OECD – Comments on the White Paper on Transfer Pricing Documentation

Dear Sirs,

We welcome the opportunity to comment on the OECD’s White Paper on Transfer Pricing Documentation, published on 30 July 2013 and its efforts to launch a global conversation on how transfer pricing documentation rules can be improved, standardised and simplified.

Aiming at preparing transfer pricing documentation in a standardized and simplified manner, the OECD proposes a coordinated approach to implement a two-tier approach in the White Paper with the consideration that reducing compliance costs for taxpayer can be equally balanced with improving tax assessment. We understand that this project is ambitious and we are particularly pleased at the willingness of the OECD to consider concerns of both tax authorities and MNEs.

Please find herewith our comments and suggestions of issues to address. We agree to have our comments posted on the OECD website.

Sincerely yours,

Siemens Aktiengesellschaft

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Enclosure

1) Introduction

We applaud the release of the OECD White Paper on Transfer Pricing Documentation. This project provides reasonable suggestions in order to fulfill the interest of both taxpayers and tax authorities. Still, a number of remaining issues need to be analyzed in the future, but this proposal can be regarded as a considerable "first step in the right direction". We are pleased to have the opportunity to provide our comments on the OECD White Paper and contributing to the simplification of transfer pricing documentation requirements.

Siemens is a multinational Enterprise (MNE) representing a broad spectrum of sectors which are based throughout the world. Siemens is active in around 190 countries, occupying leading technology positions worldwide with its business activities in the Energy, Healthcare, Industry and Infrastructure & Cities sectors. Siemens employs approx. 370,000 people around the world and has more than 285 manufacturing locations, with office buildings, warehouse, research and development facilities or sales offices in nearly every country around the globe.

Under this scenario, Siemens’ transfer pricing documentation is a challenge in itself and has provided us a long lasting experience worldwide on this matter. Siemens has presented transfer pricing documentation in each country as required by local law. However, local requirements became considerable burdensome by requesting very detailed information that go beyond the level of detail necessary for risk assessment. A couple of years ago, therefore, Siemens launched the SieDoc approach (Siemens Documentation) in order to standardize, simplify and streamline our transfer pricing documentation and to improve global consistency, but still complying with local requirements. Initially, we had approximately 70 transfer reports. In the meantime we accomplish about 500 reports per year and it continues to further increase. Clearly, this reflects the global trend with new additions to the list of countries requiring preparation of transfer pricing documentation.

In the following we would like first to briefly elaborate on our documentation approach as an example of how requirements of different jurisdictions could be flexibilized and still fulfill tax authorities’ and MNE’s concerns. As a matter of fact, Siemens’ German tax administration considered the Siemens documentation approach as being one of the best approaches presented to them.

Subsequently, we provide our comments on the White Paper remarking critical topics and presenting some suggestions according to our experience. At first, we will comment on the general part of the White Paper and then on the proposed transfer pricing documentation template.

Lastly, we will present our conclusion and an annex with screenshots of our transfer pricing documentation.

We trust that our comments on the White Paper will assist the OECD in its project of simplification and streamlining of transfer pricing documentation requirements.

2) Current Siemens’ Transfer Pricing Documentation Approach

2a) Concept of Siemens’ Transfer Pricing Documentation Approach

Traditionally, documentation approaches are differentiated between centralized and decentralized approaches. In case of decentralized approaches, the documentation is prepared locally. The advantage of this approach is that the documentation packages are individually tailored to the local documentation requirements. Disadvantages of such an approach are the high costs which arise due to the repeated preparation of similar facts and the inconsistencies’ increase among different local documentation related to the same transaction. Moreover, a local preparation bears the risk of contradicting descriptions of similar facts. After all, it is very difficult for the central tax function of a MNE group to control and enforce the desired quality standards or other content-related requirements in case the documentation is prepared locally.
For those reasons, a centralized documentation approach has prevailed in many MNE groups. Centralized documentation approaches usually feature – predominantly in narrative format – in addition to a relatively exhaustive description of general facts, (e.g. industry analysis, description of the business model, etc.) a generic description of different transaction types and economic analyses prepared centrally. For the local adaptation a part of the whole document is modified and/or amended by the respective local responsible party in order to comply with local specific circumstances and requirements.

While a centralized documentation conceptually addresses the weaknesses of a decentralized approach in principle, several variations might be feasible for a successful implementation of an efficient centralized documentation process depending on the legal structure of the group. Siemens had already implemented a centralized approach for years ("Masterfile Concept") and, on the occasion of internal restructuring of the businesses, this concept was further fine-tuned.

The main goals to be achieved with the redefined approach in this regard were: assure global consistency while complying with local regulations, reduce costs, provide an easy framework to document, that was flexible enough to include all local information requirement, hence assuming penalty protection, and streamline the documentation process. The desire to streamline the documentation approach was in particular for the following reasons:

- The differing implementation of Masterfile Concept in several countries resulted in limited consistency of form and content between reports analyzing the same transaction.

- Updating the documentation for the subsequent years proved to be too extensive and thus too time-consuming, particularly due to the extreme amount of documentation in narrative format.

- The core documentation was finalized too late for some countries with tight deadlines to prepare and/or present documentation which frequently resulted in decentralized preparation prior to rollout of the core documentation.

Given the complexity and size of Siemens, we were required to tailor an approach which until now has not faced fundamental challenges by any tax authorities neither in Europe, nor in countries outside of Europe.

The redefined approach is divided in two concepts: the "Autonomous" and the "Modular". The Autonomous concept is adopted when local specific transfer pricing documentation rules require different content and formatting. However, the content must still be consistent with the documentation of the contra-part.

The Modular concept is characterized by the following:

- The modular transfer pricing documentation process leverages from the existing transfer pricing documentation from which standardized individual modules are created, strictly separating central and local modules. The appropriate combination of such modules creates headquarters' and local country reports based on the desired level of aggregation.

- The central modules ("Core Modules") includes a division description, industry analysis, description of major transaction types with associated volumes, standardized functional and risk analysis templates for local adaptation and standardized economic analysis templates with pan-regional benchmarks for local adaptation, where applicable. They are prepared in the respective headquarter, include all content relevant to all Siemens’ companies of the sector/division and, accordingly, must not be directly modified by the local entities (ensuring consistency). The steps to design the Core File are as follows:
  
  o Perform a top-down analysis of the transactions and organizational reporting units with an aggregation as high as possible in order to understand and identify common transactions and map key transactions across the geographies and individual countries.

  o Design a Core File for each sector or division depending on the aggregation level which includes a high level description of the sector/division on a global basis, a globally applicable industry analysis and standardized transaction description.
Create standardized FRAA templates for the routine entity types suitable for local adaptation prepared centrally or at the division headquarters jurisdiction based on a more detailed analysis of the major transactions and the major routine entity types in the divisional value chain. These templates are meant specifically for local adaptation and are prepared with a "Check-the-Box" system for efficient preparation of local country documentation. The FRAA template includes the most important and sufficient parameters that are related to define the correct characterization of an entity/division/function.

Prepare standardized economic analysis templates and pan-regional benchmarks (e.g., pan-European, pan-American and pan-Asian) provided for each of the routine entities in different geographies as part of the Core File.

- Preparation of standardized overviews with regard to function and risk analysis and company characterization: The functional analysis focus on pre-defined functional profiles rather than comprising an analysis of the entire value chain. The entity characterization, as the conclusive part of the functional analysis, is based on the functional profile that is relevant to the respective entity, in case of a multi-functional entity usually on the basis of the pre-dominant function.

- Via central pre-selection, a documentation package consisting of only the modules relevant to the local entities and relevant cross-referenced materials are provided to the countries in order to complete the local documentation. The flexible combination of modules allows not only an efficient multiple-use of the same standardized module but at the same time an utmost focus on the particular entity’s characteristics.

- The local adaptation process uses the Core File and standardized documentation templates as the basis for preparing country specific documentation in order to ensure a consistent setup. The templates are filled by the local company or the local advisor and, therefore, also include additional country-specific information (e.g. financials, deviations to the general facts, additional information due to local requirements, explanations of special cases, etc.). The main elements of the local adaptation process are as follows:

  - Given that the Core File documentation is designed to have a global divisional description, globally applicable industry analysis and standardized functional and risk analysis templates with a "Library Concept", local documentation are prepared based on an evaluation of the applicability of the respective standardized chapters. As necessary, local modifications or additions to any of the qualitative parts of the documentation will be included in the local documentation content or appendices to comply with local documentation requirements.

  - The standardized economic analysis templates are also reviewed at the local country level for applicability and used locally where they meet local requirements. In specific instances, there may be a need to compile country specific benchmarks in which case this would also be prepared locally and included in the local documentation.

Main accomplishments of the SieDoc approach:

- Reduction of documentation content to the absolute minimum:
  - Preparation of the documentation in presentation style with local narrative description, if absolutely necessary. Central preparation of pan-regional benchmarking studies, supplemented by local studies, if absolutely necessary (e.g. India, Korea).

  - Already existing documents (e.g. surveys, internal reports, annual reports, etc.) and additional, more detailed information (e.g. complete benchmarking studies) are added only as attachment or reference to the documentation ("Annex System").

  - Tax auditors prefer a short and effective overview of information on transactions and functions and risks analysis in order to review the documentation in a shorter timescale.
• Implementation of a "Check-the-box" process:
  o Based on a centrally performed initial characterization of all local entities (particularly with respect to functions and transactions), the modules/information are selected by using checklists and provided specifically to each local entity.

• Annual update of the documentation with "Update Letters":
  o The "Annual Update Letters" are also intended to minimize the documentation efforts made in subsequent years.
  o Certain modules/attachments are annually updated by default (financials, transaction volumes, etc.).
  o Marginal changes of the facts are only documented by an attachment to the previous year documentation (description of the changes).
  o Restriction of the adjustments/explanations of the facts to those with impact on the comparability analysis.
  o New Core Files per sector or division will only be designed in case of significant/substantial changes in the business (re-organizations, re-structuring of the distribution system, etc.) and/or in the transfer pricing systems.

• Development of a Consistency Check Process:
  o A globally aligned transfer pricing documentation means achieving global consistency while complying with local regulations, mitigating risk exposure and reducing internal and external costs.
  o The Consistency Check Process has the objective to review and achieve consistency (between entities analyzing the same transaction) in the following points: a) tested party characterizations, b) selected transfer pricing method, c) PLI selection, d) benchmarks and e) arm's length range used.

2b) Benefits of the Siemens Concept

Once the streamlined documentation process including an efficient update process was set in place, Siemens achieved the following synergies and benefits:

• Reduction of compliance costs for the preparation of the documentation, for example:
• Streamlined content management through a set of standardized and individualized modules. The modular structure also supports flexibility regarding the engagement of various advisors as well as integrating additional countries with the least additional effort; it is also more flexible to cope with supply chain restructurings and business re-organizations most effectively.

• Reduction of reconciliation time: ease of maintenance and updating through reduced paperwork.

• Minimization of the risk of penalties due to consistent description of the minimum content of a transfer pricing documentation, amended by local documentation elements in a standard, consistent format which provides a more focused local country documentation.

A survey of the worldwide costs after the first two years showed that they were cut in half due to the implementation of the new and improved concept. Additionally, further savings can be achieved in the future due to the possibility to further increase in-house preparation of the documentation.
The Siemens’ auditors of the German tax authorities considered the Siemens documentation approach to enhance transparency with more focused and useful information for consideration in connection with transfer pricing audits.

3) Comments on the OECD White Paper on Transfer Pricing Documentation

OECD emphasized its intention to promote a wider perspective on local documentation through its BEPS\(^1\) and White Paper’s\(^2\) work. As already mentioned, today’s business must be seen as a global one, where the transfer pricing information must be provided with a worldwide perspective. In this respect, taxpayers must provide a documentation considering multi-jurisdictional ramifications, and tax authorities need to reform their local regulations. Unfortunately, we have experienced that numerous countries require transfer pricing documentation covering only local interest (e.g. BRICS states). That results in large documentation inconsistencies for MNEs and limits information transparency for tax authorities. A documentation oriented to provide “big picture” information complies with the interests of all concerned parties. The international coordination of information contributes to global consistency and cost savings for MNEs and transparency for tax authorities.

3a) General Part of the OECD White Paper

a) \textit{Paragraphs 10 et sqq.}

We believe, that the summarized pitfalls on existing guidance reflect perfectly the current situation for MNEs. There are some problems in the current transfer pricing documentation guidance, such as a) significant gap between different countries’ transfer pricing documentation requirements; b) lacking a big picture of MNEs’ overall business; c) one-sided approach in analyzing controlled transactions; and d) lacking universal application and flexibility. Generally, these descriptions match the situation that we are facing in practice. With the global survey taken by OECD, we believe that existing guidance’s shortcomings and complexities have been fully dug out.

The White Paper, in paragraph 10, refers to the compliance and cost challenges faced by MNEs when local legislations are implemented with a high domestic tax enforcement point of view. Practice shows that the one-sided analysis of the transactions realized by tax authorities and, consequently, the lack of complete tax authorities’ analysis of global business results in insufficient consistency, compliance and transparency. In this regard, neither taxpayers’ interests nor tax authorities’ concerns are fulfilled. We fully agree with the intention to develop a standardized description of the documentation at an international level, as PATA and EU TPD already proposed. However, we have not adopted any of these approaches because we consider them still too burdensome for our business size. Besides, the adoption of these approaches does not protect MNEs from transfer pricing adjustments.

The disclosure of taxpayer’s financial statement evaluation of material transfer pricing exposure mentioned in paragraph 15 of the White Paper is quite remarkable. As already cited in the mentioned paragraph, this information is not part of the transfer pricing documentation in a strict sense. If there is a risk, we suggest that it should be considered either as a liability according to the respective accounting standards or depending on the respective tax law results in a self-adjustment. Presentation of tax risk evaluations is nothing specifically related to transfer pricing but would include other tax issues as well. Although we agree to the idea that tax authorities should be provided with all the relevant facts in order to be able to conduct their own risk assessment, tax risk evaluations should not be part of the transfer pricing documentation. Furthermore, it needs to be noted that the assessment would hardly be feasible as long as tax contingencies evaluation differ (e.g. FIN 48, IFRS, US GAAP). We understand that this demand works against the project on the simplification and streamlining of the transfer pricing requirements and it would create a lack of certainty for MNEs.


\(^2\) OECD, “White Paper on Transfer Pricing Documentation”, Public Consultation, section I, paragraph 2, (July 2013)
b) Paragraphs 17 et sqq.

We concur with the initiatives related to the transfer pricing documentation mentioned in section B. The minimization of potential adverse consequences derived from the multiplicity of documentation requirements can be achieved if tax authorities and taxpayers work together for a more global and simpler documentation.

The size of a MNE like Siemens creates burden transfer pricing documentation. Therefore, it is desirable that local requirements are consistent. For instance, when applicable, it would be prudent to apply the same economic analysis in different local documentation. We understand that the requirements related to the economic analysis are directly associated to the arm’s length principle. In this regard, no further information should be required in order to verify the compliance with the arm’s length principle.

We strongly support the suggestion to realize financial updates instead of performing new comparable searches every year. Moreover we propose to conduct in the first year the full economic analysis and to elaborate the update of the benchmarking study in the next year. The update would fulfill the expectations of tax authorities and it would reduce considerable costs for MNEs. Additionally, we understand that the preparation each year of new comparable searches would not significantly improve the quality of the information in relation to the update and, therefore, add no value for both taxpayer and tax authorities.

Considering the transactions to be analyzed, MNEs with high transaction amounts are almost forced to define an internal threshold in order to prepare its transfer pricing documentation. It is quite impossible – and unnecessary – to analyze all transactions of the group, especially the ones with low amounts which do not denote significant impact. If materiality thresholds were set for transactions both in terms of amounts and relevance of the transaction based e.g. on total revenues per country or some other standard, this would decrease the documentation process while providing the taxpayer greater clarity on the transactions and tax authorities with the “big picture”.

c) Paragraphs 45 et sqq.

Section III of the White Paper identifies some reasons for governments to ask for transfer pricing documentation. We understand that those conditions are reasonable and we work on the best practice to fulfill those concerns. The documentation package suggested in the White Paper aiming to provide a risk analysis to the tax authorities seems to be the most advisable solution. Additionally, OECD intends to simplify and streamline the information on a global level. This provides more transparency to tax authorities and less time-consuming work for taxpayers. The quality of the information would increase as well, considering that it would be consistent and more comprehensive. We believe that additional information could be locally provided upon request and/or during an audit, which will occur in any case. Tax authorities can always require information from taxpayers to suit for their designated purposes whenever needed. Transfer pricing documentation should not be the only information source which may be too much burdensome to taxpayers. At the same time, according to the issues mentioned in this paragraph, local penalty regulation should be adapted in order to provide more certainty to taxpayers.

The requirements established by local tax authorities are unfortunately disproportionately burdensome and they do not provide enough guidance for MNEs. Taxpayers are obliged to provide all necessary information to be in accordance with tax authorities’ expectations and, thus, avoid penalties. There is an effort to be compliant with local regulations. However, regarding the complex local requirements, this goal might become difficult to be completely achieved by MNEs. Therefore, from a practical standpoint, we suggest that local tax authorities should be more linear in accepting that information cannot be provided by the tax payers in order to contribute to the improvement of the transfer pricing documentation process as a whole.

Still regarding section III, referring to the topic “Cooperative approaches with tax authorities”, this is also desired by MNEs, but tax authorities usually do not accept information on a global level. The BEPS already mentioned the importance to provide transfer pricing documentation reflecting a “big picture” of MNE’s business. Therefore, it would be straightforward if the acceptance of information on a global level

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increases. The intention to improve cooperative work between taxpayers and tax authorities is noteworthy, but global consistency should be considered as priority for both.

d) Paragraphs 54 et sqq.

According to our experience, we believe that standard information would not decrease the quality of the documentation. We understand that the non-acceptance of standard information would work against the demand of the “big picture” scenario, which results from globally consistent and standard information.

Additionally, the approach of “cut and paste” documentation mentioned in paragraph 55 is not limited to transfer pricing documentation. It is known that this practice might be used in questionnaires and in other documentation as well, without threatening the quality of the information.

The affirmation presented in paragraph 56 of the White Paper – “While it is desirable that documentation have as one of its objectives the encouragement of a culture of thoughtful compliance, the pragmatics of ever-expanding demands from tax authorities may undermine that objective and contribute to a culture of minimal effort and commoditised economic analysis directed purely at penalty protection.” – reflects MNEs’ situation. It confirms the importance to determine documentation requirements that respect global consistency. Supporting the understanding of the OECD⁴, documentation demands should support taxpayers’ and tax authorities’ interests without undermining each other.

e) Paragraphs 57 et sqq.

As appropriately mentioned by the OECD, transfer pricing audits usually are very fact-intensive. In order to provide the “big picture” of the business, the different pieces of information have to be taken from heterogeneous sources. However, according to our experience, this information can only be presented in a highly aggregated form in the transfer pricing documentation (e.g. in a TP report). We believe that an exhaustive description of the facts is not possible in such a report. In this respect, that creates an uncertainty whether the penalties can be applied or not. Additionally, we would like to point out that each jurisdiction has its “audit culture” which can be more inclined to a formalistic-based approach or to a content-based approach.

For a group as big as Siemens it is unrealistic to present all relevant information with such a high level of detail in the transfer pricing report. In this respect, the transfer pricing report can only serve as an introduction. This is comparable to a tax audit situation in which the annual reports that are being audited are also only available in highly aggregated form to give an overview about profit and loss of a company. In the course of the subsequent audit, the individual positions – with regards to transfer pricing: the transactions and characterizations required for an evaluation – are being investigated.

In order to clarify and/or verify facts which have been explained only very shortly in the TP reports, the tax auditors depend on a description of the respective business backgrounds. Since – other than in audits of solely balance sheets and/or profit/loss statements – more or less pre-defined documents cannot be accessed anymore; Additional information – which certainly is necessary for an in-depth analysis – could then be provided during the following various stages of an audit. This is often extensive and sometimes may only be managed by doing interviews.

f) Paragraphs 69 et sqq. – “Information Required for a Transfer Pricing Risk Assessment”

Given the difficulty to prepare documentation which covers the complete extent of the business, we understand as reasonable the demand of the OECD regarding the need to present a documentation that provides enough information to the tax authorities to identify foregoing risk factors.

Paragraph 70 lists some topics where the focus should rely on. According to our practice, please find our comments to each topic below:

- Identification of material transactions
  We agree with this demand. However, it would be of great help for MNEs if the materiality could be defined (e.g. establishment of a threshold). The materiality could be considered on entity, country or group level. Considering the domestic focus of local audits, we believe that a

⁴ OECD, “White Paper on Transfer Pricing Documentation”, Public Consultation, section III, paragraph 64, (July 2013)
materiality on a group level would be quite unrealistic. If we take into account the country level, it could result in inconsistencies, because local entities might consider transactions as material and the headquarters might not agree with such understanding. In this context, further guidance would be welcomed in respect to how taxpayers should identify/classify a material transaction.

- **Identification of business restructuring**
  Considering an audit based on risk analysis, the knowledge of business restructuring transactions is justified. However, it is not clear what this requirement precisely aims at. The analysis of chapter nine of the OECD Transfer Pricing Guidelines provides plenty of different types of restructuring.

- **Level of corporate debt and interest expenses**
  It is noticeable that this topic is closely related to the BEPS discussion and to the OECD suggestion regarding risk assessments (paragraphs 41 et sqq.). Both understand that financial transactions involve potential risk. The requirement asks for the disclosure of the group financing, aiming at the comparison between external and internal financing. Problems might arise due to the fact that such information might be irrelevant for routine entities or it could result in burdensome effort for these companies. Then, the connection with each business and the financing structure is not obvious. For instance, the financing of a matrix organisation is usually independent of each business segment. In this regard, it is not clear how such information should be prepared. Which form and which regulations’ standards should be considered? International Financial Reporting Standards (IFRS), local General Accepted Accounting Principles (GAAP) or tax book?

- **Information regarding transfer pricing policy/global APAs**
  It is comprehensible that transfer pricing policies should be part of the Masterfile report. Nevertheless, the information to be presented to tax authorities that are not involved in the APA is not so detailed like the one to be provided to tax authorities involved in the APA. We understand that information on the APA should be presented in the documentation provided to the tax authorities involved and that the APA could be presented as an annex of the documentation as well. Additionally, it is important for MNEs to have a precise definition of “important intangibles”. This information is vague and can create uncertainty and inconsistencies because tax authorities and entities might have a different understanding of “important intangibles”.

- **Material transfer pricing arrangements**
  The explanation of arm’s length principle compliance is completely in accordance with the principle of transfer pricing documentation. However, it is crucial to establish a threshold to determine which arrangements should be considered as material in order to avoid disputes.

Regarding level of detail, please refer to “d) Paragraphs 54 et sqq.”

**g) Paragraphs 72 et sqq. – “Structure of a Global Documentation Package”**

The OECD White Paper mentioned that it would be possible for MNEs without extra effort to provide information based on internal documents (e.g. management accounts, balance sheets, etc.). We cannot agree with that affirmation, and it is questionable why tax authorities should have access to some specific information – sometimes quite sensitive – which does not have any relevance to the analyzed transaction.

Paragraph 73 outlines the essence of the transfer pricing documentation: taxpayers’ description of transfer pricing methods and the analysis they apply to demonstrate compliance with the arm’s length principle. It also mentions that this should be elaborated in a robust comparability analysis by analyzing the functions, assets and risks relevant to the transfer pricing analysis for transactions that are material for local tax authorities. Since Siemens is organized in a matrix structure, the business descriptions are covered in central modules, since it can be assumed that the value chains for the respective sector/division are always the same. It can also be assumed that the function and risk profiles can be standardized to the greatest possible extent.
This information is provided as modules - though not within the framework of a strict Masterfile concept, but in terms of templates. If necessary, local deviations and/or documentation requirements to be added separately can be amended or described in local modules. In this context, it can be affirmed that we prepare our transfer pricing documentation with the goal to fulfill the essence mentioned by the OECD. Nevertheless, a reference and/or a threshold might be needed in order to define which transactions are considered as material for local authorities.

We believe that the required information on tax return related data might result in controversy. Which tax data exactly should be presented? Is it expected to provide domestic taxable income and local tax according to tax assessment or tax data according to local or international GAAP? In both cases, global consistency is affected. An important related issue to be mentioned is that tax assessments are available only after the transfer pricing documentation preparation.

Regarding financial information to be used such as profits and/or transaction data, central information sources, such as e.g. the central group reporting structures, must be used for consistency reasons. This is to ensure the highest possible consistency while having solid data quality.

Experience shows that inconsistencies often arise due to different local requirements:

- **Actual or assumed necessity to use local GAAP figures for transaction volumes and profit margins**
  
  Often, inconsistencies and problems with data quality result from this, since the central group reporting and the entire controlling is based on IFRS. Since local GAAP figures merely derived from it, inconsistencies arise between headquarters’ and local report. In addition, local GAAP figures may complicate the quantitative explanation of certain facts since the internal reporting and also the business controlling and planning and thus the whole internal pricing is based on IFRS.
  
  In addition, deviations may result due to different time period requirements (e.g. India, China, etc.). A reasonable reconciliation of deviating fiscal years as in the case of Siemens is not possible or extremely complex. Deviations also come from countries adopting different ways to calculate the arm’s length range (e.g. India).

- **Preparation of local documentation according to locally deviating standards**, even if only the format is different, always requires double work from the group company’s point-of-view, without necessarily resulting in substantive improvements.

Information such as consolidated financial statements or local annual statements are either publicly available at Siemens anyway or will be provided during the tax audit of the parent company (i.e. SAG). Thus, theoretically, the tax burdens from the annual statements, though not combined, would be available.

Local tax returns are provided only in exceptional cases upon request. This could result in a language problem since tax returns are only available in local language.

Management reports, i.e. internal reporting which are not necessarily incorporated into external reporting, but are partially derived from the same data, partially prepared manually, are available in a quantity which is hardly manageable. Using such reports is usually abandoned, if possible, since the quality cannot be verified.

In order to reduce inconsistencies and time-consuming work, we would suggest, as an alternative, that the tax data should be presented based on IFRS. Please note that, in this case, the presentation of reconciliation accounts would be necessary considering that the provided tax data reflects preliminary figures, because its establishment is prior to the tax return submission.

It is important to mention that information on entire tax burden related to a specific business or on group financing is quite limited considering an MNE with matrix structure. Besides, the effects related to holding and tax group structure which do not have any influence in the conducted operating business structure should be considered.
Another point worth mentioning is that the requirement of information on consolidated group income, tax rates and debt structure is new for transfer pricing documentation. We believe that most of the MNEs do not have this information available considering that most jurisdictions do not ask for such information for tax return purposes (e.g. Germany). Therefore, all this information must be elaborated and that would imply additional compliance costs and time-consuming work for MNEs.

For instance, it would not be burdensome for American entities to provide information on consolidated group income, because the American tax system had already implemented this requirement. Therefore, it would be unproblematic to present such information in the American transfer pricing documentation. However, in Germany – and in Europe as general – there is no such requirement and, therefore, this information is not available. This discrepancy would result in more inconsistencies on a global level. In this case, we would suggest that information on tax group could be presented.

Regarding the tax rate, if we take into account only Germany as an example, it would be already quite difficult to provide such information, mentioning that Germany has a very complex tax structure. For this reason, it turns even more complex when an MNE the size of Siemens is analyzed on a group level. The preparation of a document with the tax rates on a global basis would be an enormous effort, considering that we are located in around 190 different countries. We believe that this requirement would entail burdensome effort for taxpayers and it would not significantly improve the quality of the information provided to tax authorities.

About the requirement regarding the debt structure, we believe that a clear definition of “debt structure” (e.g. entity, country or group level?) and of the data’s nature (e.g. IFRS, local GAAP or tax value?) is prudent in order to avoid inconsistencies. With a clear definition, we believe that it would not be a problem to provide such information if it relates just to one entity. However, if the debt structure requirement should be considered on a group level, it would be, again, a burdensome effort for MNEs with matrix structure.

Another paragraph which we believe could provide more guidance for taxpayers is paragraph 75. For example, the segments “identification of material cross border transactions” and “identification of the most relevant data regarding comparables” do not define the understanding of “material” or “most relevant”. This implies the same inconsistency issues mentioned above. We noticed that the White Paper does not pay considerable attention to the economic analysis. We would like to point out that, according to our experience, tax auditors concentrate their attention more on the economic analysis. Therefore, it is very important that taxpayers receive clear guidance on this issue in order to provide sufficient information.

h) Paragraphs 77 et seq. – “Mechanics of Preparing Transfer Pricing Documentation”

We entirely agree with the affirmation of the OECD about unnecessary mechanical issues related to transfer pricing documentation preparation. In some countries, certificates by external auditors are required (e.g. Greece, India, Mexico, Argentina, Colombia etc.). These are obtained as and when required. Nevertheless, it has not been observed that the audit intensity decreased and/or that assessments were lower (refer to example India). In audits performed by external auditors, e.g. in Greece, there are even more discussions due to the apparent risk aversion by external auditors and clearly a more formulaic audit than audits performed by tax administrations.

Considering the mandatory use of consulting firms to prepare documentation, we strongly support the suggestion in the White Paper in order to incentivate the in-house work. Siemens is for the most part prepared by external advisors, often due to capacity reasons; however, in the end all material information originates from the company so that the input of the external advisors solely rests on putting together and, if necessary, interpreting the provided data. Aside from this, valuable input was provided during the setup of the concept. Additionally, we understand that the reliability of information related to tax assessment figures and to benchmark range analyses could not be increased by external auditors, given that the figures have already been certified and that the range analyses leave room for interpretation.

The issue about the use of local or regional comparables is a very important aspect to be considered in the documentation. As already mentioned, tax authorities concentrate their attention to the economic analysis. Therefore, our comments regarding this issue are more extensive. At first, we will point out the
importance of global consistency – which is strongly linked to the comparables’ issue – and then present the issues about comparable searches.

We have experienced that global consistency is a considerable challenge faced by MNEs. Taking this into account, we would like to suggest the OECD to give more emphasis on this topic. Global consistency is a big challenge for MNEs like Siemens that are present in all parts of the world because different specific local requirements contribute to work against global consistency. For example, Argentinean regulations define that the Argentinean entity must always be the tested party, without considering its functional profile. That is opposed to the OECD Guidelines which determine that the simplest entity of the transaction must be the tested one\(^5\). One of the biggest consistency problems for Siemens is the one related to profit level indicator (PLI). Some countries ask to present the result in local GAAP and other jurisdictions accept IFRS. Another topic is the one related to the years to be analyzed in the study. Some tax authorities ask for multiple (e.g. three) years’ average and some jurisdictions ask for one year (e.g. Australia and the Netherlands). As a consequence, different results are established and, therefore, inconsistencies arise. We believe that a standard and/or guidance on these issues would be strongly required.

In order to improve global documentation consistency, we propose a consistency check of information received from different countries about the same topic. This helps to reduce compliance costs for MNEs and to provide consistent information to tax authorities. As already mentioned in section three of the present statement, the BEPS work also suggests providing tax authorities with information that enhances transparency. The aimed transparency can be better achieved by improving global consistency. In this vein, after the realization of necessary changes in the OECD Guidelines, it would be prudent if the OECD Guidelines could be recognised as a binding rule by individual jurisdictions.

Regarding the benchmarking studies, according to our experience most of the tax authorities in Europe accept pan-European comparables in case there are not enough publicly listed functional data of comparable local companies. The two main exceptions in our experience are Greece and Italy which sacrifice functional comparability in order to obtain benchmarks composed exclusively of local companies. Moreover, the Italian tax authorities also disregard any comparable that has one year or more of losses, for reasons, which according to economical empirical evidence and to the OECD Guidelines, do not constitute by themselves an indication that the company is not consistent with the behaviour of the industry, and therefore, should not be the sole reason for eliminating a possible comparable.

These inconsistencies between the benchmark approach followed by the tax authorities in Greece and Italy compared to the benchmark approach followed by the rest of the European tax authorities (consistent with the OECD), constitute an important double taxation risk for MNEs operating in the region due to the fact that the different benchmark approaches result in inconsistent arm’s length ranges.

Another point worth mentioning refers to the lack of information which listed companies in Europe have to show in the annual report compared to the requirements in other regions such as North America and Asia. The lack of publicly available information prevents companies operating in Europe from performing additional benchmark screenings (i.e. marketing expenses to sales, R&D to sales, etc.) and comparability adjustments (working capital intensity adjustment, cost of capital adjustment) which would increase the comparability between the tested party and the comparable companies, leading to better and more consistent comparability analyses. The usage of additional benchmark screenings and comparability adjustments is commonly done in countries like the USA and South Korea.

We face problems regarding establishment of the ranges as well. The interquartile range is differently calculated in different jurisdictions. For example, the Canadian or Columbian tax authorities accept only a full range of comparables results’ when evaluating a tested transaction and most of the European jurisdictions apply interquartile ranges.

The scenario presented above encourages MNEs to realize transfer pricing adjustments and that is what MNEs aim to avoid. The best scenario would be if one analysis could be used for all local documentations. Unfortunately, in reality, that is not possible because of the issues mentioned above. The OECD Guidelines had already pointed out the need of a universal formula in order to achieve global

\(^5\) OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, Chapter III, Section A.3.3, Paragraph 3.18, p. 113 (July 2010)
consistency. However, this goal is difficult to achieve considering that each tax authority accepts different justifications in different levels of detail.

Considering the necessity of translating the documentation, the Siemens documentation approach is generally in English language. However, it is evident that even fewer local tax authorities accept this approach. More and more, local language is demanded. It would be helpful if the OECD could establish a clear statement determining that, as a general rule, the documentation could be provided in English and that the translation of specific parts of the documentation into local language should be justified by local tax authorities.

We strongly support the suggestion of the OECD White Paper regarding materiality standards when referring to the need of materiality threshold establishment. As already mentioned above, it is unrealistic for MNEs to document all transactions. Therefore, an official threshold in this regard would be very helpful for MNEs.

i) Paragraphs 78 et seq. – “Development of a Coordinated Approach to Documentation”

The intention of the Coordinated Documentation Approach is in accordance with our SieDoc as well. It is worth mentioning that the present comments are drafted from the taxpayer’s perspective and that the onus to prove that transfer prices are at arm’s length is on the taxpayer. However, we aim to contribute to the improvement of transfer pricing documentation in order to fulfil both interests, from taxpayers and tax authorities.

3b) OECD White Paper’s Transfer Pricing Documentation Approach

a) Paragraph 82

Table 1: Coordinated Documentation Approach – Masterfile

We believe that the requirements of the overview of the MNE and of the description of the MNE’s business are appropriate. However, considering all the requirements of the OECD White Paper transfer pricing documentation approach, we believe that it might be burdensome for MNEs like Siemens with matrix structure.

OECD lists some requirements to be presented under the description of the MNE’s business. It would be helpful if clear definitions and/or thresholds could be established. For instance, OECD could provide clear definitions of “important drivers”, “important related party service arrangements”, “important business restructuring transactions”. OECD also asks for the description of important business restructuring transactions which occurred during the last five years. Aiming for documentation simplification, we would suggest using the description of business restructurings that occur in the particular year instead of during the last five years.

Some requirements can be found in internal documentations of the MNE. Therefore, we believe that the additional work to prepare a new documentation repeating the same information already presented in other internal reports is dispensable. We would like to suggest, as a general practice for the transfer pricing documentation, when applicable, to annex reports and guidelines of the MNE which contains information required by the tax authorities. Instead of repeating the same information of internal reports and documentations of the MNE in the sections of the documentation, we suggest to make a reference in the section to the related part of the annex which contains the information required. Given this situation, it would minimize the MNE’s efforts and full tax authorities’ expectations as well.

Regarding the requirements of the section “MNE’s intangibles”, we believe that the compilation of a list containing all intangibles of the group and details as to which entities are entitled to the returns from relevant intangibles is quite complicated for an MNE as big as Siemens. It would be an enormous effort for the MNE – considering, of course, the size of the group – to compile such a list. For example,

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\(^6\) OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, Chapter I, Section C.2, Paragraph 1.22 and ff., p. 38 (July 2010)
Siemens holds roughly 57,300 granted patents worldwide. A definition of what would be considered as material for tax authorities and an establishment of a threshold would be very helpful.

Additionally, we understand that a list of intercompany R&D agreements would be redundant, considering that this information can be obtained from the transactions’ input.

An example for a burdensome requirement is the one in the section “MNE’s intercompany financial activities” which asks for the description of material intercompany loans and other financial arrangements. For the provision of this information, a separate documentation would be necessary. Therefore, an establishment of a threshold for this requirement would be prudent as well.

In order to avoid misunderstandings, we believe that a clear definition of “MNE’s consolidated accounts” is needed. It would be better to specify what type of information is required (e.g. annual consolidated financial statement, consolidation documentation or local financial statements before consolidation).

Another important issue to mention is that the OECD White Paper suggests presenting MNE’s applicable APAs. Theoretically, this is an interesting initiative, but the practice shows that it would not help to improve compliance, considering that an MNE does not realize enough APAs in order to enable a considerable reduction of transfer pricing risk. We would suggest to present information on especially unilateral APAs in the local file.

b) Table 2: Coordinated Documentation Approach – Local file

We would like to point out that the proposal of the OECD White Paper does not refer in detail to the economic analysis. As already mentioned, the economic analysis is the most important section for the concerned parties, considering that financial adjustments will arise from the economic analysis. In this regard, we can affirm that this is a considerable issue for tax authorities and MNEs. Therefore, we understand that this subject could be more explored by the OECD in order to provide more guidance to both tax authorities and MNEs.

In advance, we present some challenges faced by Siemens regarding the economic analysis. One challenge is the analysis of tested parties with hybrid functions. Segmented financial data by function is hardly available and the efforts to obtain them are not reasonably justified for every case. It becomes quite difficult to obtain profitability data on transactional level from the IT system when the reporting entity performs different functions. IT systems usually have been designed for business purposes targeted at the performance of the company in different markets, whereas for TP purposes the financial statements should be segregated by type of function. In absence of segmented financial data, a weighted benchmarking range can be regarded as a solution. In other cases, segmented financial statements might possibly be manually prepared.

Additionally, justification has to be provided when tested party’s results are outside of the range. Assuming that at the time the transfer prices were set (planning/budgeting phase), they were at arm’s length. This may be in question, when the report is prepared based on actual figures. An analysis is needed to find out if the transfer prices are the drivers of the deviations.

c) Paragraph 83

The OECD White Paper also alludes to the fact that there are still a reasonable number of issues that should be analyzed in order to improve the simplification or streamlining of the transfer pricing documentation requirements.

The first point listed by the OECD White Paper regards the timing issue. That is another challenge faced by some of our entities. Due to the burdensome local specific transfer pricing documentation requirements, many entities struggle with tight deadlines for the completion of the documentation. Siemens usually allows all units to prepare the documentation within one year after the fiscal year to be documented as long as there are no earlier mandatory local deadlines. The documentation must be prepared annually. As we have positive experiences with this, we would suggest defining as a general rule that the documentation should be delivered one year after the fiscal year end.
The presentation of a comprehensive documentation reflects the *bona fides* of the MNE, thus, it should assure penalty protection. In the same vein, we understand that penalties related to disputes should not be applied. Given these penalties, MNEs avoid to initiate legal procedure in order to discuss possible double taxation. As a result, double taxation might occur. As such, we suggest that these procedures should be regulated in double taxation agreements.

4) Conclusion

According to all considerations presented above, it can be concluded that there are still some important topics which deserve more attention from the OECD in order to provide guidance and clearance for tax authorities and MNEs. Considering the aggregation level, some tax authorities require the analysis of transactions individually, which increases documentation complexity. It would be prudent if the level of the transaction aggregation could be defined in a consistent way with the nature of the business of the MNE. Regulation about documentation update – specially benchmarking study – should be also specified in detail.

We assume that MNEs must face some critical challenges, like: difficulties in achieving global documentation consistency and to fulfill high complex requirements imposed by local documentation rules. As such, this scenario obliges MNEs to elaborate an approach which simplifies the transfer pricing documentation process in order to reduce costs and unnecessary time-consuming work and to fulfill tax authorities’ expectations. Our experience shows that our redefined documentation approach seems to be an approach which largely can comply with these issues. Additionally, it might be appropriate in some circumstances that local tax authorities could be more linear in accepting the available information provided by MNEs in case the specific required information cannot be presented (e.g. segmented financials in some circumstances) and that tax authorities of different jurisdiction contact each other and make a compromise regarding documentation information compliance. From a practical standpoint, these procedures would strongly contribute to consistency improvement.

Throughout our comments, we have presented suggestions to leave transfer pricing documentation requirements less burdensome and more targeted, as also aimed by the BEPS work. The documentation simplification would not damage tax authorities’ interests, considering that the assessment of the arm’s length nature of tested transactions will still be possible. We also believe that strengthening the cooperation between tax authorities and taxpayers would improve the transfer pricing documentation process.

It is worth mentioning that we consider the efforts to prepare such a complex and detailed documentation with the level of analysis expected by the tax authorities as disproportionate. According to our experience, tax auditors concentrate their attention more on the benchmarking study and whether the results of the tested party are within the range. The analysis of the remaining documentation is not as intensive as the one regarding the economic analysis, and, therefore, the high complexity level of the whole documentation cannot realistically be justified. We understand that tax authorities should only require information that is directly related to the economic analysis which verifies the arm’s length nature of the related party transactions.

The expected outputs of the BEPS and of the White Paper include: a) changes in the OECD Guidelines and in the OECD Model Treaty, b) recommendations for local law rules, and c) the development of novel approaches such as multilateral tax instruments. Most of the expected outputs will require significant work at the individual country level in terms of determining whether, when and how to implement OECD's recommendations.

Nowadays, it is important for consistency and compliance that transfer pricing documentation presents the "big picture" of MNE’s business and not only a "snapshot" of each operation. It would be helpful if local tax authorities accept documentation based on a global perspective instead of only on a local perspective. Another help would be if all jurisdictions require similar and consistent transfer pricing related information. The OECD also supports such practice (BEPS' and White Paper\(^7\) and White Paper\(^8\)), given that the

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\(^8\) OECD, “White Paper on Transfer Pricing Documentation”, Public Consultation, section 1, paragraph 2, (July 2013)
BEPS states that divergences of countries’ transfer pricing documentation requirements lead to significant administrative costs for business. Additionally, it would be prudent if the OECD could establish a transfer pricing documentation model that focuses on the most significant controlled transactions.

We would like to point out that the outlined programme of work on simplification and streamlining of transfer pricing documentation requirements is consistent with what we consider the right path to ultimately make transfer pricing compliance simpler and more straightforward with more focus on useful information, while also reducing compliance costs for MNEs. However, in our opinion, it still leaves room for considerable improvements. We believe that if our presented suggestions could be put in practice, they will result in a significant reduction of costs and effort for tax payers, while at the same time obtaining a much more concise documentation which will collaborate with tax authorities’ reviewing activities.

Therefore, we highly appreciate that the White Paper could improve tax authorities’ awareness of taxpayers’ difficulties. Transfer pricing documentation should enable tax administrations to identify tax risk. But it should not lead to taxpayers spending a disproportionate amount of compliance effort. Consequently, transfer pricing documentation should only provide necessary information while tax administrations could reserve the right to require details at any moment. Otherwise, it would be more difficult for the tax authorities to fully review the massive transfer pricing documentation and the preparation might increase the compliance costs of taxpayers. Therefore, a) tax authorities should largely require information that is directly related to the economic analysis which verifies the arm’s length nature of the related party transactions, b) the requirement of transfer pricing related information should be similar and consistent in all legislations, c) the level of the transaction aggregation should be defined in a consistent way with the nature of the business of the MNE, and d) if the previous proposals are enacted, they will result in a significant reduction of cost and effort for the tax payer, while at the same time obtaining a much more concise documentation which will facilitate tax authorities’ reviewing job.

That being said, local tax authorities would always seek to protect their domestic interest in the first place. Developing countries and developed countries may hold different views on a number of topics that will give rise to diversified transfer pricing documentation approaches and requirements. It remains to be seen if answers to these “hot controversial topics” (e.g. market premium) can be achieved; otherwise a globally consistent transfer pricing documentation approach may still be on taxpayer’s wishing list. In the short term, as it seems likely hard to reach a consensus on many tax divergences, a unified approach may not necessarily be achieved. In the long run, it is indispensable to reach a global transfer pricing documentation approach basing on tax authorities seeking common points while reserving difference.

We look forward to the opportunity to continue to provide input on these important issues as the process moves forward. Thank you again for the opportunity to share our ideas and issues with the OECD’s White Paper on Transfer Pricing Documentation.

In the meantime, if you have any questions about the submission, please contact:

Dr. Sven Bremer (Global Head of Transfer Pricing) at +49 89 636 30242 (or mailto:sven.bremer@siemens.com)
5) Appendix – Sample screenshots of Siemens' modular documentation:

Overview of the XY Industry

Key Messages
Due to considerable consolidation in recent years, there is heightened competition between major players in the market. With a market share of x%, the group is currently in the third position in the respective market. The main global competitors of the group are xxx

 XY Industry

Total market size as of 20xx
€x

Market Distribution 20xx

Sales Distribution 20xx

Overview of the Value Chain

Key Messages
The product business is generally characterized by:
- The main IP holding Entrepreneur (HQ)
- Contract R&D Providers and Contract Manufacturers working on behalf of the Entrepreneur
- Local Distribution Entities
- R&D as well as manufacturing is centrally performed in the respective headquarters, which serve as headquarters.
- Some services (contract R&D or contract manufacturing) may be provided by other entities. Third party contract manufacturers are also employed on occasion.
- Such activities are performed on behalf of the headquarters.
- RCs distribute finished products on a buyout basis from the respective headquarters.
- Royalty profits are earned by the distributing RCs and the internal service providers.
- Residual profits are accumulated at the respective headquarters.

Illustration A: value chain

- Limited Functions & Roles
- No Strategic Intangible Assets
- No Strategic Planning Functional Roles
- Production & R&D Responsibility
- Strategic Decision
- Strategic Planning
- Strategic Marketing
- Strategic Intangible Assets
- Residual Profit / Loss
- Sales & Distribution
- Product Marketing
- After-Sales Service
Local Industry Analysis - Sub

Key Messages

<table>
<thead>
<tr>
<th>FY11</th>
<th>Market Volume (in €)</th>
<th>Total Market Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>xx</td>
<td>xx</td>
<td>xx%</td>
</tr>
</tbody>
</table>

Competitive situation in the local market:
[Description of the competitive situation in the local industry]

Local key drivers of profitability:
[-]

Local market characteristics:
[Number of market leaders, local growth rates, etc.]
[-]

[Executive Summary of Local Industry Analysis - please use references to existing documents as appropriate]

Local Company Analysis - Sub

Key Messages

<table>
<thead>
<tr>
<th>History and Background</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Brief description of the history of Sub (e.g. incorporation date, mergers, mini mergers, spin-offs)]</td>
</tr>
<tr>
<td>[Number of employees involved in distribution, sales, production, R&amp;D, administration, etc.]</td>
</tr>
<tr>
<td>[Ownership structure of Sub]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business activities of Sub</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Brief summary of the business activities the Sub is involved in. Additionally, market share of Sub and market trends relevant for Sub if available]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Organizational Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Brief summary of the organizational structure of Sub shown on the following slide]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Most important products</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Brief description of the products shown in the respective table on the right]</td>
</tr>
<tr>
<td>[Brief description of product trends if available]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Most important suppliers</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Brief description of the suppliers shown in the respective table on the right]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Most important customers</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Brief description of the customers shown in the respective table on the right]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Most important competitors</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Brief description of the competitors shown in the respective table on the right]</td>
</tr>
</tbody>
</table>

[Executive Summary of Local Company Analysis:
Business activities Sub is involved in, categories of transactions with regard to the value chain overview in Module C, description of these transactions (entrepreneurial/transactional), general conclusions]
### Distribution - Function and Risk Analysis

**Summary - Transfer of Tangible Goods for Distribution**

<table>
<thead>
<tr>
<th>Transaction Type</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affiliated Company A (legal entity):</td>
<td>Participation/Responsibility</td>
</tr>
<tr>
<td>xxx</td>
<td>0 None</td>
</tr>
<tr>
<td></td>
<td>1 Low</td>
</tr>
<tr>
<td></td>
<td>2 Medium</td>
</tr>
<tr>
<td></td>
<td>3 High</td>
</tr>
<tr>
<td></td>
<td>4 Full</td>
</tr>
<tr>
<td>Affiliated company B (legal entity)(yes)</td>
<td></td>
</tr>
<tr>
<td>Distribution Entity</td>
<td></td>
</tr>
</tbody>
</table>

#### 2. RISK JURIS**

<table>
<thead>
<tr>
<th>Risk</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Inventory risk</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>2. R&amp;D risk</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>3. Warranty Risk &amp; Product Liability Risk</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>4. Volume Risk (risk arising from the impact of demand on the quantity of a product as opposed to the impact on the price of the product)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>5. Price Risk (risk arising out of adverse movements in the world prices)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>6. Market risk</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>7. Credit (receivables that can no longer be collected) or &quot;expense&quot; in accounting</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>8. FOREX risk (Foreign Exchange Risk)</td>
<td>3</td>
<td>1</td>
</tr>
</tbody>
</table>

#### 3. ASSETS USED

<table>
<thead>
<tr>
<th>Assets Used</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Tangible Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manufacturing Equipment</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Office &amp; Office Equipment</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Technical Infrastructure (incl. IT)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Accounts Receivable, Inventory</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>b) Intangible Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ownership of Intellectual property (designs, patents, trademarks, Know-how and copyright) relating to manufacturing/service</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Distribution Network</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Local Customer Lists</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>

---

### Distribution - Benchmarking Approach

**Key Messages**

- The general approach to benchmarking is to choose the affiliate that is at the simpler end of the intercompany transaction. Usually, this is the affiliate that is identified as performing routine functions only.
- Entities at Level 3 perform typical distribution and related functions. Among the most important ones are sales, marketing and customer services. As the most appropriate method for testing the distribution activities of these affiliated entities of the xxx the TNMM was selected.
- Compared to Level 1 and Level 2 entities Level 3 entities are different to the extent that they always perform routine functions. In other words, they are always at the less complex and low risk end of the intercompany transaction. Therefore, under normal circumstances, they are only entitled to a routine profit.
- The functional scope of Level 3 entities in all transactions types (e.g. A, E, F, and G) is always very similar. Under all these transaction types they purchase merchandise from related parties (predominantly Level 2) and resell it to third parties or other related Level 3 entities.
- The selection of the appropriate transfer pricing method for the transaction under review is summarized in the following table. The level 2 BCC function is reviewed by testing the results of affiliated distribution entities involved in transactions with the BCC. As the most appropriate method for testing the distribution activities of these affiliated entities of the BCC the TNMM was selected.
- Following international practice and standards we have chosen the interquartile range as the arm's length range. The interquartile range represents the middle 50% of results observed among the comparable companies, so as to reduce the influence of outliers into our results. Information available for our comparable companies is limited, and we have not been able to identify companies that are completely identical to the tested party. Thus, the use of the interquartile range increases reliability and provides a more reliable basis for comparison than the entire range.

**Selection of the most appropriate method**

<table>
<thead>
<tr>
<th>Methodology</th>
<th>Selection Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUP</td>
<td>No comparable uncontrolled transactions were found.</td>
</tr>
<tr>
<td>RPM</td>
<td>Although unrelated comparables were identified that are sufficiently similar to the company under review, the RPM cannot be used, as sufficient financial data could not be obtained. The CPLM is most appropriate in cases involving manufacturing, assembly, or the provision of services. Therefore, the CPLM was deemed not appropriate to determine arm's length intercompany transfer prices for the distribution functions.</td>
</tr>
<tr>
<td>CPLM</td>
<td>The PSM is largely used in cases where arm's length parties involved in the transaction are to be tested only and contribute with significant intangible assets. As there is an ET Group entity involved in the transaction under review performing routine functions the PSM was deemed not appropriate.</td>
</tr>
<tr>
<td>PSM</td>
<td>As a result of not being able to apply any transactional method for the distribution function of the tested party, by default the TNMM remains as the transfer pricing method to be applied. The operating margin used as profit level indicator to test whether the transfer prices established are at arm's length.</td>
</tr>
</tbody>
</table>

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Page 19 of 21
Distribution – Economic Analysis

Key Messages

Intercompany Transaction under Review
Transaction Group: Distribution
Transaction Volume (aggregated): [xxx]
Transfer Pricing Method applied: TNMM
Comparable Set: [xxx]

OMs achieved in the transaction:

<table>
<thead>
<tr>
<th></th>
<th>x.xx%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x.xx%</td>
</tr>
</tbody>
</table>

Benchmarking Study

<table>
<thead>
<tr>
<th></th>
<th>Weighted Average OM 2008 to 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparables</td>
<td>xx</td>
</tr>
<tr>
<td>Minimum</td>
<td>x.xx%</td>
</tr>
<tr>
<td>25th percentile</td>
<td>x.xx%</td>
</tr>
<tr>
<td>Median</td>
<td>x.xx%</td>
</tr>
<tr>
<td>75th percentile</td>
<td>x.xx%</td>
</tr>
<tr>
<td>Maximum</td>
<td>x.xx%</td>
</tr>
</tbody>
</table>

Result of the Ann’s Length Test:
[Comparison of the PLI achieved to the interquartile range of the benchmarking conducted]
[If applicable reasoning to support a PLI achieved which does not lie within the interquartile range]
[Conclusion if the PLI achieved is at arm’s length, if applicable]

Local Company Financials and Intercompany Transactions

Profit and Loss Statement

- P&L_JFRS
- P&L_Local GAAP

Balance Sheet

- Balance Sheet_JFRS
- Balance Sheet_Local GAAP

Intercompany transactions

IC-Transaction Volumes

1 – Local Company Financials
This slide shows the profit and loss statement and the balance sheet of the Sub in IFRS or local GAAP embedded as .xls, .pdf etc. objects.

2 – Intercompany Transactions
This slide shows the intercompany transactions of the Sub embedded as .xls, .pdf etc. objects.
### Update Overview and Instructions

Check the box approach has been used in order to give an overview of the Modules requiring an update for FY 20xx+ or not. This following table provides an overview of the Modules/Appendices subject to local update for the transfer pricing documentation of FY 20xx. Please note that material changes in new information regarding the Core Modules B, C, E and H (if any) have been incorporated already here or the Modules are excluded (no changes).

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
<td><strong>Module A - Summary</strong></td>
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<td><strong>Module B - Industry Analysis</strong></td>
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<td><strong>Module C - Division Analysis</strong></td>
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<td><strong>Module D - Local Industry &amp; Division Analysis</strong></td>
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<td><strong>Module E - Transactions</strong></td>
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<td><strong>Module F - Results of Benchmarking Analysis</strong></td>
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<td><strong>Manufacturing</strong></td>
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<td><strong>Project/Management (Construction, Business)/Engineering</strong></td>
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<td><strong>Contract R&amp;D</strong></td>
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<td><strong>Module G - Local Company Financials</strong></td>
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<td><strong>Module H - Generic Description of Functions and Risks</strong></td>
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<td><strong>Module J - Extraordinary Business Transactions</strong></td>
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<td><strong>Appendix A - Transaction Volumes</strong></td>
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