



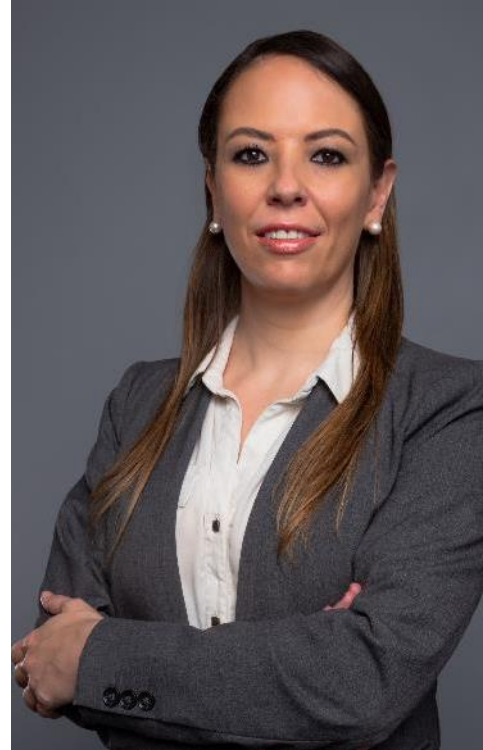
TRANSFER PRICING HOT TOPICS FOR LATAM AND EUROPE

SPEAKERS



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AGENDA

- Transfer pricing main concepts.
- LATAM main obligations and updates
- Europe's main obligations and updates
- BEPS introduction – Transfer pricing
- Controversial transactions between LATAM and Europe
- Simplification of TP Obligations – Automation solutions

TRANSFER PRICING INTRODUCTION

What is Transfer Pricing?

- Market prices vs. Transfer prices
- Related parties may not seek to maximize their own profitability.
- Typical tax incentives that may affect transfer prices
- Arm's-length standard.
- Why is transfer pricing important?
- Why is Transfer pricing documentation important? – TP Risk management

OVERVIEW OF MAIN TRANSFER PRICING REQUIREMENTS IN LATAM

Transfer pricing in LATAM – Countries with TP Rules

- Almost all countries in LATAM have followed OECD Recommendations - Arm's length standard.

Year of sanction and entry into force of transfer pricing regulations and the approach adopted at the time of incorporating them					
Countries	Year of sanction of the rule	Year of entry into force	OECD and Country's own criteria	OECD Criteria	Own criteria
Mexico	1992	1992	X		
Surinam	1992	1992	X		
Dominican Republic	1992	2011	X		
Brazil	1996	1997		X	
Chile	1997	1997		X	
Argentina 1/	1998	1998	X		
Ecuador	1999	2005	X		
Venezuela	1999	1999	X		
Peru	2000	2001	X		
Colombia	2003	2004		X	
Costa Rica	2003	2003	X		
Uruguay	2006	2007	X		
El Salvador	2009	2010			X 2/
Panama	2010	2011		X	
Honduras	2011	2014	X		
Guatemala	2012	2013	X		
Nicaragua	2013	2017	X		
Bolivia	2014	2014	X		
Jamaica	2015	2015		X	
Paraguay	2019	2021	X		
Cuba	N/A	N/A			

- Countries that do not have transfer pricing regulations: Barbados, Belize, Bermuda, Guyana, Trinidad y Tobago.

Transfer pricing in LATAM – General overview

Formal obligations of the transfer pricing information regime				
Countries	Obligation to file TP Report	Obligation to maintain TP Report		Obligation to file TP Return
		Yes	Number of years of conservation required	
Argentina	X /4	X		X
Bolivia	X 12/	X	8	X 12/
Brazil	X	X	5	X
Chile	13/			X
Colombia	X	X	5 11/	X
Costa Rica		X		X 7/
Ecuador	X	X	5/	X 6/
El Salvador				X 1/
Guatemala		X	4 10/	X
Honduras	X	X		X
Jamaica	X	X		X
Mexico	X /2	X		X
Nicaragua	X	X		
Panama	X	X		X
Paraguay	X	X		X
Peru /3	X	X		X
Dominican Republic	X 8/	X 9/	10	X
Uruguay	X	X		X
Venezuela	X	X		X

- Arm's length standard.
- Transfer pricing methodology
- Sanctions for non compliance
- Action 13 BEPS
- APA
- Increase in transfer pricing cases (direct or indirect) – public cases: Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, México, Perú, Uruguay.
- Formal obligations – Transfer pricing reports and returns

Examples on transfer Pricing requirements

COLOMBIA

If the gross equity as of December 31 is equal to or greater than Col\$4,706,500,000 (100,000 UVT) or if by that date, the gross income obtained is equal to or greater than Col\$2,870,965,000 (61,000 UVT),

You will only be obligated to prepare an informative declaration if:

- a.** Your operations with foreign and/or free-zone related parties did not exceed Col\$2,117,925,000 (45,000 UVT), or
- b.** Operations carried out with companies or persons located in non-cooperating or low or zero taxation countries do not exceed Col\$470,650,000 (10,000 UVT).

On the contrary, if the operations carried out in the taxable year exceed the amounts mentioned above, you will be obliged to prepare the informative return, along with the transfer pricing study.

MÉXICO

If the taxpayer conducts operations with related parties and exceeds 13 million pesos in income from business activities in previous year or 3 million pesos derived from rendering professional services in México.

COSTA RICA

Taxpayers engaging in transactions with related parties are required, for income tax purposes, to determine their income, costs, and deductions, considering the prices and amounts of consideration agreed upon between independent entities in comparable transactions, following the arm's length principle and the principle of economic reality.

OVERVIEW OF MAIN TRANSFER PRICING REQUIREMENTS IN EUROPE

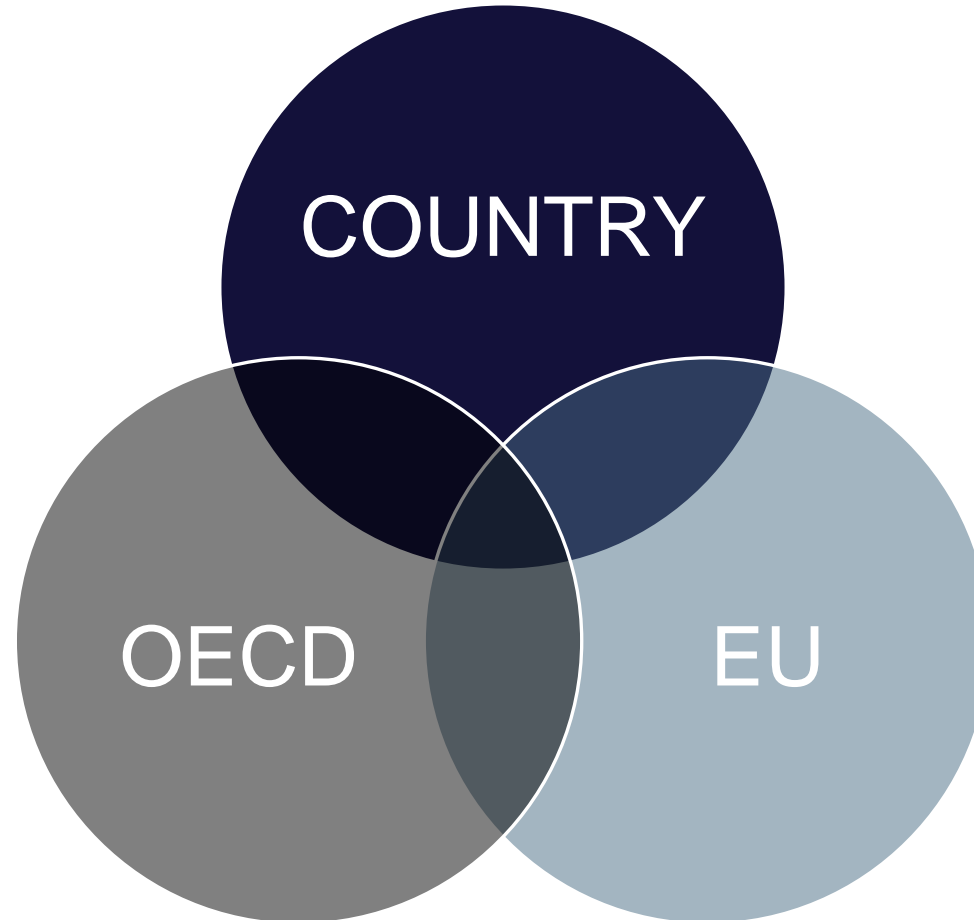
TP compliance requirements in Europe

- Annual TP documentation required
 - MF
 - LF
 - Information forms
- Tresholds
 - No MF/LF
 - Free form substantiation
- Submission documentation yes/no
- Language

TP compliance requirements in Europe

- Local additional requirements may apply
- Non compliance impact
 - Reversal Burden of proof
 - Penalties
- Exchange of information

General European landscape



Proposed EU initiatives

- Business in Europe: Framework for Income Taxation” (BEFIT)
 - EU TP Directive
- Debt-equity bias reduction allowance (DEBRA)
- Prevent the misuse of shell entities for tax purposes (UNSHELL)
- SME “Relief Package”

BEPS 2.0

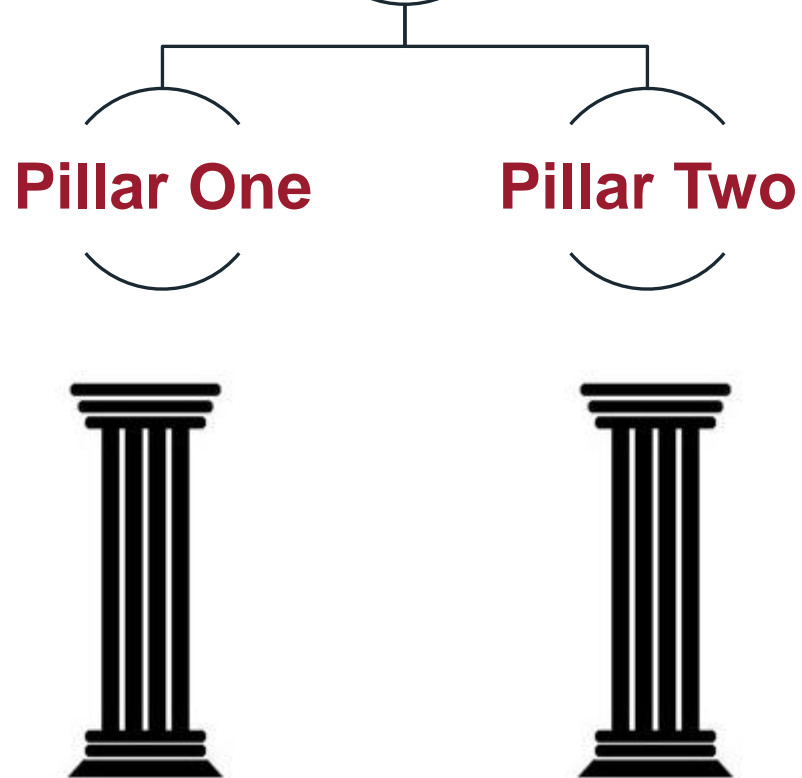
General Background

- BEPS plan was initiated in 2013
- 15 actions.
- Core principles: coherence, substance, and transparency
- The BEPS 2.0 plan address aggressive tax strategies focused in principle on the digitalization of the economy.
- Gaps in the existing rules that allow MNEs to avoid paying taxes.
- Extends tax rights to jurisdictions where significant business activities are carried out or where profits arise.

Background on BEPS

- Increased abuse of tax rules
 - Substance
 - Mismatches tax regulations
 - Artificial structures
- Use of tax haven countries
- Developing countries' challenges
- Tax transparency
- Coordinated approach
- Recent developments: Pillar 1 & Pillar 2

BEPS 2.0



GOALS:

- BEPS 2.0: “ Ensuring a more level tax playing field”
- Pillar One: More taxing rights to the source countries (marktstaten)
- Pillar Two: Reducing tax competition/ profit shifting among countries

Pillar 1 –Profit Allocation and Nexus

- Limited to largest companies (> 20 bln)
- Revised allocation rules
 - Deemed allocation to market country
 - No physical presence required
 - Formulary approach
 - **Amount A** : Market countries
 - **Amount B** : Baseline Distribution Activities
- Exchange of information
- Dispute resolution

Pillar 1 –Amount B

- Baseline Distribution Activities
- Routine Wholesale distributors
 - Limited retail distribution
 - No unique and valuable intangibles
 - No Services
 - No commodities
- Simplified approach
 - Pricing Matrix
 - Industry Groupings
 - Intensity factors OAS and OES

INDUSTRY GROUPING FACTOR INTENSITY	INDUSTRY GROUP. 1	INDUSTRY GROUP. 2	INDUSTRY GROUP. 3
(A) High OAS/ any OES >45%/any level	3.50% +/- 0.5%	5.25% +/- 0.5%	5.50% +/- 0.5%
(B) Med/High OAS / any OES 30%-44.99/ any level	3.25% +/- 0.5%	3.50% +/- 0.5%	4.50% +/- 0.5%
(C) Med Low OAS / any OES 15%-29.99/ any level	2.75% +/- 0.5%	3.25% +/- 0.5%	4.25% +/- 0.5%
(D) Low OAS / now low OES <15% / 10% or higher	2.00% +/- 0.5%	2.25% +/- 0.5%	3.00% +/- 0.5%
(D) Low OAS / now low OES <15% / 10% or higher	1.50% +/- 0.5%	1.75% +/- 0.5%	2.25% +/- 0.5%

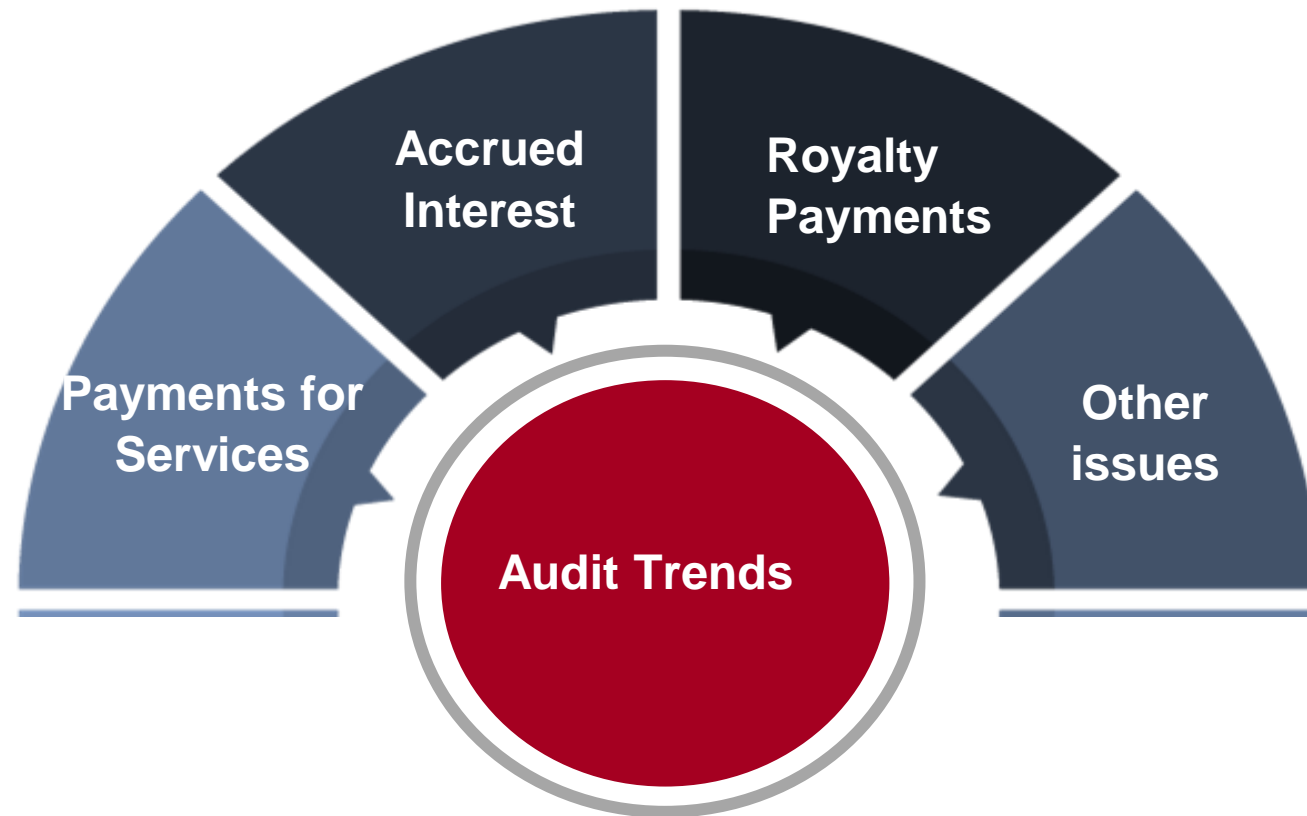
Attention: Amount B applies to all companies (not just the largest companies)

Pillar 2 – Global Minimum Taxation

- Minimum level of profit taxation on global scale
 - Global revenue > € 750 mln
 - Top up tax approach
 - Effective tax rate
 - Substance based income exclusion
- Mechanism:
 - Income inclusion rule (IIR)
 - Understated Payments Rule (UTPR)
 - Subject To Tax Rule (STTR)
- Local countries may impose additional tax:
 - Qualified Domestic Minimum Top up Tax (QDMTT)

CONTROVERSIAL TRANSACTIONS

Transfer Pricing Audit Trends and Risk Areas for Companies Operating in LATAM



Services

Services that are unnecessary and/or not rendered - Prove the service was effectively rendered

Tax Authorities - substance and form

- Strictly indispensable expense
- Comply with transfer pricing guidelines
- There shall be a reasonable relation between the expense paid and the benefit received or to be received

If Tax Authorities determines the transaction was not performed as independent third parties would or that there is a duplicity in the service received, said expenses would become non-deductible.

Financial transactions

- Loans
 - Credit rating
 - Benchmarking
 - 2 sided perspective
 - Debt service capacity analysis
- Cash pools
 - Financial Guarantees
 - TP Documentation
- Accurate delineation of transaction

Business restructurings



Centralisation of intangibles, risks, or functions with the profit potential attached to them.



Business restructurings often involve the transfer of tangible assets, intangible assets (or the rights to such assets) as well as business activities.



The termination or substantial renegotiation of existing arrangements.

Other Issues

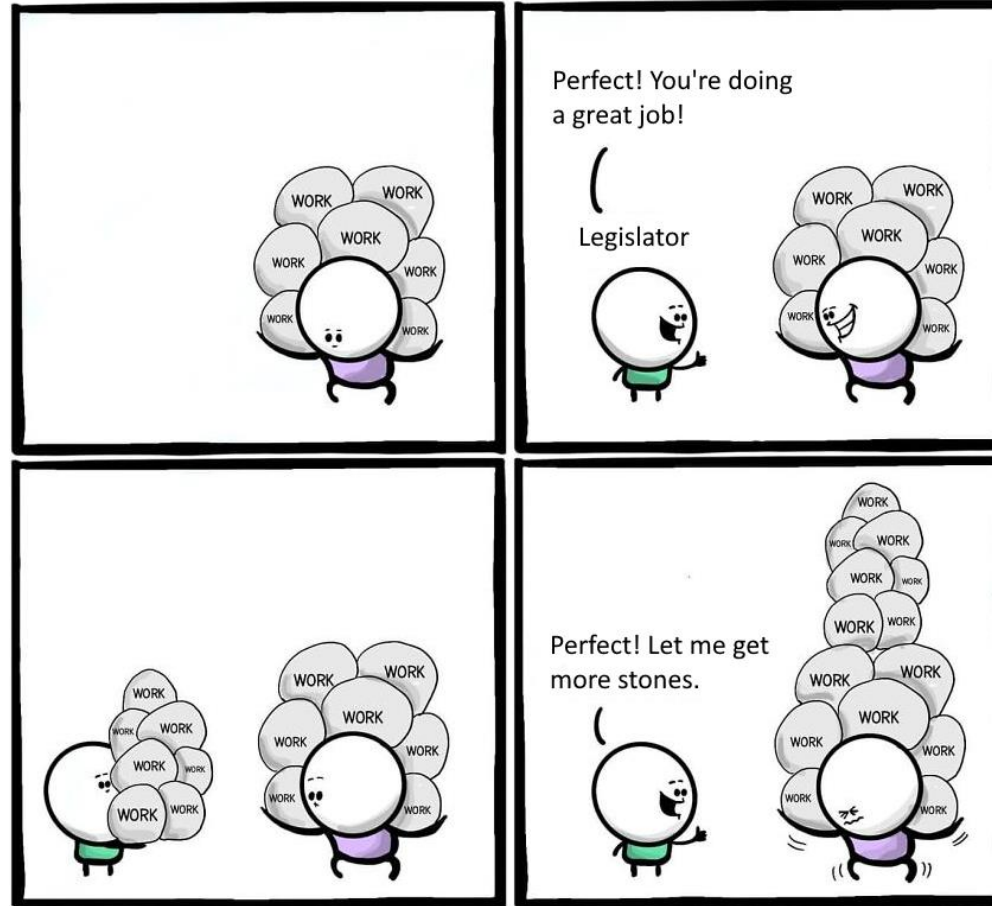
Business restructures

Atypical behaviors in tax payment

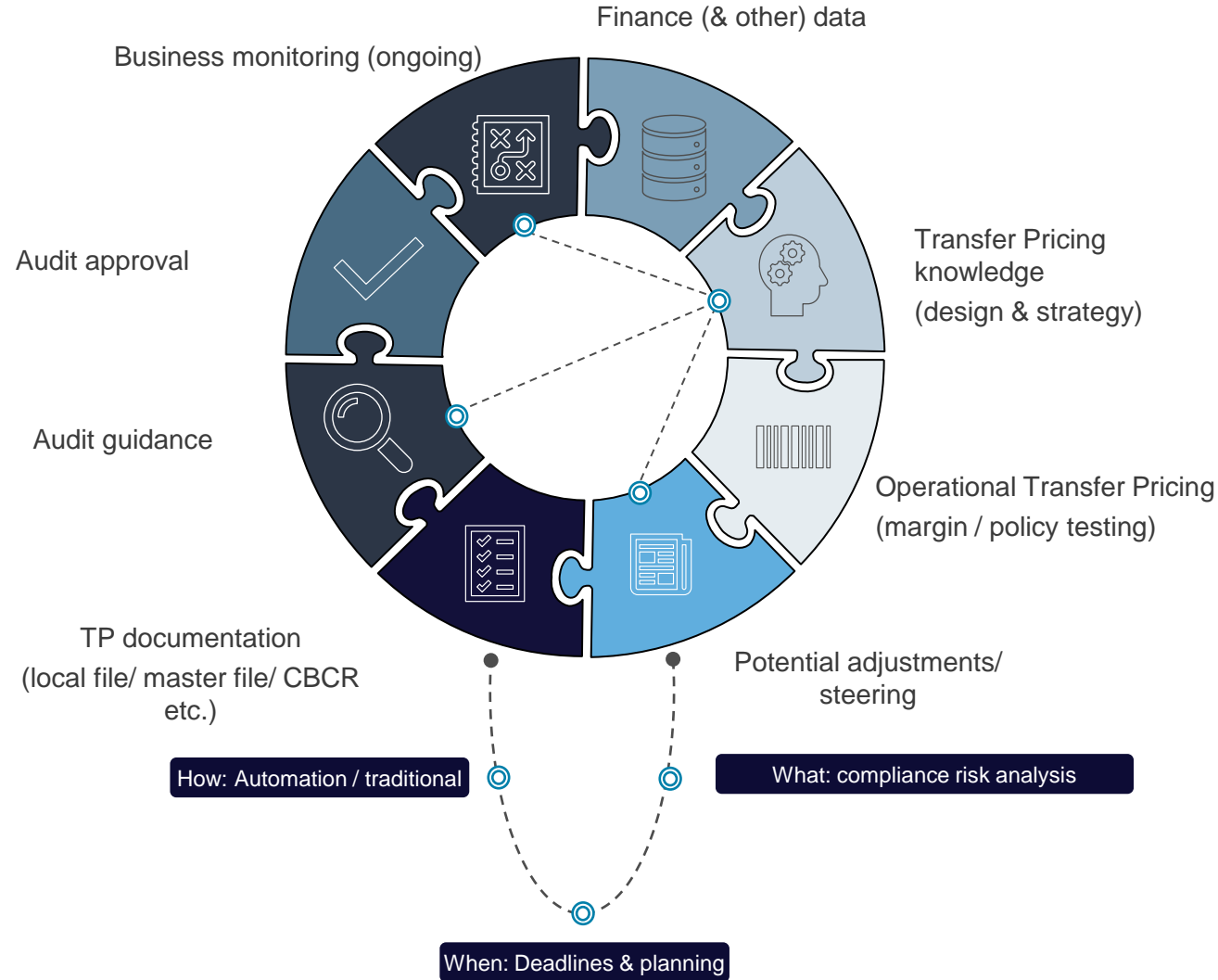
Omissions in transactions
within informative returns
/ Different Returns submitted
to Authorities – cross referencing
consistency between them

Significant transactions with related
parties in low taxation jurisdictions

Why automation ?



Endgame TP



Data Governance

Control framework

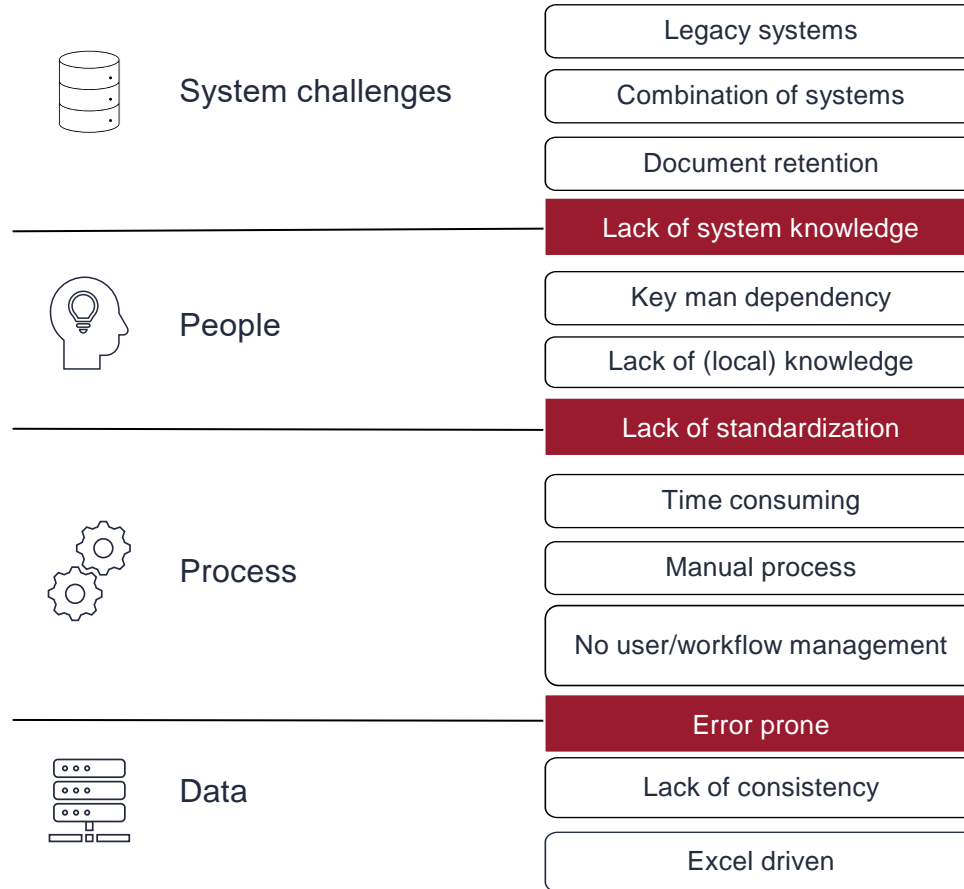
Policies

Centralized documentation

Change management



Common challenges



The Coperitas platform

- Legal Entity
- Management



- All data in one place
- Visualize legal tree
- Obtain insight in your organization
- Store key documents

- Transfer Pricing
- Compliance



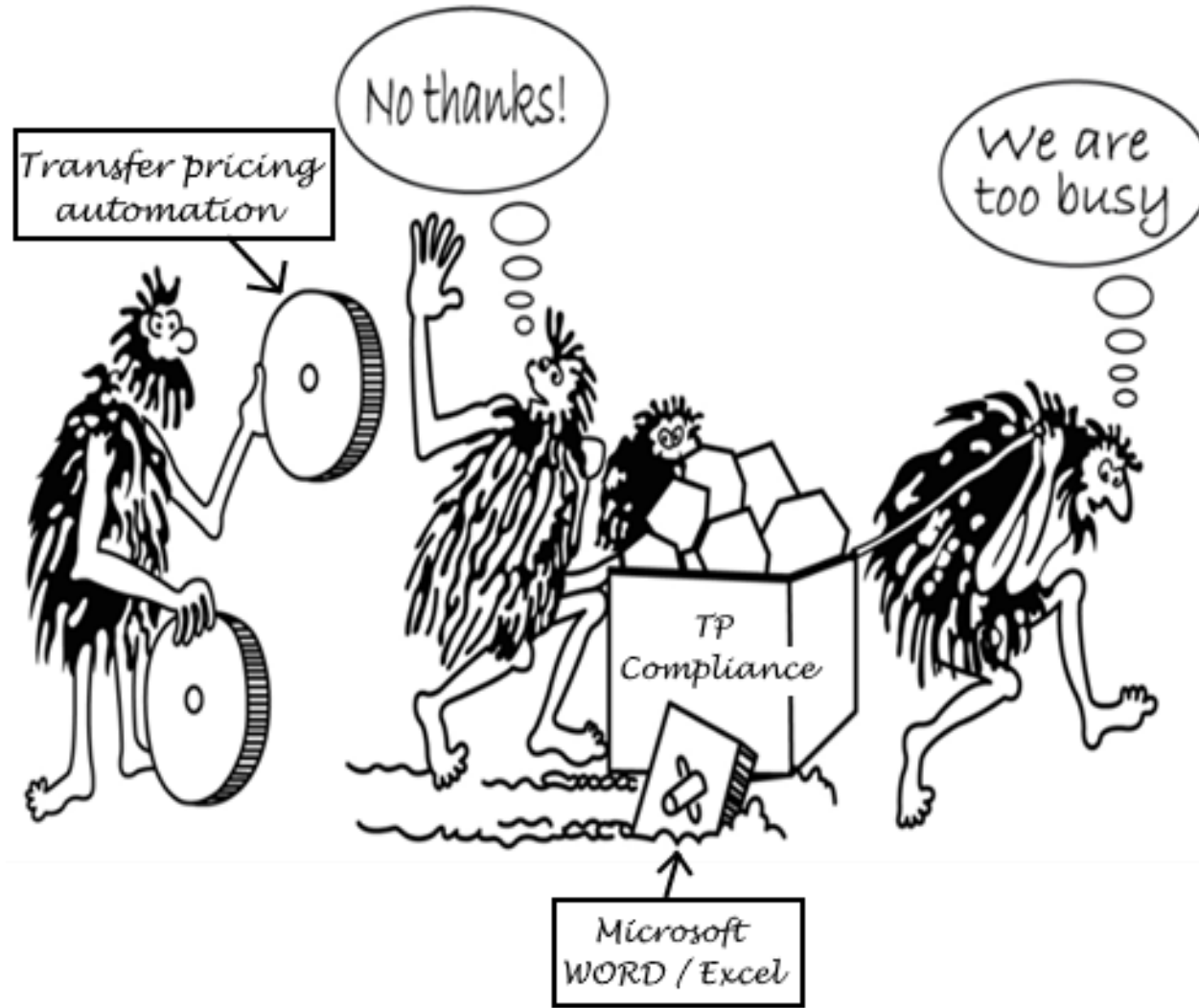
- TP Local files and Master file generation
- Policy generation
- Legal agreement generation
- Services benchmark study options

- Transfer Pricing
- Control



- Workflows
- Track expiring documents
- Track financial performance
- Flexible dashboarding
- Transfer pricing deadlines

Timing, always the right moment!





Thanks!



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