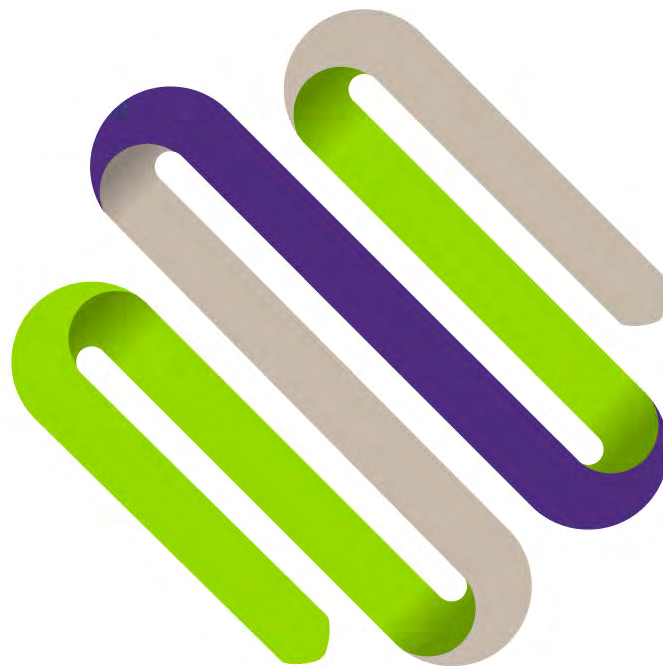


# Transfer pricing in Asia Pacific

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Paul Sutton



# Agenda

- Your presenters
- Post BEPS landscape - Australia, India and Singapore
- Legal implementation of transfer pricing compliance and intercompany agreements (ICAs)
- Practical do's and don'ts in transfer pricing



# Your presenters

# Your host



## Lorraine Parkin

Partner, Head of Tax

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### About Lorraine

- Lorraine has over 30 years' experience advising in all aspects of indirect taxes, transfer pricing and transaction taxes across multiple jurisdictions. Her particular focus lies in advising on all forms of supply chain management, business transformation and tax risk management.
- Lorraine is a member of the Chartered Institute of Tax and a member of the Worshipful Company of Tax Advisers, a livery company in the City of London where she sits on a panel that briefs the Lord Mayor on taxation issues that are barriers to trade. Lorraine has specialised in the Middle East and the Far East.
- Lorraine has been a partner with Grant Thornton and a legacy firm since 1993. During this time she has lived and worked in the UK, Malaysia and Singapore.



# Your Speakers - Australia



## Jason Casas

Partner, National head of transfer pricing

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### About Jason

- Jason is head of transfer pricing services at Grant Thornton Australia and leads Grant Thornton's transfer pricing services in the Asia.
- Jason has over 20 years' experience as an Economist specialising in transfer pricing issues. He has successfully advised numerous multinational companies on transfer pricing risk management and on using transfer pricing to align operational and tax strategies.
- Jason has significant international transfer pricing experience. In addition to his experience in Australia and the Asia region, he has worked in the Netherlands assisting clients to coordinate pan-European transfer pricing planning and documentation projects. Jason has also spent considerable time in North America, specialising in transfer pricing issues relating to the Commodities and Energy & Resources industries.



# Your speakers – India



## Munjal Almoula

Partner Transfer Pricing

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### About Munjal

- Munjal is a tax partner, specializing in the field of transfer pricing matters. Munjal is a qualified chartered accountant from India with 20 years of experience in the accounting and consulting world.
- Munjal has advised wide range of Multinational Companies as well as Indian Companies on various aspects of transfer pricing right from assisting in the design of operating / business models, setting of pricing policies, assistance with defence documentation, assistance with litigation, assistance with resolution of disputes through the APA / MAP route etc.
- Munjal was part of Big Four Accounting Firms for close to 18 years before joining the Firm. He worked extensively in the transfer pricing field with such Big Four Accounting Firms in India as well as in Singapore.
- In the past, he has advised vast range of clients which include Tata Group, Novartis, Ciba, Vedanta, FedEx, Star TV, Bharat Petroleum, etc. on various transfer pricing matters.
- Munjal has presented at several Indian and international platforms such as WIRC, BCA, Lexis Nexis etc. on transfer pricing matters. Munjal has also authored several articles that have been published in leading tax journals and in business newspapers.



# Your speakers - Singapore



## Amy To

Senior Manager, Transfer Pricing

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### About Amy

- Amy was raised in Canada and has lived/worked in Panama, Canada, Germany, Hong Kong and Singapore. For the last 9 years of her career, she has specialized in transfer pricing and has served clients across a diverse range of industries including the financial services sector.
- Some of Amy's expertise includes transfer pricing planning, risk review and opportunity assessment, audit defense and statutory compliance documentation.
- Amy joined Grant Thornton Singapore in 2017. Prior to joining Grant Thornton, Amy worked for other professional services firms.
- Amy holds a Master of Business Administration, Queen's University (Canada) and a Bachelor of Commerce degree, University of Toronto (Canada). Amy can also speak English, Chinese and French.



# United Kingdom – LCN Legal

## About Paul



- Paul is the co-founder of LCN Legal and the author of “Intercompany Agreements for Transfer Pricing Compliance – A Practical Guide”. He has over 25 years’ experience as a corporate lawyer and is a recognised expert in Intercompany Agreements and the legal issues which underpin Transfer Pricing compliance.

## Paul Sutton

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# BEPS overview

# BEPS - Overview

- Base erosion and profit shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity.
- On 19 July 2013, the Organisation for Economic Cooperation and Development (OECD) issued 15 Action Plans to address BEPS. Over 125 countries and jurisdictions are involved.
- The 15 Action Plans include proposals on taxation for the digital economy, treaty abuse, permanent establishment, transfer pricing documentation and more.
- Within the 15 Action Plans, Actions 8 to 10 and Action 13 are directly related to transfer pricing. Actions 8 to 10 focus on transfer pricing for intangibles, risks and capital and other high risk transactions. Action 13 focuses on transfer pricing documented. A three-tiered documentation approach, including Country-by-Country report, Master File and Local File, was introduced.
- Since the introduction of BEPS, many countries have updated their transfer pricing and tax rules and guidelines to align with the Action Plans.
- Not all Action Plans have been finalized yet. For example, a consultation paper on “Addressing the Tax Challenges of Digitalization” has just been released in February 2019. The consultation paper introduces revised profit allocation and nexus rules and a global anti-base erosion proposal on the digital economy. Some of the proposals go beyond the current transfer pricing norms. It is anticipated that transfer pricing rules and guidelines globally will continue to change.



# Post BEPS - Australia

# Australia – Grant Thornton

## Australia's response to BEPS has been swift . . .

- Pre BEPS New TP legislation (2013) that incorporates OECD Guidelines
- CbCR adopted but Local File 'Australianised'
- Unilaterally adopted new legislation for Multinational Anti-Avoidance Legislation and Diverted Profits Tax
- Hybrid mismatch rules recently legislated and Thin Capitalisation rules refined
- Expanding application of Reportable Tax Position schedule



# Australia – Grant Thornton

## ATO aggressively enforcing new transfer pricing landscape

- MAAL reviews conducted 2016 to 2018
- Top 1,000 Streamlined Assurance Reviews
- DPT reviews expected to commence in 2018
- ATO has released Practical Compliance Guidelines for:
  - a) Inbound distributors
  - b) Procurement and marketing hubs
  - c) Financing arrangements



# Australia – Grant Thornton

## Practical do's and don'ts of transfer pricing in Australia

Do	Don't
Establish TP policy	Apply intercompany transactions inconsistently
Monitor and review TP policy annually	Ignore ATO risk assessment indicators
Proactively engage with ATO	Close your eyes and hope for the best

# Post BEPS - India

# India – Grant Thornton

India's response to BEPS . . .

- Legislation introduced in
  - ✓ **Equalization levy**- Equalization levy is charged @ 6% on payments made to non-residents for digital advertising services
  - ✓ **Modification of definition PE**- Regulation expanded the scope under domestic law of the term - 'Business Connection' to enable taxation of non-residents having a Significant Economic Presence (SEP) in India.
  - ✓ **Thin Capitalization**- Provisions introduced to restrict interest deductibility on transactions with Associated Enterprises.
  - ✓ **Three tier documentation**- Introduction of Master File and CbCR
- General Anti Avoidance Rules ("GAAR") have been introduced to disregard transactions that lack substance and commercial rationale
- Further, the concept of 'Substance over form' has always been the guiding principle for any transfer pricing analysis in India. The Indian Revenue apply principles embedded in Action Plan 8-10 during the course of transfer pricing audits.
- Certain transfer pricing issues emanating post introduction of BEPS Action Plans include:
  - ✓ Contract R&D vis-à-vis Entrepreneur
  - ✓ Intra-group services
  - ✓ Royalty
  - ✓ Contract Manufacturer vis-à-vis Full-fledged manufacturer
  - ✓ Procurement model





# India – Grant Thornton

Contract R&D structure	Management services	Royalties	Contract Manufacturing arrangement	Procurement model
<ul style="list-style-type: none"> <li>- Review of conduct of R&amp;D units</li> <li>- Where R&amp;D unit found to lack 'contractual' flavour, the arrangement is disregarded</li> <li>- Cost plus approach rejected in such cases</li> </ul>	<p>Transfer pricing audits focused on</p> <ul style="list-style-type: none"> <li>- Substantiation of receipt of services</li> <li>- Benefit test</li> <li>- Pricing at arm's length</li> </ul>	<ul style="list-style-type: none"> <li>- Substantiation of benefit tests</li> <li>- Focus on DEMPE functions of IP owners</li> </ul>	<ul style="list-style-type: none"> <li>- Review of Agreements to check if these are in line with the conduct of transacting parties</li> <li>- Where contractual nature of manufacturing activity not justifiable - model may be flipped to review margin of overseas distribution entities</li> </ul>	<ul style="list-style-type: none"> <li>- Focus on functions and value-add of procurement companies</li> <li>- Where role of procurement company is found substantial, cost plus arrangement is disregarded</li> </ul>



# India – Grant Thornton

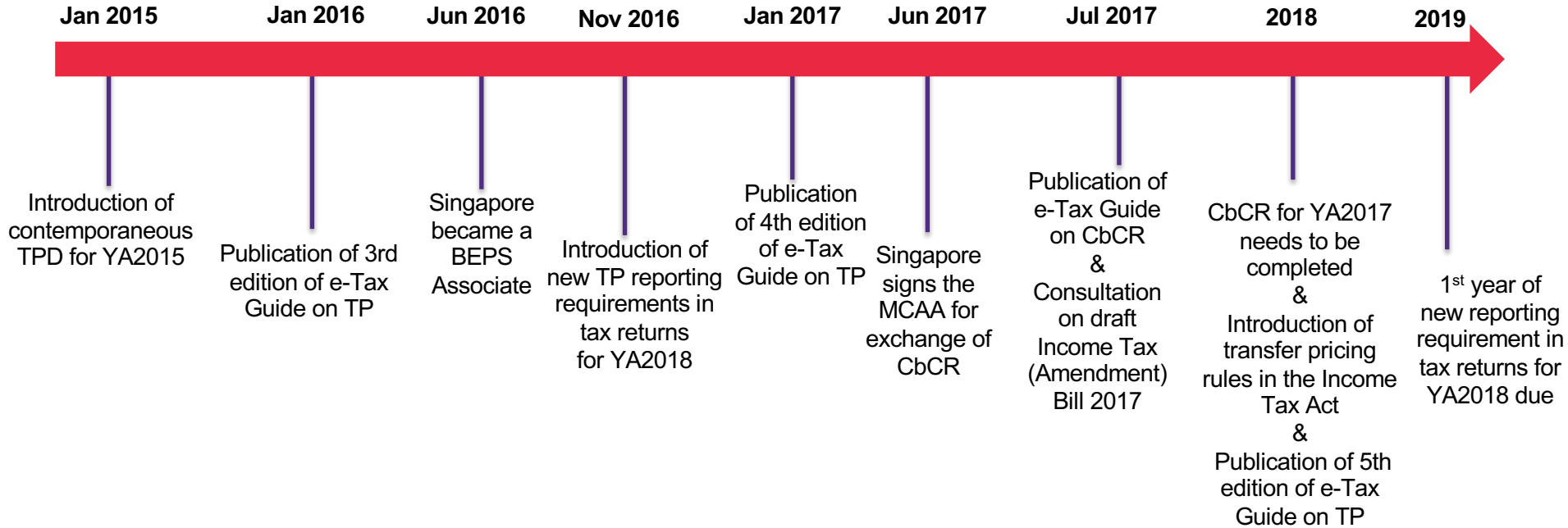
## Practical do's and don'ts of transfer pricing in India

Do	Don't
To maintain robust documentation delineating transaction, IP, risk, control, etc	Rely only on Global Documentation
Commercial Agreement in line with the actual conduct with the parties	Design of structure/ models in absence of substance
APA to be preferred mode for dispute resolution	In case of multiple transaction, adopting to Aggregate approach

# Post BEPS - Singapore

# Singapore – Grant Thornton

Singapore's response to BEPS . . .



# Singapore – Grant Thornton

## **IRAS focuses on the following:**

- Services transactions
- Transactions involving R&D and marketing activities leading to development and enhancement of intangibles.
- Transactions involving intangibles
- Taxpayers with recurring losses or large swings in operating results

# Singapore – Grant Thornton

## Our expectations:

- Audit activity remains relatively stable.
- Increase in MAPs and APAs.
- Reduce in time to conclude MAPs and APAs.
- Share of information with other tax authorities.
- Review on transfer pricing implementation



# Singapore – Grant Thornton

## Practical do's and don'ts of transfer pricing in Singapore

Do	Don't
Prepare transfer pricing documentation	Blindly assumed transfer pricing policy established by the headquarter can be accepted for the Singapore entity.
Monitor and review transfer pricing policy annually	Conclude unilateral APAs
Ensure transfer pricing policy and implementation are aligned	Allocation of profit to Singapore that is not at arm's length



# Legal implications of TP compliance and ICAs (LCN)



# Intercompany Agreements (ICAs)

## What the OECD's TP Guidelines say about ICAs:

- **Master file** must contain “a list of important agreements”
- **Local files** must contain “copies of all material intercompany agreements”

*“The purported assumption of risk by associated enterprises when risk outcomes are certain is by definition not an assumption of risk, since there is no longer any risk.”*

OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2017 edition, p 63

## What this means in practice:

- Defective ICAs are an obvious point of focus for tax authorities
- ICAs need to be in place which match the stated TP policies
- ICAs need to be contemporaneous
- The longer that issues are left unfixed, the greater the exposure





# ICAs – Practical do's and don'ts

DO'S	DON'TS
Engage all stakeholders	ICAs addressing only one aspect (e.g. TP)
Prioritise highest risk supplies first	Duplicated ICAs / fragmented approach
Keep agreements as brief and simple as possible ...	Draft overly-long, overly-complicated ICAs
... but address all the necessary legal functionality	Recycle third party agreements as ICAs
Clear accountabilities for creation, implementation, review, maintenance, archiving and accessing ICAs	Fail to update ICAs on a regular basis and following a strategic transaction
Educate the business, including market-facing lawyers	Treat as an exercise 'for tax' only or fail to include key stakeholders in the business
Streamline and standardise processes, e.g., using electronic signatures / electronic archives	ICAs left unsigned, undated or not accessible when needed



# About Grant Thornton and LCN Legal

# About LCN Legal

LCN Legal is an international legal consultancy which specialises in helping multinational groups and asset managers to create and maintain the Intercompany Agreements (ICAs) they need for Transfer Pricing compliance. We regularly speak at conferences, seminars and webinars, and provide articles and other materials, including for organisations such as Thomson Reuters Onesource and LexisNexis.

*For any inquiries and to receive 20% discount on our ICA toolkit, please contact Ida Donn (MNE Solutions)*



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# Thank you

## Questions



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