

**[company name]**

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**Local file for the financial year 2022**

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**June 2024**

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## 1.2 Scope of this Local file

*[The purpose of this section is to introduce the intercompany transactions under review. Often this is achieved by way of providing a top down description of the group, its parent company, the company subject to review and the intercompany transactions the latter is involved in. Please find sample wording below]*

[Local Opco] is part of the [XYZ] group of companies of which [full legal name of parent company], established in [country], is the ultimate parent company (hereinafter referred to as '[parent company]').

The [XYZ] group is specialized in [insert a brief description of the XYZ group's business and products] and is operating in [XX] countries in the world.

The main intercompany transaction subject to review in this Local file is the supply of [insert name] products from [full legal name of the principal [XYZ] group company ultimately responsible for all product development, production, and sales] (hereinafter referred to as 'principal') to [Local Opco]. In the latest financial year (i.e. 20[XX]), this intercompany transaction amounted to some [currency] [amount]. In the same year, [Local Opco] also purchased [insert name] products from independent third party suppliers for an amount of [currency] [amount] (i.e. some [number]% of its turnover).

The information in this Local file represents the situation as we understood it during our interviews and other fact gathering activities conducted in [month], 20[XX]. Based on this information, we documented the intercompany transactions for [Local Opco] as per the beginning of the company's fiscal year 20[XX] and onwards (under the assumption that the relevant facts and circumstances will not significantly change).

The information provided in this Local file, unless otherwise stated, stems from documents and facts provided by [XYZ] group's management. We relied upon the information provided to us and have not reviewed or verified the information in all cases. The benchmarking analysis included in this report is based on the financial information available on the [insert name] database. We have not undertaken any work to verify or otherwise examine the data contained in this database.

Neither this Local file nor any portion thereof (including without limitation any conclusions as to transfer prices, or the identity of [tax advisor] or any individuals signing or associated with this report) shall be disseminated to third parties by any means without the prior written consent and approval of [tax advisor], except as required by law.

Further, the scope of this Local file is limited to the transfer pricing aspects of the identified intercompany transactions and does not consider other potential (direct and indirect) tax implications of the transactions addressed herein.

## 1.3 Structure of this report

The remainder of this report is split out into two components: i) a description of the relevant facts and circumstances that are important to obtain a good understanding of the

## 2. Description of [local company legal name]

### 2.1 Introduction

This section provides a description of [Local Opco]. The information provided includes (but is not limited to): a description of [Local Opco]'s management structure, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

Further, the business in which [Local Opco] operates is discussed, including an indication whether [Local Opco] has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year. Finally, the key competitors of [Local Opco] in [country] are listed.

### 2.2 Management structure

*[Please insert a description of the organizational structure of [Local Opco] and the reporting lines of the various functions, including the reporting lines of top management. Please find below sample wording]*

*[Suggested information sources: relevant information often can be gathered through questionnaires or interviews with heads of departments]*

[Local Opco] operates as [XYZ] group's distribution company in the [country] market for the [insert name] products. [Local Opco] is led by its board of directors consisting of the local managing director and [add other board members]. The local managing director reports to [insert function] who is ultimately responsible for the group's marketing and sales activities. This direct report of [Local Opco]'s managing director maintains its principal office in [city], [country].

[Local Opco] employs some [number] FTEs. The local managing director of [Local Opco] has a number of direct reports. The direct reports are heading the following departments (including FTEs per department):

Department	# FTE
General management and support	[XX]
Marketing and sales	[XX]

Please find below an organizational chart of [Local Opco]:

[insert organizational chart] *[we often use MS PowerPoint to prepare such a chart]*

## 4. Functional analysis

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### 4.1 Introduction

This section details the functional and risk profile of [Local Opco] for the year ended 20[XX] for the transactions it is involved in. These details are described in a so-called functional analysis.

The OECD Guidelines state “Application of the arm’s length principle is generally based on a comparison of the conditions in a controlled transaction with the conditions in transactions between independent enterprises. (...) Independent enterprises, when evaluating the terms of a potential transaction, will compare the transaction to the other options realistically available to them, and they will only enter into the transaction if they see no alternative that is clearly more attractive”<sup>3</sup>.

In dealings between two independent enterprises, comparison will usually reflect the functions that each enterprise performs, the assets used and the risks assumed. Therefore, in determining whether controlled and uncontrolled transactions or entities are comparable, comparison of the functions taken on by the parties is necessary. This comparison is based on a functional analysis, which seeks to identify and compare the economically significant activities and responsibilities undertaken or to be undertaken by the independent and associated enterprises. Consistent with the OECD Guidelines, the functional analysis covers only “economically significant” activities.

Thus, the functional analysis provides the factual foundation for establishing transfer pricing methods consistent with the arm’s length principle. A controlled transaction meets the arm’s length principle if the results of the transaction are consistent with the results that would have been realized had the same transaction occurred between uncontrolled entities. A functional analysis is essential to the development of transfer pricing policies for the following reasons:

- The functions undertaken by each related party typically correlate with the risks borne and the assets acquired or developed;
- The functions, assets and risks associated with a related party’s operations usually have a significant effect on its expected profitability;
- The functional analysis provides the information and background necessary to the related parties and identifies uncontrolled transactions potentially comparable to the controlled transactions under review.

In the remainder of this chapter, we will describe our understanding of the functional and risk profile of [Local Opco] and its group companies in the various identified transactions, with a particular focus on the role of [Local Opco] in those transactions. The description of the functional analysis reflects the situation as per [month], 20[XX] and onwards.

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<sup>3</sup> Paragraph 1.33 and 1.34 of the OECD Guidelines.

Risks refer to those business factors that expose a company to variability in its performance and profitability.

[Please note that the descriptions below might differ from the actual situation which is described in the intercompany agreement between principal and [Local Opco]. The actual conduct of parties then prevails and should be included in the paragraphs below. If there is no intercompany agreement in place, please refer to <http://www.IRMA.nl> where intercompany template agreements are offered]

#### 4.2.2.1 Market risk

Market risk refers to the loss associated with operating in an uncertain marketplace. Market risk may arise due to demand factors that adversely affect price or volume, such as increased competition in the marketplace, adverse demand conditions within the market, the inability to develop markets, or failure to position products to service targeted customers. Market risk may also be due to supply-side factors, such as fluctuation in the availabilities and prices of raw materials and other inputs.

The principal bears the primary market risk of the [insert name] products as it is responsible for the global development of the brand and the marketing and sales strategy for the [insert name] products. In addition, [Local Opco] bears certain local market risks since it is responsible for winning new and maintaining existing customers in the [country] market.

Under the current intercompany agreement between principal and [Local Opco], the demand side market risk (that is, fluctuations in market prices and volumes of [Local Opco]'s finished products) and supply side market risk (that is, fluctuations in procurement prices from principal) are largely borne by principal due to the applied transfer pricing mechanism.

#### 4.2.2.2 Credit risk

Credit risk is the risk assumed by a firm that its customers, after receiving the product, are unwilling or unable to pay for it.

[Local Opco] engages with third-party customers in the [country] market and as such assumes the credit risk associated with default or late payment. However, since the creditworthiness of all [Local Opco]'s customers is checked before a contract is concluded and products are delivered, the credit risk actually incurred is limited.

#### 4.2.2.3 Inventory risk

Inventory risk exists when a company is financially responsible for inventories that cannot be sold or must be sold at a discount due to product defects or obsolescence. A company may also incur inventory risk if the value of its inventory fluctuates due to demand, or price volatility.

[Local Opco] holds a limited level of inventory, which it requires to deliver the [insert name] products to its customers in a timely fashion. As such [Local Opco] does bear some inventory risk. However, based on the agreement with principal, [Local Opco] is allowed to return any obsolete products against the procurement price. As such, the inventory risk is negligible.

Traditional transactional methods are the most direct tool used to find out whether the conditions of trade and financial relations between related businesses correspond with the market conditions. Therefore, these methods are usually preferred to other methods. Traditional transactional methods are the following:

- Comparable Uncontrolled Price method (“CUP”);
- Resale Price Method;
- Cost Plus Method.

The complexity of actual business situations may create practical obstacles to the use of traditional transactional methods. In situations where necessary data are not available, where available data are not of a sufficient quality to rely only on these methods, or where they cannot be relied upon at all, the use of other methods for determining an arm’s-length price might be considered. The OECD Guidelines describe the following other methods, also known as transactional profit methods:

- Profit Split Method;
- Transactional Net Margin Method.

Generally, businesses can consider a range of methods to establish an arm’s length price. The support for the use of the methods is stated below.

### **6.2.1 CUP method**

The CUP method “compares the price for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.” Comparability requires that there be no differences that would materially affect the open market price, or that reasonably accurate adjustments can be made to reflect any differences between the controlled and uncontrolled transactions. The extent and reliability of the necessary quantitative adjustments will affect the relative reliability of the CUP analysis. However, “when it is possible to locate comparable uncontrolled transactions, the CUP method is the most direct and reliable way to apply the arm’s length principle.”

### **6.2.2 Resale Price Method**

The resale price method “begins with the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. The resale price is then reduced by the appropriate resale price margin [...]. What is left after subtracting the resale price margin from the resale price can be regarded, after adjustment for other costs associated with the purchase of the product (e.g. customs duties), as an arm’s length price for the original transfer of property between the associated enterprises.” In essence, the resale price method determines an arm’s length price for the sale of tangible property by reference to the gross profit margin realized in comparable transactions between unrelated companies. The method compares the gross profit of a reseller on its resale to an unrelated company of property it

## Appendix B - BEPS Action 13 – Cross-reference table

As mentioned in the report, the OECD Guidelines prescribed information that should be included in the local file. The table below presents an overview of the prescribed information with a cross-reference to the specific paragraph in the report.

Local file documentation requirements	Reference Chapter/Paragraph
<b>Local entity</b>	
<ul style="list-style-type: none"> <li>A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.</li> </ul>	
<ul style="list-style-type: none"> <li>A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.</li> </ul>	
<ul style="list-style-type: none"> <li>Key competitors.</li> </ul>	
<b>Controlled transactions</b>	
<ul style="list-style-type: none"> <li>A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.) and the context in which such transactions take place.</li> </ul>	
<ul style="list-style-type: none"> <li>The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payor or recipient.</li> </ul>	
<ul style="list-style-type: none"> <li>An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.</li> </ul>	
<ul style="list-style-type: none"> <li>Copies of all material intercompany agreements concluded by the local entity.</li> </ul>	
<ul style="list-style-type: none"> <li>A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions,</li> </ul>	