

THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2026

MODULE 3.03 – TRANSFER PRICING OPTION

SUGGESTED SOLUTIONS

PART A

Question 1

Part 1

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 (TPG 2022) at paragraph 1.35 state that “the accurate delineation of the actual transaction or transactions between the associated enterprises requires analysis of the economically relevant characteristics of the transaction. These economically relevant characteristics consist of the conditions of the transaction and the economically relevant circumstances in which the transaction takes place.”

It is acknowledged that candidates do not have access to additional information, which would be required to undertake this exercise in a professional capacity. This information would be needed to be sourced for example, from interviewing employees and obtaining written contracts between associates.

Candidates should identify the associated enterprises in Pet Group. “Two enterprises are associated enterprises with respect to each other if one of the enterprises meets the conditions of Article 9, sub-paragraphs 1a) or 1b) of the OECD Model Tax Convention with respect to the other enterprise.” The facts confirm that Pet Group (PG) Rana, PG Lepus and PG Piscis are wholly owned subsidiaries of PG Canem. On this basis, candidates should identify these entities as associated enterprises within PG.

PG Canem

- Sale of finished goods to PG Rana, PG Lepus and PG Piscis
- Performs logistics (sourcing of finished goods) on behalf of PG Rana, PG Lepus and PG Piscis
- Provision of administrative, managerial and associated services to PG Rana, PG Lepus and PG Piscis (i.e. strategic direction, advertising and marketing, finance and accounting, human resources, and information technology support)
- Provides manuals and associated guidelines on operating retail pet store to PG Rana, PG Lepus and PG Piscis [note, candidates may assume this is provision of intellectual property].
- Provision of funds (loans) to PG Rana, PG Lepus and PG Piscis

PG Rana, PG Lepus and PG Piscis

- Receipt of finished goods from PG Canem
- Receipt of logistics services (sourcing of finished goods) from PG Canem
- Receipt of administrative, managerial and associated services from PG Canem
- Receipt of manuals and associated guidelines on operating retail pet store from PG Canem
- Receipt of funds (loans) from PG Canem

Part 2

The below functional analysis is representative based on the facts available (it is reasonable for candidates to make appropriate assumptions, noting that additional information would need to be sourced in practice).

The Pet Group operates as a multinational enterprise engaged in the manufacture and sale of pet products. Summary of transactions between group members (refer to Question 1(1) for further detail).

A functional analysis examines the economically significant functions performed, assets employed, and risks assumed (FAR), in order to accurately delineate the controlled transactions.

PG Canem

Functions Performed

Key entrepreneurial and control functions relating to intangibles, potentially include:

- Strategic direction of products
- Decision-making authority over research and development
- Ownership and management of intellectual property for Pet Group
- Control over exploitation, licensing, and protection of intellectual property

Manufacturing related functions, potentially include:

- Procurement of finished goods (including relationship management)
- Production scheduling and quality control
- Packaging and dispatch of finished goods

Likely low-value-adding or routine services, such as:

- Accounting and reporting
- Payroll and human resources administration
- Information infrastructure support

Operational for retail stores:

- Point of sale management, including managing cash registers, processing payments etc
- Customer service by assisting clients in store
- Visual merchandising by setting up store layout and organising store according to Pet Group manuals and guidelines

Inventory and supply chain:

- Local warehousing and storage by receiving orders, unpacking and storing
- Stock ordering and tracking to monitor stock levels and placing new orders
- Logistics by coordinating the transport of goods from manufacturers or wholesalers to warehouse and from warehouse to stores (and associates)

Marketing and local strategy:

- Set group strategy for marketing
- Local advertising for market, including by TV, digital (social media), catalogues or radio
- Marketing feedback based on loyalty program to tailor offers to customers based on previous purchases

Administration and associated:

- Human resources management, including recruiting, training and managing retail and warehouse staff
- Payroll and local compliance, including managing staff rosters, paying wages etc
- Lease management of stores by paying lease, negotiating property leases etc

Assets Utilised

Intellectual assets/property:

- Patents, trademarks, brand names, corporate logos
- Contractual rights including licences and sourcing agreements

Tangible assets:

- Property and buildings including retail stores (including land), warehouse building (including land)
- Plant and equipment including warehouse storage, retail store fitout, dog grooming, information technology (computers)
- Inventory for sale and in warehouse (for selling to associates)

Financial capital:

- Cash at bank, including for loaning to associates
- Receivables (likely from associates)

Risks Assumed

Market risk:

- Competitive risk of new competitors
- Inventory risk, including obsolescence

Operational risk:

- Quality control risk of product defects, possible product recalls, warranty risk
- Possible failure on suppliers fulfilling orders on time and to quality specifications (such as supply chain disruptions)

Financial risk:

- Credit or bad debt risk (for loans to associates)
- Foreign exchange (possibly for sales to associates)
- Interest rate risk of possible fluctuations

Legal and regulatory risk:

- Product Liability Risk, including possible legal claims from customers
- Intellectual property infringement, including third parties utilising intellectual property
- Regulatory risk, for example breaching local legislation for workplace safety of employees or customers

Strategic risk:

- Key employee risk, for example senior management who have specialised knowledge

PG Lepus

Functions Performed

Website operations:

- Maintenance of online store website and phone app
- Facilitating with advertising company to place advertising on websites and social media apps

Note, candidates can make reasonable assumptions as limited information is available regarding the operations of PG Lepus. For the purpose of the suggested solutions, it is assumed that PG Lepus does not hold inventory or arrange for goods to be dispatched to customers from Lepus, based on only having 5 employees. Based on the high-level financial information, PG Lepus is making sales, but it is uncertain regarding whether the sales are material given the different currencies across the group and no foreign exchange translation being provided.

Assets Utilised

Intellectual assets/property:

- Patents, trademarks, brand names, corporate logos (likely not owned by PG Lepus)

Tangible assets:

- Commercial office, including office equipment (chairs, desks, phones)
- Information technology equipment

Risks Assumed

Operational risk:

- Risk that advertising is not successful

Legal and regulatory risk:

- Product Liability Risk, including possible legal claims from customers
- Regulatory risk, for example breaching local legislation for workplace safety of employees
- Risk of requirements of tax holiday not being satisfied

Part 3

Candidates may articulate the primary role of the respective entities in a different terminology, which may be accurate. Candidates may also reference the grooming services being offered, but limited details are provided in the facts – it could be reasonably assumed that the three entities which have retail outlets also offer these services in their stores. The characterisation of an entity is a critical step because it dictates the transfer pricing method under the arm's length principle.

<u>Entity</u>	<u>Jurisdiction</u>	<u>Primary Role/s</u>
PG Canem	Canem	Legal owner of intangibles, centralised support services, logistics (sourcing of products for group), provision of funds to group members and local distribution and sales. PG Canem is the entrepreneur in PG.
PG Rana	Rana	Local distribution and sales
PG Lepus	Lepus	Online sales (further information is required in order to accurately identify). Potentially a service entity on behalf of PG Canem.
PG Piscis	Piscis	Local distribution and sales

Question 2Part 1

As the owner of intangibles and entrepreneur for the PG group, the residual entrepreneurial profit should be derived by PG Canem.

In relation to service functions provided by PG Canem to PG Rana, PG Lepus and PG Pisc cost plus method is likely the most appropriate. A fixed percentage markup to the direct and indirect costs of should be applied. The intra-group services are potentially low value adding as set out in D.1 of Chapter VII of OECD TPG. Based on paragraph 7.61, a markup of 5% should be applied of the relevant costs.

In relation to sales of finished goods to PG Rana, PG Lepus and PG Piscis, potentially Transactional Net Margin Method or TNMM would be appropriate based on routine activities of marketing, distribution activities of the subsidiaries. For example, an appropriate profit level indicator would be applied to the Earnings Before Interest and Tax (EBIT)/Sales.

Candidates may note that PG Rana sources 50% of its products from unrelated or independent parties.

In respect of royalty or licence fee payable by subsidiaries to PG Canem for intellectual property, this could be factored into the price paid for the finished goods (under TNMM method). Alternatively, it is possible that independent parties would apply a royalty or licence fee (with appropriate withholding tax) utilising Comparable Uncontrolled Price (CUP) method, but benchmarking against independent parties.

In relation to PG Lepus, further analysis would have to be undertaken. However, if PG Lepus was a service provider, it is likely that Cost Plus method may apply to remunerate PG Lepus. It is noted that sales are fulfilled by PG Canem, so PG Lepus may not hold title to goods and may not be classified as a retailer or distributor.

In respect of loan of funds between PG Canem and subsidiaries, the Comparable Uncontrolled Price (CUP) method is the primary method under OECD TPG. Under Chapter X, this involves pricing the loan by identifying the interest rate an independent lender would charge a borrower under identical economic circumstances.

Part 2

It is noted that candidates are likely to provide varied responses to this question.

PG Canem has loaned funds to PG Rana, PG Lepus and PG Piscis for working capital and store fitout. However, the facts do not specify the quantum of funds loaned to each associate or where PG Canem has sourced the funds i.e. their whether they have sourced funds from an independent party or from their own cash reserves.

Candidates should refer to Chapter X of the OECD TPG, which is dedicated to financial transactions.

Information likely to be required in order to undertake a transfer pricing analysis would be in relation to whether the borrowers (i.e. PG Rana, PG Lepus and PG Piscis) actually required the use of the funds, whether they have the financial capacity to repay the funds and whether a third party (such as a financial institution or bank) would have lent the money under similar terms and conditions. This information may include:

- Standalone credit ratings of borrowers (e.g. debt-to-equity ratio or interest coverage ratio) which are generally utilised to calculate independent credit scores
- Implicit group support analysis to evaluate whether the borrower's or subsidiaries credit rating receives a passive lift because it belongs to a strong parent corporate group (noting the credit rating of PG Canem is AA).
- Cash flow forecasts for borrowers to project whether there is appropriate future liquidity to service interest payments and repay the principal amount at the end of the loan term
- Documentation setting out the business rationale for the loan (i.e. board agreements, minutes of meetings or other relevant documentation)
- Documentation whether the borrowers approached a third party to source funds and if so, the details, including proposed terms, including interest rate.

Other relevant data to perform a comparison of the profile of the loan terms in order to compare with independent transactions his data forms the exact profile of the financial instrument, which is necessary to run an accurate market comparison. For example:

- Principal loan amount and currency of loan.
- Maturity profile or term duration (i.e. 10-year loan)
- Interest rate structure including whether fixed or variable interest rate, including reference to indices (e.g. EURIBOR)
- Payment scheduled including timeframe for interest payments i.e. monthly interest and principal.
- Details of whether the loan is secured against property, unsecured etc

In relation to analysis, you may expect Pet Group to undertake (or a tax administration may undertake may include):

- Search of commercial databases (e.g. Bloomberg) to identify potential comparable third-party transactions.
- Identify potential Comparable Uncontrolled Transactions or CUPs, including seeking to identify independent or third-party corporate bonds or commercial loans with a matching credit rating, currency and timeline.
- Understand any adjustments made to market data to seek to account for differences.
- Request transfer pricing documentation

Candidates with more comprehensive responses also may have referred to the principles from recent transfer pricing financing case law such as for example:

- Chevron (Chevron Australia Holdings Pty Ltd v Commissioner of Taxation)
- Singtel (Singtel Telecom Australia Investments v Commissioner of Taxation)
- BlackRock (Blackrock HoldCo5 LLC v HMRC)
- Exxon Mobil (Exxonmobil Production Norway Inc v Norwegian Tax Authorities)

Part 3

Candidates may provide a range of differing responses, which are reasonable based on the facts available or assumptions made.

For example, highlight the significant gross and net profit margin of PG Lepus when you consider based on facts available, the limited economic activities of the entity. It is noted that the initiative in relation to website and phone app was from PG Canem management, with limited activity undertaken by PG Lepus. Further, PG Canem fulfils orders and undertakes logistics from its warehouse for sales legally made (and presumably booked) by PG Lepus. PG Lepus has 5 employees compared to 8,500 in PG Canem so there may not be capacity for PG Lepus to undertake the activities purported to earn a 28% net profit margin, which is more akin to a profit of an entrepreneur or owner of valuable intellectual property.

Introduced under the OECD's Base Erosion and Profit Shifting (BEPS) Action 8-10, Development, Enhancement, Maintenance, Protection, and Exploitation (DEMPE) is a framework used to determine which legal entity in a multinational group is entitled to the economic profits generated by an intangible asset, regardless of who legally owns it.

Consideration should be given to DEMPE of intangible assets, including in this case any IP arising from the online store. Legal ownership does not grant the right to retain profits from intellectual profit. Instead, profits are allocated to the entities that physically perform the people-functions, manage the risks, and deploy the assets required to create and sustain that IP value.

PG Lepus has a tax holiday, resulting in a 10% effective tax rate, which presumably is less than other PG entities. In summary, there is likely to be an incentive for PG group to shift profits into PG Lepus based on the facts available.

Candidates may also identify that PG Piscis is returning a -4% net profit margin, despite having sizeable operations and potentially undertaking routine type of activities of local distribution and sales. If PG Piscis is being remunerated at arm's length based on a return of an independent party, one would expect the entity to not be making losses. However, a functional analysis and benchmarking would have to be undertaken, rather than relying on the 4% transfer pricing policy

Better candidates would be expected to reference appropriate paragraphs of OECD TPG to support their response.

PART B

Question 3

Part 1

The facts of the case present a value chain re-organisation for Tea Bliss Corporation. As a result of changes to the value chain of Tea Bliss Corporation, there has been an alteration in functions, assets and risks within the group as well as transactions, agreements and pricing.

In this regard, the OECD Transfer Pricing Guidelines (2022), Chapter IX: Transfer Pricing Aspects of Business Restructures are relevant.

From a transfer pricing perspective, a full functional analysis would be required for all entities to establish the global value chain along with the form and substance of the arrangements within Tea Bliss Corporation, pre and post restructure. This includes the identification of the economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed by the parties to the transactions. Correspondingly, each entity should be characterised following identification of the functions, assets and risks of the entities.

In terms of the functional analysis, candidates may highlight that functional interviews should be completed across all entities within Tea Bliss Corporation with staff and both the strategic and operational levels, including key decision makers. In addition, it is important to gain an understanding of the industry dynamics within which Tea Bliss Corporation operates. Accordingly, this should elicit the commercial and financial relations between the associated enterprises within Tea Bliss Corporation.

Prior to the implementation of a value chain re-organisation, Leaf Ltd, tax resident in Country A, comprised the following functions, assets and risks as the ultimate parent entity of Tea Bliss Corporation.

Functions

Manufacturing and production, warehousing, procurement and logistics, marketing and sales, distribution, research and development, centralised services (including accounting, finance, human resources and legal services).

Assets

Intellectual property, property, plant and equipment, inventory, staff, offices, warehouses.

Risks

Operational, market, inventory, obsolescence, financial, manufacturing, bad debt, intellectual property/research and development,.

Characterisation

Fully-fledged manufacturer with a sales and marketing/distribution, centralised services and procurement and logistics function and intellectual property holder.

Having regard to the above, Leaf Ltd receives the following remuneration:

- Royalty of 2.5% of sales for licensing of intellectual property.
- Cost plus 5% for the provision of centralised services.
- Cost plus 7.5% for the provision of procurement and logistics.
- Cost plus 6% for marketing and sales.

Following the implementation of a value chain re-organisation, Leaf Ltd continues to perform a research and development function, however does not legally own the intellectual property. All other functions previously performed have been transferred to associated enterprises within the Bliss Corporation group. Consequently, the associated remuneration for these functions has been transferred (within changes noted below). Further, Leaf Ltd has subordinated the debt it held with an external financial institution to an associated enterprise and provided a guarantee to the external financial institution.

The implementation of the value chain re-organisation has created the following additional changes for the Bliss Corporation group.

Tea Bliss Sub 1 (Country B)

Functions: Procurement and logistics.

Assets: Office, staff, warehouse.

Risks: Market, operational, inventory, obsolescence (assuming takes legal ownership of the goods, else if 'flash title' will bear limited risk).

Characterisation: Procurement and logistics hub.

Remunerated 4% of gross sales.

Tea Bliss Sub 2 (Country C)

Functions: Legal ownership of intellectual property.

Assets: Staff (depending on performance of any DEMPE functions).

Risks: Intellectual property.

Characterisation: Intellectual property holder.

Remunerated with a royalty of 8% of sales.

Tea Bliss Sub 3 (Country D)

Functions: Assets: Office, staff.

Risks: Operational.

Characterisation: Centralised services hub.

Tea Bliss Sub 4 (Country E)

Functions: Financing (borrowing/hold debt).

Assets: Potentially staff, office (depending on the level of functionality including decision making in relation to the financing arrangement).

Risks: Financial.

Characterisation: Debt holding entity.

An interest rate of 2% charged for the financial facility.

Part 2

Candidates may raise transfer pricing risks including:

- The implementation of a value chain re-organisation is akin to a business restructure which typically raises potential transfer pricing risks.
- Establishment of new entities in tax jurisdictions lower than that in Country A of which Leaf Ltd is a tax resident. The structure of the arrangements have changed as well as the pricing.
- The commercial and financial relations of the business restructure may be different from the conditions that would be expected from independent enterprises and inconsistent with the arm's length principle.
- The commercial reasons or justification and expected benefits from the restructure (including synergies) may differ from those that would be expected between independent enterprises.
- The remuneration for the new transactions between associated enterprises may not be at arm's length.
- A mismatch between the form and economic substance of the transactions.

- Has there been an arm's length compensation for transfer of intellectual property from Leaf Ltd to Tea Bliss Sub 2? Has an independent valuation been conducted?
- The DEPME functions concerning the intellectual property for Tea Bliss Corporation.
- Have any exit payments been made for the loss of earning potential as a result of the changes to functions, assets and risks of Leaf Ltd?
- The arm's length nature of the new transactions between associated enterprises including:
 - The royalties.
 - The cost plus method/markup.
- The financing arrangement:
 - The commercial rationale for the changes.
 - The arm's length nature of the terms and conditions of the arrangement, including the interest rate.
 - Any guarantee fee charged.

Question 4

Students may reference the OECD Model Tax Convention on Income and Capital, Article 5 – Permanent Establishment.

The term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

A permanent establishment specifically includes:

- A place of management,
- A branch,
- An office,
- A factory,
- A workshop,
- A mine, oil or gas well, quarry or other place of extraction of natural resources, and
- A building suite or a constructional or installation project if the period exceeds 12 months.

Article 5(4) stipulates that a permanent establishment shall be deemed not to include:

- Facilities for storage, display or delivery of merchandise.
- Maintaining goods or merchandise for the purpose of storage, display or delivery.
- Fixed place solely for purchasing goods or merchandise or for collection of information, or
- Activities of a preparatory or auxiliary nature.

Candidates may assume that there is a Double Taxation Agreement between Fregate and Alerez, containing a permanent establishment article.

Candidates may raise the following points:

- Cordell may have a dependent agent permanent establishment in Alerez, in accordance with Article 5(5) as decision makers (directors) of Cordell have successfully negotiated and signed contracts for the oil refinery upgrade in Alerez.
- The oil refinery upgrade to commence in Alerez may create a permanent establishment having regard to Article 5(3); if it is a project lasting more than 12 months.
- Candidates may contend that Cordell has a fixed place of business permanent establishment in Alerez. The place of management may be conducted in Alerez for running the project - Article 5(1 & 2). Although Cordell does not intend to lease an office in Alerez, it does intend to sub-contract the work through another company that may then utilize an office in Alerez (dependent agent PE).
- Candidates may highlight that the anti-fragmentation rules may apply to the Cordell. Staff employed by Cordell are intended to undertake work in Alerez on a short-term basis for two months at a time. This may result in the overall combination of activities carried out in Alerez resulting in a permanent establishment for Cordell.
- A services permanent establishment may also exist, having regard to the staff employed by Cordell, performing work in Alerez.

Candidates may take the permanent establishment application further to apply Article 7 (business profits) of the OECD Model Tax Convention (2017) which would have implications for the attribution of potential profits to a permanent establishment.

Reference is made to the OECD Guidance on Attribution of Profits to Permanent Establishments (2017). The analysis of the examples included in the Report is governed by the authorised OECD approach contained in the 2010 version of Article 7. The key principle across the examples is that the profits attributable to a PE are those that the PE would have derived if it were a separate and independent enterprise having regard to the functions, assets and risks.

PART C

Question 5

Part 1

Models which candidates may consider from a transfer pricing perspective may include:

- Licensing/Royalty Model: The IP owner licenses the rights to subsidiaries for market exploitation in exchange for a royalty payment (typically, a percentage of sales).
- Contract research and development: A central entity owns the IP and pays a contract researcher (subsidiary) for R&D services. The researcher receives a cost-plus markup and typically does not share in the residual profits of the IP.
- Profit Split Method: Often used when multiple entities contribute uniquely to the intellectual property's value (e.g. shared development). The total profits from intellectual property exploitation are divided between the parties based on their relative functional contributions and risk assumption.
- Cost contribution arrangement: a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create benefits for individual businesses of each of the participants.

Candidates may make reference to the OECD TPG, Chapter VI.

Areas that could be raised that would form consideration as part of a transfer pricing analysis in the application of potential models in relation to intellectual property include:

- Ownership and DEMPE (development, enhancement, maintenance, protection and exploitation) need to be fully examined. This includes the form and substance of the intangibles.
- Analysis of intangibles should involve an investigation of the commercial and financial relations of the entities within the group to delineate the transactions. A functional analysis should be performed to identify which entities are creating intangibles or adding value through the value chain.
- Economic versus legal ownership.
- Performance of a functional and comparability analysis to identify intangibles and the associated risks, contractual arrangements and actual conduct of the parties.
- Identification of intangibles, establish the ownership of the intangibles and look at how they are valued, assess the contribution of the intangibles to value creation within the MNE group, and decide which group members contributed to the value of the intangible.
- The appropriate transfer pricing method should then be established to allocate the profit between the related parties.
- In cases where the IP development activity was outsourced to an associate under a contract R&D arrangement, the arm's length compensation for such contract R&D services must be established. The OECD TPG indicate that the functions performed by contract R&D providers, including any risk mitigation or DEMPE functions, should be appropriately compensated via a service arrangement (i.e. usually cost plus) and should not impact the valuation of the IP.
- Marketing intangibles such as trademarks, trade names, or customer lists can be created by marketing activities and increase the sales of a product or a service for an MNE.
- Risk control functions.

Part 2

Candidates may make reference to the OECD TPG, Chapter VIII – Cost contribution arrangements.

For the conditions of a cost contribution arrangement (CCA) to satisfy the arm's length principle, the value of participants' contributions must be consistent with what independent enterprises would have agreed to contribute under comparable circumstances given their proportionate share of the total anticipated benefits they reasonably expect to derive from the arrangement.

Issues that may be considered in the implementation of a CCA may include:

- Determining participants – including contributions made, exercise over control, decision making, performance of activities.
- Expected benefits from the CCA – including allocation of contributions, shares of benefits, activities contributed.
- The value of each participant's contribution – including the participant's proportionate share of overall contributions, consistency with the value that independent enterprises in comparable circumstances would have assigned to each contribution.
- Balancing payments – where the value of the participants' share of the overall contributions is not consistent with share of expected benefits.
- Accurate delineating the actual transaction – comparing the actual transaction to the terms of the CCA.
- The tax treatment of contributions and balancing payments.
- CCA entry, withdrawal or termination – compensation based on the arm's length principle.

Question 6

Candidates may make reference to the OECD TPG, Chapter IV – Administrative approaches to avoiding and resolving transfer pricing disputes.

The mutual agreement procedure (MAP):

- Authorised by Article 25 of the OECD Model Tax Convention, can be used to eliminate double taxation that could arise from a transfer pricing adjustment.
- Article 25 requires that the competent authorities endeavour to resolve the case by mutual agreement.
- The detailed elements of the minimum standard are set out in OECD (2015), Making Dispute Resolution Mechanisms more effective, Action 14 – 2015 report, OECD/G20 BEPS Project.
- To eliminate double taxation in transfer pricing cases, tax administrations may consider requests for corresponding adjustments as described in paragraph 2 of Article 9.
- Most competent authorities endeavour to reach bilateral agreement for the resolution of a mutual agreement procedure case within 24 months.
- The OECD and Inclusive Framework on BEPS Action 14 includes Part VI I the Multilateral Instrument (MLI). Article 19 of the MLI allows a taxpayer to refer a MAP dispute to arbitration if the dispute has remained unresolved for 24 months (26 months for agreement with some certain jurisdictions).

Advance pricing arrangements (APAs):

- An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for those transactions over a fixed period of time.
- A multinational enterprise may request an APA from a tax authority.
- A bilateral APA may reduce or eliminate the possibility of double taxation and assist in enhancing the predictability of tax treatment in international transactions.

Transfer pricing documentation:

- Contemporaneous transfer pricing documentation prepared by a multinational enterprise that demonstrates compliance with the arm's length principle may mitigate the likelihood of compliance activity and audit adjustments for transfer pricing by a tax administration.

Multinational enterprises may take advantage of potential safe harbours in certain jurisdictions.

Question 7Part 1

Candidates may make reference to the OECD TPG, Chapter V – Documentation; C. A three-tiered approach to transfer pricing documentation.

Master file

Overview of the group business, including nature of its global business operations, overall transfer pricing policies, and its global allocation of income and economic activity.

High-level overview in order to place the multinational enterprises group's global transfer pricing practices in their global economic, legal, financial and tax context.

Should present the information for the multinational enterprise group as a whole.

Local file

- Provides more detailed information relating to specific intercompany transactions.
- Focuses on information relevant to the transfer pricing analysis related to transactions taking place between a local affiliate and associated enterprises in different jurisdictions and which are material in the context of the jurisdiction's tax system.
- Includes relevant financial information regarding specific transactions a comparability analysis and the selection and application of the most appropriate transfer pricing method.

Country-by-Country Report

- Requires aggregate tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the multinational enterprise operates.
- Requires a listing of all the Constituent Entities for which financial information is reported, including the tax jurisdiction of incorporation, where different from the tax jurisdiction of residence, and the nature of the main business activities carried out by that Constituent Entity.

CbC reports may add the following value for tax administrations:

- Provide the information necessary to conduct an informed transfer pricing risk assessment and allocate resources to higher risk transfer pricing cases.
- Provide useful information to employ in conducting an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction, along with any required additional information.
- Provides assurance that the taxpayer has analysed the positions it reports on tax returns, has considered the available comparable data, and has reached consistent transfer pricing positions.
- Encourages compliance and good governance.

CbC reports may add the following value for taxpayers:

- Provides the taxpayer with all the relevant information to understand their transfer pricing policies and practices in establishing prices and other conditions for transactions between associated enterprises and in reporting the income derived from such transactions in their tax returns.
- Reduces the likelihood of a transfer pricing audit by providing tax administrations with a robust overview and analysis of their transfer pricing if subject to a risk assessment.
- Reduces the likelihood of double taxation from a transfer pricing adjustment following a transfer pricing audit.

Part 2

Candidates may make reference to the OECD TPG, Chapter VII – Special considerations for intra-group services.

The key issues are whether services have been provided by one member of a group to other members, and if so, to establish an arm's length price.

In some instances, a group will provide a range of services to its members including administration, technical, financial and commercial. The group should ensure that services are appropriately identified and associated costs are allocated with the group in accordance with the arm's length principle.

It should be determined whether intra-group services have been rendered. Key points include:

- Shareholder activities would not usually be considered an inter-group service (refer to paragraph 8.10 for examples).
- Duplicate services should not usually be charged.
- Incidental benefits would not usually be paid for by independent enterprises.
- Centralised services are usually considered a to be an intra-group service.
- In a transfer pricing context, consider whether independent enterprises would likely charge for the service.

Once it is determined that an intra-group service has been rendered, there is a need to determine if the amount of the charge is in accordance with the arm's length principle. The different options are direct charge methods and indirect charge methods.

In relation to low value-adding services, it is possible to apply a simplified approach (set out in D.1). Paragraph 7.45 includes details of low value-services with paragraphs 7.47 indicating activities which would not qualify for the simplified approach.

D.2. Sets out the simplified approach for low-value adding intra-group services including application of the benefits test, determination of cost pools and allocation.