

# **Recent Developments in Global Transfer Pricing Documentation**

**Shikha P Gupta  
General Electric, India  
December 2008**

# Global Trends in Transfer Pricing Documentation

*Recognition of documentation challenges apparent in national and pan regional/ global initiatives*

- (1) OECD discussion drafts on comparability and profit methods
- (2) Multilateral initiatives to harmonize documentation eg EU TPD
- (3) Countries introducing APA regimes and some issuing supplemental guidance on specific transactions

*while*



*countries continue to introduce and expand documentation requirements!*

- (1) Developments in financial and tax disclosure requirements
- (2) New and expanded documentation rules in a growing number of countries
- (3) Variations in country documentation rules and interpretations

# Financial and Tax Disclosure Requirements

(1) Enhanced disclosure requirements driving transparency in MNEs transfer pricing positions

(2) Needs underlying cross functional processes to manage accurate disclosures

Examples: FIN 48, International Accounting Standard 24, revised international standard on auditing 550

(3) Documentation effectively required in some instances without explicit statutory documentation obligation

Examples: Australia, Japan, Korea, Thailand, Israel

(4) Various countries require certified disclosures in addition to formal TP study

Examples: India, Taiwan, Mexico,



imagination at work

# New and Expanded TP Documentation Guidelines

- (1) ~ 37 countries have effective transfer pricing documentation requirements
- (2) Aruba, Sri Lanka, Turkey, Romania, Spain, Kazakhstan, Indonesia approved new documentation guidelines in 2008
- (3) China, Russia, France to issue new guidelines soon
- (4) Need to assess company wide annual compliance volume and establish statutory calendar
- (5) Establish processes and priorities for renewing existing documentation



**“Just because I can leap tall buildings in a single bound does not mean I can understand transfer pricing documentation rules”**

# Variations in Country Rules...Examples

**(1) Definition of related party:**

- In Spain, transactions with entities in which direct stakeholding is 5% or (1% in case company is listed) considered related
- In Turkey, local distributor of a foreign company is automatically deemed to be related to foreign company

**(2) Functional analysis: Spain, Romania require documentation relating to the group including functions of various group entities in addition to that relating to tax payer.**

**(3) TP Method: Korea recognizes Berry Ratio Method in addition to 5 principal methods**

**(4) Tested party: In Argentina, local entity to always be the tested party. Hence foreign company as tested party not recognized**

**(5) Comparables analysis and arm's length price: In Brazil, analysis based on formulaic approach vs comparables analysis**

# Variations in Country Rules...Examples

- (6) **Years of analysis:** In India, single year analysis vs multiple year range accepted in many other countries
- (7) **Profit Level Indicator:** In Taiwan, Net Cost Plus Mark-up approved as PLI recently post amendment in 2008
- (8) **Arm's length price:** In India, arithmetic mean used as arm's length price vs IQR/ another statistical range accepted in many other countries
- (9) **Domestic transactions:** Some countries (Turkey, Spain...) also require documentation for domestic related party transactions



# OECD Discussion Draft on Comparability

- (1) OECD's draft on comparability (May 2006) recognizes,
- that cost of information is a real concern for SMEs;
  - that truly unique transactions where finding comparables is difficult are increasing
  - limited access to public information in some markets
    - use of foreign source comparables where taxpayers perform regional search or lack domestic comparables
    - need for developing guidance on principles and concepts for performing comparability adjustments



## Currently,

- (2) Pan regional approaches not well embraced by tax authorities leading to sizeable costs and effort by taxpayers on seeking local comparables
- (3) Finding comparables difficult for transactions such as specialized captive services, loan and guarantee fee transactions

# OECD Draft on Transactional Profit Methods

- (1) OECD's discussion draft on transactional profit methods issued in Jan 2008:
  - recognizes widespread application of the TNMM both by taxpayers and by tax authorities; and
  - recognizes that the TNMM may be more appropriate in more instances than originally contemplated by the OECD and that traditional transactional methods may not have as wide an application;but
  - states the general preference for transactional methods where they can be applied equally reliably

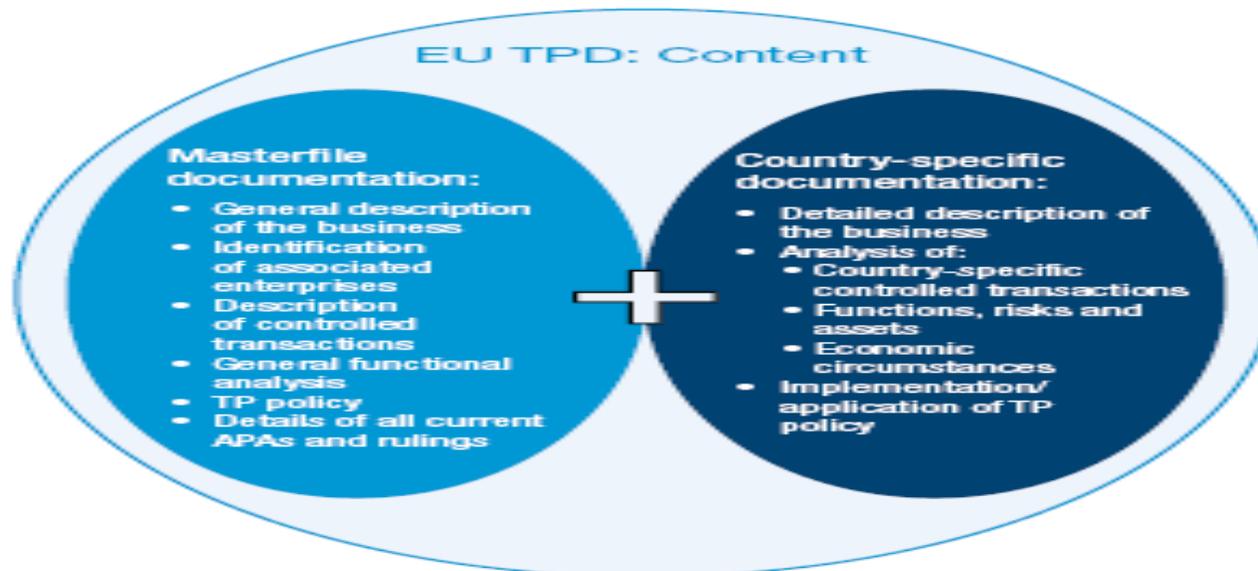
## Recently,

- (2) AAT ruling (July 2008) for Roche (Australia) reinforces the preference for traditional transactional methods
- (3) Canada tax court decision (June 2008) for Glaxo illustrates use of independent prices in preference of gross margin analysis or company wide net margin analysis



# Multilateral Initiatives

- (1) European Council approved EU TPD in 2006; PATA members introduced documentation package in 2003...offer standardization but principal result is to largely add separate country requirements
- (2) Above multilateral initiatives not viewed by taxpayers as being effective in reducing burden on their current documentation practices
- (3) Other recent developments include Tri lateral alliance IBSA (India-Brazil-South Africa) that propose to undertake joint approach on transfer pricing



# Other Global Developments

## APA Regimes

- APA programs exist in ~ 20 countries
- Portugal, Turkey, Ecuador introduced APA regimes effective 2008
- Malaysia, Sweden, Finland, Norway considering/ proposing introduction of APA regimes in near term

## Supplemental Guidance on specific transactions

- Australia issued draft note on inter company financial transactions
- Singapore issued draft guidelines related party services and loans
- Japan proposed amendments for rules on inter company services; China issued circular on service charges
- Korea, China introduce cost sharing rules...



# In Summary,

At an individual country level:

- Documentation and disclosure requirements piling up burden for taxpayers
- Divergence in rules at country level is greater not s

At pan regional/ global level:

- OECD projects illustrate documentation challenges but practical solutions awaited as industry responds with comments
- EU and PATA's initiatives on documentation do not effectively ease taxpayers' burden



**Taxpayers' challenged with the need to have resources and processes to manage documentation for compliance, consistency and risk mitigation**

**Thank You!**