

# INTERNATIONAL TAXATION CONFERENCE

DECEMBER 1 - 3, 2011, ITC MARATHA HOTEL, MUMBAI

## Transfer pricing: Country experience CANADA

Foundation for International Taxation

Mumbai, 3 December 2011

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# OECD–Transfer Pricing Aspects of Intangibles

## Definition of Intangibles

- Identifying intangibles used or transferred
- Examining the characteristics of the intangibles
- Examining the form of the transaction

## Ownership of Intangibles

- Providing specific guidance and illustration on ownership issues
- Examination of contractual terms and the role of comparables
- Whether the transaction leads to a transfer of an intangible

## Valuation Issues

- Selection of the most appropriate transfer pricing method
- Aggregation of intangibles for valuation purposes
- Financial valuation methods
- Highly uncertain valuations

## Timing Issues

- Years covered
- Use of information not available at the time of the transaction
- Approaches where valuation is highly uncertain
- Appropriate transfer pricing adjustments

# Transfer Pricing of Intangibles - Canada

## No specific legislation or policy

**High volume of audit files involve intangibles**

**All files involving the transfer of ownership and/or the use of intangibles between non-arm's length parties must be referred to CRA's head office**

**Valuation of intangibles for other income tax purposes**



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# OECD-Transfer Pricing Simplification

## Revision of the TPG

- Revisit negative view of transfer pricing safe harbours

## Low Value-Added Services

- Review country experiences
- Consider EU Joint Transfer Pricing Forum relevant guidance
- Definitions
- Ways to reduce compliance burden

## Small Taxpayers/Transactions

- Bilateral or multilateral MOU for common types of transactions
- Acceptable pattern approaches
- Ways to reduce compliance burden

## Documentation

- Consider EU documentation approach
- Relevance of information
- Centralization of information

## Dispute Resolution

- Streamlined APA process
- Bilateral or multilateral MOU for simple cases
- Ways to expedite dispute resolution

# **OECD – Enhanced Engagement**

## **Increased involvement of NOEs:**

- Observers: Argentina, China, India, Russia, South Africa**
- Ad-hoc observers: Brazil, Indonesia, Malaysia, Singapore, Colombia**

**First Annual Transfer Pricing Meeting  
under the auspices of the Global Forum**



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# Transfer Pricing - Canada

## Guarantee Fees

- **GE case does not resolve all guarantee fees**
- **Canada Revenue Agency is still auditing guarantee fees**
- **Facts and circumstances of the GE Federal Court of Appeal decision are specific and can not be applied to all guarantee fee transactions**



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# Transfer Pricing - Canada

## Guarantee Fees

**Facts and circumstances that CRA considers:**

- **The industry/business of the guarantor**
- **The benefit obtained by the payee of the fee**
- **The price charged**
- **Change in circumstance of the guarantor**



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# Transfer Pricing - Canada

## General Electric Capital Canada Inc. V. The Queen

**The FCA dismissed the Crown's appeal of a decision by the TCC. The reassessments had denied the full amount of the deductions claimed by GE Canada with respect to fees paid to GE US for guaranteeing its capital market borrowings on the basis that such fees would not have been paid, at arm's length, for the guarantee provided.**



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# Transfer Pricing - Canada

## General Electric Capital Canada Inc. V. The Queen

Rejected the Crown's argument that GE Canada's rating was AAA without an explicit guarantee.

Held the proper analytical approach is to determine the credit rating on a stand-alone basis (GE Canada is BB-/B+) and that "implicit support" is a factor worth a three notch increase to GE Canada's stand-alone credit rating (increased to



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# Transfer Pricing - Canada

## GlaxoSmithKline Inc. V. The Queen

**The FCA reversed the Tax Court's decision.**

**The FCA found that the business realities such as the use of the brand name, and the higher prices that result, should be taken into account, and bring into question the comparability of the generic CUPs used by the CRA.**

**Supreme Court: to hear the case in January 2012.**



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**Thank you for your attention!**

**Open discussion**

