



# Global Transfer Pricing Documentation Compliance Services for US Based Multinational Companies (MNCs)

Frazier & Deeter's Global Transfer Pricing team has developed a pragmatic and cost-effective compliance approach for transfer pricing documentation for US-based MNCs. Our approach focuses on the selection of the "best method" – this makes it easy for the tax authorities to follow and it demonstrates clearly how the taxpayer has complied with the transfer pricing documentation requirements.

## US Transfer Pricing – Penalty-Protection Driven Documentation Compliance

If a US taxpayer is examined by the Internal Revenue Service [IRS] and a transfer pricing adjustment is made that results in a tax assessment over a specific threshold, the IRS may assert penalties. To avoid those penalties, taxpayers can provide to the IRS, transfer pricing documentation that they prepared contemporaneously with their tax return filing.

Robust transfer pricing documentation helps to demonstrate that the taxpayer had reasonable cause for their pricing of inter-company transactions and they acted in good faith. Taxpayers rely on their contemporaneous transfer pricing documentation defensively during the audit process to demonstrate that they complied with the arm's length standard under internal revenue code (I.R.C) § 482. The documentation provides the basis for the reasonable cause and good faith exception to the penalty if the requirements are met.

### US IRS Penalties

There are different types of penalties described in the internal revenue code that may be imposed by the US IRS in relation to transfer pricing documentation compliance. The primary penalty is a 20% addition – to – tax penalty on the portion of the underpayment of tax which is attributable to accuracy-related misconduct e.g., negligence or disregard of rules or regulations, any substantial understatement of income tax, or any substantial (or gross) valuation misstatement. The penalty rate may be as high as 40% under certain circumstances, including gross valuations misstatements. Further, a net adjustment penalty applies when the net § 482 transfer pricing adjustment exceeds the relevant dollar thresholds.

Transfer Pricing is  
the most  
commonly  
audited item for  
MNCs

## Objectives of Transfer Pricing Documentation

The OECD Base Erosion and Profit Shifting [BEPS] Action 13 Report identifies three main objectives of transfer pricing documentation requirements:

- To ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns.
- To provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment and selection of cases for audit.
- To provide tax administrations with information necessary to conduct an audit of the transfer pricing of entities subject to tax in their jurisdiction. As part of the process of complying with reporting obligations, taxpayers may also be incentivized to focus attention on their transfer pricing arrangements and their compliance with transfer pricing rules.

By preparing transfer pricing documentation, taxpayers can place themselves in a better position to defend their transfer pricing policies in the event of an audit by the tax authorities. For tax administrations, the contemporaneous transfer pricing documentation will help to ensure the integrity of the taxpayer's position.

## Benefits for Taxpayers Who Invest in Robust Transfer Pricing Documentation

Transfer pricing reports that comprehensively document the reasonable selection and application of a transfer pricing method, help demonstrate low levels of compliance risk and in turn, help support early deselection of the transfer pricing issue from further examination. High-quality transfer pricing documentation allows the examining agent to rely on the taxpayer's analysis of functions, risks, intangibles and value drivers, saving both the taxpayer and the IRS time in examining low-risk transfer pricing issues. Robust transfer pricing documentation facilitates efficient transfer pricing risk assessments and examinations for both taxpayers and examiners.

## Frazier & Deeter's Approach to Transfer Pricing Documentation

We believe that transfer pricing compliance documentation should follow a robust and practical approach. Only the mandatory information required by the tax regulations should be maintained, with minimal administrative and cost impact for the business.

To achieve this objective, we have developed the FD transfer pricing documentation compliance toolkit with the following features:

### Time-efficient Functional Analysis Documentation Checklist

Our team of industry experts have developed a standardised information checklist that can address the mandatory sections of the transfer pricing documentation and which will typically only require a time investment of around 2 to 4 hours, from the client's team [including business, finance and tax teams], to gather the transfer pricing compliance-related information.

### Option to Choose Standard Large Sample Industry Benchmark Reports or Customised Benchmark Analysis

We adopt a pragmatic approach to benchmarking analyses by focusing on functional comparability and producing cost-effective benchmarking analyses using an extended team of offshore benchmarking specialists. Our clients are given an option to choose a standard large sample industry benchmark report or a customised benchmarking analysis, performed by our team of benchmarking experts. We pass on the benefits of the cost savings from our offshore benchmarking model to our clients, whilst ensuring centralised quality review. The

standard large sample industry benchmark reports, which are cost-efficient, may be adopted by clients based on the evaluation of potential audit risk and the materiality of the inter-company transactions.

## Executive Management Styled Transfer Pricing Documentation Reports

The Sections of the transfer pricing documentation toolkit will cover the mandatory sections required by I.R.C. § 482 regulations, along with the additional sections required under the OECD guidelines on Master File and Local File (largely adopted by most non - US jurisdictions).

## Transfer Pricing Agreements

Every business faces risk. From a transfer pricing perspective, risks must be identified and then allocated between the headquarters company and the other group entities. The US IRS recommends that Inter-company Agreements are maintained, which clarify how the assignment of rights and responsibilities between the parties are established and how risks are allocated. Our transfer pricing team can assist with drafting transfer pricing Inter-company Agreement templates for the business to execute, in relation to meeting the standards for robust TP documentation compliance requirements both in the US and in other jurisdictions.

## Transfer Pricing Documentation Compliance Requirements:

### Tops 15 US Trading Partner Countries

Country	TP Documentation Compliance Requirement				
	Master File	Local File	Contemporaneous TP Documentation	Annual Benchmarking Requirement	Penalty for TP Non – Compliance
China	Y	Y	Y	Y	Y
Mexico	Y	Y	Y	Y	Y
Canada	N	N	Y	N	Y
Japan	Y	Y	Y	Y subject to conditions	Y
Germany	Y	Y	Y	N	Y
South Korea	Y	Y	Y	N	Y
United Kingdom	N Accepted	N Accepted	Y	N	Y
Switzerland	N	N	N	N	General Penalties
Taiwan	Y	Y	Y	Y	Y
Vietnam	Y	Y	Y	Y	Y
India	Y	N India TP documentation largely in line with OECD format	Y	Y	Y
Ireland	Y	Y	Y	N	Y
Netherlands	Y	Y	Y	Y	Y
France	Y	Y	Y	Y	Y
Italy	N	N	Y	Y	Y



OECD Transfer Pricing Documentation Requirements	US TP Documentation
<p><b>Master File</b></p> <p>The OECD Transfer Pricing Guidelines recommend that a master file includes five categories of information:</p> <ol style="list-style-type: none"> <li>1. Organisational structure;</li> <li>2. Description of the MNE’s business or businesses;</li> <li>3. Intangibles;</li> <li>4. Inter-company financial activities; and</li> <li>5. Financial and tax positions.</li> </ol> <p><b>Local File</b></p> <p>The local file requires detailed information relating to specific transactions taking place between the local country affiliate and associated enterprises, including information on the identity of related parties, relevant financial information regarding those specific transactions, comparability analysis and the selection and application of the most appropriate transfer pricing method.</p> <p>The information contained in this report should reflect the analysis, elements taken under consideration and sources of information used by the taxpayer to substantiate their application of the arm’s length principle.</p> <p>The following categories of information are required in the local file:</p> <ul style="list-style-type: none"> <li>▪ Information on the local entity</li> <li>▪ Detailed information on each material category of controlled transactions in which the entity is involved, including a functional analysis of each, an indication of the most appropriate transfer pricing method (including which party is selected as the ‘tested party’) and the implementation of that method.</li> <li>▪ Financial information</li> </ul>	<p><b>Principal Documents</b></p> <p>An overview of the taxpayer’s business, including an analysis of the economic and legal factors that affect the pricing of its property or services. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(1).</p> <p>A description of the taxpayer’s organizational structure (including an organization chart) covering all related parties engaged in transactions potentially relevant under § 482, including foreign affiliates whose transactions directly or indirectly affect the pricing of property or services in the US. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(2).</p> <p>Any documentation explicitly required by the regulations under § 482 (e.g., cost-sharing agreements, the election of Services Cost Method, etc.). Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(3).</p> <p>A description of the method selected and an explanation of why that method was selected, including an evaluation of whether the regulatory conditions and requirements for the application of that method, if any, were met. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(4).</p> <p>A description of the alternative methods that were considered and an explanation of why they were not selected. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(5).</p> <p>A description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(6).</p> <p>A description of the comparables that were used, how comparability was evaluated and what (if any) adjustments were made. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(7).</p> <p>An explanation of the economic analysis and projections relied upon in developing the method. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(8).</p> <p>A description or summary of any relevant data that the taxpayer obtains after the end of the year and before filing a tax return, which would help determine if a taxpayer selected and applied a specified method in a reasonable manner. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(9).</p> <p>A general index of principal and background documents and a description of the recordkeeping system used for cataloging and accessing those documents. Treas. Reg. § 1.6662-6(d)(2)(iii)(B)(10).</p>

## Frazier & Deeter's Global Transfer Pricing Team



### Malcolm Joy | Global Transfer Pricing Leader

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Malcolm is the leader of Frazier & Deeter's global transfer pricing practice. Prior to joining Frazier & Deeter in 2019 he was the head of transfer pricing at a top 5 accounting firm in the UK. Malcolm's areas of specialization include Value Chain Analyses, base erosion and profit shifting (BEPS), intellectual property and supply chain structuring. Malcolm is a regular lecturer on transfer pricing and Value Chain Analyses. He has presented on transfer pricing reforms at the OECD transfer pricing meetings in Paris and has also been interviewed on numerous occasions by the BBC and other media organisations on transfer pricing matters.



### Jaydeep Menon | Senior Manager – Global Transfer Pricing

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Jay has 15 years' experience in transfer pricing and value chain analyses and has led project teams with big4 consulting firms in UK, US and in India. He has expertise of dealing with UK, US, Europe and APAC transfer pricing compliance, operating model planning and implementation, transfer pricing audit/ litigation, route-to-market advisory, value chain projects, transfer pricing due diligence and Competent Authority proceedings.

Jay's areas of expertise include: BEPS Action Plan based DEMPE analysis, value chain analyses projects, global transfer pricing compliance (Master File, Local file, CbCR, benchmarking), studies on attribution of profits to permanent establishments, Advance Pricing Agreements and Mutual Agreement Procedures. He has worked extensively on consulting for UK – US start-up corridor, global transfer pricing planning, benchmarking and compliance projects. Jay has published articles in different tax websites and attended transfer pricing webinars and tax conferences as expert panelist.

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