Pacific Association of Tax Administrators (PATA) Transfer Pricing Documentation Package

I. Introduction

The PATA members, which include Australia, Canada, Japan and the United States, are providing principles under which taxpayers can create uniform transfer pricing documentation ("PATA Documentation Package") so that one set of documentation can meet their respective transfer pricing documentation provisions. This PATA Documentation Package is not intended to impose legal requirements greater than those imposed under the local laws of a PATA member. In this regard, it should be noted that each PATA member has different legal systems, statutes, regulations and administrative approaches with respect to transfer pricing.[1] The PATA members, after reviewing their respective domestic laws regarding transfer pricing and documentation of controlled transactions, agree that a multinational enterprise ("MNE") will satisfy each PATA member's documentation provisions by complying with all of the principles contained in this PATA Documentation Package, and will thus avoid the imposition of the PATA members' transfer pricing documentation-related penalties with respect to the documented transactions. However, satisfaction of the principles of this PATA Documentation Package does not preclude PATA member tax administrations from making transfer pricing adjustments.

This PATA Documentation Package responds to the potential difficulties that MNEs face in complying with the laws and administrative requirements of multiple tax jurisdictions. MNEs may face significant and potentially costly duplicative administrative requirements in order to meet the transfer pricing documentation standards of the different jurisdictions. By providing this uniform documentation package, the PATA members intend to assist taxpayers to efficiently prepare and maintain useful transfer pricing documentation, and timely produce such documentation upon request to PATA member tax administrations. It is considered that this documentation package is consistent with the general principles outlined in Chapter 5 of the Organisation for Economic Co-operation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines").

[1] For example, some PATA members would apply the prudent business management principles of section 5.4 of the Organisation for Economic Co-operation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations by taking into account the complexity and importance of the business decision in evaluating the adequacy of the taxpayer's documentation. Also, none of the PATA members, except Canada, has legal requirements to create transfer pricing documents. Canada and the United States have transfer pricing-related penalties that may be excused based on documentation that meets these PATA Documentation Package principles.

II. The PATA Documentation Package

The PATA Documentation Package has three operative principles that need to be met to avoid the imposition of PATA member transfer pricing documentation-related penalties. First, MNEs need to make reasonable efforts, as determined by each PATA member tax administration, to establish transfer prices in compliance with the arm's length principle. Second, MNEs need to maintain contemporaneous documentation of their efforts to comply with the arm's length principle. Third, MNEs need to produce, in a timely manner, that documentation upon request by a PATA member tax administrator. These three operative principles are more fully explained below.

A. Efforts to comply with the arm's length principle in establishing transfer prices

The first principle is that taxpayers need to make reasonable efforts to establish their transfer pricing in accordance with the arm's length principle. Such efforts include, but are not limited to, analysis of controlled transactions, searches for comparable transactions between independent enterprises dealing at arm's length, and selection and application of transfer pricing methods that are reasonably concluded to produce arm's length results in accordance with applicable PATA member transfer pricing rules, consistent with the OECD Guidelines.

B. Contemporaneous documentation of efforts to comply with the arm's length principle

The second principle is that taxpayers need to reasonably and contemporaneously document their efforts to comply with the arm's length principle. Contemporaneous documentation helps taxpayers and tax administrations in the examination process by giving taxpayers notice of information needed to assess whether prices of controlled transactions comply with the arm's length principle. Such documentation also provides tax administrations with useful analysis of controlled transactions between associated enterprises and assists in minimizing controversies over potential transfer pricing issues.

The attached schedule[2] describes the documentation for purposes of satisfying the second operative principle of the PATA Documentation Package. An analysis under the arm's length principle is generally based on information about the associated enterprises involved in the controlled transactions, the transactions at issue, the relevant functions, assets and risks, and information derived from independent enterprises engaged in similar transactions or businesses. Taxpayers need to prepare and maintain the documentation as necessary to demonstrate compliance with the arm's length principle. Transfer pricing documentation prepared and maintained pursuant to this PATA Documentation Package needs to be of sufficient quality so as to

[2] The schedule contains nine documentation headings. Opposite each heading is a description of the relevant documentation. The PATA members have identified these headings as being representative of the various areas that taxpayers should consider when documenting their related party dealings. The order of the headings is in no way representative of the importance to be assigned to a particular heading.

evidence that the taxpayer reasonably concluded that it selected and applied a transfer pricing method that produced an arm's length result in accordance with applicable PATA member transfer pricing rules, consistent with the OECD Guidelines. Documentation is contemporaneous if it is existing or brought into existence no later than the due date, under each PATA member's respective rules, of a timely filed (taking into account extensions allowed by the PATA member) income tax return for the taxation year of the controlled transactions at issue and includes relevant information through such date.

Additional information not listed on the attached schedule may be requested by a PATA member tax administration as necessary to examine an MNE's conclusions as to the arm's length nature of its arrangements. In evaluating the adequacy of an MNE's documentation, a PATA member tax administration may take into account the documentation guidelines and principles contained in Chapter 5 of the OECD Guidelines, for example, considering what information was reasonably available at the time of the transfer pricing arrangement.

C. Timely production of documentation evidencing efforts to comply with the arm's length principle

The third general principle is that taxpayers need to timely produce the foregoing documentation upon request by a PATA member tax administrator. Tax administrations have the right to obtain the documentation prepared or referred to in this process as a means of verifying compliance with the arm's length principle. Upon request by a PATA member tax administration, documentation needs to be provided to a tax administration in accordance with each PATA member's respective rules, if any, on timely production of documentation. It is usually in a taxpayer's interest to provide this documentation to the tax administration early in a transfer pricing review or audit as it will assist in demonstrating whether their transfer pricing is appropriate for tax purposes.

TRANSFER PRICING DOCUMENTATION TO BE PROVIDED BY TAXPAYERS

To avoid the imposition of PATA member transfer pricing documentation-related penalties, the taxpayer needs to maintain and timely produce upon request documentation of sufficient quality so as to accurately and completely describe the transfer pricing analysis conducted by the taxpayer and the efforts to comply with the arm's length principle, covering:

Organizational structure	▪ Identification of the participants in the related party dealings and their relationship, including associated enterprises whose transactions directly or indirectly affect the pricing of the related party dealings ▪ The world wide group structure ▪ The history of, and changes in, the main shareholdings
Nature of the business/industry and market conditions	▪ An outline of the business including a history of the taxpayer, the industries operated in, and the taxpayer's business lines ▪ The corporate mission statement and business plans ▪ A description of internal procedures and controls in place at the time of the related party dealings ▪ Analysis of the general economic factors affecting the business and industry ▪ A description of the structure, intensity and dynamics of the competitive environment ▪ The broader regulatory and other factors affecting the taxpayer's business ▪ A description (catalog) of intangible property ▪ Copies of annual reports and financial statements ▪ Information from key staff as to the functions performed, assets employed and risks assumed ▪ An explanation of capital relationships (e.g., balance and source of debt and equity funding)
Controlled transactions	▪ Identification of controlled transactions, the property or services to which the transaction relates, and any intangible rights or property attached thereto ▪ A description of the controlled transactions that identifies the participants, the scope, timing, frequency of, type, the value of the controlled transactions as well as the currency of the transactions, and the terms and conditions of the transactions and their relationship to the terms and conditions of each other transaction entered into between the participants ▪ Identification of internal data relating to the controlled transactions and any similar transactions ▪ A description of the relationships of parties to the controlled transactions and their legal entity operating structure ▪ Copies of all relevant inter-company agreements ▪ A description of the scope, type, value and timing of the relevant related party dealings in all geographic markets

Assumptions, strategies, policies	▪ Information regarding business strategies and special circumstances at issue, for example, set-off transactions, market share strategies, distribution channel selection and management strategies that influenced the determination of transfer prices ▪ If the taxpayer pursues a market share strategy, documentation demonstrating that appropriate analysis was done prior to implementing the strategy, that the strategy is pursued only for a reasonable period, and that the costs borne by each associated enterprise are proportionate to projected benefits to such enterprise ▪ Assumptions and information regarding factors that influenced the setting of prices or the establishment of any pricing policies for the taxpayer and the related party group as a whole
Cost contribution arrangements (CCA)[3]	▪ A copy of the CCA agreement and any other agreements relating to the application of the CCA between the CCA members ▪ A list of the arrangement's participants, and any non-participants that will benefit from the CCA ▪ The extent of the use of CCA property by related parties which are not CCA members, including the amounts of consideration paid or payable by these non-members for use of the CCA property ▪ A description of the scope of the activities to be undertaken, including any intangible or class of intangibles in existence or intended to be developed ▪ A description of each participant's interest in the results of the CCA activities ▪ The duration of the arrangement ▪ Procedures for and consequences of a participant entering or withdrawing from the agreement (i.e., buy-in and buy-out payments) and for the modification or termination of the agreement ▪ The total amount of contributions incurred pursuant to the arrangement ▪ The contributions borne by each participant and the form and value of each participant's initial contributions (including research) with a description of how the value of initial and ongoing contributions is determined and how accounting principles are applied ▪ A description of the method used to determine each participant's share of the contributions including projections used to estimate benefits, any rationale and assumptions underlying the projections, and an explanation of why that method was selected

[3] The current Japanese and Australian tax law does not provide specific treatment for CCA

Cost contribution arrangements (continued)	▪ The consistent accounting method used to determine the contributions and benefits (including the method used to translate foreign currencies), and to the extent that the method materially differs from accounting principles accepted in the relevant PATA member's country, an explanation of the material differences ▪ Identification of each participant's expected benefits to be derived from the CCA, the extent of the benefits expected, and the formula and projections used for allocating or sharing the expected benefits, and the rationale and assumptions underlying the expected benefits ▪ Where material differences arise between projected benefits and actual benefits realized, the assumptions made to project future benefits need to be amended for future years, and the revised assumptions documented ▪ Procedures governing balancing payments, e.g. where payments are required to reflect differences between projected benefits and actual benefits realized
Comparability, functional and risk analysis	▪ Description of the comparable transactions including, for tangible property, its physical features, quality, availability; for services, the nature and extent of the services; and for intangible property, the form of the transaction, the type of intangible, the rights to use the intangible that are assigned, and the anticipated benefits from its use ▪ Documentation to support all factors that could affect prices or profits in arm's length dealings ▪ For the taxpayer and the comparable, identify the factors determining comparability, including the characteristics of the property or service transferred, the functions performed (and the significance of those functions in terms of their frequency, nature and value to the respective parties), the assets employed (taking into consideration their age, market value, location, etc.), the risks assumed (including risks such as market risk, financial risk, and credit risk), the terms and conditions of the contract, the business strategies pursued, the economic circumstances (for example, the geographic location, market size, competitive environment, availability of substitute goods and services, levels of supply and demand, nature and extent of government regulations, and costs of production, etc.), and any other special circumstances ▪ Evaluation of the process of comparability ▪ Criteria used in the selection of comparable transactions including database screens and economic considerations ▪ Adjustments (and reasons for those adjustments) made to the comparable transactions ▪ Aggregation analysis (grouping of transactions or entities for comparability)

TRANSFER PRICING DOCUMENTATION TO BE PROVIDED BY TAXPAYERS (CONTINUED)

Comparability, functional and risk analysis (continued)	▪ Supporting transfer pricing methodology or methodologies used ▪ The establishment of ranges of outcomes ▪ Extension of the analysis over a number of years with reasons for the years chosen
Selection of the transfer pricing method	▪ Identification of the method selected and the reasons why it was selected, including, for example, economic analysis and projections relied upon ▪ Description of the data and methods considered and the analysis performed to determine the transfer pricing. Explanation as to why other methods were not selected (where countries have a hierarchy of methods, it may only be necessary to explain why higher ranking methods were rejected).
Application of the transfer pricing method	▪ Documentation of assumptions and judgments made in the course of determining an arm's length outcome (refer to the comparability, functional and risk analysis section above) ▪ Documentation of all calculations made in applying the selected method in respect of both the taxpayer and the comparable ▪ Appropriate updates of prior year documentation relied upon in the current year to reflect adjustments for any material changes in the relevant facts and circumstances
Background documents	▪ Documents that provide the foundation for or otherwise support or were referred to in developing the transfer pricing analysis
Index to documents	▪ General index of documents and a description of the record-keeping system used for cataloging and assessing those documents (required in the United States and encouraged, but not required, by other PATA members). The general index is not required to be prepared contemporaneously.