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LEGAL AND TAX ADVISERS

## How to Prepare Your Own Transfer Pricing Documentation?

CAMBODIA | LAOS | MYANMAR | THAILAND | VIETNAM



**DFDL MEKONG**  
LEGAL AND TAX ADVISERS

- 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 BORGE**  
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](mailto:Nicolai.Borge@dfdlmekong.com)

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**A FEW KEY TAX ADVISERS:** 



**Pham Ngoc Thuan**  
*Senior Tax Adviser*


Thuan is an experienced tax adviser with a degree in economics and accounting. He has over 10 years work experience, most recently with a "big four" tax advisory firm. He has advised, just to name a few examples, on tax implications of large construction and engineering projects, major acquisitions and on several highly publicized real estate developments.



**Huy Cam Luu**  
*Senior Tax Adviser*


Huy is a career tax lawyer with a J.D. from Hofstra and an LLM in taxation from Georgetown University. He has over 7 years experience in top tier law and tax advisory firms in New York. Huy combines his international tax expertise with a detailed knowledge of Vietnam taxes. He has, among other things, much experience with employee remuneration plans, real estate development and designing international corporate tax strategies.

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**AGENDA** 


- Introduction to Transfer Pricing
- Legal status in Vietnam
- 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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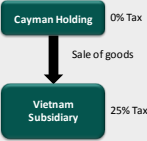
graph TD
    A[Vietnam Holding] -- Sale of goods --> B[Chinese Subsidiary]
    
```

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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



```

graph TD
    A[Cayman Holding 0% Tax] -- Sale of goods --> B[Vietnam Subsidiary 25% Tax]
  
```

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## Legal Status in Vietnam

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**LEGAL STATUS IN VIETNAM** 


- Law on Tax Management 2007 (Art 26)
- Circular 66/2010/TT-BTC dated 22/4/2010
  - Requiring all companies with inter-company transactions to prepare and maintain *contemporaneous* transfer pricing documentation
  - Guidelines on available methods and required information
- Documentation to be presented within "30 working days" upon request - can be extended up to further 30 days.
- Documentation must be in Vietnamese.
- Form GCN-01/QLT must be submitted upon the deadline of income tax finalization declaration.

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## Methodology

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**METHODOLOGY** 

**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?




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**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**

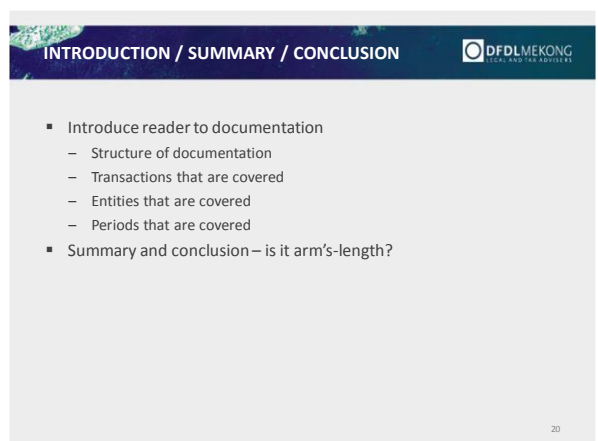
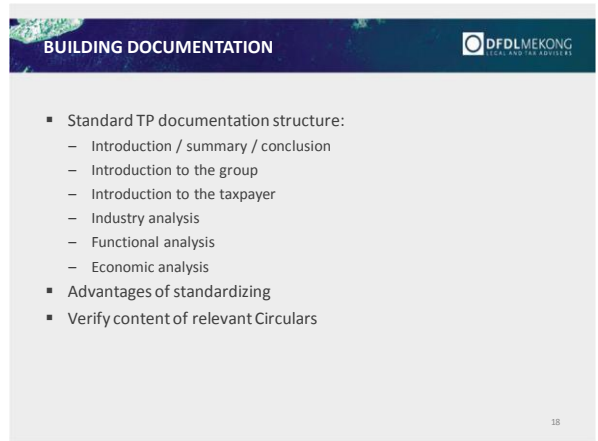
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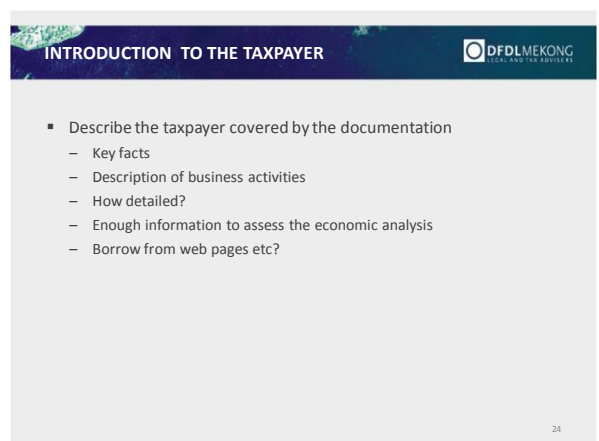
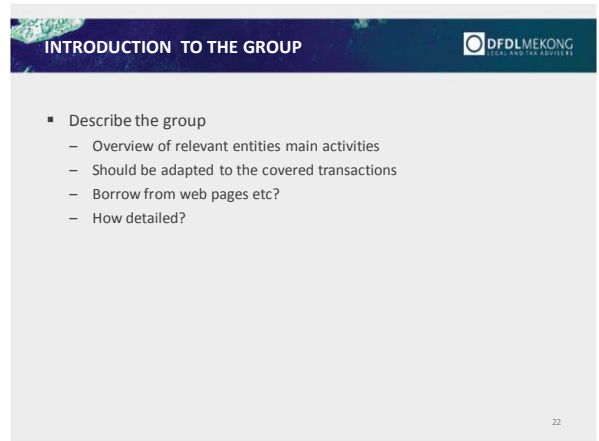
**PROJECT PLANNING** 

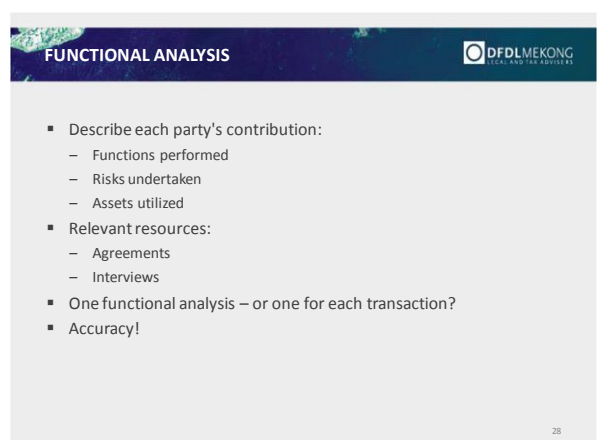
**First steps....**

- 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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**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

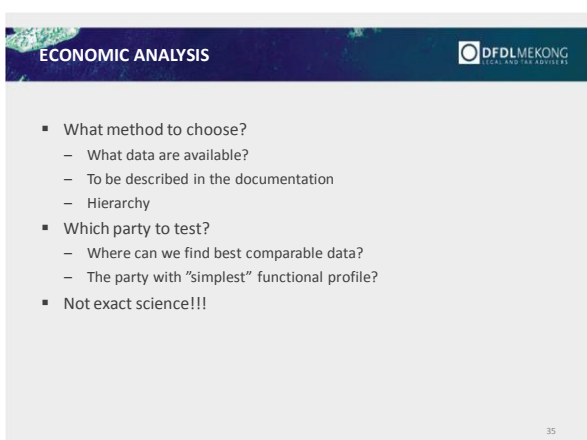
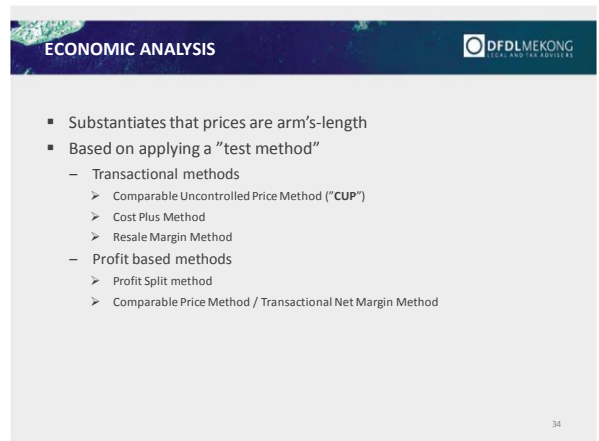
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**FUNCTIONAL ANALYSIS** 

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

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CASE – MANUFACTURING OF GOODS

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

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CASE – MANUFACTURING OF GOODS

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Comparable Uncontrolled Price Method (CUP)

->Compares prices in transactions

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CASE – MANUFACTURING OF GOODS

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Comparable Uncontrolled Price Method (CUP)

->Compares prices in transactions

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CASE – MANUFACTURING OF GOODS

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Discussion points:

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

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**CASE – MANUFACTURING OF GOODS** DFDLMEKONG  
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- Vietnam manufacturer of garment and textiles (VietCo)
- 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 VietCo to 3rd party distributors

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**CASE – MANUFACTURING OF GOODS** DFDLMEKONG  
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**Cost Plus Method**  
->Compares gross profits (based on costs of goods sold)

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**CASE – MANUFACTURING OF GOODS** DFDLMEKONG  
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**Resale Price Method**  
->Compares margins based on resale price

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**CASE – MANUFACTURING OF GOODS** DFDLMEKONG  
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**Comparable Profit Method / 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  
Viet Co.

Price = 115

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

Costs=25  
Profit=10  
HK Co.

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 –  
Rent of Assets**

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**CASE – RENT OF ASSETS** DFDLMEKONG  
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- Singapore company owns off-shore supply vessel (SingCo).
- Boat is rented out on long term contract to VietCo.
- Boat is operated by VietCo, with own staff.
- Boat is rented to 3rd party oil company in Vietnam.

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**CASE – RENT OF ASSETS** DFDLMEKONG  
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**Comparable Uncontrolled Price Method (CUP)**  
->Compares prices in transactions

Sing Co.

Price = 100

Viet Co.

3<sup>rd</sup> Party Ship Owner

Price = 100

3<sup>rd</sup> Party Shipping Co.

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**CASE – RENT OF ASSETS** DFDLMEKONG  
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**Comparable Profit Method / Transactional Net Margin Method**  
->Compares net profits

Relevant Profit Level Indicator?

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**CASE – RENT OF ASSETS** DFDLMEKONG  
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**Cost Plus Method**  
->Compares gross profits (based on costs of goods sold)

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**CASE – RENT OF ASSETS** DFDLMEKONG  
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**Resale Price Method**  
->Compares margins based on resale price

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**Economic Analysis –  
Service Charges**

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**CASE – SERVICE CHARGES** DFDLMEKONG  
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- Vietnam hotel resort (VietCo) 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%
- **NB! Notice Vietnam's special requirements on "management fee's"**

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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?

**NB! Notice Vietnam's special requirements on "management fee's"**

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**CASE – SERVICE CHARGES** DFDLMEKONG  
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**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
<b>Total</b>	<b>60</b>				<b>40</b>

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**CASE – SERVICE CHARGES** DFDLMEKONG  
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**Is the markup (profit element) appropriate?**

```

    graph TD
      SingCo[Sing Co.] -- "Cost=100  
Plus element=7%  
Transfer Price=107" --> VietCo[Viet Co.]
      Provider[3rd Party Service provider] -- "Cost=200  
Plus element=7%  
Transfer Price=214" --> Recipient[3rd Party Service Recipient]
    
```


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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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**CASE – SERVICE CHARGES** 

**Allocation keys - examples**


Service	Distribution key
Human Resources	Number of employees? Number of new hires?
IT	Number of terminals? Number of licenses? Turnover?
Sales and Marketing	Number of sales people? Number of clients? Turnover?
Accounting	Number of transactions? Turnover?
Research & Development	Turnover?

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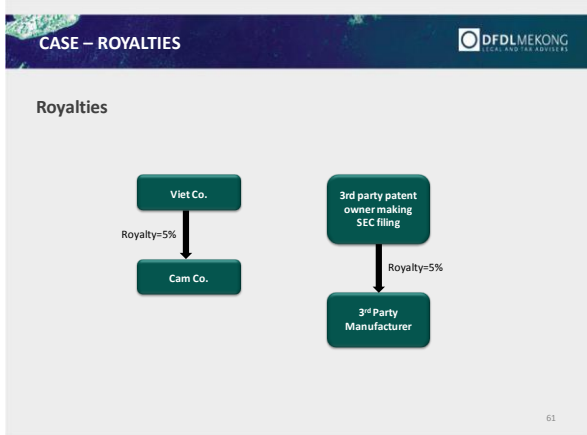
**Economic Analysis –  
Royalties**

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**CASE – ROYALTIES** 

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

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CASE – ROYALTIES

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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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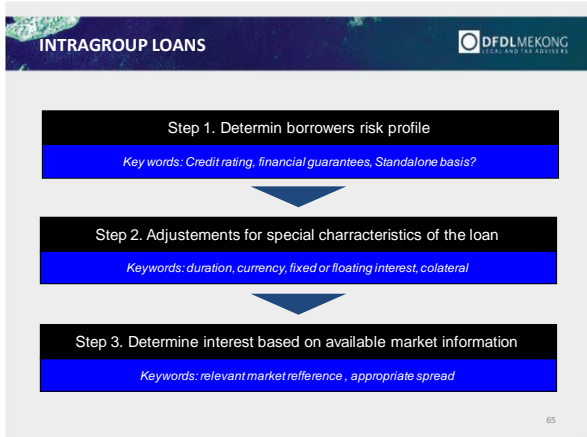
INTRAGROUP LOANS


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

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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** 

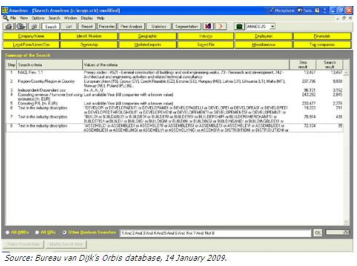
- Profit element can be determined by use of database search.
- Databases used contains publicly available financial information.
- Search can be performed based on a number of criteria:
  - Geographical location
  - Business characterization codes
  - Business description keywords
  - Turnover
  - Number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

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BENCHMARKS

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Screenshot from database search:



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

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BENCHMARKS

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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

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Discussion points:

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

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Compiling Documentation

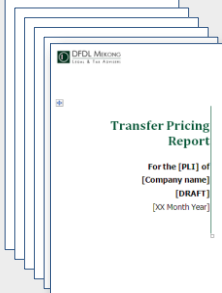
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PREPARING DOCUMENTATION

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**Normal content of documentation:**

- Overview of the group
- Overview of the company
- Industry analysis
- Functional analysis
- Economic analysis
- Focus on telling a story!



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PREPARING DOCUMENTATION

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**Masterfile concept:**

**Masterfile:**


- Overview of the group
- Industry analysis

**Country file:**

- Overview of the company

**Transaction file:**

- Functional analysis
- Economic analysis



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PREPARING DOCUMENTATION

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**Challenges:**


- Getting the correct information
  - Lack of contracts
  - Discrepancy between contracts and “way of life”
  - Rationale behind chosen prices not available
- Understanding transfer pricing
  - Available in-house know-how
- Presenting facts without triggering unwanted results
  - Triggering capital gains taxation or permanent establishments
- Priorities
  - Time
  - Resources

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**What can DFDL  
Help YOU With?**


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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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Director, Regional Tax Practice  
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