances, TP becomes an issue due to the difficulties that may arise in determining the exact amount of profit that should be attributed to each of the taxable entities.[10]

The TP regulations of many countries, including those in the United Kingdom,[11] require that the transactions that occur between connected parties should be recognised for taxation purposes by applying the amount of profit that would have arisen if unconnected parties had carried out the same transaction.[12] This has come to be known as the ALP, which will be examined in greater length in the following chapter of this work.

TRANSFER PRICING: A THREATENING TREND?

Although TP has attracted the connotation of tax avoidance, it is important to distinguish the legitimate use of TP strategies from those particular cases that involve transfer price manipulation (TPMan).[13] Even though cases of abusive TP are considered to be the exception rather than the rule,[14] structures like Google's "Double Irish Dutch Sandwich", which was designed to reduce the company's overall tax burden, have drawn a lot negative attention to these issues.[15]

The primary concern for governments, and indeed the reason for the existence of the ALP, is the risk of MNEs abusing their ability to adjust transfer prices. TPMan, as distinct from TP, is the over- or under-invoicing of related party

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[8] Sayers, *Tolley's International Tax Planning 2013-14* (LexisNexis 2013).
[9] Wittendorff, *Transfer Pricing and the Arm's Length Principle in International Tax Law* (Kluwer Law International 2010).
[10] Miller and Oats (n. 7).
[11] TP legislation was first introduced in the United Kingdom through section 770A and Schedule 28AA of the Income and Corporation Taxes Act 1988. Presently, the relevant provisions are contained in Part 4 of Taxation (International and Other Provisions) Act 2010.
[12] Sayers (n. 9).
[13] Kobetsky, *International Taxation of Permanent Establishments: Principles and Policy* (Cambridge University Press 2011).
[14] OECD, *Addressing Base Erosion and Profit Shifting* (OECD Publishing 2013).
[15] Petruzzi and Spies, *Tax Policy Challenges in the 21st Century* (Linde Verlag 2014).

transactions in order to avoid government regulations or to exploit cross-border differences in tax rates.[16] MNEs manipulate internal transfer prices with a view of shifting the profits earned in a high-tax location to affiliates situated in jurisdictions with lower tax rates, effectively reducing the overall tax burden of the enterprise. Thus, the purpose of these manipulations is tax minimisation, which may in turn result in the inability of governments to tax the corporate income that is generated by MNEs within their jurisdictions. The real problem therefore arises when the overly aggressive manipulation of transfer prices moves "over the line" into abusive TP, which has been described by Eden and Smith as being illegal and fraudulent.[17] This kind of abuse and exploitation of differences in domestic tax regulations is extremely undesirable, as it can lead to the inefficient allocation of economic resources.[18] TP abuses can prevent tax authorities from collecting a fair and appropriate share of taxes from MNEs, which could result in considerable damage, especially in the case of developing countries with already struggling economies.[19]

PART 2: THE ARM'S LENGTH PRINCIPLE

THE ARM'S LENGTH PRINCIPLE

The ALP is set forth in Article 9 of the OECD Model Convention.[20] As an extension to the Article, the OECD has also published a series of Transfer Pricing Guidelines (TPG), which were first issued in 1995.[21] An update of the TPG was approved by the Council of the OECD in 2010, which represented the first substantive revision of the Guidelines since their original inception.[22] The OECD's TPG deal with numerous aspects of TP, offering detailed guidance for

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[16] Eden, *Taxing Multinationals: Transfer Pricing and Corporate Income in North America* (University of Toronto Press 1998).
[17] Eden and Smith, "The Ethics of Transfer Pricing" (Accounting Organisations and Society Conference, London, April 2011).
[18] Kobetsky (n. 13).
[19] Alliance Sud, "Abusive transfer pricing is widespread" (Alliance Sud, 30 July 2008).
[20] Article 9, 2010 OECD Model Tax Convention on Income and on Capital.
[21] OECD, TPG 1995/96/97.
[22] Silberztein, "The 2010 Update to the OECD Transfer Pricing Guidelines" in Dennis Weber and Stef van Weeghel (eds), *The 2010 OECD Updates: Model Tax Convention and Transfer Pricing Guidelines – A Critical Review* (Kluwer Law International 2011).

both MNEs and tax administrations on the application of the ALP, including several methods for the determination of arm's length prices and their appropriateness under different circumstances.[23]

The ALP is an important concept in international tax law that underlies the TP legislation of many countries of the world.[24] The existence of an international standard such as the ALP is imperative in the context of a globalised economy where MNEs are able to engage in cross-border business activity through the different affiliates that form part of their group. The purpose of the ALP is to achieve a fair allocation of an MNE's tax base to all of the taxing jurisdictions in which it operates by preventing the manipulation of transfer prices through uncommercial practices.[25]

The manner in which it seeks to achieve this objective is by requiring that the prices charged in controlled transactions between associated enterprises be comparable to those charged in uncontrolled dealings occurring between independent entities.[26] What this essentially means is that the ALP involves a valuation of controlled transactions where the yardstick will be the operations that occur at a market value, with taxation being collected in relation to a hypothetical "normal" transaction.[27] The assumption behind such a principle is that affiliated companies within a group will transact with the other members of the group in the same way that they would with parties that are unrelated, a proposition that arguably defies reality.[28]

THE METHODS

The list of TP methods that may be employed by tax administrations and MNEs in determining what the appropriate transfer prices should be for intra-firm transactions are set forth in Chapter II of the TPG. The OECD proposes

[23] Lohse et al, "The Increasing Importance of Transger Pricing Regulations – a Worldwide Overview" [2012] Oxford University for Business Taxation Working Paper 12/27.
[24] Arnold and McIntyre, *International Tax Primer* (2nd edn, Kluwer Law International 2002).
[25] Miller and Oats (n. 7).
[26] Ibid.
[27] Wittendorf (n. 10).
[28] Avi-Yonah and Benshalom, "Formulary Apportionment – Myths and Prospects" (2010) Public Law and Legal Theory Working Paper 10-029.

two different categories of methods, namely: 1) traditional transaction methods (TTM); and 2) transactional profit methods (TPM).[29] A comprehensive examination of all of the aforementioned methods is beyond the scope of this article.[30]

With regards to the selection of the most appropriate TP method, the TPG appear to recommend the use of transaction-based methods, as they are regarded to be the most direct.[31] Although there has never been a formal "hierarchy", the 1995 TPG noted that the TTM were the preferred methods, while the TPM were considered to be methods of last resort.[32] Under the 2010 TPG, this preferential treatment appears to have disappeared, the emphasis being put on selecting the method that is most appropriate for each particular case.[33]

An observation must be made at this point. The process of determining the most appropriate TP method appears to be relatively subjective, with both MNEs and tax authorities having to rely on the guidance provided by the OECD. Despite the fact that the TPG are a common element in their decision-making, what is appropriate in the opinion of an MNE executive may not align with that of tax administrations. It is submitted therefore that the TPG allow for a certain degree of uncertainty, which could arguably be regarded as a disadvantage. Since there is potential for the interpretation of the standards provided by the OECD to vary, disagreements may arise between multinationals and tax authorities. Additionally, there can also be differing views among those working within the same MNE group or among one (or more) of the tax authorities involved.[34] Disagreements such as these could potentially lead to the double taxation of an MNE group's corporate income.[35]

[29] OECD TPG (n. 5), Chapter II Parts II and III respectively.
[30] For a detailed explanation of each method and comprehensive examples of circumstances in which their use is appropriate see Chapter II of the TPG.
[31] OECD TPG (n. 5), para 2.3.
[32] Silberztein (n. 23).
[33] OECD TPG (n. 5), para 2.2.
[34] Rogers and Oats, "The Use of Advance Pricing Agreements in Transfer Pricing Management" [2013] BTR 76.
[35] Ibid.

This may prove especially true if one takes into consideration the fact that TP is an art and not an exact science, and thus there will always be scope for differences of opinion to develop.[36]

PERCEIVED ISSUES WITH THE ALP

As noted by Wilkie, although the ALP has enjoyed a long and continuous life, concerns have been raised regarding how well equipped the ALP is to deal with unforeseen challenges for which it was never intended.[37]

Comparability

Comparability plays a rather significant role in the application of most of the methods endorsed by the OECD, as the ALP is generally based on a comparison between the conditions of a controlled transaction with those occurring in transactions between independent parties. The objective of this process is to identify the most reliable comparables that would allow tax authorities and MNEs to select the most appropriate transfer prices.[38]

The TPG do acknowledge however that certain limitations may exist when attempting to obtain the necessary information on comparables.[39] The lack of such information has led to a decrease in the use of certain methods, predominantly TTM, as these rely heavily on comparability.[40] This decline has also been facilitated by the highly integrated nature of MNEs and their dominance in the market, which have led to fewer comparable arm's length transactions.[41] The lack of and difficulty in finding comparable transactions, combined with the highly integrated nature of MNEs, seem to undermine the applicability of the ALP.

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[36] Kobetsky (n. 14).
[37] Schön and Konrad, *Fundamentals of International Transfer Pricing in Law and Economic* (Spring 2012).
[38] OECD TPG (n. 5), para 3.2.
[39] Silberztein (n. 23).
[40] This in turn has led to an increase in the use of the TPM, particularly the TNMM, as they operate based on information that is more easily accessible.
[41] Kobetsky (n. 14).

In this context, the Principle does not seem to reflect the realities of the globalised corporate economy in which it seeks to operate. Companies have moved to an integrated business model, which has caused an increase in intra-firm transactions that can be directly linked to the decline in the availability of comparable uncontrolled transactions.

Reflecting on Business Reality

Many of the criticisms directed at the ALP seem to be attributable to the "fictions" that it appears to base itself on, such as the assumption that an MNE can and should be judged as if it were something other than a singular economic actor.[42] Associated enterprises that are part of an MNE group do not treat each other as separate entities and do not use "arm's length" prices for their transfers, as their goal is to operate as a unitary and integrated business.[43] Although the different units of an international enterprise may be located across different jurisdictions, they share the same control, objectives and resources.[44] The human body could perhaps serve as a good analogy in this context. The brain (parent company) is at the top of the chain, with the rest of the organs (subsidiaries) operating from other parts of the body. Although they all perform different functions and are located in different areas, all of the organs exchange necessary resources between them with the common objective of keeping the individual alive. MNEs can be said to operate in a similar manner. The driving force behind the creation of these economic units is their purpose: to pursue and achieve, jointly, the same targets. It could therefore be said that it is counterproductive to ask of them to interact with each other as if they were independent entities, since this could not be farther from the truth. So why does the ALP continue to attempt to impose its separate entity approach onto MNEs, when it is clear that the way in which these enterprises operate is completely different from how their independent counterparts do?

[42] Wilkie (n. 39).
[43] Kobetsky (n. 14).
[44] Ibid.

Hellerstein characterises this flaw in the ALP by reflecting on *Alice in Wonderland* and notes that the Principle attempts to turn reality into fancy and then pretend that this is in fact the real world.[45] The ALP appears to ignore the interdependence that characterises a unitary enterprise by treating its members as separate and independent entities. It seeks to compare the transactions that occur within MNEs to those that take place between enterprises that are not associated, despite the fact that in many cases the economically relevant characteristic of these transactions will not be sufficiently comparable. Therefore, a rather fundamental issue is the fact that the ALP, in its current form, cannot give credit to the important and unique economic circumstances and group synergies that are at play in the context of an MNE.[46] In fact, the revised OECD TPG themselves acknowledge the fact that the ALP is particularly difficult to apply in highly integrated organisations and note that the TPM might be the most appropriate approach in such corporations.[47]

It could be argued therefore that the ALP is fundamentally unsuited to determine how the taxable profits of MNEs should be distributed between the countries in which they operate.

FORMULARY APPORTIONMENT: A SUITABLE ALTERNATIVE?

For the past 30 years, the international tax world has acted as a backdrop for a heated debate between supporters of the OECD approach to TP, on the one hand, and advocates of formulary apportionment (FA) on the other.[48] Under an FA system, in addition to being taxed as a single corporation, the overall corporate income of affiliated enterprises is attributed among the jurisdictions in which the MNE engages in meaningful economic activity through the use of a predetermined formula.[49] Already, such a system would appear to be able to better respond to the challenges presented by the realities of a globalised

[45] Kobetsky (n. 14), 79; See further Hellerstein, *Federal Income Taxation of Multinationals* (1993).
[46] Petruzzi (n 16).
[47] OECD TPG (n 5), para 1.9.
[48] Avi-Yonah, "Between Formulary Apportionment and the OECD Guidelines: A Proposal for Reconciliation" [2010] 2 WTJ 3.
[49] Arnold (n. 26).

economy as this methodology recognises the fact that MNEs operate as a single and highly integrated entity. Furthermore, supposing that all tax administrations could agree on the utilisation of such a system, the threat of double taxation could be eliminated, due to the fact that MNEs would only be taxable once on their global income.[50]

A further proposal would be to stop viewing the ALP and FA as mutually exclusive alternatives and instead find a middle ground that would allow for the creation of a hybrid tax regime.[51] Rather than attempting to replace one system with the other, which would undoubtedly prove to be an extremely expensive and complex process, it would perhaps be more worthwhile to identify the strengths of both approaches and find a way in which they could enhance each other. FA has become a something that is feared in the context of international tax, when in fact it has a lot to offer towards the overall improvement of the current TP regime.[52] It is submitted that such an approach could prove to be extremely beneficial, as the OECD would be able to retain the use of TTM, for those transactions where good comparables exists and utilise FA for the situations where this may not necessarily be the case.

PART 3: THE DEBATE CONCERNING THE ARM'S LENGTH PRINCIPLE AND FORMULARY APPORTIONMENT

THE DEBATE

As opposed to the ALP, FA represents a form of taxation under which MNEs are treated as single economic units whose profits are allocated to the various jurisdictions in which they operate through the use of a formula.[53] The crucial difference between these two methodologies stems from the fact that the ALP attempts to treat the various entities that comprise an MNE group as separate taxpayers, whereas the formulary approach deals with them as one unitary

[50] Ibid.
[51] Avi-Yonah and Benshalom (n. 30).
[52] Ibid.
[53] Avi-Yonah "Back from the Dead: How to Revive Transfer Pricing Enforcement" [2013] Law & Economics Working Papers.

enterprise.[54] The two methods have long been contrasted with each other, with FA often being proposed as the main alternative to the ALP, a proposition that has sparked diverging opinions in the international tax landscape.[55]

Despite receiving widespread support in bespoke literature, FA continues to be viewed disbelievingly by some commentators and international organisations, including the OECD who remain committed to the standard set out through the TPG and the ALP contained within.[56] In order to ensure that its position on this matter is extremely clear, the OECD has chosen to explicitly state in the TPG that itself and its members "support […] the use of the arm's length principle that has emerged over the years among member and non-member countries and agree that the theoretical alternative to the arm's length principle represented by global formulary apportionment should be rejected".[57]

While FA may not be a particularly popular concept internationally, certain jurisdictions within the United States and Canada operate versions of this system at a subnational level.[58] The system that is in operation in the US is considered by some to be a suitable framework that could potentially serve as a model to be adopted at a more international level.[59]

The implementation of such an arrangement has been attempted by the European Union through the Common Consolidated Corporation Tax Base (CCCTB) project, which seeks to adopt a single set of rules that MNEs operating within the EU could use to calculate their overall taxable profits, rather than having to comply with the different rules of each Member State in which they operate.[60] Nonetheless, the EU CCCTB venture has not been greeted with a lot of enthusiasm by its Member States, as they appear reluctant

[54] Avi-Yonah, "The Rise and Fall of the Arm's Length: A Study in the Evolution of US International Taxation" [1995] 15 VTR 89.
[55] Avi-Yonah Reconciliation (n. 50).
[56] Kobetsky (n. 14).
[57] OECD TPG (n. 5), para 1.32.
[58] Kobetsky (n. 14).
[59] See further McIntyre, "The Use of Combined Reporting by Nation States" [2004] 35 TNI 917.
[60] The project has its own website where most of the relevant material is available; see: <http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/>.

to renounce their rights to establish their own regulations over the taxation of resident corporations.[61]

Bearing in mind the foregoing reasons, all signs would seem to indicate that the international implementation of a formulaic standard is not very likely. In spite of the persistent objection of the OECD, many have pointed to the fact that for TP purposes, the use of TPM is for all intents and purposes a more complicated form of FA.[62] In consideration of this further aspect of the debate, one could assume that the arm's length and formulary approaches are in fact the two sides of the same coin. The proposition arises from the fact that both the TPSM and FA operate on the basis of an analysis of the total profits of an MNE, as both methods seek to utilise the overall profits generated by an MNE from cross-border transaction flows, rather than attempt a transaction-by-transaction analysis.[63]

Upon consideration of these perceived similarities, some commentators have argued in favour of treating the two methodologies not as if they were completely parallel, but as two extremes of the same continuum. One of the proponents of such an approach is Avi-Yonah, who has suggested that the RPM and CPM are an initial step away from treating MNEs as separate entities, since they take into account the group's overall gross profits, with the TPM representing a second step that brings the process closer to the realm of FA.[64] On this basis, there would seem to be some overlap between the ALP and FA, which makes the OECD's rejection of the latter appear to be rather peculiar. One could reasonably conclude that since some similarities do exist, it would be a relatively straightforward process for the OECD to move from the current TP regime. Conversely, on the basis of the same reasoning, there is potential for a different conclusion to be reached – since ALP methods that resemble FA already exist within the ALP regime, there is no need for the OECD to switch to a new formulary system. Furthermore, such a shift would

[61] Miller and Oats (n. 7).
[62] Kobetsky (n. 14).
[63]Schön (n. 39).
[64] Avi-Yonah Rise and Fall (n. 56).

mean losing the TTM that although may not be used as frequently as the TPM, certain cases may still arise where these methods prove to be the most appropriate.

THE COMPLEXITY OF ACHIEVING SUCH A TRANSITION

While FA is used as a profit allocation method in some countries, such as the US and Canada, even in these jurisdictions it is only employed for the taxation of resident corporations at a subnational level. Furthermore, it has also been observed that the implementation of a system that would facilitate the use of FA within the European Union has not been met with a lot of interest by its Member States, who are weary of the introduction of such a universal approach. In light of these arguments, the transition to a global FA system would arguably "present enormous political and administrative complexity and require a level of international cooperation that is unrealistic to expect in the field of international taxation".[65]

As discussed in the previous chapter, the introduction of a "most appropriate method" rule under the 2010 update of the TPG allows for some degree of uncertainty in the application of the ALP. This is due to the possibility of differing views arising among MNEs and tax authorities as to the appropriateness of methods in particular cases. It is important to note that the issue of uncertainty may not necessarily be resolved through the introduction of FA, as this type of misalignment may very well continue under the new regime. If the EU CCCTB project is of any indication, achieving uniformity across a large number of states following the implementation of a new system is a hard task to achieve. It may very well be the case that some tax administrations will continue to apply the ALP, while others will opt for FA, and even among those utilising FA, different formulas may be used.[66] The underlying reason for this is simply the fact that jurisdictions, out of self-interest, will seek to use formulae that benefit them and are based on their

[65] OECD TPG (n. 5), para 1.24.
[66] Avi-Yonah Reconciliation (n. 50).

characteristics and projections.[67] Additionally, achieving such legal uniformity and getting countries to agree to a common formula may also require immense harmonisation costs.[68] It is proposed that in the absence of such consensus, MNEs would undoubtedly face the dangers of double taxation, as they would be left with no choice but to attempt to comply with the varying methods and formulas employed by the different jurisdictions and more often than not, would fail to do so. Thus, rather than clarifying the international TP regime, the introduction of a new formulary system could lead to the creation of even more uncertainty.

Although flawed in some respects, the ALP, through its continued existence and acceptance as an international TP standard, is able to provide more certainty as it is enshrined not only in the OECD TPG, but also in many international tax treaties.[69] The introduction of a new system would not only prove to be a lengthy and expensive process, but it could also potentially involve the renegotiation and changing of most the existing agreements between countries in order to accommodate the new standard.[70] It is arguably a much simpler task to build upon existing foundations and improve the ALP framework that has already been implemented applied by many countries that are both members and non-members of the OECD.[71]

Conclusion

The aim of this analysis has been to assess the ability of the existing international TP regime to respond to the challenges posed by abusive TP practices and the changes in how MNEs operate in the context of a globalised economic world.

In the second chapter of this work, it was observed that TP has evolved into a form of tax avoidance, with many MNEs utilising TPMan as a method of

[67] Brauner, "Formula Based Transfer Pricing" [2014] 42 Intertax 615.
[68] Schön (n. 39).
[69] Avi- Yonah and Benshalom (n. 30).
[70] Schön (n. 39).
[71] Ibid.

shifting their taxable corporate income from high-tax jurisdictions to low-tax ones in the hope of reducing their overall tax liability. Throughout the third chapter of the paper, several issues were identified in relation to the applicability of the ALP. It was argued that the Principle has started to resemble a good tax gone bad, which has become unsuitable in the context of a globalised world due to its apparent refusal to treat MNEs as single economic units. The penultimate chapter focused on the comparison between the ALP and FA. It was found that although FA may sound good in theory, the uniform implementation of such a system would require a high level of international cooperation and involve substantial transition costs.

Despite its inherent flaws, the OECD continues to insist on the application of the ALP. Nevertheless, can it really be said that a regime, which requires continuous updating, is the most efficient way of regulating the behaviour MNEs? The answer would appear to be affirmative, as it is very unlikely that the OECD will replace the existing framework with an FA system in the near future. Another option that should be considered is the gradual implementation of a hybrid tax system. Under this approach, rather than attempting a complete overhaul of the TP regime all at once, the transition would be made gradually and would result in the creation of a new framework that would incorporate aspects of both the ALP and FA. This may very well be the way forward.

To conclude, it is submitted that the ALP is a long established standard in the international tax landscape, which will undoubtedly continue its existence in one form or another for many more years to come. For the time being, all that MNEs and tax administrations can do is pay close attention to the development of the ALP and ensure that when the time comes, they are prepared to implement any changes that occur into the way in which they operate and regulate TP.