

**APPENDIX A****Documentation on specific transactions**

In addition to the documentation requirements in **paragraph 11.2 of Chapter XI**, a taxpayer engaged in the provision or acquisition of intragroup services, transfer of intangible property or participate in cost sharing arrangement is also required to prepare documentation that contain information as listed below:

**(i) Documentation pertaining to Intragroup Services**

(a) A detailed description of the relevant service transactions. All aspects of the transactions must be analyzed and documented including:

- Who is doing what and for whom, Where are they doing it,
- Why are they doing it,
- How are they doing it, and
- What property is being used or transferred in connection therewith. A written binding service contract between payer and payee companies i.e. the charter which illustrates policies adopted,
- Services provided, costs included and excluded, etc.
- The contract should at the minimum set out:
  - ✓ Details of the group companies which will be providing and receiving services under the contract;
  - ✓ Details of the nature and extend of services to be provided;
  - ✓ The basis for determining the fees to be charged;
  - ✓ The basis for periodic rate increases (if applicable);
  - ✓ The dates at which invoices will be issued;
  - ✓ The time for payment of fee invoices; and
  - ✓ The charges for late payment of invoices and outstanding accounts.

- (b) Documents (e.g. meeting notes and draft agreements) which show that the contract was concluded only after bona fide (bilateral) negotiations regarding its terms.
- (c) Proof of the provision of intragroup service (in order to demonstrate that the service recipient has benefited therefrom). A comprehensive and complete description of those benefits may consist of the following:
- Detailed description of the benefits provided by each business unit, the costs of which are being allocated;
  - Documentation (e.g. correspondence, memoranda, manuals and directives) indicating a benefit to the recipient of the intragroup services;
  - Job descriptions of the staffs of both the service provider and the recipient, so as to prove that there is no duplication of services;
  - Documentation demonstrating that the recipient's operations have not been made to absorb a disproportionate share of the total regional/global costs of administration and management.
- (d) Documentation of each of the functions, such as marketing, legal or technical functions, as the case may be;
- (e) Documentation that the service provider undertakes to supply in justification of the fee for the services rendered e.g. copies of time sheets or cost centre reports. Documentation could also include letters, manuals, instructions, proof of visits, written advice, periodic activity reports and any other documents or data which tend to confirm that the service have been rendered for the benefit of the recipient and are justifiable on an arm's length basis;
- (f) Where a fixed key is used under the indirect charge method, the justification for the allocation key and method adopted shall be demonstrated;

- (g) In the determination of cost base for the application of cost method, it is important to document all issues considered in the calculation of the cost base including:
- nature/type of cost which have been included in the cost base;
  - method of allocation of costs between associated persons;
  - the basis of allocation or apportionment of all indirect costs included in the cost base.

**(ii) Documentation pertaining to Intangible Property**

- (a) Description of the intangible property, potential market application and advantages the intangible property provides in the particular market.
- (b) The prevailing industry royalty rates.
- (c) The terms of the license including geographic limitations, time limitations and exclusivity rights.
- (d) The singularity of the invention and the period for which it is likely to remain unique.
- (e) Technical assistance, trademarks and know-how provided along with access to a patent.
- (f) Profits anticipated by the licensee; and benefits to the licensor arising from sharing information on the experience of the licensee.
- (g) In relation to marketing activities, an agreement to indicate the arrangement between the entities in terms of bearing the risks/expenses for the marketing activities to be undertaken; the nature of the marketing expenses incurred and the proposed treatment, in particular of the non-routine expenses.

### **(iii) Documentation pertaining to Intragroup Financial Assistance**

- (a) Loan agreement.
- (b) For each financial assistance received or provided, the following information is required:-
  - i. Details of lenders/ borrowers
  - ii. Date of agreement, the date of loan drawn down /disburse, duration of loan
  - iii. Total amount of loan, balance of loan at the end of financial year
  - iv. When interest was first paid, interest paid for each financial year
  - v. Interest rate charge and basis of the rate charged e.g. .the base reference rate and spread, and prove that the rate is arm's length
  - vi. Withholding tax documentations if applicable
- (c) Document supporting all items covered under comparability factors under paragraph 9.4 of Chapter IX
- (d) Currency of loan.
- (e) A copy of the accounts of the borrower (where Malaysian entity is the lender).

### **(iv) Documentation pertaining to Cost Contribution Arrangement**

The documentations pertaining to a cost contribution arrangement should include:

- (a) A copy of the CCA agreement that is contemporaneous with its formation (and any revision) and any other agreements relating to the application of the CCA between the CCA participants;
- (b) The identity of participants in the CCA and any other associated persons that will benefit from the CCA;
- (c) The scope of the activities covered by the arrangement, including any intangible or class of intangibles in existence or intended to be developed;
- (d) The duration of the arrangement;
- (e) The total amount of contributions incurred pursuant to the arrangement;

- (f) The allocation of tasks and responsibilities;
- (g) 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;
- (h) 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;
- (i) The nature and extent of each participant's effective ownership interest in the results of the CCA activities;
- (j) The manner or basis on which proportionate shares of the expected benefits are to be measured;
- (k) The rationale and any assumptions underlying the projections of expected benefits;
- (l) The procedures for entering or withdrawing from the arrangement and the consequences thereof;
- (m) The policies and procedures governing balancing payments;
- (n) 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;
- (o) The extent of the use of CCA property by associated persons who are not CCA participants, including the amounts of consideration paid or payable by these non-participants for use of the CCA property; and
- (p) All material changes to the arrangement.