



DFDLMEKONG
LEGAL AND TAX ADVISERS

How to Prepare Your Own Transfer Pricing Documentation?

CAMBODIA | LAOS | MYANMAR | THAILAND | VIETNAM



DFDL MEKONG

- Established in Laos in 1994
- Offices in 9 cities in the Mekong Region
 - Phnom Penh, Cambodia
 - Vientiane, Laos
 - Hanoi and Ho Chi Minh City, Vietnam
 - Bangkok, Phuket and Koh Samui, Thailand
 - Yangon, Myanmar (affiliated)
 - Singapore (liaison)
- 90+ Legal Professionals
- 200 Total Staff
- 1 Regional Head Office



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CORE SECTORS

DFDLMEKONG
LEGAL AND TAX ADVISERS

ONE REGION @ ONE FIRM

- Tax, Customs & International Trade
- Real Estate
- Corporate & Commercial
- Project Finance, Energy and Infrastructure

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NICOLAI BERGE

DFDLMEKONG
LEGAL AND TAX ADVISERS

Director, Regional Tax Practice



- Attorney-at-law, specializing in international corporate tax and transfer pricing.
- 17 years of experience from Big 4 and international law firms, working in Europe, America and Asia.
- Assisting clients from a wide range of industries, with special focus on the oil & energy industry, maritime industry, telecom, pharmaceutical industry, as well as private equity and venture capital.
- Nicolai is a frequent speaker for international tax authorities and is licensed to practice law in Norway.
- He speaks Norwegian, Scandinavian languages and English.
- Email: Nicolai.Borge@dfdlmekong.com

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AGENDA

- Introduction to Transfer Pricing
- Legal status in Thailand
- Methodology
- Project Planning
- Building transfer pricing documentation
- DIY-kit

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Introduction to Transfer Pricing

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INTRODUCTION

What is Transfer Pricing?

- Prices charged in transactions between related parties
- "Arm's length standard"?
- "Related parties"?



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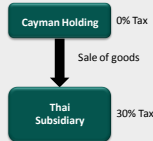
graph TD
    A[Thai Holding] -- "Sale of goods" --> B[Chinese Subsidiary]
  
```

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INTRODUCTION

Why focus on Transfer Pricing?

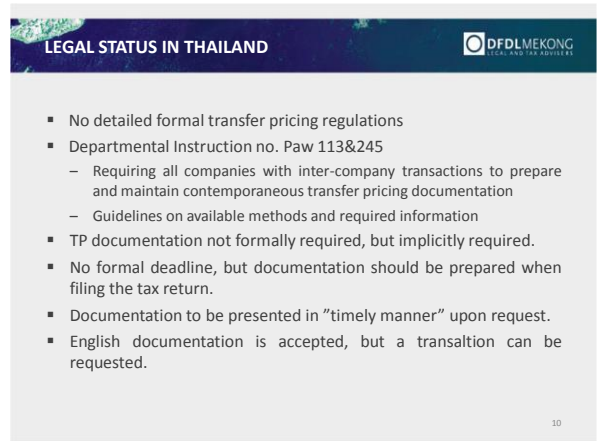
- Tax authorities
 - Protecting tax base
- Tax payers
 - Reducing effective tax rate
 - Reducing penalties and controversies



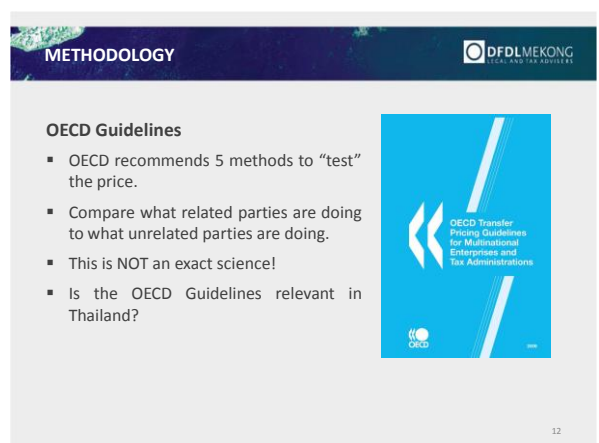
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graph TD
    A[Cayman Holding 0% Tax] -- "Sale of goods" --> B[Thai Subsidiary 30% Tax]
  
```

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- No detailed formal transfer pricing regulations
- Departmental Instruction no. Paw 113&245
 - Requiring all companies with inter-company transactions to prepare and maintain contemporaneous transfer pricing documentation
 - Guidelines on available methods and required information
- TP documentation not formally required, but implicitly required.
- No formal deadline, but documentation should be prepared when filing the tax return.
- Documentation to be presented in "timely manner" upon request.
- English documentation is accepted, but a translation can be requested.



- OECD Guidelines**
- OECD recommends 5 methods to "test" the price.
 - Compare what related parties are doing to what unrelated parties are doing.
 - This is NOT an exact science!
 - Is the OECD Guidelines relevant in Thailand?




METHODOLOGY 

Each party to be remunerated based on

- Functions performed
- Risks incurred
- Assets utilized

Relevant for tax planning as well!



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Project Planning

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PROJECT PLANNING 

First steps....


- Dedicate resources
- Mapping of transactions
 - All transactions covered?
- Map existing documentation and relevant resources
 - Group company in other country already have TP documentation?
- Scoping transactions and entities to be covered
- Create awareness of the project

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Building Documentation

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BUILDING DOCUMENTATION 

- Standard TP documentation structure:
 - Introduction / summary / conclusion
 - Introduction to the group
 - Introduction to the taxpayer
 - Industry analysis
 - Functional analysis
 - Economic analysis
- Advantages of standardizing

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BUILDING DOCUMENTATION 


Requirement under Revenue Departments guidelines:

1. Structure and relationship of relevant entities, including business description of each entity
2. Budgets, business plans and financial information
3. Description of the entity's business strategies, and rationale behind this.
4. Turnover, operating results and description of related parties transactions
5. Rationale behind entering into deals with related parties
6. Pricing policies, profitability analysis and market analysis of relevant products, profit contribution of each involved party based on functional profile
7. Rationale for selecting transfer pricing method
8. If other methods was considered – the reason for this rejection
9. Documentation of negotiations related to intra-group transactions
10. Other relevant documents

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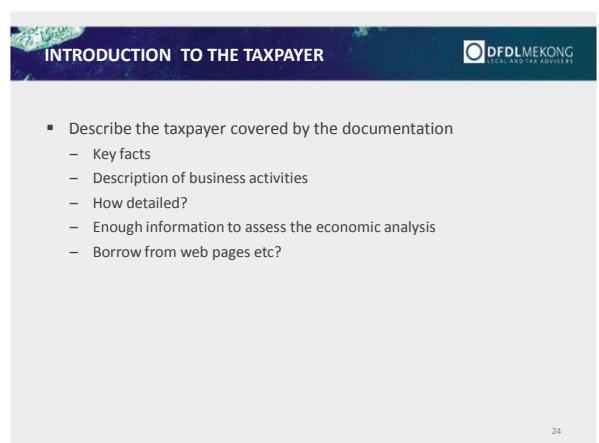
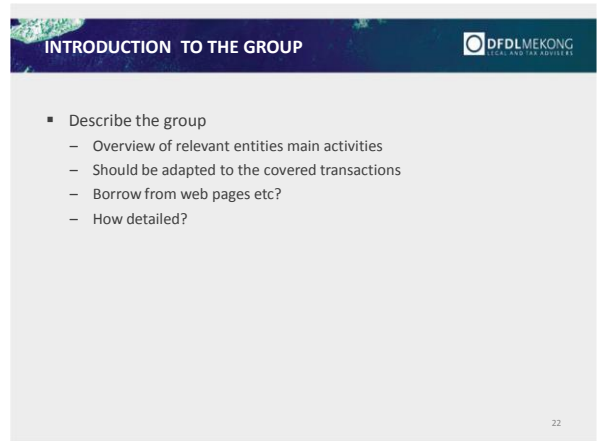
 **Introduction / Summary / Conclusion**

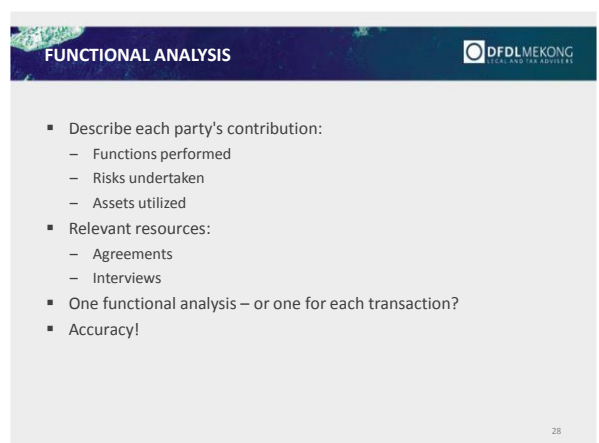
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INTRODUCTION / SUMMARY / CONCLUSION 

- Introduce reader to documentation
 - Structure of documentation
 - Transactions that are covered
 - Entities that are covered
 - Periods that are covered
- Summary and conclusion – is it arm's-length?

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FUNCTIONAL ANALYSIS 

- Functions performed- amongst others:
 - Design
 - Purchasing / sourcing
 - Manufacturing
 - Logistics / warehousing
 - Performance of services
 - Sales & marketing
- Tips:
 - Phone lists / organizational charts
 - Contracts

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FUNCTIONAL ANALYSIS 


- Risks undertaken - amongst others:
 - Market risk
 - Obsolescence of stock
 - Product liabilities
 - Credit risk
 - Currency risk
- Tips:
 - Contracts
 - Balance sheet

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FUNCTIONAL ANALYSIS 

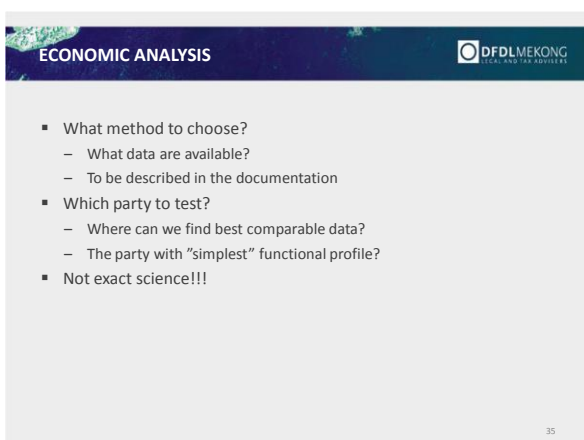
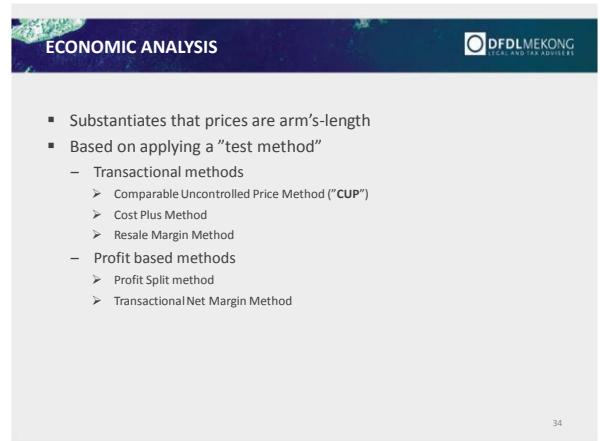
- Assets utilized - amongst others:
 - Tangible goods
 - Manufacturing equipment / machinery
 - Inventory
 - Buildings and office equipment
 - Intangible goods
 - Patents
 - Designs
 - Trademarks
 - Customer relations
 - licensed or concessions
- Tips:
 - Contracts
 - Balance sheet

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FUNCTIONAL ANALYSIS 

- Write the functional analysis:
 - To the point
 - Accurate
 - Tell a story!
 - Be careful with making a chart


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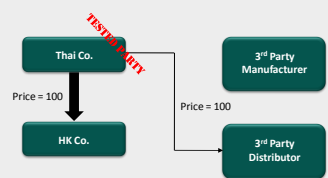
CASE – MANUFACTURING OF GOODS 

- Thai manufacturer of garment and textiles (ThaiCo).
- Raw materials is purchased locally.
- Textiles are sold to related distributor in Hong Kong (HKCo), who sells the textiles to 3rd parties.
- In addition textiles are sold from ThaiCo to 3rd party distributors.


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CASE – MANUFACTURING OF GOODS 

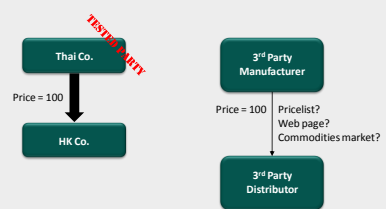
Comparable Uncontrolled Price Method (CUP)
->Compares prices in transactions




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CASE – MANUFACTURING OF GOODS 

Comparable Uncontrolled Price Method (CUP)
->Compares prices in transactions



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CASE – MANUFACTURING OF GOODS 

Discussion points:


- How similar does the transactions need to be?
 - Functions
 - Risks
 - Assets
- Can we make adjustments?
- Can we deviate from the 3rd party price?
- Can the method be used against the taxpayer?

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CASE – MANUFACTURING OF GOODS 

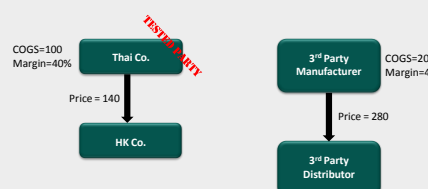
- Thai manufacturer of garment and textiles (ThaiCo)
- Raw materials is purchased locally
- Textiles are sold to related distributor in Hong Kong (HKCo), who sells the textiles to 3rd parties.
- Textiles are NOT sold from ThaiCo to 3rd party distributors

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CASE – MANUFACTURING OF GOODS 

Cost Plus Method

->Compares gross profits (based on costs of goods sold)

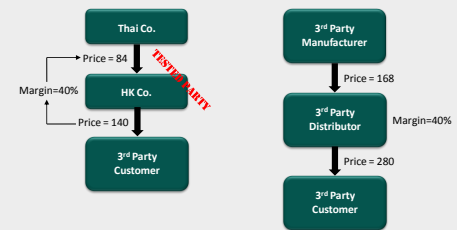


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CASE – MANUFACTURING OF GOODS 

Resale Price Method

->Compares margins based on resale price




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CASE – MANUFACTURING OF GOODS 

Transactional Net Margin Method

->Compares net profits



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CASE – MANUFACTURING OF GOODS DFDLMEKONG
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Profit Split Method
->Allocate net profits based on contribution analysis

Costs=75
Profit=40
Thai Co.

Price = 115

Total costs=100
Sales price=150
Total net profit=50

Costs=25
Profit=10
HK Co.

TESTED ENTITY

Function	Relative weight	Manufacturer	Distributor
Design	25%	100%	0%
Production	50%	100%	0%
Logistics	10%	50%	50%
Sales & Marketing	15%	0%	100%
Allocation		80%	20%

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Economic Analysis – Service Charges

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CASE – SERVICE CHARGES DFDLMEKONG
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- Thai hotel resort (ThaiCo) receives invoice for group services by Singapore parent company (SingCo).
- Services cover
 - Sales and Marketing,
 - Human resources services, e.g. recruitment and training, and
 - Accounting and financial advice.
- SingCo will invoice the incurred costs + a markup of 5%

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CASE – SERVICE CHARGES DFDLMEKONG
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- First step – benefits test:
 - Are the services received?
 - Are the services duplicated?
 - Are the services primarily in the interest of the parent company?
 Would an independent company have purchased these services?
- Second step – price test:
 - Are the incurred costs appropriate?
 - Is the incurred markup (profit element) appropriate?
 Is the price arm's-length?


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CASE – SERVICE CHARGES 

Are the incurred costs appropriate?

Item	Incurred	Received?	Duplication?	Parent benefit?	Benefit?
Sales manager	10	Yes	No	No	Yes
Web developer	10	Yes	No	No	Yes
HR manager	10	Yes	No	No	Yes
Computer technician	10	No	-	-	No
Internal Audit manager	10	Yes	No	Yes	No
Finance manager	10	Yes	No	No	Yes
Total	60				40

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CASE – SERVICE CHARGES 

Is the markup (profit element) appropriate?

Cost=100

Plus element=7%

Transfer Price=107

Sing Co.

↓

Thai Co.

Cost=200

Plus element=7%


Transfer Price=214

3rd Party Manufacturer

↓

3rd Party Distributor

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CASE – SERVICE CHARGES 

Discussion points:

- Do we need a markup?
- What if services are provided to several recipients?

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Economic Analysis – Royalties

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CASE – ROYALTIES



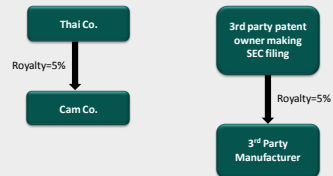
- Cambodian manufacturing company (CamCo) utilizes patents owned by Thai parent company (ThaiCo).
- Patents cover technical design and blueprints for building machinery.
- Machinery is sold by CamCo to third parties.
- CamCo pays 5% of their turnover to ThaiCo in royalties.

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CASE – ROYALTIES



Royalties



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CASE – ROYALTIES



Discussion points:


- Other methods that can be used?
- Do we need to make a charge?
- Can too high price give ownership rights?

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Case – Intra Group Loans

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INTRAGROUP LOANS 

- Singapore subsidiary (SingCo) borrows money from Thai parent (ThaiCo)
- SingCo pays LIBOR + 5%
- ThaiCo is financed with a 3rd party loan at LIBOR +3%

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INTRAGROUP LOANS 

Step 1. Determin borrowers risk profile
Key words: Credit rating, financial guarantees, Standalone basis?

Step 2. Adjustments for special characteristics of the loan
Keywords: duration, currency, fixed or floating interest, collateral

Step 3. Determine interest based on available market information
Keywords: relevant market reference , appropriate spread

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INTRAGROUP LOANS 

Discussion points:


- Can we use the same interest rate as the parent company has?
- Can we get a quote from our bank?

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Benchmarks

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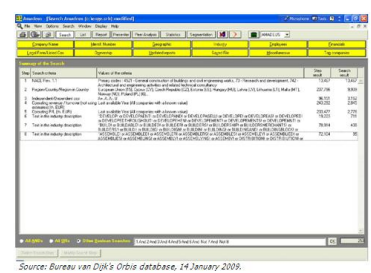
BENCHMARKS 

- Profit element can be determined by use of database search.
- Databases used contains publicly available financial information.
- Search can be performed based on a number of criteria:
 - Geographical location
 - Business characterization codes
 - Business description keywords
 - Turnover
 - Number of employees
 - Interdependency criteria
 - Etc.

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BENCHMARKS 

Screenshot from database search:



Source: Bureau van Dijk's Orbis database, 14 January 2009.

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BENCHMARKS 

Illustration of typical result from database search

Number of companies available in database	1,500,000
Number of companies found comparable	15
Net Profit (EBIT) – Max	17%
Net Profit (EBIT) – Median	7%
Net Profit (EBIT) – Min	3%

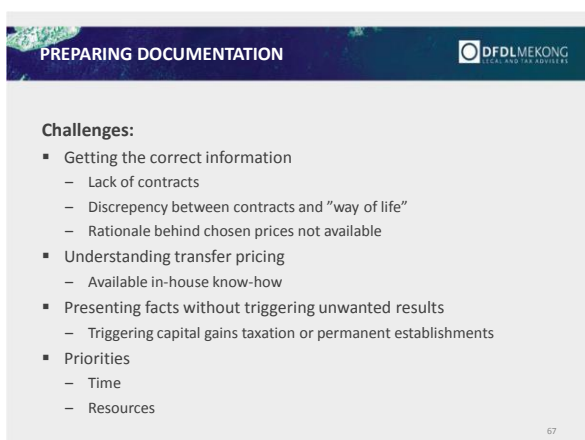
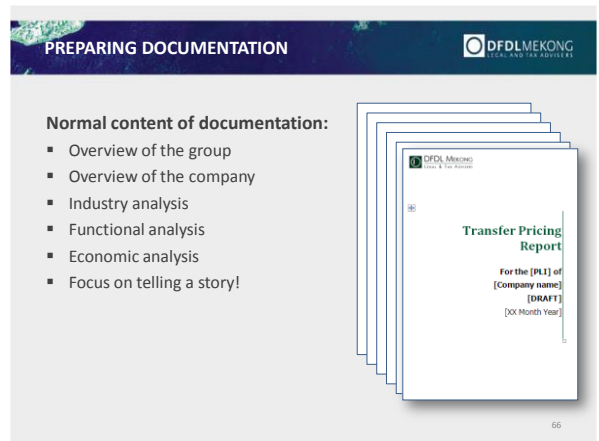
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BENCHMARKS 

Discussion points:

- Level of comparability required?
- Must we use Cambodian comparables?
- Can full range be used?

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TRANSFER PRICING DOCUMENTATION 

Why use DFDL's Do-It-Yourself package?

- Reduced costs on preparing documentation
- Ensuring that facts are properly recorded
- Strengthening in-house knowledge on transfer pricing


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TRANSFER PRICING DOCUMENTATION 

The DIY kit contains the following components:


- Workshop
 - Tailor-made workshop, with introduction to transfer pricing theory.
- Documentation template
 - Template (English) that can be used for drafting the transfer pricing documentation.
- Hot-line assistance
 - Contact person that can assist with issues and questions
- Benchmarks
 - Standardized database searches
- Review of draft documentation
 - Review with comments and recommendations for areas of improvement.

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WHAT CAN DFDL HELP YOU WITH? 

***The tax authorities focus on Transfer Pricing
-do you?***

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THANK YOU 

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