



GRA

GHANA REVENUE AUTHORITY

Practice Note on Transfer Pricing Regulations, 2020 (L.I. 2412)

Practice Note Number: **DT/2021/003**
Date of Issue: **15th April, 2021**

TABLE OF CONTENT

1.0	TAX LAW.....	1
2.0	INTERPRETATION.....	1
3.0	THE PURPOSE OF THIS PRACTICE NOTE	1
4.0	APPLICATION OF THE LAW	2
4.1	Application of Regulations.....	2
4.2	Comparability.....	2
4.2.1	Characteristics of the goods, property or services transferred.....	4
4.2.2	Functional analysis.....	5
4.2.3	Terms and conditions of relevant arrangement.....	10
4.2.4	Arm's Length Range and Statistical Analysis.....	12
4.3	Transfer Pricing Methods.....	12
4.3.1	Comparable Uncontrolled Price (CUP) Method.....	13
4.3.2	Cost Plus (CP) Method.....	16
4.3.3	Resale Price (RP) Method.....	19
4.3.4	Transactional Profit Split (PS) Method.....	21
4.3.4.1	Splitting using a contribution analysis.....	24
4.3.4.2	Splitting using a residual analysis.....	25
4.3.5	Transactional Net Margin Method (TNMM).....	28
4.4	Services between persons in a controlled relationship.....	31
4.4.1	Service Arrangements.....	31
4.4.2	Shareholder Activities.....	31
4.4.3	Duplicated Services.....	32
4.4.4	Incidental benefits.....	33
4.5	Arrangements involving intangibles property.....	34
4.6	Cost Contribution Arrangements	42
4.7	Financing Arrangements.....	46
4.8	Business Restructuring.....	51
4.9	Associated persons to file details of arrangements.....	56

4.9.1	Transfer Pricing Returns.....	56
4.9.2	Regulation 11(4).....	57
4.10	Details of documentation.....	57
4.11	Country-by Country (CbC) Report.....	58
4.12	Simplified Approach.....	58
4.12.1	General exemptions from maintain contemporaneous documentation.....	59
4.12.2	Low Value Adding Intra-Group Services.....	63
4.12.3	Technology Transfer Agreements.....	67

1.0 TAX LAW

The Commissioner-General (CG) of the Ghana Revenue Authority (GRA) is empowered under Section 100 of the Revenue Administration Act, 2016 (Act 915) to issue Practice Notes setting out CG's interpretation of provisions of tax laws. Accordingly, this Practice Note provides the Commissioner-General's interpretation of the Transfer Pricing Regulations, 2020 (L.I. 2412).

2.0 INTERPRETATION

In this Practice Note, unless the context requires otherwise, the word "Regulations" means the Transfer Pricing Regulations, 2020 (L.I. 2412) and the word "Act" means Income Tax Act, 2015 (Act 896).

Definitions, interpretations and expressions used in this Practice Note, unless the context requires otherwise, have the same meaning as they have in the Regulations, the Act and any other Tax law.

The Regulations shall be applicable, commentaries in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) and United Nations Manual on Transfer Pricing for Developing Countries (UN Manual) **may** provide guidance where the Regulations does not provide same.

3.0 PURPOSE

The purpose of this Practice Note is to give clarity and provide guidance to Officers of the Ghana Revenue Authority, Tax Practitioners, Consultants, Taxpayers and the General Public on the applicability of the Regulations to arrangements between persons in a controlled relationship; and the procedures to be followed in the determination of arm's length prices for such arrangements.

It also sets out the views of the Commissioner-General on documentation and other practical issues that are relevant in setting and reviewing arrangements entered into between persons in a controlled relationship to ensure consistency in the implementation of the Regulations.

This Practice Note is not intended to be a prescriptive or an exhaustive discussion of every transfer pricing issue that may arise. Each arrangement would be examined based on the facts and circumstances surrounding the arrangement.

4.0 APPLICATION OF THE REGULATIONS

4.1 Application of Regulations

The Regulations apply to an arrangement between persons who are in a controlled relationship including, arrangements between:

- a) an individual and a relative of the individual;
- b) partners in the same partnership;
- c) an entity and an associate of the entity;
- d) a taxpayer and another taxpayer who are in an employment relationship;
- e) a permanent establishment and its head office;
- f) a permanent establishment and other associates of that permanent establishment or its head office;
- g) a settlor, trustee and beneficiary; or
- h) a person, not being an employee, acting in accordance with the directions, requests, suggestions, or wishes of another person whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions, or wishes are communicated to that other person.

For the purposes of this Practice Note a person is an associate of an entity where,

- a) the person participates either directly or indirectly through one or more interposed entities in the management or control of the entity; or
- b) management or control of the person and the entity is either directly or through one or more interposed entities, exercised by the same persons.

For purposes of this Practice Note,

“control” in relation to an entity, means holding directly or indirectly through one or more interposed entities, twenty-five percent or more of the voting power or rights to income or capital of the entity.

4.2 Comparability

Article 9 of the OECD and UN Model Tax Conventions provides the basis for the application of the arm's length principle. The Article provides that;

"Where conditions are made or imposed between two associated enterprises in their commercial or financial relations which differ from those which would have been made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of the conditions, have not so accrued, may be included in the profits of the enterprise and taxed accordingly"

Comparability plays a central role in the overall application of the Arm's Length Standard (ALS). A taxpayer would have to conduct a comparability analysis in order to determine whether the arrangement conforms to the Arm's Length Standard.

The term "comparability analysis" is used to designate two distinct but related analytical steps:

1. An understanding of
 - a. The economically significant characteristics and circumstances of the controlled arrangement (i.e., the arrangement between persons in a controlled relationship), and
 - b. the respective roles and responsibilities of the parties to the controlled arrangement. This is generally performed through an examination of "comparability factors".
2. A comparison between the conditions of the controlled arrangement, as described in 1 above, and those in uncontrolled arrangements (i.e., arrangements between independent persons) taking place in comparable circumstances. The latter are referred to as "comparable uncontrolled arrangements".

A practical difficulty in applying the ALS is that persons in controlled relationship may engage in arrangements that independent persons would not undertake. Where independent persons do not undertake arrangements of the type entered into by persons in a controlled relationship, the ALS could be difficult to apply because there is little or no direct indication of what conditions would have been established by independent persons.

Where there is no information on uncontrolled arrangements from the same geographic market as the controlled arrangement, it may be possible to use comparable uncontrolled

arrangements from another geographic market. A determination of whether comparable uncontrolled arrangements from other markets are reliable would be made on a case-by-case basis taking into account the extent to which they satisfy the comparability factors and represent the most reliable choice of the method and the tested party. Such a comparable arrangement sometimes may need to be adjusted ("comparable adjustment") to eliminate or reduce the differences between that arrangement and the controlled arrangement.

In other instances, where there is no uncontrolled comparable arrangement for a controlled arrangement, it may be necessary to use approaches not depending directly on comparable arrangements to find an arm's length price. It may also be necessary to examine the economic substance of the controlled arrangement to determine whether its conditions are such that independent parties in comparable circumstances would have agreed to such conditions.

In ascertaining whether controlled and uncontrolled arrangements are comparable, a number of attributes of the arrangements would be taken into account.

These attributes, which are usually referred to as the comparability factors, include;

- a) Characteristics of the goods, property or service transferred;
- b) Functions performed by the parties taking into account assets employed and risks assumed;
- c) Contractual terms of the arrangement; and
- d) Economic circumstances.

4.2.1 Characteristics of the goods, property or services transferred

Differences in the specific characteristics of goods, property or services can often explain the differences in their open market value. Comparisons of these characteristics may be useful in determining the comparability of controlled and uncontrolled arrangements or activities. Focus should be placed on the attributes or characteristics that are valued by customers, including but not limited to the intangible benefits of design, trademark and perceived quality.

For example, depending on the nature of the arrangement, the comparability analysis should take into account the differences between

- i. patents and know-how (i.e. trade intangibles) which relate to the production of goods and the provision of services and are typically developed through research, and
- ii. trademarks and trade names that guide in commercial exploitation (i.e. marketing intangibles).

Summary of the relevant characteristics of goods, properties and services

Goods and Tangible Property	Intangible Property	Services
Physical Features of the property	Form of the Arrangement (e.g., license or sale)	Type of services
Its quality and reliability	Type of property (e.g., patent, trademark, or know-how)	The nature and extent of services
The availability and volume of supply	Duration and degree of protection	Duration
Trademarks incorporated into the goods or tangible property	Anticipated benefits from use	Anticipated benefits from the service

4.2.2 Functional analysis

Functional analysis is the process of identifying the economically significant activities and responsibilities undertaken, the assets used or contributed, and risks assumed by the parties to the arrangements.

The compensation for the transfer of property or services between independent persons will usually reflect the functions that each person performs, taking into account the risks assumed and the assets used. In determining whether two arrangements are comparable, the functions performed, assets used, and risks assumed by the independent parties should be compared to those undertaken by the persons in a controlled relationship.

It can be assumed that the operation of the market in an 'arm's length' context results in the highest profit potential being earned by those persons that assume economically

significant risks, and those that provide unique and valuable contributions (such as scarce capabilities or unique and valuable intangibles).

If the parties in a controlled relationship are transacting in relation to products for which there is an open market (e.g. quoted markets for securities, commodities or financing), it may only be necessary to conduct a brief functional analysis. In complex cases, for example, where intangibles are involved, the analysis needs to be more thorough and rigorous.

a) Functions performed

Functions performed are the activities that are carried out by each of the parties to the arrangement. In conducting a functional analysis, economically significant functions must be considered. Economically significant functions performed by a party would add value to an arrangement and this should fetch higher anticipated returns for the party performing such functions. Thus, the focus should not be on identifying the number of functions performed by a party but rather on the identification of critical functions in terms of their frequency, nature and value performed by the persons in a controlled relationship.

Some of the relevant functions that may be performed by an entity in an arrangement are:

- i. Research and development;
- ii. Product design and engineering;
- iii. Manufacturing, production, assembly, process engineering and design work;
- iv. Purchasing, materials management and other procurement activities;
- v. Manufacturing, production or assembly work;
- vi. Transportation, warehousing and inventory;
- vii. Marketing, advertising, publicity and distribution;
- viii. Market intelligence on technological developments; and
- ix. Intra-group services,
 - managerial,

- legal,
- accounting and finance,
- credit and collection and
- training and personnel management services.

It should be emphasized that this list is purely indicative; the extent to which each of these functions (or other functions not listed above) are economically significant and contribute to the creation of value depends on the industry and on the taxpayer-specific circumstances.

When various functions are performed by a group of independent persons, it would be expected that the person who provides the rare or unique functions, assets or bears a higher level of the risk would potentially earn a higher entrepreneurial profit.

b) Assets employed

This involves the identification of the type of capital assets employed and their significance to the controlled arrangement. For economically significant assets it may be necessary to perform a more detailed analysis of the assets employed, such as their age, location, property right protections available, market value, etc.

c) Risk assumed

This involves the identification of the economically significant risks that are assumed by each of the parties to the arrangement. The important aspects of the risk are;

- i. How it is created –
 - By ownership;
 - by exploitation or use of assets; or
 - by the performance of functions over time.
- ii. Which entity bears the risk. This involves the identification of the party having control over the risk and requires an examination of the following factors:

- Core functions;
- Key responsibilities;
- Key decisions; and
- Level of individual responsibilities for the key decisions.

Types of risks assumed

Nature of risks	Particulars
1. Financial risk	a. Method of funding b. Fluctuation in interest rates c. Funding of losses d. Foreign exchange risk
2. Product risk	a. Design and development of products b. Upgrading/obsolescence of products c. After sales service d. Risks associated with Research & Development e. Product liability risk f. Intellectual property risk g. Scheduling risk h. Inventory risk
3. Market risk	a. Development of a market including advertisement and product promotion, etc. b. Fluctuation in demand and prices c. Business cycle risk d. Volume risk e. Service incentive scheme risk f. Asset redundancy risk

4. Collection risk	a. Credit risk b. Bad debt risk
5. Entrepreneurial risk	a. Risk of loss associated with capital investment b. Single customer risk c. Risk of losing human capital
6. General business risk	a. Risk related to ownership of property b. Risk associated with the exploitation of a business c. Inflation risk
7. Country/regional risk	a. Political risk b. Security risk c. Regulatory risk d. Risk related to government policies

There are many sources and types of risk, the significance of which will vary depending on the nature of the business arrangement. The significance of a risk will depend on a combination of its likelihood and its potential impact on the profits (or losses) of the business. For example, the risk associated with the design of new packaging to improve visibility of a product may be relatively small compared to the risk associated with the development of a new product line.

Example 1

Nhyiraba Company, which is resident for tax purposes in Ghana is a full-fledged distributor in Ghana with a developed risk profile. It performs value added activities such as post-sales services and support, maintaining the brands and trade names for its parent company located in Canada.

What are the factors which ought to be considered in determining the appropriate price for the services performed by Nhyiraba Company for its Canadian parent?

Comment

The risks assumed and extra functions performed should be considered when seeking independent comparable data to test Nhyiraba's arrangements with controlled persons. These factors could be expected to have a considerable influence on the price (or other conditions) of comparable arrangements between independent persons.

Where service income can be separated from sales revenue, the service activities should be separately rewarded rather than relying on data on more integrated businesses that perform both sales and service functions.

Nhyiraba must be adequately compensated for the risks assumed and extra functions performed in Ghana for its Canadian parent company.

4.2.3 Terms and conditions of relevant arrangement

The terms and conditions of an arrangement define explicitly or implicitly the way the responsibilities, risks and benefits are divided among independent persons. When independent persons negotiate contracts or agreements, the ultimate price or margin agreed is influenced by the terms and conditions of the proposed agreement. Examples of the terms and conditions that may influence the agreed price or margin include:

- a) credit and payment terms;
- b) volume;
- c) duration;
- d) product and service liabilities of the parties; and
- e) warranties and exchange risks.

Persons in a controlled relationship may not adhere strictly to the terms of the contract in the same way independent persons would. Where the actual conduct of the parties involved

differs from the terms of the contract, the transfer pricing analysis would apply to the actual conduct of the parties to the arrangement.

Example

Nhyiraba Company, which is resident for tax purposes in Ghana, sold vehicles at the same price to Nana Kofi Limited, (an associate) and Joe Manu (an independent party). Nana Kofi Limited and Joe Manu have similar risk profiles. Nana Kofi Limited was given a credit period of six (6) months whereas the third-party purchaser was given a credit period of three (3) months.

Does the arrangement between Nhyiraba Company and Nana Kofi Limited satisfy the arm's length standard?

Comment

A cursory examination of the facts raises the presumption that the price charged to the associated party was not at arm's length. However, in order to arrive at a conclusion that the transfer price was not at arm's length, the volume of sale (i.e., a possible bulk discount) and the other credit sale terms should be taken into account.

4.2.4 Arm's Length Range and Statistical Analysis

There are instances where a comparability analysis may produce a range of prices or other financial indicators which are relatively equally reliable. The "arm's length range" is derived where the comparability analysis identifies a number of comparable (and associated financial indicators) that are all relatively equally reliable. In this case, the full range of the relevant financial indicators may be adopted for purposes of determining whether an arrangement between persons in a controlled relationship accords with the arm's length standard. It is often the case that such a range contains relatively few comparable and the range is relatively small.

The arm's length range is a range of relevant indicator figures which are of equal reliability, produced by applying the most appropriate transfer pricing method to a number of comparable uncontrolled arrangements.

Where the application of the most appropriate method results in a number of financial indicators for which the degree of comparability of each to the controlled arrangements, and to each other, is uncertain, a statistical approach using a weighted average method over a three-year period shall be used, and the interquartile range shall be considered to be an arm's length range.

The interquartile range is a range of the appropriate financial indicator derived from the various comparables employed by the application of a transfer pricing method. For example, the application of a TNMM may identify 80 comparables and, for each of these comparables, a return on sales (operating profit/sales) is identified. This would create a 'full range' of 80 profit/sales ratios. If this range is listed from lowest to highest, the interquartile range represents the two middle quarters (in this case, the range of figures from the 20th highest to the 60th highest).

Where the relevant financial indicator resulting from an arrangement between persons in a controlled relationship falls outside the arm's length range, the chargeable income of the taxpayer must be computed on the basis that the relevant indicator is the median of the arm's length range.

Where such adjustments are necessary, they must be made by the taxpayer in order to calculate the amount of chargeable income, included in the relevant tax return. If no such adjustment is made by the taxpayer, the Commissioner-General shall make such an adjustment.

Financial indicator is a price, resale margin, cost mark-up, net profit ratio or a split of profit.

4.3 Transfer Pricing Methods

The Regulations set out the methods for the purposes of ascertaining the arm's length price of a controlled arrangement.

The most appropriate method in a given case will depend on the facts and circumstances of the case and the extent and reliability of data which is used in the comparability analysis. It should always be the intention to select the method that produces the highest degree of comparability.

The choice of the most appropriate method should therefore be based on a practical weighting of the evidence, having regard to:

- a) The nature of the activities being examined;
- b) The availability, quality and reliability of the data;
- c) The nature and extent of any assumptions; and
- d) The degree of comparability that exists between the controlled and uncontrolled arrangements where the difference would affect conditions in the arm's length dealings being examined.

4.3.1 Comparable Uncontrolled Price (CUP) method

The CUP method compares the price for property, goods or services transferred in a controlled arrangement to the price charged for property or services transferred in a comparable uncontrolled arrangement under comparable circumstances. It primarily focuses on the goods being transferred or service being rendered, but also takes into account broader business functions and economic circumstances.

An uncontrolled price is the price agreed between independent parties for the transfer of property, goods or services. If the property, goods or services transferred in an uncontrolled arrangement is in all material respects comparable to that transferred between parties in a controlled relationship, the price becomes a comparable uncontrolled price. If there are differences between the two arrangements that will have a material effect on the price, then the price of the uncontrolled arrangement will only be a comparable uncontrolled price if reasonably accurate adjustments can be made to eliminate the effect of the differences.

There are two possible approaches of comparison in applying the CUP method. These are:

- a) **internal comparable uncontrolled price** where the price in the controlled arrangement is compared to the price charged in a comparable arrangement between one of the parties to the controlled arrangement and an independent person; and
- b) **external comparable uncontrolled price** where the price in the controlled arrangement is compared to the price in a comparable arrangement between

independent parties, both of whom are unrelated to the parties to the controlled arrangement.

The use of an internal comparable uncontrolled price is preferred to the external comparable uncontrolled price, because the circumstances of the controlled arrangement are likely to reflect more closely to those of the uncontrolled arrangement.

A reliable application of the CUP method requires that there are no differences in the arrangements being compared and if there are differences, a reasonable adjustment can be made to the uncontrolled arrangement to eliminate the effect the differences may have on the price of the item. While all comparability factors should be considered, the most important are;

- a) similarity of products,
- b) contract terms,
- c) economic circumstances, and
- d) market conditions.

Where after taking into account the comparability analysis of the controlled arrangement and the availability of information, the CUP method and other transfer pricing methods can be applied in an equally reliable manner, the CUP method is preferable.

Situations where the CUP method is more likely to be the most appropriate method include:

- a) interest rate charged in financial arrangements between persons in a controlled relationship;
- b) royalties charged for licensing of intangible properties (e.g., trademark, design, copyright etc.);
- c) price charged for the sale of quoted securities or commodities; and
- d) sale of goods.

Example 1

Company A, which is resident for tax purposes in Ghana, manufactures chocolate which it sells at a price of GH¢100.00 per carton to a subsidiary in France. Company A also sells

the chocolate at a price of GH¢120.00 per carton to an independent person in France and this independent person carries out the same functions as the subsidiary of Company A.

Assuming all other factors of comparability such as contractual terms are the same, does the arrangement between Company A and its subsidiary satisfy the arm's length standard?

Comment

Using the CUP method, the price at which the item is sold to the independent person is an internal comparable uncontrolled price. Thus, the price at which the item is sold to the subsidiary of Company A is not at arm's length and should be adjusted to GH¢120.00. Therefore, the additional amount of GH¢20.00 per carton should be added to the income of Company A.

Example 2

Company A which is resident for tax purposes in Ghana trades in listed securities. It holds shares which would raise GH¢10million on the Ghana Stock Exchange. However, Company A sells the shares to its Nigerian subsidiary for GH¢5 million.

Does the arrangement between Company A and its subsidiary satisfy the arm's length standard?

Comment

Using the CUP method, the price at which the shares could be sold to an independent person on the Ghana Stock Exchange is an external comparable uncontrolled price. Thus, the price at which the item is sold to the subsidiary of Company A is not at arm's length and should be adjusted to GH¢10 million. Therefore, the additional amount of GH¢5 million should be added to the income of Company A.

4.3.2 Cost Plus (CP) Method

The CP method uses the costs incurred by the supplier of property, goods or services in a controlled arrangement. An appropriate mark-up is added to this cost, to make an appropriate profit in the light of the functions performed and taking into account assets used, risks assumed and the market conditions. What is arrived at after adding the appropriate mark-up to the costs may be regarded as an arm's length price for the controlled arrangement.

The CP method starts by computing the cost of providing the goods or services before adding an appropriate mark-up. The costs included in a cost-plus analysis should be the direct and indirect costs incurred in supplying the relevant goods or services.

Under the CP method, the mark-up should be calculated by reference to similar internal or external uncontrolled arrangements. The mark-up of a seller should be determined by reference to mark-ups on similar items sold at arm's length by the same seller or by comparable vendors under the same conditions.

The mark-up should provide the person with an appropriate profit in view of the functions performed, risk assumed and the market conditions.

The CP method is particularly useful in arrangements between parties in a controlled relationship with regards to:

- a) sale of manufactured or semi-finished goods;
- b) joint facility agreements or long term buy and supply arrangements; and
- c) provision of services.

Example 1

Triple J Ghana Limited, a company resident for tax purposes in Ghana, specializes in the production of chip board for a foreign subsidiary under a contract manufacturing arrangement. Under the arrangement, the foreign subsidiary provides Triple J Ghana

Limited with all the technical know-how used in the manufacturing of the chip boards and the chip boards are manufactured to the order of the subsidiary.

Madic Limited is an independent contract manufacturer of chip boards in Ghana. It sells the products to an independent German distributor. Similarly, it is provided with technical know-how and it manufactures to the order of the German distributor. Madic Limited which is identified as an external comparable, charges an average mark-up of 10 percent.

What is the appropriate price Triple J should charge its subsidiary for the manufacture of the chip boards?

Comment

Assuming Triple J Ghana Limited incurred direct and indirect costs of GH¢200.00 in producing one unit, the arm's length mark-up on the cost would be GH¢20.00 (i.e., GH¢200 x 10%).

Example 2

Company A, which is resident for tax purposes in Ghana has entered into a contract to supply electricity to Company B based in Togo with whom it is in a controlled relationship. Company A also supplies electricity to an independent entity, Company C based in Togo. The agreed terms between Company A and Company C are that Company A would be paid a 12% premium on the cost of electricity produced. Company A produced and supplied 1,000 units of electricity to Company B. Company A's fixed cost for the units of electricity produced is Gh¢1,200,000 and variable cost for the units of electricity produced is GH¢3,900,000.

What is the appropriate price Company A should charge Company B for the supply of the electricity?

Comment

Using the CP Method, the transfer price is arrived at by adding the mark-up to the cost of manufacture (fixed cost + variable cost). This is demonstrated as follows;

	GH¢
Fixed Cost	1,200,000
Variable Cost	<u>3,900,000</u>
Total	5,100,000
Transfer Price (5,100,000*1.12%)	<u>5,712,000</u>
Profit	<u>612,000</u>

Company A should earn a profit of GH¢612,000 from the arrangement with Company B.

Example 3

Company G which is resident for tax purposes in Ghana, is a manufacturer of computers. It sells this product to its foreign subsidiary. Company G earns a 5 percent gross profit mark-up with respect to its manufacturing operation. Companies A, B, and C are unrelated domestic manufacturers of computers. Companies A, B, and C sell to independent foreign purchasers and earn gross profit mark-ups with respect to their manufacturing operations that range from 3 to 5 percent.

Company G accounts for supervisory, general, and administrative costs as operating expenses, and thus these costs are not reflected in the cost of goods sold. The gross profit mark-ups of Companies A, B, and C, however, reflect supervisory, general, and administrative costs as part of costs of goods sold.

Can the mark-ups on costs of Companies A, B and C be selected as comparable for purposes of determining the appropriate mark-up on the arrangement between Company G and its subsidiary?

Comment

Since Company G accounts for supervisory, general, and administrative costs as operating expenses, the choice of comparable must take into account how these potential comparable entities treat supervisory, general, and administrative costs. This is because differences in the treatment of supervisory, general, and administrative costs would have an impact on the financial indicator being examined under the CP method.

If the CP method is used, the gross profit mark-ups of Companies A, B, and C must be adjusted to eliminate the differences in the treatment of supervisory, general, and administrative costs would have on the gross profit mark-ups between Companies A, B, and C on the one hand and Company G on the other hand.

4.3.3 Resale Price (RP) method

The resale price method is based on the price at which a product that has been purchased from a person in a controlled relationship is resold to an independent person. This resale price is reduced by the resale price margin which represents the amount the reseller would use to cover its selling and other operating expenses and make an appropriate profit. The appropriate resale price margin is determined by the functions performed taking into account assets used and risks assumed. What is left after subtracting the resale price margin can be regarded, after adjustment for other costs associated with the purchase of the product (e.g., customs duties) as an arm's length price of the previous transfer of property between the parties in a controlled relationship.

The resale price method will likely be the most appropriate under the following circumstances:

- a) the reseller does not add substantial value to the product or does not use unique assets such as valuable intangible assets;
- b) the reseller sells the product to third parties on an arm's length basis; and
- c) there exists comparable information such as margins made by independent parties performing similar functions.

The resale price margin should be calculated by reference to the margin in similar internal or external uncontrolled arrangements.

The resale price margin is expected to vary according to the amount of value added by the reseller.

Example 1

Inky Ghana Limited, a company resident for tax purposes in Ghana purchases fashion and clothing items from its U.K. parent company (Inky UK) and sells them through various retail outlets in Ghana. Fashion A-Z, an independent distributor in Ghana, purchases similar products from various suppliers in the Middle East and sells the same to customers and earns an average gross margin of 40 percent (40%). Fashion A-Z carries out comparable functions (including assets used and risks assumed) to Inky Ghana Limited.

What is the appropriate price Inky Ghana should pay for the fashion and clothing items it purchases from its U.K. parent company (Inky UK)?

Comment

Assuming Inky Ghana Limited sold a particular line of women's clothing it purchased from the UK parent company and derived sale proceeds of GH¢2 million. The arm's length price for this line of clothing it purchased from the UK parent company should be GH¢1.2 million (i.e. $\text{GH¢}2.0\text{m} \times 60/100$).

Example 2

Distributor Y, which purchases goods from an independent supplier, performs the warranty function and it is compensated by the supplier through a reduced price. Distributor Z, which purchases goods from a person with whom it is in a controlled relationship, does not perform the warranty function and thus, defective products are sent back to the supplier.

What is the appropriate price Distributor Z should pay for the products it purchases from the person with whom it is in a controlled relationship?

Comment

If Distributor Y is to be used as a comparable to Distributor Z, adjustments would have to be made to eliminate the differences the warranty function performed by Distributor Y would have on the resale price margin.

If Distributor Y accounts for the cost of performing the warranty function as a cost of goods sold, then the adjustment in the gross profit margins for the differences is automatic. If the warranty expenses are accounted for as operating expenses, then there is a distortion in the margins which must be corrected. The reasoning is that, if Distributor Z performed the warranty function, its supplier would have reduced the transfer price thereby increasing Z's gross profit margin.

4.3.4 Transactional Profit Split (PS) method

The Transactional Profit Split (PS) method identifies the aggregate profit to be split between the parties in a controlled arrangement and then splits those profits between the parties based on an economically valid basis. The combined profits to be split are the total profits earned by all the persons in a controlled relationship from the controlled arrangement under review.

The traditional transaction methods might continue to work in circumstances where the functions of group members are inter-related. However, there are situations when group functions are so intertwined that they cannot be evaluated separately and the most appropriate way is to examine the whole process from initial manufacture to end sale and work out the real economic contribution made by each enterprise by way of functional and risk analysis.

If the final prices of goods do not reflect the cost of manufacture but the functions (research, technology, marketing and promotion) are spread among group members, all

of whom are adding value, and operating in various tax jurisdictions, it may be difficult to compute the price at which the goods, in different states of incompleteness at different points in the process, would have been transferred between independent persons.

After the functional and risk analysis have been carried out to identify the real economic contribution made by each party to the process, the next step is to allocate to each party, the share of profit or loss which it would have anticipated at the time the relevant arrangements were set up, had each been transacting with independent parties.

The profit may be the aggregate profit from the arrangement or a residual profit intended to represent the profit that cannot readily be assigned to one of the persons. Factors to be taken into account in undertaking a profit split are:

- a) whether the profit split is to be undertaken on a particular product line, an aggregation of products, or a whole of entity basis;
- b) whether it is necessary to identify the persons in relation to the arrangement and the profits of each person so as to determine the profits to be split among them if the person transacted with more than one person with whom that person is in a controlled relationship;
- c) whether the accounts of the persons with whom that person is in a controlled relationship need to be put on a common basis as to accounting practice and currency and then consolidated in order for the combined profit to be determined.

Example 1

Company D is resident for tax purposes in Ghana and Company E is resident for tax purposes in China. Company D and Company E are in a controlled relationship. Company E manufactures components of computers and sells them to Company D for assembling and distribution to independent persons.

The manufacturer employs unique manufacturing processes and owns valuable intangibles (such as know-how). The distributor also owns and employs unique marketing intangibles (such as its tradename, distribution network and trade secrets).

The combined profit from the arrangement is GH¢60 being GH¢20 to the manufacturer and GH¢40 to the distributor. These two entities are dealing in products that do not have reliable comparable. In this instance, the profit split appears to be more suitable than applying a one-sided method such as Cost Plus method, Resale Price method or a TNMM.

The profit is split as follows:

Company E (Manufacturer)		Company D (Distributor)	
Sales to Company D	GH¢200	Sales to customers	GH¢ 320
Less		Less	
Direct cost	100	Purchases materials from E	200
Indirect cost	20	Indirect costs	20
	<u>120</u>		<u>220</u>
Gross profit	80	Gross profit	100
Deduct Admin. & other costs	60	Deduct	
	<u>20</u>	Selling & other costs	40
		Administration & other costs	20
			60
Net profit	<u>20</u>	Net profit	<u>40</u>

The profit split is 40:20 in favor of Company D.

If a profit split method is to be used, it will be necessary to determine how the profit would have been split between the parties had they been independent parties acting at arm's length. In this case, it will be necessary to consider the extent to which value is added by:

- a) the product intangibles held by manufacturer E, and
- b) the marketing intangibles held by distributor D.

The answer will be dependent on the facts and circumstances of the specific case and will entail careful analysis.

Assuming that both the product and marketing intangibles are valuable in this case, and both contribute to a premium profit earned in the manufacture and sale of these goods then their relative contribution needs to be assessed in order to apply the profit split method.

Again, any method for determining this would be heavily dependent on the facts and circumstances of the individual case. In some cases, it may be appropriate to simply estimate the relative value of the product and marketing intangibles by means of an analysis of the economic and commercial environment in which the business is conducted.

Assuming that the value of the intangibles held by the two parties to the arrangement can be estimated by reference to historical cost of development. For example, it may be established that the value of any spending by Company D on marketing diminishes over a period of 3 years, taking this into account, an analysis of marketing expenditure over the previous three years might establish a present value of, say, GH¢100. A similar analysis on R&D expenditure over a relevant period might establish a present value of, say GH¢300. If this analysis is accepted, then the profit split would be 3:1 in favor of Manufacturer E.

Two alternative approaches to the profit splitting method

4.3.4.1 Splitting using a contribution analysis

Splitting profits on the basis of a contribution analysis means that the aggregate profits from controlled arrangements are divided among the participating persons based upon the relative value of the functions performed, assets used and risks assumed by each of the persons participating in those arrangements. This may be supplemented by external market data that indicate how independent persons would have divided profits in similar circumstances.

The measurement of each party's contribution may be made in a number of ways, but it is important that the measurement chosen makes sense in the context of the specific arrangement. In general terms, the measurement chosen should reflect the respective parties' contribution to value – whether by means of ownership of unique

value-adding attributes (e.g. intangibles) or by the assuming (including management) of economically significant risks.

4.3.4.2 Splitting using a residual analysis

Splitting profits on the basis of a residual analysis involves the division of the combined profit from the related persons' arrangements using a two-stage approach.

Each participant is first allocated sufficient profit to provide it with a basic return for contributions which can be reliably benchmarked: typically, less complex contributions for which reliable comparables can be found. The basic return would be determined by reference to the market returns achieved for similar types of arrangements by independent persons. It is frequently possible to employ the Cost-Plus, Resale-Price or Transactional Net Margin Method (TNMM) to determine basic returns. The basic return would generally not account for the return that would be generated by any unique and valuable assets possessed by the participants, or for the assumption of economically significant risks.

Any residual profit or loss remaining after the first stage division, would be allocated among the participating persons based on their relative economic contribution and an analysis of the facts and circumstances that might indicate how this residual would have been divided among independent persons. The division of the residual profits would be allocated in the same way as the application of the contribution analysis outlined above.

At each stage, it is necessary to have regard to the relevant functions performed, assets contributed and risks assumed by each party. Where a particular function, asset or risk is relevant to both stages, it is important to apportion the relevant contribution between the two stages in order to avoid double counting.

Example 1

Company E manufactures goods and sells to Company D with whom it is in a controlled relationship. Company D which is resident for tax purposes in Ghana, resells the goods to independent parties. The total combined profit from the operations is GH¢2,000. Assume that Company D is rewarded GH¢500 for the routine marketing, distribution and other functions undertaken based upon an analysis of typical returns for that type of business activity using TNMM or RP while Company E is rewarded GH¢300 based upon an analysis of returns for similar manufacturing functions. (e.g., using CP).

The remaining profit of GH¢1,200 is then allocated on the basis of the contribution of each of the companies to the value of the intangibles, i.e. 10% (being GH¢120) to Company E and 90% (being GH¢1,080) to Company D.

Profits

	Company E GH¢	Company D GH¢	Total profits GH¢
Return to basic manufacturing and distribution (taking into account tangible assets, functions & routine risks)	300	500	800
Intangibles	(10%) 120	(90%) 1,080	1,200
Total	420	1580	2000

When an overall loss is incurred, the same logic should be followed. Assuming the total loss from the operations is GH¢1,000, Company D would still be allocated GH¢500 for the marketing, distribution and other functions undertaken while Company E would be allocated GH¢300 for the manufacturing function undertaken. The residual loss of GH¢1,800 is then

allocated on the basis of the contribution of each of the enterprises to the value of the intangible, i.e. 10%, being GH¢180 to Company E and 90% being GH¢1,620 to Company D.

Losses

	Company E GH¢	Company D GH¢	Total profits GH¢
Return to basic manufacturing and distribution (taking into account tangible assets, functions & risks)	300	500	800
Intangibles	(10%) -180	(90%) -1,620	-1,800
Total	120	-1,120	-1,000

Comment

While this example is based on fixed contributions, market reality may be such that a distributor's margin may change because of a range of factors including low levels of sales, promotion costs and discounts arising from competition. The possibility, therefore, exists for lower-than-normal rates of return during lean years and commensurately higher returns during good years.

Other approaches to splitting profits

There are other possible approaches that may be used in splitting the profits between parties in a controlled relationship. These include splitting:

- a) the combined profits so that each person participating in the controlled arrangement earns the same rate of return on the capital employed in that arrangement. The method should be used cautiously, particularly if some of the group members are providing high value added services;

- b) the combined profits based on the division of profits that actually results from comparable arrangements among independent persons. The use of this method is extremely remote because it will be difficult to find independent persons engaged in arrangements that are sufficiently comparable. If such comparable can be found, then the traditional methods should be adopted;
- c) profits using a flexible methodology that recognizes the contributions by different persons over the economic and product life cycles; and
- d) profits using weighting based on external market data.

4.3.5 Transactional Net Margin Method (TNMM)

The Transactional Net Margin Method (TNMM) examines the net profit margin relative to an appropriate base such as sales, costs or assets that a person realizes from a controlled arrangement that is appropriate to aggregate. This is compared with the result achieved by independent persons in a similar arrangement.

The TNMM requires a comparison between the net margins achieved in controlled arrangement against either:

- a) the net margins of the person's dealings with independent persons in comparable circumstances; or
- b) the net margins earned in comparable dealings between two independent persons.

The focus is initially on examining the net margin relative to an appropriate base. The relative usefulness of the various profitability ratios depends largely on the facts of the case and the extent of reliable data being available for the person and any comparable. Any ratio analysis should be directed at net profit or some similar point because the TNMM emphasizes the comparison to be undertaken at the net profit rather than the gross profit level.

There are a number of possible Profit Level Indicators (PLI) that can be used to apply the TNMM. It is important to note, that each case must be considered according to its specific facts and circumstances, and that the illustrations in the table below may not always be the most appropriate. It should be noted also that the TNMM is unlikely to be an appropriate

method to test the net return of an entity that exploits valuable unique intangibles or assumes extraordinary risk. A summary of possible PLIs is shown in the table below:

Tested Party	Potential PLI
Manufacturer – selling to connected person	Net profit/Full costs; or Net profit/ Assets used (a)
Manufacturer – selling to independent persons, with controlled transaction costs	Net profit/Sales revenue
Manufacturer – raw materials purchased from controlled person, and sales to controlled persons	Net profit/Assets used; or Net profit/Process (non-raw material) costs; or Net profit/Wage cost (b)
Service provider	Net profit/Full costs
Distribution	Net profit/Sales; or Net profit/Operating costs (excluding cost of goods sold) (c)

Notes:

- a) Net profit/Assets used will most likely be appropriate in a capital-intensive business.
- b) Net profit/Wage cost will most likely be appropriate in a labor-intensive business.
- c) Referred to as the 'Berry Ratio', which may be appropriate in a business where a positive relationship between operating costs and net profit can be expected. In all cases above it is assumed that TNMM is the most appropriate method, and that the appropriate party/function is being tested. This will always be a matter to be determined in view of a comparability analysis.

Under the TNMM, margins are often calculated after operating expenses but before interest and taxation. As a result, differences in arrangements that would not have an effect on a gross margin need to be accounted for under this method. Multiple year data should be considered in the TNMM for both the person under examination and independent persons to the extent that their net margins are being compared, to take into account the effects on profits of product life cycles and short-term economic conditions.

The following ratios are useful for this purpose;

- a) net profit to sales;
- b) net profit (before interest and tax) to sales;
- c) gross profit to operating expenses;
- d) net profit before tax to shareholders' funds;
- e) earnings before interest and tax to assets; and
- f) net profit (before interest and tax) to operating expenses and cost of goods sold.

Example

Distributor A, a company resident for tax purposes in Ghana, purchases food products from an associate in Nigeria and distributes those goods to independent customers. Its accounts for 2020 showed a net return of 0.5%.

A comparability analysis shows that it is possible to find entities in Ghana that carry out sufficiently comparable functions to Distributor A. Reliable financial data on those comparable entities is available only at the net profit level. Accordingly, TNMM is used, with Distributor A as the tested party, and using net profit/sales as the applicable indicator.

By means of a database search, 17 Ghanaian entities were identified that conduct functions that are comparable to those conducted by Distributor A. A financial analysis of those entities reveal a range of net margins (by reference to sale) of 0.4% to 5.5%, with an inter-quartile range of 3.5% to 4.2%.

What is the appropriate profit Distributor A should earn from the above arrangement?

Comment

The 2020 reported net return of Distributor A (i.e., 0.5%) falls outside the inter-quartile range of 3.5% to 4.2% obtained from the financial analysis of 17 Ghanaian entities identified as conducting functions that are comparable to those conducted by Distributor A. Thus, the profit of Distributor A must be adjusted, for tax purposes, to the median of the inter-quartile range.

4.4 Services Between Persons in A Controlled Relationship

4.4.1 Service Arrangements

Intra-group service arrangements encompass a wide array of services including administrative, technical, financial and commercial services.

A service charge between persons in controlled relationship shall be considered consistent with the ALS where:

- a) It is charged for a service that is actually rendered;
- b) The service provides the recipient with economic or commercial value to enhance its commercial position, and that economic or commercial benefit is not incidental or duplicative;
- c) It is charged for a service that an independent person in comparable circumstances would have been willing to pay for, if performed for it by an independent person, or would have performed in-house for itself; and
- d) the charge corresponds to that which would have been agreed between independent persons for comparable services in comparable circumstances.

Note: Taxpayers should take note that during a transfer pricing audit, the Commissioner-General shall demand for evidence such as travel records, time sheets, meeting minutes, attendance sheets, board resolutions etc. of actual services provided in an intra-group service arrangement.

4.4.2 Shareholder Activities

A service charge between persons in a controlled relationship that is attributable to shareholder activity is not consistent with the ALS. Shareholder activities are performed for the benefit of the parent company and do not directly benefit the subsidiaries.

Shareholder activities include:

- a) ownership interest of a shareholder in one or more of the companies in the group;
- b) meetings of the parent company's shareholders;
- c) issuing of shares by the parent company;
- d) stock exchange listings of the parent company;
- e) costs of the supervisory board of the parent company;
- f) maintaining the share register of the parent company;
- g) activities to satisfy statutory reporting requirements of the parent company such as
 - i. the consolidation of reports,
 - ii. the audit of the accounts of a subsidiary carried out exclusively in the interest of the parent company, and
 - iii. the preparation of consolidated financial statements of the group; and
- h) raising of funds for the acquisition of participations and the parent company's investor relations such as:
 - i. communication strategy with shareholders of the parent company,
 - ii. financial analysts, funds, and
 - iii. other stakeholders in the parent company.

except where the participation is directly or indirectly acquired by a member within the group and the acquisition benefits that person or is expected to benefit that person.

4.4.3 Duplicated Services

Duplicated services are activities undertaken by one group member that duplicates a service that another group member is performing for itself, or that is being performed for such other group member by a third party. An exception may be where the duplication of services is

only temporary, for example, where an MNE group is reorganizing to centralize its management functions. Another exception would be where the duplication is undertaken to reduce the risk of a wrong business decision (e.g., by getting a second legal opinion on a subject).

A duplicated service is not consistent with the ALS.

Example

A company resident for tax purposes in Ghana, in compliance with domestic law requirements, contracts an accounting firm to perform an audit of its activities for a financial year. The parent company directs an entity within the group to perform a similar audit on the activities of the subsidiary to satisfy the investor and legal requirements of the parent company.

How would the second audit contracted by the shareholder be treated for transfer pricing purposes?

Comment

Since the second audit was procured by the parent company as a steward for its own investments rather than for the benefit of the subsidiary company, the audit constitutes a duplicated service. Thus, the second audit is not consistent with the ALS and the parent company should bear the cost of the audit.

4.4.4 Incidental Benefits

A person would not be considered to have received an intra-group service where it obtains incidental benefits attributable:

- a) to a service rendered by a group member exclusively to some members within the group; or
- b) merely on account of the person being affiliated to the group and not in relation to any specific activity being rendered to that person.

Example

A parent company undertakes a reorganisation of its group by acquiring new entities and collapsing certain divisions within the group. The reorganisation provides a face lift to the

group which then provides economic benefits to group members not directly involved in the reorganisation.

How would the economic benefits received by the group members who were not directly involved in the reorganisation be treated for transfer pricing purposes?

Comment

The incidental benefits enjoyed by the group members which were not directly involved in the reorganisation will not be treated as an intra-group service because the activities producing the benefits would not be one that an independent party would have paid for.

4.5 Arrangements involving intangible property

Intangibles refer to something which is not a physical or financial asset, and which is capable of being owned or controlled for use in commercial activities and whose use or transfer would be compensated had it occurred in an arrangement between independent parties in comparable circumstances. An important attribute of many intangibles is a denial or restriction on the ability of persons who do not own or control it to exploit it.

Intangible property includes:

- a) copyright of literary or artistic work;
- b) marketing intangibles;
- c) software,
- d) patents,
- e) trademarks,
- f) design or model;
- g) secret formula or process;
- h) know-how;
- i) inventions; and
- j) trade secrets.

For example, a patent or a copyright cannot legally be exploited by anyone other than the 'owner' (usually the person in whose name it is registered) or a person to whom the right to exploit has been

granted by the owner (usually through a license agreement). An intangible does not necessarily have to be registered. For example, a business may have know-how or a trade secret that is proprietary information but is not legally registered or protected. The know-how or trade secret may be information of a commercial, industrial or scientific nature arising from previous experience and represents knowledge that assists or improves a commercial activity. They may relate to manufacturing, marketing, research and development or any other commercial activity.

An intangible will be significant for transfer pricing only if it creates value. For example, a person (including a licensee) who owns or controls an intangible may exploit it by charging a higher price for goods or services, or by selling a higher volume of goods or services. Another example is a manufacturer that has developed manufacturing know-how may be able to make more profit than competitors because it is able to produce goods at a lower cost due to the use of that know-how.

When considering an intangible, a fundamental issue to bear in mind is which persons have a right to share in the value it creates. This may include more than one person. The starting point in considering this should be the contractual and legal arrangements, recognizing that, at arm's length, value in an intangible may be recognized by one or more of the persons that are involved in the development, enhancement, maintenance, protection and exploitation (DEMPE) of the intangible. Depending on the facts and circumstances of the case, this might include:

- a) Persons who carry out the development or enhancement of the intangible;
- b) Persons who assume the risks involved in such development or enhancement, in particular those that manage and control the relevant risks, and in fact bear those risks;
- c) Persons who assume the risks involved in exploiting the intangible, in particular those that manage and control those risks, and in fact bear them; and
- d) Persons that carry out maintenance and protection functions.

This analysis may inevitably be complex. For example, if a manufacturer is granted a right under a license to manufacture and sell a particular product under a valuable trademark, then consideration should be given to:

- a) The legal ownership of the trademark and the terms of the license agreement;
- b) Which persons developed the trademark;
- c) Which persons bore the financial risk of its development;

- d) Which persons in fact managed and controlled that risk;
- e) Which persons bear, manage and control, the risks involved in the exploitation of the intangible; and
- f) Which persons carry out the maintenance and protection of the trademark rights.

In carrying out the transfer pricing analysis involving intangibles, it is necessary to consider the following:

- a) Identify the intangible used or transferred in the arrangement with specificity and the specific economically significant risks associated with the development, enhancement, maintenance, protection and exploitation of the intangibles;
- b) Identify the full contractual arrangements with special emphasis on determining legal ownership of intangibles based on the terms and conditions of legal arrangements, including relevant registrations, license agreements, other relevant contracts and other indicia of legal ownership and the contractual rights and obligations including contractual assumption of risks in the relations between the persons in a controlled relationship;
- c) Identify the parties performing the functions, using assets and managing risk relating to developing, enhancing, maintaining, protecting and exploiting the intangibles by means of the functional analysis and in particular which parties control any outsourced functions and control specific, economically significant risks;
- d) Confirm the consistency between the terms of the relevant contractual arrangements and the actual conduct of the parties and determine whether the party assuming economically significant risks controls the risks and has the financial capacity to assume the risks relating to the development, enhancement, maintenance, protection and exploitation of the intangibles;
- e) Delineate the actual controlled arrangements related to the development, enhancement, maintenance, protection and exploitation of intangibles considering the legal ownership of the intangibles, the other relevant contractual relations under relevant registrations and contracts, and the conduct of the parties, including their relevant contributions of functions, assets and risks; and
- f) Where possible, determine arm's length prices for these arrangements consistent with each party's contribution of functions performed, assets used, and risk assumed.

It should be noted that an entity that has legal ownership of an intangible, but does not perform any other functions, will not be entitled to any of the return derived from the exploitation of the intangible. Similarly, an entity that has provided funding to develop and enhance an intangible,

but which does not carry out any other function (including the control and management of the related risk) will not be entitled to any of the return derived from the exploitation of the intangible.

Once it has been determined which persons are entitled to share in the value of an intangible, an arm's length reward to each of those persons must be established.

Example 1

XYZ Limited is a company resident for tax purposes in Ghana and it is wholly owned by XYZ Group based in the USA. XYZ Group is a manufacturer and owner of the XYZ brand of electrical products which are known world-wide.

XYZ Limited entered into a distribution agreement with the parent company for the sale of XYZ electricals in Ghana. The agreement provides that XYZ Limited will pay royalty at a fee of 1% of its net sales for the use of the XYZ brand. Investigations into this arrangement disclosed that the brand name does not create any value for XYZ Limited.

What is the appropriate royalty fee XYZ Limited should pay for the use of the XYZ brand?

Comment

The Commissioner-General may consider the above arrangement to be consistent with the arm's length standard if the following requirements are met:

- a) if the licensee is actually using the brand name in its business;
- b) if the brand name actually confers economic or commercial value to the business of the licensee;
- c) if the license arrangement is necessary in the advancement of the licensee's business; and
- d) if any independent party will agree to enter into such an arrangement.

Based on the above facts, the arrangement does not appear to confer direct benefits on the business of XYZ Limited. This is because the XYZ brand does not create economic or commercial value for the licensee and, therefore, an independent party would not be expected to enter into such an agreement. In these circumstances, the Commissioner-General may deem the royalty payment as inconsistent with the ALS.

Example 2

Abavana Ghana Limited, is the manufacturer of Abavana Soap, which is a popular soap in Ghana. The know-how and the brand name are used by Abavana under a license arrangement with its parent (Abavana PTY) based in the UK. The license agreement provides for Abavana Ghana Limited to pay royalty of 1% of net sales for the use of the brand name and know-how.

The audit investigations show that Abavana Ghana Limited undertakes substantial promotion, advertisement and marketing activities in Ghana. Details of the Advertisement, Marketing and Promotion (AMP) show that some of these activities promote and enhance the brand.

A bench-marking study by the Audit Team confirmed that the rate of 1% is within the arm's length range.

How should the transfer pricing issues be resolved?

Comment

The Royalty payment of 1% of net sales would be allowed to the extent that Abavana Ghana Limited was using the know-how and the brand name in its business and the 1% is deemed to be within the arm's length range.

Abavana Ghana Limited should be compensated for undertaking AMP activities (DEMPE functions), which promote, or enhance the Abavana brand and this compensation may, depending on the facts and circumstances, constitute all or a substantial part of the return anticipated to be derived from the exploitation of the intangible.

However, where it is established that the AMP activities undertaken by Abavana Ghana Limited exceed what an independent person under comparable circumstances would have done, the Commissioner-General would make the necessary adjustments.

Arm's length pricing of arrangements involving intangibles for which valuation is highly uncertain at the time of the arrangement (HTVI).

Intangibles or rights in intangibles may have specific features complicating the search for comparable and in some cases making it difficult to determine the value of an intangible at the time of the arrangement. When valuation of an intangible or rights in an intangible at the time of the arrangement is highly uncertain, the question arises as to how arm's length pricing should be determined. The question should be resolved by reference to what independent enterprises would have done in comparable circumstances to take account of the valuation uncertainty in the pricing of the arrangement.

Certain intangibles may be considered hard to value intangibles (HTVI). HTVI covers intangibles or rights in intangibles which at the time of their transfer between persons in a controlled relationship,

- (i) no reliable comparable arrangements exist, and
- (ii) at the time the arrangement was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.

Arrangements involving the transfer or use of HTVI may exhibit one or more of the following features:

- a) The intangible is only partially developed at the time of the transfer;
- b) The intangible is not expected to be exploited commercially until several years after the transfer;
- c) The intangible does not itself fall within the definition of HTVI but is integral to the development or enhancement of other intangibles that do fall within the definition of HTVI;
- d) The intangible is expected to be exploited in a manner that is novel at the time of the transfer and the absence of a track record of development or exploitation of similar intangibles makes projections highly uncertain;
- e) The intangible meeting the definition of HTVI has been transferred to an associated person for a lump sum payment; and

- f) The intangible is either used in connection with or developed under a Cost Contribution Arrangement or similar arrangements.

In situations involving the transfer of HTVI, the Commissioner-General may consider ex post outcomes as presumptive evidence about the appropriateness of the ex-ante pricing arrangements. However, the consideration of ex post evidence should be based on a determination that such evidence is necessary to be taken into account to assess the reliability of the information on which ex-ante pricing has been based. Where the Commissioner-General is able to confirm the reliability of the information on which ex ante pricing has been based, then adjustments based on ex post profit levels may not be made.

However, the approach described above, shall not be applied where at least one of the following applies:

- a) The taxpayer provides the Commissioner-General with sufficient detail of:
 - i. the ex-ante projections used at the time of the transfer to determine the pricing arrangements, including details of the appropriateness of accounting for risks and other reasonably foreseeable events, and their probability of occurrence; and
 - ii. reliable evidence that any significant difference between the financial projections and the actual outcomes is due to:
 - (A) Unforeseeable developments or events occurring after the determination of the price that could not have been anticipated by associated persons at the time of the arrangement; or
 - (B) The playing out of probability of current or foreseeable outcomes, and that, these probabilities were not significantly overestimated or underestimated at the time of the arrangement.
- b) The transfer of the HTVI is covered by a bilateral or multilateral advance pricing agreement in effect for the period in question.

- c) Any significant difference between the financial projections and the actual outcomes does not have the effect of reducing or increasing the compensation for the HTVI by more than 20% of the compensation determined at the time of the arrangement.
- d) A commercialization period of five years has passed following the year in which the HTVI first generated unrelated party revenues for the transferee and in which commercialization period any significant difference between the financial projections and the actual outcomes was not greater than 20% of the projections for that period.

Example 1

Abokobi Limited, a resident of Ghana, has patented a pharmaceutical compound. Abokobi Limited has concluded pre-clinical tests for the compound and has successfully taken the compound through Phases I and II of the clinical trials. Abokobi Limited transfers the patent rights to an affiliate, Sojul Limited, a resident of India, in Year 0. Sojul Limited will be responsible for the Phase III trials following the transfer. In order to determine the price for the patent on the partially developed drug, the parties made an estimation of expected income or cash flows that will be obtained upon exploitation of the drug over the remaining life of the patent, once finalized. Assuming the price so derived at the time of the transfer was US\$700,000 and that this was paid as a lump sum in Year 0. In particular, the taxpayer assumed sales would not exceed US\$1m a year, and that commercialization would not commence until Year 6. The discount rate was determined by referring to external data analyzing the risk of failure for drugs in a similar therapeutic category at the same stage of development.

Scenario A

Commercialization in fact starts during Year 3 since the Phase III trials were completed earlier than projected. Sales in Years 3 and 4 correspond to sales that were projected, at the time of the transfer, to be achieved in Years 6 and 7. The taxpayer cannot demonstrate that its original valuation properly took into account the possibility that sales would arise in earlier periods and cannot demonstrate that such a development was unforeseeable.

The Commissioner - General may use any evidence available to him to determine that the possibility of earlier sales should have been taken into account in the valuation. The

taxpayer's original valuation is revised to include earlier sales resulting in a revised net present value of the drug in Year 0 of US\$1m instead of US\$700,000. Therefore, assuming for the purposes of the example that the arm's length price anticipated in Year 0 should have been US\$1m.

Note that the value of US\$1m is not necessarily the net present value of the transferred rights based solely on the actual outcome. In accordance with the approach to HTVI, the Commissioner-General can make an adjustment to assess the additional income of US\$300,000 in Year 0.

Scenario B

The taxpayer's original valuation is revised to include earlier sales resulting in a revised net present value of the drug in Year 0 of US\$800,000 instead of US\$700,000. Therefore, for the purposes of the example that the arm's length price anticipated in Year 0 should have been US\$800,000. Note that the value of US\$800,000 is not necessarily the net present value of the transferred rights based solely on the actual outcome. In accordance with the approach to HTVI, an adjustment could be made to assess the additional profits of US\$100,000 in Year 0. However, in this example, the exemption applies since the adjustment to the compensation for the transfer is within 20% of the compensation determined at the time of the arrangement. Notwithstanding that the HTVI approach does not apply, an adjustment under other provisions of the Regulations may be appropriate.

4.6 Cost Contribution Arrangements

A Cost Contribution Arrangement (CCA) is a contractual arrangement among persons to share the costs or risks associated with the development, production or the obtaining of intangibles, tangible assets or services, in proportion to the benefits that each participant is reasonably expected to derive from such intangibles developed, tangible assets produced or services obtained under the arrangement.

A key feature of a CCA is the sharing of contributions in accordance with the ALS at the time of entering into a CCA. Each participant's proportionate share of the overall contributions to a CCA

must be consistent with its proportionate share of the overall benefits expected to be received under the arrangement.

Development CCAs and Service CCAs are the two major types of CCAs commonly encountered. Each is fundamentally different in its commercial rationale and characteristics, particularly in respect of the relationship between cost, risk and benefit. These differences have significant implications for the application of the ALS.

- a) Development CCAs are generally arrangements for developing, producing or obtaining assets or rights. They mostly relate to research and development activity performed for the joint benefit of the participants. They may also relate to mining exploration and/or development undertaken jointly. Such activities typically involve a significant degree of risk of commercial failure and resulting financial loss. A commercial rationale of such a CCA is to share or spread the risk. Another possible benefit is that a party is able to exploit a potentially profitable business opportunity that individually may not be a financially or commercially viable proposition. The participants contribute different assets, resources and expertise that together make the venture possible. When entering into the arrangement, any benefit from success of the venture is a future possibility or expectation that may accrue within an uncertain timeframe. Such CCAs contractually provide for each participant, an ownership interest in any intangible or tangible assets resulting from the activities of the CCA or rights to use or exploit those intangible or tangible assets.
- b) Service CCAs which relate to activities performed for the joint benefit of the participants that do not result in any property being produced or developed. For example, management and administrative services may be centralised by an MNE and undertaken by one group member for the benefit of it and others. Such activities involve little risk of commercial failure. Rather, the commercial rationale of a CCA for such activities is primarily to share, and thus create cost savings. The participants have a common need for the activities to be performed and the benefit of cost efficiencies from centralisation of functions is cost savings through non-duplication of infrastructure. Such a benefit is immediate or short term, being ordinarily realised in the period in which the service activities are performed. In this regard, the distinction between the expectation

of benefit and the derivation of actual benefit from the activities may not be as significant as in other types of CCA.

For the conditions of a CCA to satisfy the ALS, the value of the participants' contributions must be consistent with what independent persons would have agreed to contribute under comparable circumstances given their proportionate share of the total anticipated benefits they reasonably expect to derive from the arrangement.

In addressing this, regard should be given to the following matters, to the extent that each is relevant in a particular case:

- a) The arrangement should make business sense:
 - i. the terms and conditions of a CCA should be consistent with what would have been agreed between independent persons acting in their own economic interests, and reflect outcomes that make business sense in their particular circumstances; and
 - ii. it should make business sense for each person, acting in its own economic interests, to enter into a CCA compared to other options realistically available to it.

- b) The terms should accord with economic substance:

The terms agreed between the participants to a CCA should accord with the economic substance of the arrangement, as evidenced by the conduct of the participants and what persons dealing at arm's length would be expected to have agreed in similar circumstances.

- c) The terms should be agreed up-front:
 - i. The terms of a CCA should be agreed prior to commencement of the CCA activity; and
 - ii. The terms of a CCA should be arm's length judged by reference to circumstances known or reasonably foreseeable at the time of entry into the arrangement.

- d) The participants should have a reasonable expectation of benefit:
 - i. A participant must have an interest in the results of the CCA activity; and
 - ii. A participant should have a reasonable expectation of benefit from exploiting its interest in the results of the CCA activity.

- e) Sharing of contributions should be consistent with sharing of expected benefits:

- i. A participant's proportionate share of the overall contributions to the CCA should be consistent with its proportionate share of the overall expected benefits from the arrangement;
 - ii. Cost contributions should be measured on an arm's length basis;
 - iii. Expected benefits should be measured using reasonable estimates of revenues or cost savings from use of the results of the CCA activity; and
 - iv. The sharing of contributions might appropriately be subject to review and prospective adjustment to account for changes in circumstances that result in changes to expected benefits.
- f) Entry, withdrawal and termination should be on arm's length terms:
Any transfer of a valuable interest in the results of the CCA activity as a result of a person's entry into or withdrawal from an active CCA, or upon termination of a CCA, should be on arm's length terms.

A payment made by a new entrant to an already active CCA for obtaining an interest in any results of prior activities of the CCA, which is referred to as a "buy-in payment", is consistent with ALS, if it reflects an amount an independent person under comparable circumstances would have paid, given the expected benefit to be derived under the CCA.

A compensation received by a participant who withdraws from an active CCA for an effective transfer of an interest in the results of past activities of the CCA, which is referred to as a "buy-out payment", is consistent with the ALS, if it reflects an amount an independent person under comparable circumstances would have received, given the expected benefit to be derived under the CCA.

Where all participants to a CCA agree to terminate the arrangement, the interest of each participant shall be determined based on the proportionate share of contributions made by each participant to the CCA.

Generally, a CCA between controlled persons should meet the following conditions:

- a) The participants would include only persons expected to derive mutual and proportionate benefits from the CCA activity itself and not just from performing part or all of that activity.
- b) The arrangement would specify the nature and extent of each participant's interest in the results of the CCA activity as well as its expected respective share of benefits.

- c) No payment other than CCA contributions, appropriate balancing payments and buy-in payments would be made for the particular interest or rights in intangibles, tangible assets or services obtained through the CCA.
- d) The value of participants' contributions would be determined in accordance with the ALS.
- e) The arrangement may specify provision for balancing payments and/or changes in the allocation of contributions prospectively after a reasonable period of time to reflect material changes in proportionate share of expected benefits among the participants.
- f) Adjustments would be made where necessary (including the possibility of buy-in and buy-out payments) upon the entrance or withdrawal of a participant and upon termination of the CCA.

4.7 Financing Arrangements

The purpose of this sub-section is to provide guidance for determining whether the terms and conditions of financial arrangements between persons in a controlled relationship are consistent with the ALS.

It must be noted that the terms and conditions of financial arrangements between independent persons are mainly influenced by market forces. In contrast, the terms and conditions of financial arrangements between persons in a controlled relationship may be influenced by other considerations that independent persons may not take into account when negotiating the terms and conditions of financial arrangements.

In accurately delineating an advance of funds, the following economically relevant characteristics may be useful indicators, depending on the facts and circumstances:

- a) the presence or absence of a fixed repayment date;
- b) the obligation to pay interest;
- c) the right to enforce payment of principal and interest;
- d) the status of the funder in comparison to regular corporate creditors;
- e) the existence of financial covenants and security;
- f) the source of interest payments;
- g) the ability of the recipient of the funds to obtain loans from unrelated lending institutions;

- h) the extent to which the advance is used to acquire capital assets; and
- i) the failure of the purported debtor to repay on the due date or to seek a postponement.

Determination of Whether a Purported Loan Should Be Regarded as a Loan

It may be the case that the balance of debt and equity funding of a borrowing entity that is part of an MNE group differs from that which would exist if it were an independent entity operating under the same or similar circumstances.

This situation may affect the amount of interest payable by the borrowing entity and so may affect the profits accruing in a given jurisdiction.

Example

Company B, a member of an MNE group, needs additional funding for its business activities. Company B receives an advance of funds from its associate, Company C, which said advance is treated as a loan with a term of 10 years.

In light of all reasonable financial projections for the next 10 years of Company B, it is clear that Company B would not be able to service such a loan.

How would the loan be treated for transfer pricing purposes?

Comment

Based on the facts and circumstances, it can be concluded that an independent person would not have provided such a loan to Company B due to its potential inability to repay the loan.

Accordingly, the accurately delineated amount of Company C's loan to Company B for transfer pricing purposes would be a function of the maximum amount that an unrelated lender would have been willing to advance to Company B, and the maximum amount that an unrelated borrower in comparable circumstances would have been able to borrow from Company C, including the possibilities of not lending or borrowing any amount.

Consequently, the amount provided by Company C which exceeds the amount an independent person under comparable circumstances would have provided to Company B would not be

delineated as a loan for the purposes of determining the amount of interest which Company B would have paid at arm's length.

Where Company C is a shareholder of Company B, the amount provided by Company C which exceeds the amount an independent person under comparable circumstances would have provided to Company B would be treated as equity financing in the books of Company B.

Where Company C is not a shareholder of Company B, the amount provided by Company C which exceeds the amount an independent person under comparable circumstances would have provided to Company B would be disregarded for purposes of determining the interest payable by Company B to Company C.

Factors to Consider in Identifying Commercial or Financial Relations

In determining the arm's length conditions of financial arrangements between persons in controlled relationship, accurate delineation of financial arrangements require an analysis of the factors affecting the performance of businesses in the industry or sector in which the MNE group operates. This is because differences exist among industries or sectors. Factors such as the particular point of an economic, business or product life cycle, the effect of government regulations, or the availability of financial resources in a given industry are relevant features that have to be considered to accurately delineate the controlled arrangement. This examination will take account of the fact that MNE groups operating in different sectors may require, for example, different amounts and types of financing due to different capital intensity levels between industries or may require different levels of short-term cash balances due to different commercial needs between industries.

In considering the options realistically available, the perspective of each of the parties to the arrangement must be considered. For instance, in the case of an entity that advances funds, other investment opportunities may be contemplated, taking account of the specific business objectives of the lender and the context in which the arrangement takes place.

From the borrower's perspective, the options realistically available will include broader considerations than the entity's ability to service its debt, for example, the funds it actually needs to meet its operational requirements. In some instances, although an entity may have the capacity to borrow and service an additional amount of debt, it may choose not to do so to avoid placing negative

pressure on its credit rating, increasing its cost of capital, jeopardizing its access to capital markets and its market reputation.

In accordance with Regulation 9, the Commissioner-General shall deem appropriate interest or loan fees where none is charged or adjust the amount of interest or loan fees to reflect an amount an independent person in a comparable circumstance would have charged for providing a loan, credit facility or otherwise becoming the creditor of an associated person.

The arm's length principle applies to financial arrangements to ensure that the conditions of an arrangement between persons in a controlled relationship are consistent with those conditions that would have been made or imposed between independent persons dealing in comparable circumstances.

In relation to financial arrangements, the Commissioner-General will require a broad analysis of the conditions of the loan or other financial instrument to determine whether these conditions satisfy the ALS.

As prescribed by Regulation 9(2)(d) of L.I.2412, the following relevant conditions may be taken into account in determining whether interests or loan fees charged under an arrangement reflect the ALS.

- a) The quantum of debt
- b) The nature of repayments of principal and interest
- c) The rate of real or effective interest
- d) The existence of any guarantees
- e) The circumstances surrounding the arrangement, including:
 - i. The commercial purpose of the loan
 - ii. The creditworthiness of the borrower
 - iii. The ability of the borrower to obtain finance from a third party

Example 1

Company A, which is resident for tax purposes in Ghana has a subsidiary Company B in country XYZ. Company A provides a loan facility of Gh¢100,000,000.00 to Company B. However, the terms of the loan do not include interest or loan fees.

What is the transfer pricing issue arising out of this arrangement?

Comment

Clearly, if Company A and Company B were unrelated and dealing at arm's length, Company A would charge interest on the loan. The Commissioner-General will determine an appropriate interest on the loan (in accordance with the ALS) and increase the taxable income of Company A by the interest amount computed.

Example 2

Company B which is resident for tax purposes in Ghana, is a subsidiary of Company A based in USA. Company B, which was registered with the Registrar-General in January 2020 had a stated capital of US\$100,000,000.00 in the year 2020. Below are the details of how the funds were remitted to Ghana.

DATE	RECEIPTS (US\$ m)	EQUITY(US\$ m)	LOAN(US\$ m)
January 2020	10	5	5
March 2020	50	25	25
June 2020	70	35	35
August 2020	40	20	20
December 2020	30	15	15
		100	100

The interest rate on the loan is 7.2%. Company B has been granted dispensation to prepare Financial Statement in US\$.

How would the interest generated on the loan provided to Company B be treated for transfer pricing purposes?

Comment

The capital requirement for establishing an entity in Ghana is provided by law. In this particular scenario, although the entity was registered with equity of \$100 million, it is obvious from the arrangement that the company did not in reality have such equity. When the company was remitting the funds, instead of remitting the equity, it employed the strategy by making part of the funds debt with an interest component. The arrangement smacks of a scheme to erode the tax base of the subsidiary in Ghana and shift profit to the US. The interest payment shall be disallowed and only recognized after the minimum capital is met by re-characterizing the debt as equity.

Example 3

Company X is resident for tax purposes in Ghana and has a parent Company Y resident in UK. In 2011, Company X received a loan of US\$100 million from Company Y at the rate of 10%. In 2015, the principal loan amount of US\$100 million had accumulated interest of US\$40 million. Company X has for some unknown reasons, converted the loan and interest into Cedis. Company X applied half of the cedi amount as equity and the other half as a loan at a rate of 27%.

What is the transfer pricing issue arising out of this arrangement?

Comment

The dollar denominated loan of US\$ 100 million between Company X and Y was at the rate of 10%. The principal and accumulated interest amounting to US\$140 million was converted into cedis. The cedi equivalent of US\$70 million was treated as a loan at the rate of 27%. For transfer pricing purposes, the Commissioner-General would treat the cedi denominated facility at the rate of 27% as a new financing arrangement between Company X and Y and disregard the old arrangement from the date of inception of the new arrangement. The interest rate charged under the new arrangement must reflect the ALS.

4.8 Business Restructuring

Introduction

For transfer pricing purposes, a business restructuring involves the reorganization or transfer of functions, assets or risks to an associated person in some cases including the termination or

substantial renegotiation of existing arrangements. This section considers situations where such transfers occur between persons in a controlled relationship with the aim of implementing changes in the group's existing business arrangements or operations.

Business restructuring may involve the:

- a) conversion of full-fledged distributor (that is, enterprises with relatively higher level of functions and risks) into limited-risk distributors, marketers, sales agents, or commissionaires (that is enterprises with a relatively lower level of functions and risks) for a foreign associated enterprise that may operate as a principal;
- b) conversion of full-fledged manufacturers (that is, enterprises with relatively higher level of functions and risks) into contract manufacturers (that is, enterprises with relatively lower level of functions and risks) for a foreign related party that may operate as a principal;
- c) transfers of intangibles or rights in intangibles to a central entity within the group; or
- d) concentration of functions in a regional or central entity, with a corresponding reduction in scope or scale of functions carried out locally; examples may include procurement, sales, support, supply chain logistics.

4.8.1 Where a particular arrangement is part of a broader business restructuring agreement, determining the arm's length consideration for that arrangement requires that all of the circumstances relevant to the agreement are taken into account in evaluating comparability with the consideration that might reasonably be expected under an agreement between independent persons dealing at arm's length.

4.8.2 Where possible and practicable, the arm's length consideration is determined by applying the most appropriate transfer pricing method using reliable comparable data relating to an agreement between independent persons dealing at arm's length for a comparable arrangement in comparable circumstances.

4.8.3 Where there is insufficient reliable comparable data, the consideration that might reasonably be expected under an agreement between independent persons dealing at arm's length in comparable circumstances can be determined by considering the following indicators of arm's length behaviour and outcomes that might reasonably be expected to shape such an agreement:

- a) An arm's length outcome is one that makes business sense in the circumstances of all parties to the arrangement;
- b) An independent person dealing at arm's length would seek to protect its own economic interest; and
- c) An independent person dealing at arm's length would compare the options realistically available and seek to maximise the overall value derived from its economic resources.

4.8.4 Where it is concluded from an examination of all relevant matters that the consideration for an arrangement under a business restructuring agreement is comparable with that which might reasonably be expected to be agreed between independent persons dealing at arm's length, then that consideration is regarded as satisfying the ALS under the transfer pricing provisions.

4.8.5 In some cases, comparability with what might reasonably be expected to be agreed between independent persons dealing at arm's length should be achievable by adjusting the consideration payable or receivable by the taxpayer based upon the business restructuring arrangement, as agreed by the persons in a controlled relationship.

4.8.6 However, in some cases where it is not possible or practicable to achieve an arm's length outcome in the manner described in the preceding paragraph, the Commissioner-General may apply the transfer pricing provisions to adjust the consideration receivable or payable by the person by reference to an agreement that might reasonably be expected between independent parties dealing at arm's length in comparable circumstances.

4.8.7 In determining the arm's length price in relation to a business restructuring arrangement, the following steps should be undertaken:

Step 1

Consider the arrangement between the persons in a controlled relationship in the context of the business:

- a) Identify the scope, type and value of the dealings with persons in a controlled relationship involved in the business restructuring;
- b) Perform functional analyses of the pre and post restructuring business activities affected by the business restructuring;
- c) Refer to any relevant contracts, including those entered into to implement the business restructuring (for example, contracts for the sale of property) and those evidencing the terms of the pre and post restructuring arrangements for the business activities affected by the restructuring; and
- d) Examine whether the contractual terms accord with the outcomes of the functional analyses and determine the true nature, terms and effects of the business restructuring.

Step 2

Select the most appropriate transfer pricing methodology or methodologies:

- a) Identify the available data that may establish an arm's length consideration for each of the dealings involved in the business restructuring and for the dealings in their entirety;
- b) Obtain any available data as to arrangements between independent persons dealing at arm's length in comparable circumstances;
- c) Depending upon the extent of such comparable data, obtain any other available data relevant to determining whether the pricing of the business restructuring makes commercial sense for the parties, having regard to what is in their best economic interests and the options realistically available to them at arm's length; and

Determine the most appropriate arm's length pricing methodology or methodologies based on the facts and circumstances of the particular case.

Step 3

Apply the most appropriate method and determine an arm's length outcome:

- a) Determine the consideration that might reasonably be expected under an agreement between independent persons dealing at arm's length in comparable circumstances;
- b) Perform a comparability analysis using any available data as to arrangements between independent persons dealing at arm's length in comparable circumstances;
- c) If this analysis is sufficiently reliable, use the outcomes to apply the most appropriate arm's length pricing method(s) to determine the amount(s) of arm's length consideration receivable or payable in connection with the business restructuring;
- d) If not, then use the functional and comparability analyses and any other relevant available data to examine whether the pricing of the business restructuring makes commercial sense for the persons in a controlled relationship, having regard to what is in their best economic interests and the options realistically available to them at arm's length;
- e) If the pricing of the business restructuring arrangement is considered to make commercial sense using this analysis, then this determines the amounts of arm's length consideration receivable or payable by the taxpayer under that arrangement;
- f) If the examination of these matters shows that the pricing of the business restructuring arrangement does not make commercial sense, then seek to achieve an arm's length outcome through a pricing adjustment by reference to the arrangement as entered into by the parties; and
- g) If it is not possible or practicable to achieve an arm's length outcome in this way, then determine arm's length pricing using an arrangement that might reasonably be expected to exist between

independent persons dealing at arm's length in comparable circumstances.

Example

Assume that Company A was a fully-fledged manufacturer of widgets which, among others, assumed economically significant inventory risk. Pursuant to a business restructuring arrangement, Company B is set up as a principal. Under the new contractual arrangements between Company A and Company B, the latter is obliged to produce widgets according to the quality standards and production plan provided by Company A. The contractual arrangements indicate that Company B is responsible for the inventory risk.

Do the terms of the business restructuring arrangement satisfy the ALS?

Comment

If a functional analysis establishes that Company B does not have any control over the inventory risk, i.e. it does not exert any decision making power in relation to the production plan and has no influence over the deployment of risk mitigation strategies if the inventory quantity rises because of sales slow-down, then it may be concluded that the terms of the restructuring arrangement do not conform to the ALS.

In such a situation, the risk and associated consequences should be re-allocated to Company A, i.e. the company actually controlling and managing the risk.

4.9 Associated persons to file details of arrangements

Regulations 11 to 13 of the Transfer Pricing Regulations set out the requirements for taxpayers with respect to Transfer Pricing Documentation, Transfer Pricing Returns and Country-by-Country Reports.

4.9.1 Transfer Pricing Returns

The Regulations require persons who enter into an arrangement with persons with whom they are in a controlled relationship to file transfer pricing returns in a prescribed form as per Appendix 1. The Transfer Pricing Return shall be filed at the

Transfer Pricing Unit (TPU) of GRA not later than four (4) months after the end of each basis period.

4.9.2 Regulation 11(4)

For the purpose of this Practice Note, a reasonable time to submit requested documents to the Commissioner-General shall be seven (7) days where the documents are within Ghana, and fourteen (14) days where the documents are outside Ghana.

4.10 Details of documentation

The Regulations require a person who enters into an arrangement with another person with whom that person is in a controlled relationship, to maintain contemporaneous documentation of the arrangement engaged in by that person in each year of assessment.

Contemporaneous documentation means information, records and other documents which exist or are brought into existence at the time the person is developing or implementing any arrangement that might raise transfer pricing issues.

A person who enters into an arrangement with another person with whom that person is in a controlled relationship is required to file with the Commissioner-General, an electronic copy of the Master File and Local File containing the information prescribed in Regulation 12, not later than four months after the end of each basis period.

For information which should be included in the Master File and Local File, please refer to Appendix 2 (a) and 2 (b).

Note

The provisions in the Revenue Administration Act, 2016 (Act 915) relating to failure to comply with a tax law would apply where a taxpayer fails to file the Master File and Local File with the Commissioner-General within the prescribed timeframe.

4.11 Country-by-Country (CbC) Report

An MNE Group with total consolidated group revenue of two billion, nine hundred million Ghana Cedis during the Fiscal Year immediately preceding the Reporting Fiscal Year is required to prepare a CbC Report.

An "MNE Group" is any Group that:

- i. includes two or more entities which are resident for tax purposes in different jurisdictions; or
- ii. includes an entity that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

An Ultimate Parent Entity or a Constituent Entity of a MNE Group that is resident for tax purposes in Ghana shall file with the Commissioner-General not later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group, a CbC Report where the conditions set out in Regulation 13 of L.I. 2412 are met.

The CbC Report shall contain all the information listed under Regulation 13 of L.I. 2412 and any additional information that the Commissioner-General may require. For information which should be included in the CbC Report, please refer to Appendix 3.

Note

The provisions in the Revenue Administration Act, 2016 (Act 915) relating to failure to comply with a tax law would apply where a taxpayer fails to file the CbC Report or a notification relating to the CbC Report with the Commissioner-General within the prescribed timeframe.

4.12 Simplified Approach

Regulation 14 provides for situations where a taxpayer may adopt the simplified approach with respect to transfer pricing documentation. The simplified approach deals with three scenarios.

4.12.1 Scenario 1 - General exemption from filing contemporaneous documentation.

A person who enters into an arrangement with another person, with whom that person is in a controlled relationship, is not required to local file and master file, if the monetary value of the controlled arrangement in a year of assessment, does not exceed the Ghana Cedi equivalent of Two hundred thousand United States Dollars (US\$200,000). However, the person is required to file a Transfer Pricing Return under Regulation 11 (1).

Where a taxpayer enters into an arrangement and the monetary value of the arrangement does not exceed the Ghana Cedi equivalent of US\$200,000, the taxpayer would not be required to prepare and file with the Commissioner-General, a Master File and Local File.

Where the taxpayer enters into a number of arrangements and the monetary value of some of the arrangements exceed the Ghana Cedi equivalent of US\$200,000, the taxpayer would be required to prepare and file with the Commissioner-General, a Master File and Local File.

Sub-regulation 2 of Regulation 14 provides that, the Commissioner-General may aggregate two or more arrangements among persons in a controlled relationship in determining whether or not the monetary value of an arrangement does not exceed the Ghana Cedi equivalent of Two hundred thousand United States Dollars (US\$200,000). The Commissioner-General may only aggregate the arrangements if the Commissioner-General is satisfied that the arrangements are designed in furtherance of a tax avoidance arrangement.

Section 99 (4) and (5) of the Revenue Administration Act, 2016 (Act 915) provides that a Tax Avoidance Arrangement covers:

- a) an arrangement that has as a main purpose the provision of a tax benefit for a person; or
- b) an arrangement where the main benefit that might be expected to accrue from the arrangement is a tax benefit for a person.

A tax benefit in relation to a person, means

- a) avoiding, reducing or postponing a tax liability of the person;
- b) increasing a claim of the person for a refund of tax; or
- c) preventing or obstructing collection of tax from the person.

Further, an arrangement is a "tax avoidance arrangement" only if it involves a misuse or abuse of a tax law provision having regard to the purpose of the provision and the wider purposes of the law in which the provision is situated.

Example 1

Company B, a subsidiary of Company A, is a tax resident in Ghana, while its parent Company is resident in Israel. As part of capacity support, Company A signed separate contracts to provide to Company B the following:

1. Administrative Services - US\$50,000.00
2. Technical Service - US\$180,000.00

Company B holds the view that since the value of each contract with Company A is below the threshold, there is no need to maintain contemporaneous documentation to cover the arrangements.

Comment

Regulation 14(1) states that;

"A person who enters into an arrangement with another person with whom that person has a controlled relationship, is exempted from the requirement under sub regulation (1) of Regulation 12, if the monetary value of the arrangement does not exceed the Ghana Cedi equivalent of two hundred thousand United States Dollars".

From the facts provided, the two contracts cover the provision of management and technical services to Company B in Ghana. The splitting of the management and technical services into two contracts is an attempt to keep the arrangement below the threshold required for the maintenance of contemporaneous documentation.

The two contracts fall under an arrangement for management services. In the opinion of the Commissioner-General, the splitting of the arrangement into two separate contracts was in furtherance of a tax avoidance arrangement as provided for under Section 99(4) of the Revenue Administration Act, 2016 (Act 915).

Sub-regulation (2) of regulation 14 therefore empowers the Commissioner-General to aggregate the contracts for the purpose of determining whether the monetary value of an arrangement is within the threshold.

Since the value of the two contracts is US\$230,000.00, Company B is required to prepare and file with the Commissioner-General, a Master File and Local File under Regulation 12.

Example 2

Company X is a trading entity which is resident for tax purposes in Ghana. Company Y which is the parent company of X, is also the sole shareholder of Company U and Company V. Company Y, U and V are resident for tax purposes in Mauritius. Company X enters into a supplier's agreement with Company U and Company V for the supply of trading goods. The monetary value of each supplier's contract is US\$120,000.00.

Company X holds the view that since each contract is less than US\$200,000.00, it is not required to maintain contemporaneous documentation under Regulation 12.

Comment

Since Companies U, V and X have a common shareholder, these companies are considered as associates for tax purposes. The supplier's arrangement among the associates is for the provision of trading goods. Since the subject matter of the arrangements is trading goods, the Commissioner-General may aggregate the supplier's contract among the associates in order to determine the monetary value of the supply of trading goods unless Company X is able to prove to the satisfaction of the Commissioner-General that the separate supplier's contract among the associates were not designed in furtherance of a tax avoidance arrangement.

Example 3

Company A is a manufacturing entity resident for tax purposes in Ghana. Company B, which is the parent Company of A, is also the sole shareholder of Companies C and D. Companies B, C and D are resident for tax purposes in the Cayman Islands. Company A enters into an agreement valued at US\$150,000.00 with Company B for the right to use a trademark owned by Company B. Company A also enters into an agreement valued at US\$100,000.00 with Company C to provide know-how to Company A, although in reality, it is Company B that provides the know-how to Company A. Company A also enters into an agreement valued at US\$110,000.00 with Company D to provide network support to Company A.

Company A holds the view that since each contract is less than US\$200,000.00 it is not required to maintain contemporaneous documentation under Regulation 12 (1).

Comment

Since Companies A, C and D have a common shareholder, these companies are considered as associates for tax purposes. The contracts between Companies A and B (US\$150,000.00) and Companies A and C (US\$100,000.00) are in the nature of intellectual property. On the other hand, the contract between A and D is in the nature of management and technical services. From the facts, although Company A entered into a contract with Company C to receive know-how from Company C, the know-how was actually provided to Company A by Company B.

In the opinion of the Commissioner-General, the form of the contract between Company A and Company C does not reflect the substance since the know-how is actually provided by Company B. Thus, the arrangement between Company A and Company C is in furtherance of a tax avoidance arrangement as provided for under Section 99(4) of the Revenue Administration Act, 2016 (Act 915). Therefore, the Commissioner-General will aggregate the contracts between Companies A and B, and Companies A and C in order to determine the monetary value of the arrangement under Regulation 14(1) and (2). The two contracts amount to

US\$250,000.00 which is greater than the safe harbour threshold of US\$200,000.00. On the basis of the above, the two arrangements cannot be considered under the Simplified Approach. In this case, there is the need to undertake a comparability analysis which would show that the price for the transfer of the intangible property is at arm's length.

The contract amount between A and D is US\$110,000.00 and since it is below the safe harbour threshold of US\$200,000.00, the arrangement may be considered under the Simplified Approach.

The taxpayer would be required to prepare and file with the Commissioner-General, a Master File and Local File. However, the Master File and Local File need not include a comparability analysis covering the arrangements which have monetary values not exceeding the Ghana Cedi equivalent of US\$200,000.

4.12.2 Scenario 2: Low Value Adding Intra-Group Services

Regulation 14(5) provides that a person who renders or receives low value-adding intra-group services may by a notice in writing to the Commissioner-General, elect to be exempted from the requirement to file local file and master in relation to the mark-up applied on the cost if the mark up does not exceed three percent of the cost.

Low value adding intra-group services means services performed by one member or more than one member of a group of entities on behalf of other members within the group which:

- a) are of a supportive nature,
- b) are not part of the core business of the group (i.e. not creating the profit-earning activities or contributing to economically significant activities of the group), and
- c) do not
 - i. require the use of unique and valuable intangibles,

- ii. lead to the creation of unique and valuable intangibles,
- iii. involve the assumption or control of significant risk by the service provider, and
- iv. give rise to the creation of significant risk for the service provider.

Services which may be considered as "low value adding intra-group services" include:

- a) Accounting and auditing;
- b) Human resources activities;
- c) Monitoring and compilation of data;
- d) Information technology services where they are not part of the principal activity of the group;
- e) Internal and external communications and public relations support (but excluding specific advertising or marketing activities as well as development of underlying strategies);
- f) Legal services;
- g) Tax advisory services; and
- h) General services of an administrative or clerical nature.

The Commissioner-General may consider the following conditions before approving a request by the taxpayer to apply the simplified approach:

- a) the service being provided meets the definition of "low value adding intra-group services";
- b) the cost pool for the service provided has been determined;
- c) an appropriate allocation key for the cost pool has been determined;
- d) the cost has been allocated among the various parties using the allocation key; and
- e) the mark-up on the cost has been determined.

If the above conditions are satisfied and the mark up does not exceed three percent (3%) of the cost, the Commissioner-General may approve the request by the taxpayer to apply the simplified approach to the arrangement.

Note the following:

- i. The simplified approach only exempts the taxpayer from filing local and master files with the Commissioner-General. The Notice of election to apply this Simplified Approach must be filed with the Commissioner-General within thirty days of the person entering into the arrangement.
- ii. A person whose Notice of election has been approved by the Commissioner-General is bound for a period of three years, unless otherwise determined by the Commissioner-General.
- iii. A person whose Notice of election has been approved can give notice to the Commissioner-General to opt out.
- iv. The person must file a Transfer Pricing Return and attach to the return, information required under Regulation 14(7) which relates to the cost pool.

Example 1

Company X which is resident for tax purposes in Ghana, is a mobile phone manufacturer and wholesale distributor of mobile phones in West Africa. Company Y, a wholly owned subsidiary of Company X, resident for tax purposes in Zambia, is a wholesale distributor in the Southern Africa Region of the mobile phones manufactured by Company X.

As part of its operations, Company X routinely performs credit risk analysis on its customers on the basis of reports purchased from a credit reporting agency. Company X performs, on behalf of Company Y, the same credit risk analysis with respect to Company Y's customers, using the same methods and approaches. Company X charges Company Y, a 2.5% markup on the cost of providing the credit risk analysis.

Does the credit risk analysis performed by Company X for Company Y qualify as a low value adding intra-group service?

Comment

Since the credit risk analysis performed by Company X for Company Y is of a supportive nature, not part of the core business of the group, and does not require the use of unique and valuable intangibles, lead to the creation of unique and valuable intangibles, involve the assumption or control of significant risk by the service provider, and give rise to the creation of significant risk for Company X, the service qualifies as a low value intra-group service.

The markup of 2.5% on the cost is below the 3% ceiling provided in the Regulations and thus, Company X can apply to the Commissioner-General to be exempted from the requirement of undertaking a comparability analysis which would show that the mark-up of 2.5% on the cost satisfies the ALS.

Company X would be required to prepare and file with the Commissioner-General, a Master File, Local File and a Transfer Pricing Return and attach to the return, information required under Regulation 14(7) which relates to the cost pool.

Example 2

Company X is a subsidiary of a global investment banking group, Invest Corp. Company X performs credit risk analysis with respect to potential counterparties for arrangement involving financial derivatives contracts and prepares credit reports for Invest Corp. The credit analyses performed by Company X are utilised by Invest Corp in establishing the prices of financial derivatives for the group's clients. The personnel of Company X have developed special expertise and make use of internally developed, confidential credit risk analysis models, algorithms and software.

Does the credit risk analysis performed by Company X for Invest Corp qualify as a low value adding intra-group service?

Comment

From the facts, it is evident that the credit risk analysis performed by Company X on behalf of the global investment banking group, Invest Corp is part of the core business of the group. The special expertise used by personnel of Company X which employs internally developed, confidential credit risk analysis models, algorithms and software means unique and valuable intangibles are used in the credit risk analysis. The service does not qualify as a low value intra-group service.

4.12.3 Scenario 3 - Technology Transfer Agreements

Regulation 14(8) provides that a person who enters into a technology transfer agreement with a person with whom that person is in a controlled relationship may, by notice in writing to the Commissioner-General, elect to be exempted from the requirement of maintaining contemporaneous documentation.

This simplified approach exempts a taxpayer from the requirement of undertaking a comparability analysis which would show that the amount charged for the technology transfer satisfies the ALS.

The Commissioner - General shall take into account the following in determining whether a Technology Transfer Agreement qualifies for the Simplified Approach:

- a) The agreement must be a technology transfer agreement within the definition of the Ghana Investment Promotion Centre Act, 2013 (Act 865);
- b) The agreement must be a technology transfer agreement registered with the Ghana Investment Promotion Centre; and
- c) The amount charged for the technology transfer must accord with the following ranges:
 - i. Royalties not exceeding 2 percent (2%) of net profit;
 - ii. Know-how not exceeding 2 percent (2%) of net profit; and
 - iii. Management or Technical Fee not exceeding 2 percent (2%) of net profit.

If the above conditions are satisfied, the Commissioner-General may approve the Notice of election filed by the taxpayer to apply the Simplified Approach.

Note the following:

- i. This simplified approach exempts a taxpayer from the requirement of undertaking a comparability analysis which would show that the amount charged for the technology transfer satisfies the ALS.
- ii. The Notice of election to apply this Simplified Approach must be filed with the Commissioner-General within thirty days of the person entering into the arrangement.
- iii. A person whose Notice of election has been approved is bound by the election for a period of three years, unless otherwise determined by the Commissioner-General.
- iv. A person whose Notice of election has been approved can give notice to the Commissioner-General to opt out.
- v. The person must prepare and file with the Commissioner-General, a Master File and Local File. However, the Master File and Local File need not include a comparability analysis covering the amount charged for the technology transfer.
- vi. The person must file a Transfer Pricing Return and attach to the return, information required under Regulation 14(10).

Example

Company A, which is resident for tax purposes in Tanzania, has entered into an arrangement with its Ghanaian subsidiary, Company B, to provide know-how as well as Management and Technical Services to Company B.

The Agreement covering the arrangement has been registered with the Ghana Investment Promotion Centre and the fee for know-how is 3% of net profit and 2% of net profit for Management and Technical services.

Do the arrangements qualify for the simplified approach?

Comment

From the facts, although the agreement has been registered with the GIPC, the fee charged by Company A for know-how is 3% of net profit which exceeds the maximum percentage of 2% of net profit. Therefore, Company B cannot submit an application for the payment of the know-how to be considered under the Simplified Approach. Company B would therefore be required to prepare and file with the Commissioner-General, a Master File and Local File which would include a comparability analysis covering the fee payable for the know-how.

On the other hand, since the Management and Technical services fee is within the permissible range, Company B can apply to the Commissioner-General to be considered under the Simplified Approach. Company B must file a Transfer Pricing Return and attach to the return, information required under Regulation 14(10).

Signed: 

Date: 15/04/21

Rev. Ammishaddai Owusu-Amoah
Commissioner-General

GHANA REVENUE AUTHORITY



ANNUAL RETURN ON TRANSFER PRICING ARRANGEMENTS

YEAR OF ASSESSMENT.....

BASIS PERIOD -

- b) Particulars of associated persons with whom the taxpayer has conducted any form of arrangement or dealing during the year

Name of associated person	Principal Business Activity	Nature of relationship	Country of incorporation	Location /Residence	Description of Arrangements

- c) Consolidated Group Revenue

Consolidated Group Revenue	Currency ^j
a) Total Revenue of Associated Persons in Ghana	
b) Total Revenue of Associated Persons Outside Ghana	
c) Total Consolidated Group Revenue (C) = (a) + (b)	

- d) Arrangements with Associated Persons

State the amount of income derived by the taxpayer from arrangements entered into with associated persons in the third column and the expenditure incurred by the taxpayer with respect to arrangements entered into with associated persons in the fourth column.

S/N	Item	Income	Expenditure	Associated person
i.	Stock -in-trade and raw materials			
ii.	All other goods ⁱⁱ			
iii.	Royalties related to Intellectual Properties			
iv.	Other Royalties			
v.	Rent / Lease Payment			
vi.	Other Intangibles			
vii.	Management and Administration			
viii.	Marketing			
ix.	Human Resource Development and Training			
x.	Technical Services			
xi.	Research and Development			
xii.	All other services ⁱⁱⁱ			
xiii.	Interests			
xiv.	Financial Discounts			

xv.	Commission			
xvi.	Insurance Premium			
xvii.	Guarantee fees			
xviii.	Forex loss/gains			
xix.	Other Financial Services			
xx.	Reimbursement of expenses ^{iv}			
xxi.	Cost Sharing /Cost Contribution arrangement			
xxii.	Employment Cost			
xxiii.	All other incomes or expenditure not included elsewhere			
xxiv.	Total Value of Arrangements			

c) **Loans**

i. Loans and Guaranteed Loans with interest provided to the taxpayer by associated persons

Name of Associated person					
Opening balance					
Additions					
Repayments					
Exchange Differences					
Closing balance					
Interest Rate					

ii. Loans and Guaranteed Loans with no interest provided to the taxpayer by associated persons

Name of Associated person					
Opening balance					
Additions					
Repayments					
Exchange Differences					
Closing balance					

iii. Loans and Guaranteed Loans with/without interest provided by the taxpayer to associated persons

Name of Associated person					
Opening balance					
Additions					
Repayments					
Exchange Differences					
Closing balance					
Interest Rate					

f) List the entities in which the taxpayer had either a direct or indirect interest within the basis period.

Name of Entity	Residence of Entity	Nature of Interest

g) **Non-monetary arrangement with Associated person**

Have you received from or provided to an associated person, any non-monetary consideration for the performance of services, transfer of property (tangible or intangible), processes, rights or obligations during the basis period?

Yes

No

If yes, provide details (attach schedule, if necessary)

.....

.....

.....

Have you provided to an associated person any services, transfer of property (tangible or intangible), processes, rights or obligations for which the consideration was nil during the basis period?

Yes

No

If yes, provide details (attach schedule if necessary)

.....

.....

.....
h) Acquisition/Disposal of Assets

i) Did you have any arrangements of a capital nature with associated persons in which you acquired interest in asset(s)?

Yes

No

If yes, state the transfer pricing method(s) used.

.....
.....
.....
.....

ii) Did you have any arrangements of a capital nature with associated persons in which you disposed of asset(s)?

Yes

No

If yes, state the transfer pricing method(s) used.

.....
.....
.....

i) Participation by resident person

Did a resident person with whom you are in a controlled relationship participate directly or indirectly in your capital, finance, management or control during the basis period?

Yes

No

If yes, provide details. (Attach schedules, if necessary).

.....
.....
.....

j) Participation by non-resident person

Did a non-resident person with whom you are in a controlled relationship participate directly or indirectly in your capital, finance, management or control during the basis period?

Yes

No

If yes, provide details. (Attach schedules, if necessary).

.....
.....

.....
.....

k) Business Restructuring

i) Were you involved in any Business Restructuring arrangement in which you transferred functions, rights, interests, assets and/or risks?

Yes

No

If yes, state the amount of compensation received.

.....

ii) Were you involved in any Business Restructuring arrangement in which functions, rights, interests, assets and/or risks were transferred to you?

Yes

No

If yes, state the amount of compensation paid.

.....

l) Simplified Approach

i) Were you involved in any arrangement which can be considered under the Simplified Approach in Regulation 14 of L.I. 2412?

Yes

No

If yes, provide details in the table below:

Name of associated person	Nature of Relationship	Description of Arrangement	Value of the Arrangement	Type of Simplified Approach Applied (Monetary Value Exemption, Low Value Added Intra-Group Services or Technology Transfer Arrangement)

ii) Have you filed a Notice of election to apply the Simplified Approach?

Yes

No

iii) Have you received approval from the Commissioner-General to apply the Simplified Approach?

Yes

No

Not Applicable

If yes, attach a copy of the letter of approval.

PART III. TRANSFER PRICING METHODS AND TESTING FOR ARM'S LENGTH

The Transfer Pricing Regulations, 2020 (L. I. 2412) sets out five methods for calculating arm's length considerations for the transfer of goods, services or intangible property in controlled arrangements. Please state and place against each of the methods, the total value of arrangements where that method was employed in determining the price for the transfer of goods, services or intangible property in a controlled arrangement. The "Total Arrangements" value below must be equal to the value for "Total Value of Arrangements" in 2d.

Transfer Pricing Method	Nature of Controlled Arrangement	Supplies by Associated Persons	Supplies to Associated Persons	Transfer Pricing Adjustments at the end of the year (if any)
Comparable Uncontrolled Price Method (CUP)				
Resale Price Method (RPM)				
Cost Plus Method (CPM)				
Transactional Profit Split Method				
Transaction Net Margin Method (TNMM)				
Any method other than the above				
Simplified Approach				
Total Arrangements				

PART IV. Consolidated Financial Statement

Attach the Financial Statement of the company for the basis period.

PART V. DETAILS OF DIRECTORS (Attach schedules, if the entity has more than two directors).

Director I

Name:

Telephone Number: E-mail:

Tax Identification Number: Equity Shareholding (%):

Director II

Name:

Telephone Number: E-mail:

Tax Identification Number: Equity Shareholding (%):

PART VI. AUTHORIZED OFFICER

Name: Designation:

E-mail: Telephone No:

Date: Signature:

ⁱ Persons permitted to file returns in foreign currency should complete this form in that currency. Provide the exchange rates used to convert foreign currencies into the local currency.

ⁱⁱ All other goods other than stock in trade or raw material purchased/supply from/to persons in controlled relationship.

ⁱⁱⁱ All other services other than those stated elsewhere.

^{iv} Reimbursements include refunds, recharges or payment/receipts made to/from persons in controlled relationship.

^v Purchase/Sale of goods, Provision of services, Royalties, Management services, Technical services, Marketing Services, Insurance etc. Create sub-rows within a row where a particular transfer pricing method was used to test more than one arrangement.

^{vi} Any other method used requires prior approval by the Commissioner-General.

APPENDIX 2(A)

MASTER FILE

NAME OF ENTITY:

FISCAL YEAR:

A. ORGANIZATIONAL STRUCTURE

1. Provide organisational structure of the group including full chart of the group's legal and ownership structure and location of operating entities

B. DESCRIPTIONS FOR EACH MAJOR BUSINESS LINE

1. Provide list of profit drivers of the group
2. Provide a description/chart of supply chain of at least five of the largest products and services offering of the group based on turnover and any other products or service amounting more than 5% of the group turnover:
3. Describe the important intercompany service arrangements, other than research and development (non-R&D) including services and transfer pricing policies for allocating services costs and determining applicable prices for intra-group services.
4. Describe the main geographic markets of the group for the products and services in paragraph 2 above
5. Provide a functional analysis describing the principal contributions to value creation by each of the entities within the group
6. Describe all business restructurings, acquisitions, and divestitures occurring within the group during the relevant year

C. INTANGIBLES

1. Describe the strategy for development, ownership and exploitation of Intellectual Property (IP) including location of R&D facilities and management
2. Describe the intangibles that are relevant for transfer pricing purposes and the entities within the group which own them

APPENDIX 2(A)

- | |
|----------------------------------------------------------------------------------------------------------------------|
| 3. Provide a description of the arrangements related to IP entered into among entities within the group |
| 4. Describe the group's Transfer Pricing (TP) policy related to R&D and IP |
| 5. Describe the internal transfers of interests in IP during the relevant year (entities, location and compensation) |

D. INTERCOMPANY FINANCIAL ACTIVITIES

- | |
|------------------------------------------------------------------------------------------------|
| 1. Describe how the group is financed, including important arrangements with unrelated lenders |
| 2. Identify the central financing entities and their countries of organization and operation |
| 3. Describe the group's TP policies for intercompany financing arrangements |

E. FINANCIAL AND TAX POSITIONS

- | |
|-------------------------------------------------------------------------------------------------------|
| 1. Provide the Group's annual consolidated financial statements |
| 2. List and describe the group's Advanced Pricing Agreements (APAs) |
| 3. List and describe other relevant tax rulings relating to the allocation of income among countries. |

APPENDIX 2(B)

COMPANY LOCAL FILE	
NAME OF ENTITY:	
FISCAL YEAR:	
A. INFORMATION ABOUT LOCAL ENTITY	
1. Provide the organisation chart of the entity in Ghana (Include all departments within the organisation)	
2. Describe the persons to whom local management reports, and the country or countries in which such persons maintain their principal offices	
3. Detailed description of business	
i. Describe the business activity or activities	
ii. Describe the major divisions within the organisation	
iii. Provide a list of the entity's top five (5) clients including their percentage contributions to revenue	
4. Provide a summary of the business strategy of the local entity (include the annual business plan of the entity)	
5. State whether the local entity has been involved in, or affected by business restructurings or transfer of intangibles in the current year, including an explanation of how these arrangements affect the local entity.	
6. List key local competitors	
B. CONTROLLED ARRANGEMENTS	
1. Provide a list of all controlled arrangements between the local entity and associated parties.	
2. Describe the arrangements and the context in which they took place.	
3. Identify all associated parties and their relationship with the local entity.	
4. State the amount of intra-group payments and receipts, grouped by jurisdiction.	
5. Provide copies of intercompany agreements.	

APPENDIX 2(B)

6. Provide detailed comparability and functional analysis of the local entity and relevant associated enterprises with respect to each documented category of controlled arrangements, including any changes from prior years.
7. State the most appropriate TP method(s) used, the rationale for selection of methods and the tested party or parties.
8. Provide a summary of the important assumptions made in applying the transfer pricing methodology.
9. Indicate the selected comparable uncontrolled arrangements, comparable search methodology and sources.
10. Provide a description of any comparability adjustments
11. State reasons for concluding on arm's length pricing
12. Provide a summary of financial information used in applying the transfer pricing methodology
13. Provide copies of any relevant Advance Pricing Agreement or Rulings (to which GRA is not a party)
C. FINANCIAL INFORMATION
1. Provide the local entity's financial statements for the relevant year.
2. Provide Information and allocation schedules showing how the financial data used in applying the transfer pricing method(s) may be tied to the annual financial statements
3. Provide a summary schedules and financial data for comparables and sources of data

APPENDIX 3

COUNTRY-BY-COUNTRY REPORT:

Name of Multinational Enterprise (MNE) Group:

Fiscal Year Concerned:

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)												
			Research and Development	Holding or Managing IP	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other

Note: Tick where applicable

APPENDIX 3

COUNTRY-BY-COUNTRY REPORT

Name of the Multinational Enterprise Group:

Fiscal Year Concerned:

Table 3: Additional Information

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.