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Global Transfer Pricing Conference

Cost effective global core
documentation

October 2013

*Managing
multiple
stakeholders
in the new
economy*

pwc

Agenda

Current TP documentation environment

Cost effective global coordinated documentation

OECD and TP documentation

Conclusion

Current TP documentation environment

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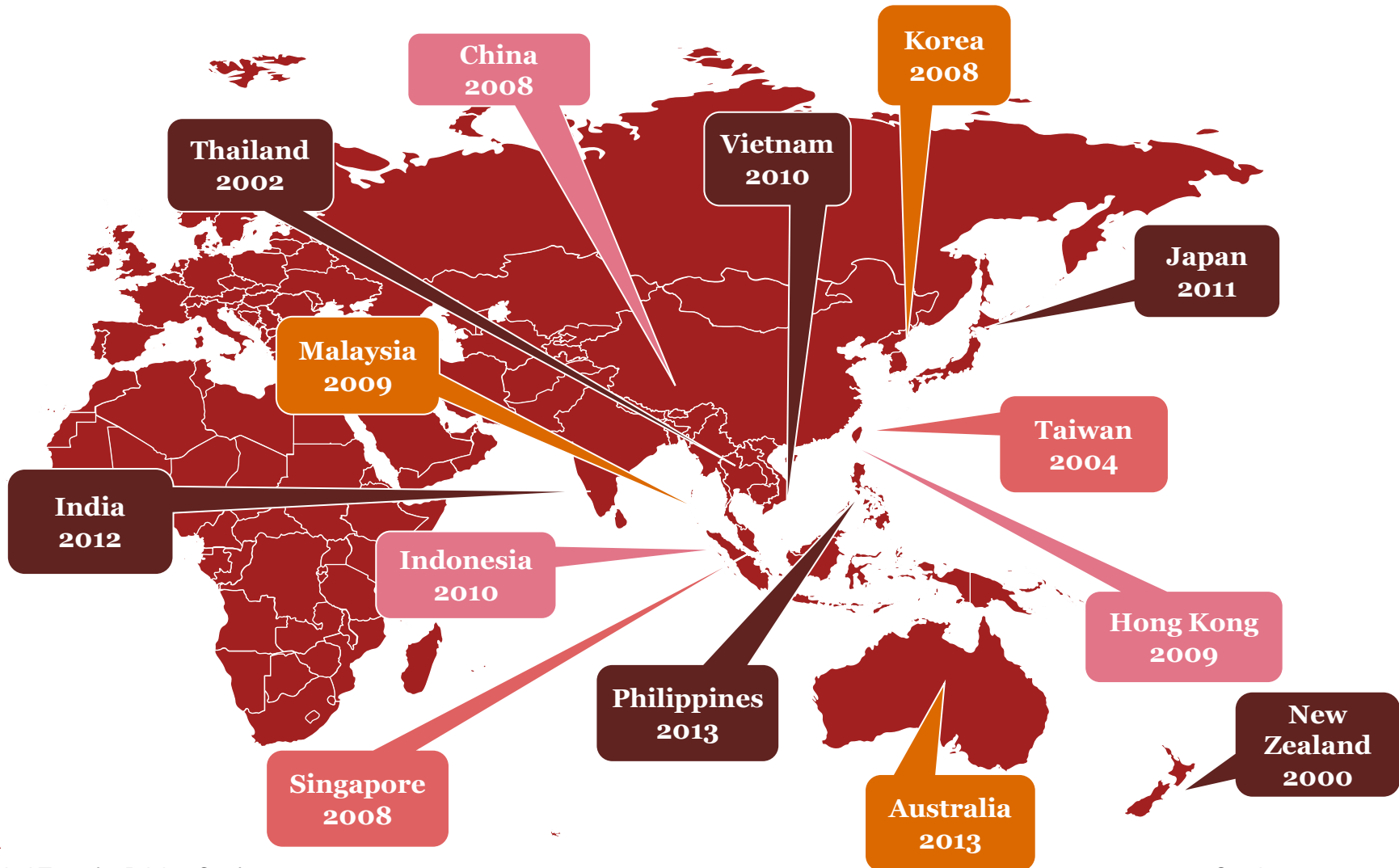
Prevalence of documentation requirements

- TP rules continue to proliferated around the globe:
 - Regulations are still mostly based on OECD Guidelines (except Brazil)
 - Continued expansion of TP rules in Asian, Central American, Caribbean and African countries (Philippines, Costa Rica, Panama and Nigeria)
 - TP rules & requirements revisions (Australia, India and France)
- Vast majority have specific TP penalties, some with information return and/or disclosure requirements
- Advance pricing agreement (APA) programs expanding
- OECD re-examining TP documentation and issuing White Paper on July 30, 2013
- Increasing sophistication and focus on substance and business purpose by local tax authorities on TP audits; as well as sharing of information between tax authorities

Summary of recent key global transfer pricing updates

Market	Description
OECD	OECD's Action Plan published on Base Erosion and Profit Shifting (“BEPS”) - focus on intangibles and re-examine transfer pricing documentation.
Australia	Revised transfer pricing rules with stricter deadlines and higher expectation on taxpayers to monitor its compliance with the rules.
Belgium	Increase in transfer pricing audits as a result of increased focus and resources of the Belgian tax administration.
Brazil	New guidance to transfer pricing regime.
Costa Rica	New transfer pricing rules for transfer pricing documentation and annual informative return.
Czech Republic	Reorganization of the Czech tax authorities leading to increase in transfer pricing audits. Requirements for documentation exemption.
France	Pending law to submit transfer pricing documentation with tax return and proposed changes in income tax law following BEPS and mimicking German exit tax regime.
India	Changes in the final safe harbor rules. Revised guidance for identification of contract R&D service provider.
Peru	Under the revised TP regulation, filing TP documentation with tax return is mandatory.
Philippines	Taxpayers must keep adequate TPD to defend their TP analysis, prevent TP adjustments arising from tax examinations and support their applications for Mutual agreement procedure.

Asia TP landscape



Europe TP landscape



Economic recession



TP related OECD Projects



Introduction of strict TP documentation requirements linked to severe penalties



Search for transparency from Tax Authorities



Increasing collaboration & exchange of information between Tax Authorities



Increasing number of Tax Audits not always accompanied by specialized Tax Authorities TP Teams.



Increase of MAP Cases



Productive relationship with Taxpayers/ enhancement of Advance Pricing Agreements



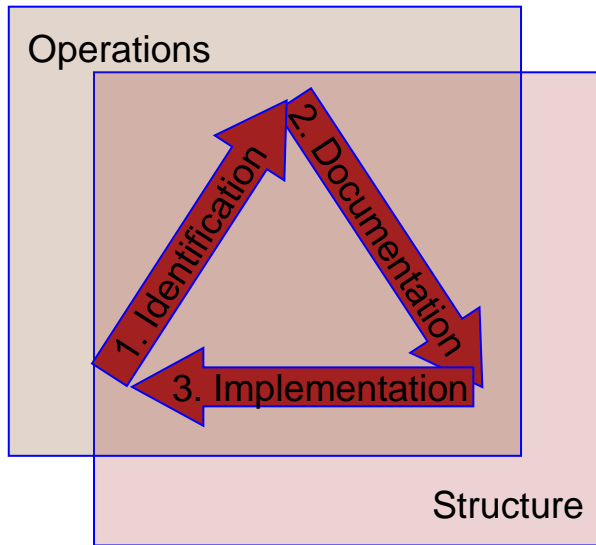
Governments looking for revenue

Cost effective global coordinated documentation

Three ways to prepare documentation and common challenges

Approaches	Common challenges
Documentation prepared internally	<ul style="list-style-type: none">• Shortage of TP-dedicated staff• Time constraints• Evidence may be lost in staff changeovers
Advisor prepares documentation	<ul style="list-style-type: none">• Company disconnected from the process• Lack of communication and knowledge sharing between company and service provider• Locally driven - Insufficient coordination may lead to duplication, inconsistency of work and conflicting analyses in cases with multiple advisors• Centrally driven - Lack of tailoring to local specifications to achieve streamlined approach• Time and people constraints
Mixture of internal and advisor preparation of documentation	<ul style="list-style-type: none">• Best or worst of both worlds?• Split of responsibilities may neither maximize internal resources nor make effective use of external advisors• No one takes ownership of the final deliverable

How to get it right



Identification

- What are the intercompany transactions
- Changes to intercompany transactions

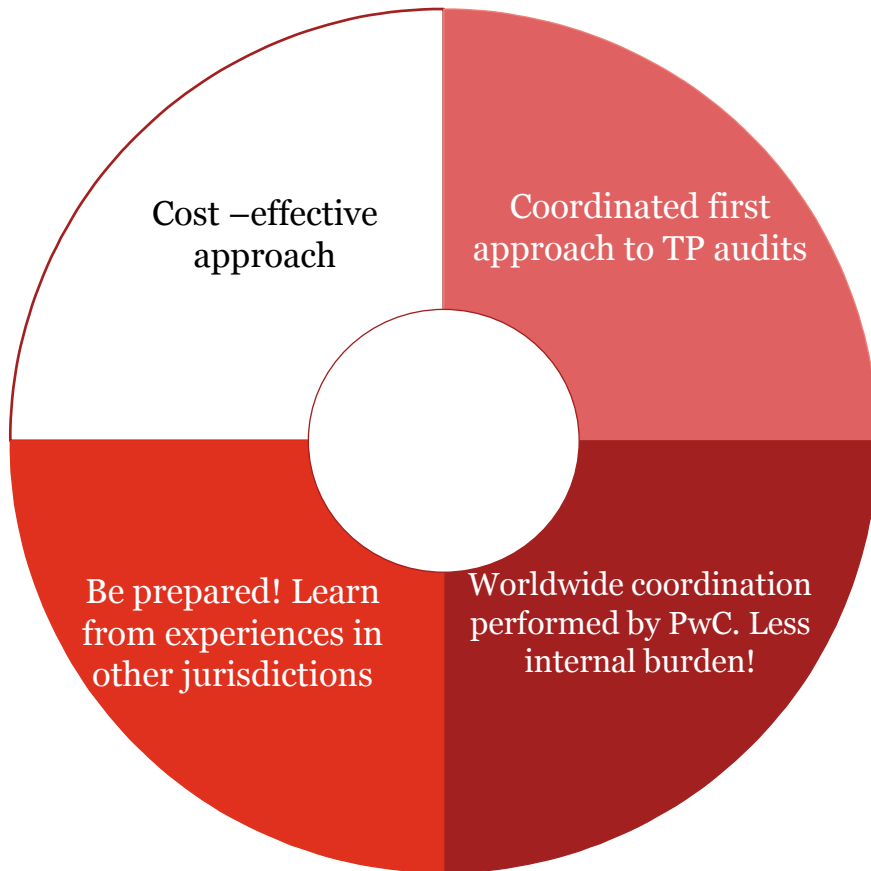
Documentation

- Know the rules
- Know the transactions
- Know the risks
- Assemble documentation and manage centrally or locally

Implementation

- Global TP policy
- Global/Regional headquarter support
- Track and monitor

A GCD approach brings benefits....



Key factors for a successful GCD approach

1

Jointly determining **needs and requirements**

2

Resulting in a **joint understanding and scope** of necessary services: avoiding duplication and extra costs

3

Constant communication throughout the project

4

Meeting centralized, jointly defined, objectives and obtaining **local comfort**

5

PwC behaves and it is perceived as a **business partner**

OECD and TP documentation

Why is TP documentation in the OECD action plan?

- In response to concerns regarding base erosion and profit shifting (“BEPS”) and at the request of the G20, the OECD began a project to address BEPS issues.
- The OECD’s 40 page *Action Plan on BEPS* released on July 19, 2013 (provides a roadmap to 15 workstreams one of which concerns TP documentation)

I. Digital economy

1. Address the challenges of the digital economy

II. Establishing international coherence of corporate income taxation (“gaps”)

2. Neutralize impact of hybrid mismatch arrangements
3. Strengthen CFC rules
4. Limit base erosion through financial payments
5. Counter harmful tax practices more effectively

III. Restoring the full effects and benefits of international standards (“frictions”)

6. Preventing treaty abuse
7. Prevent artificial avoidance of PE status
8. Assure transfer pricing outcomes are in line with value creation: Intangibles
9. Assure transfer pricing outcomes are in line with value creation: Risks and capital
10. Assure transfer pricing outcomes are in line with value creation: Other high-risk areas

IV. Ensuring transparency; Promoting increased certainty, predictability (“transparency”)

11. Establish methodologies to collect and analyze BEPS data
12. Require taxpayers to disclose their aggressive tax planning arrangements
13. **Re-examine transfer pricing documentation**
14. Make dispute resolution mechanisms more effective

V. Swift implementation of the measures

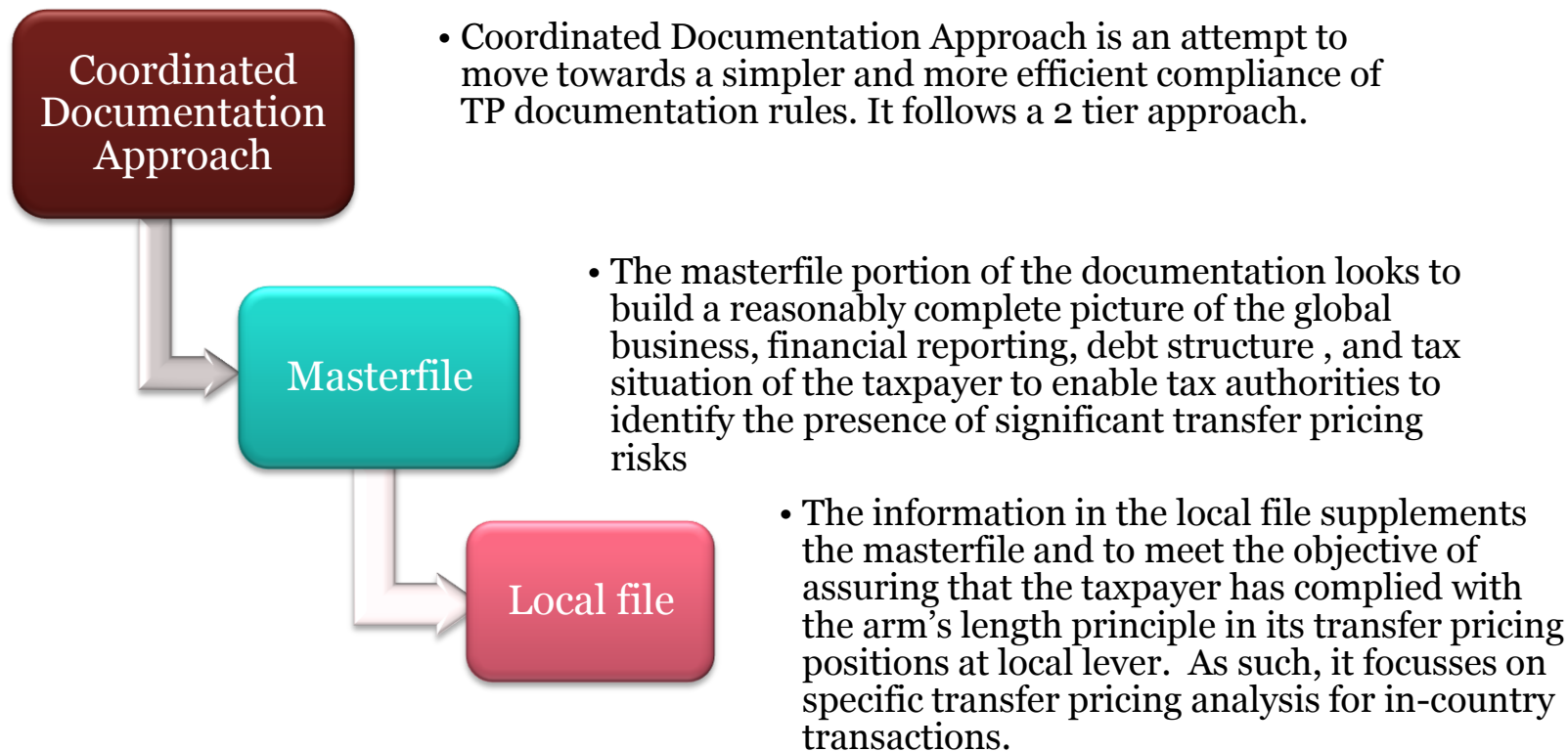
15. Develop a multilateral instrument

The OECD white paper on TP documentation

- The White Paper considers the purposes and objectives of TP documentation rules and offers suggestions on how TP documentation might be modified in order to make TP compliance simpler and more straightforward
- The OECD recognizes there are purely mechanical issues that make the process of preparing transfer pricing documentation a compliance burden, including:
 - Use of local or regional comparables
 - Translations
 - Materiality standards
 - TP related certifications
- General theme is tax authorities should take a more “holistic approach” to TP documentation to enable risk assessment of taxpayers positions
- Areas for TP documentation focus by the OECD including:
 - Identification of recent business restructurings and intangibles transfers
 - Information on global transfer pricing policies and the financial results of applying those policies
 - The taxpayer’s explanation of how its transfer pricing arrangements comply with the arm’s length principle and local transfer pricing rules.
- Memorandum on TP documentation and country-by-country reporting released on October 3, 2013 by OECD
 - Required information on income, taxes paid and other measures of economic activity

Overview of OECD's coordinated documentation

Accordingly, the OECD looks to a coordinated approach to address issues with existing regimes as well as provide appropriate data required for risk assessment by tax authorities



Overview of OECD's coordinated documentation Masterfile

Overview and Business Description

- Legal and organizational chart
- Management structure and key personnel
- Important profit drivers, related party service arrangements, key competitors, industry analysis, and functional analysis
- Description of any business restructurings in the past five years

Intangibles

- Description of strategy for development, ownership and exploitation of intangibles
- Location of R&D facilities and personnel
- List of material intangibles
- List of related party agreements
- Description of group's TP policies
- Description of material transfers intangibles in recent years

Financial Activities

- Description of material intercompany loans and other financial arrangements
- Related parties involved (directly or indirectly) and location
- Principal amounts involved in the arrangement
- Intercompany TP policy or description of the group's TP system for its financial activities

Financial & Tax Positions

- Description of the group's applicable APAs.
- Description of other relevant tax rulings related to the allocation of income to particular jurisdictions.
- Description of transfer pricing matters pending under treaty MAP processes or resolved in MAP during the last two years.
- A schedule showing total employees in each country
- A copy of the most recent consolidated income statement

Overview of OECD's coordinated documentation

Local file

Local Entity

- Description of the management structure of the local entity, to whom local management reports and the geographic location of senior executives
- An indication whether the local entity has been involved or affected by business restructurings or intangibles transfers in the present or immediately past year and explain aspects of such transactions affecting the local entity

Controlled Transactions

- Description of the controlled transactions with aggregate intercompany charges for each transaction
- Identification of associated parties involved
- Detailed functional analysis
- Selection of appropriate transfer pricing method
- Selection of tested party with basis
- Description of any comparability adjustments performed
- Summary of financial information used in applying the transfer pricing methodology

Financial Information

- Annual local entity financial accounts for previous years (audited if possible)
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements
- Summary schedules of relevant financial data for comparables used in the analysis

Overview of OECD's coordinated documentation

Considerations

- Two-tiered approach may prove a step backwards in terms of providing useful documentation to tax authorities for some complex organizations
- The White Paper Masterfile, in comparison to the EUTPD's Masterfile, puts markedly greater emphasis on taxpayers' value chain, intangibles, capital structure/debt and financial and tax position.
 - Comprehensive documentation obligation to lead to additional documentation burden
 - Added transparency to lead to increases in duration of audits as tax auditors might get sidetracked by information not relevant to the business under audit
- There should be a clear distinction between “nice to know” information and “relevant” information.
 - It would be preferable to allow a limitation of the “big picture” approach to relevant information for the case at hand.
 - All above particularly relevant given the divergence in level of training and experience of public servants charged with transfer pricing audits across countries

Overview of OECD's coordinated documentation

Considerations

- Appealing aspect of local transfer pricing documentation which is the ability to focus on relevant information and analysis to document the arm's length nature of transactions from local perspective should be acknowledged
- Value of filtering non-relevant information to decrease compliance costs on taxpayers and decrease review by tax authorities should be recognized
- Risk assessments should be a two way street and careful consideration should be given on how this information will be utilized
- Issues with determining taxpayers' global allocation of income based on a formula
- Clarity on acceptability of local versus regional benchmarks is key
- Unnecessary inefficiencies and delays will result if underlying assumption is that all documentation will initially be prepared in English
- Materiality standards should be clarified especially where the implication is that all transactions must be covered

Conclusion

Conclusion

- Ever increasing sophistication and knowledge sharing among tax authorities around the world
- Stay current on direction of OECD and other organization in the field of transfer pricing
- Be keenly aware of local tax environment and concentrate resources and attention to critical issues
- Employ coordinated and consistent approach across jurisdictions
- Anticipate controversial situations

Thank you

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