



# Managing Tax Risks – Transfer Pricing

Nicole Fung  
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# Agenda

Transfer Pricing in the Current Global Environment

Managing Transfer Pricing Risks

Conclusion

# The Current Global Environment

- The Dynamic Marketplace: increasingly regulated and transparent world
  - Documentation, Reporting, and Disclosure Requirements;
  - Audits and Examinations by Developed and Emerging Countries; and
  - APA Negotiations and Competent Authority Proceedings.
- Globally, MNCs are experiencing a growing “pandemic” of controversies and disputes – pressure on global ETR
- Pressure on countries’ tax administration: revenue enhancement and prevention of base erosion
- Governmental investigations, coordination, and sharing of information
- Primary challenges for MNCs over the next five to 10 years:
  - the identification of issues;
  - the compliance with audit demands;
  - management of controversies; and
  - resolution of disputes.

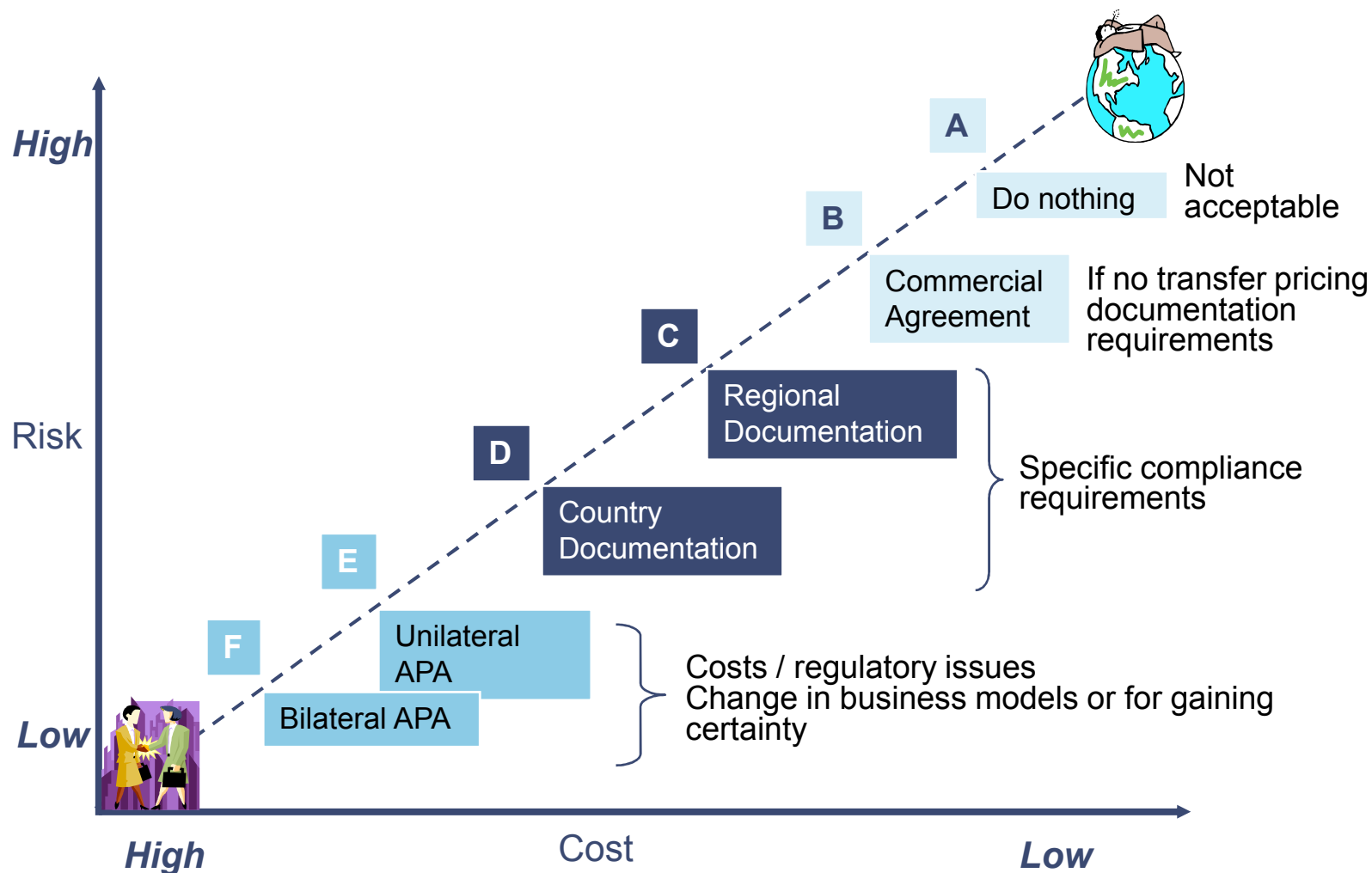
## Hot Topics in Transfer Pricing

- Management fees
- Transfer pricing audits
- Restructuring issues
- Marketing intangibles
  - Valuation of transferred intangibles (transfers of IP/ cost contribution arrangements)
- The existence of, and allocations to, Permanent Establishments
- Intercompany financing transactions
- Correlation with customs (and indirect tax)

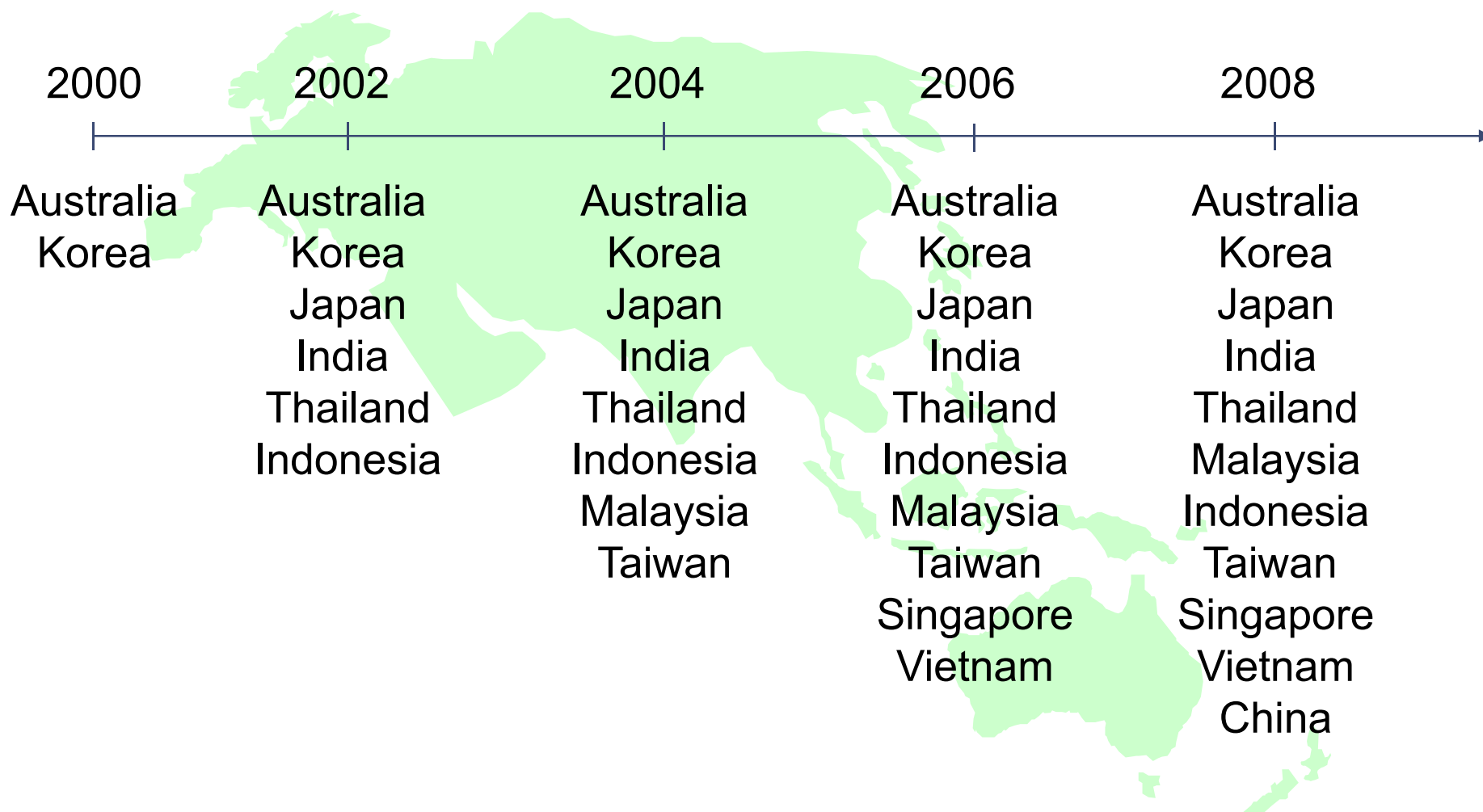
# Key Regional Transfer Pricing Developments

- **Australia**
  - Judgement on first transfer pricing case in Australia in 2008
  - Paper issued on intercompany financial transactions
  - Business restructuring perspectives
- **China**
  - Contemporaneous transfer pricing documentation introduced in 2009
  - Annual disclosures of related party transactions
- **India**
  - Ongoing transfer pricing cases which address pertinent issues such as comparables, permanent establishments, benchmarking, transfer pricing methodology
- **Japan**
  - Revisions to the Commissioner's Directive on the Operation of Transfer Pricing
- **Malaysia**
  - Formalisation of APA regimes
  - Thin capitalization rules for financial transactions
- **Taiwan**
  - Safe harbour rule provided
  - Full cost mark up accepted as profit level indicator

# Strategies to Manage Risks



## Overview of Documentation Requirements in Asia Pacific



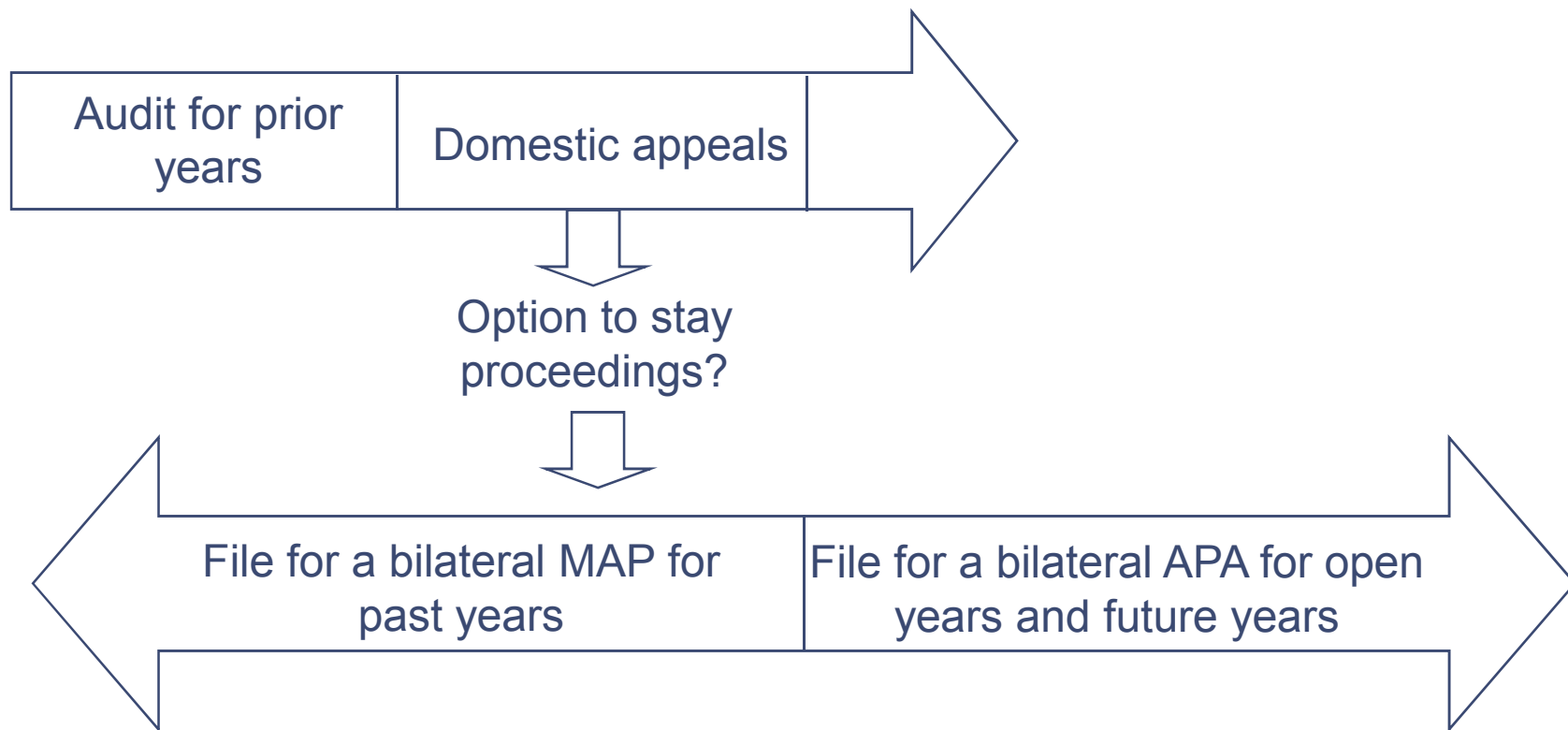
# When should I consider obtaining an APA?

What are the key factors to consider?

### Objective of the taxpayer

- Certainty for future transfer pricing arrangements
  - Change of business model or transfer pricing policy
  - Follow up to competent authority process
  - Acquisitions:
    - Integration of transfer pricing methodologies
    - Roll back for limited number of prior years
- Risk management
  - High audit risk: preemptive action
  - Following audit: prevent another bad experience

## Strategies adopted by some MNCs



# When is CA relief the best course of action?

What factors should be considered in deciding whether to apply for CA relief?

- Clarity of business model
- Alignment of tax model with the business model
- Audit-related factors
  - Materiality, complexity and timing of the adjustment
  - Reputational considerations
  - Experience of local appeals
- CA-related factors
  - Time, cost and human resource constraints

# Managing the CA Process

What, if anything, can a taxpayer do to ensure a favorable CA result?

- Appropriate sharing of information - factual and technical issues
  - Clearly summarise the basis of the adjustment
  - Provide a concise analysis of the counter-arguments
- Tactical analysis
  - Explain the likely negotiating strategies of the “audit” CA and how to deal with each of them
  - Assist with development of responses to positions proposed by the “audit” CA
- Economic analysis
  - Respect local country practices for comparables analysis

## Look Out For...

- Misalignment of business model with tax model
- Duplication of different income streams
- Incongruence of transactional or operational flows
- Increased sophistication of tax authority
  - Intensified transfer pricing audits

# Thank you

