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Plenary Session III

Using Transfer Pricing to Plan Ahead

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- ❖ Increasing scrutiny and legislation

- ❖ But there are still things you can do to plan ahead, particularly in transfer pricing

COMMON CURRENT ISSUES

- ❖ Repatriate cash to parent
- ❖ Reduce local country taxes
- ❖ Accommodate business restructurings
- ❖ Justify arm's length valuation for minority stakeholders
- ❖ Minimise transfer pricing audits

POSSIBLE SOLUTIONS

- ❖ Increase service fee charge outs
- ❖ Transfer of functions
- ❖ Pre-pay royalties
- ❖ Intercompany sales of IP rights
- ❖ Charge guarantee fees

INCREASE SERVICE FEE CHARGE OUTS

- ❖ Charge cost pools not previously recharged
- ❖ Value based fees instead of cost based charges
- ❖ Charge for embedded intangibles

INCREASE SERVICE FEE CHARGE OUTS

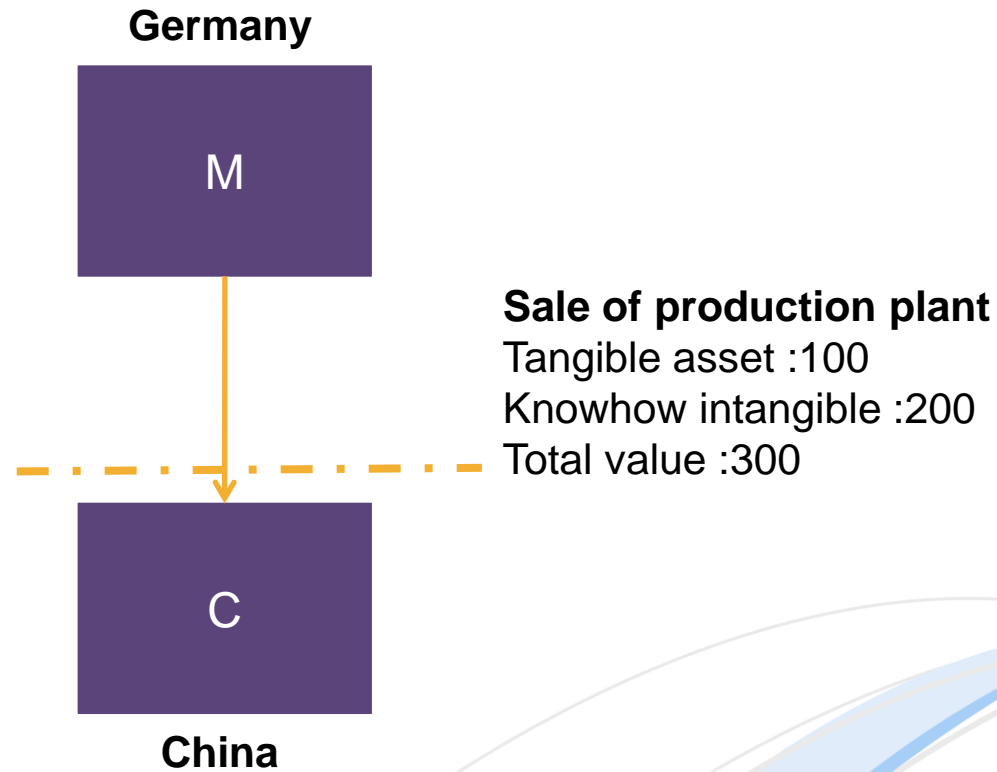
- ❖ Critical to satisfy the benefits test
- ❖ Commercially viable – e.g. Dixons case
- ❖ Aggregating services to create a know-how royalty
- ❖ Restrictions deriving from minority shareholders and project finance schemes

TRANSFERRING FUNCTIONS

- ❖ Considerations include: economic development, domestic market, customer demand, cost structures
- ❖ Transferring functions may trigger transfer of intangibles
- ❖ Tax optimisation and repatriating cash may heavily depend on the way the transfer is done

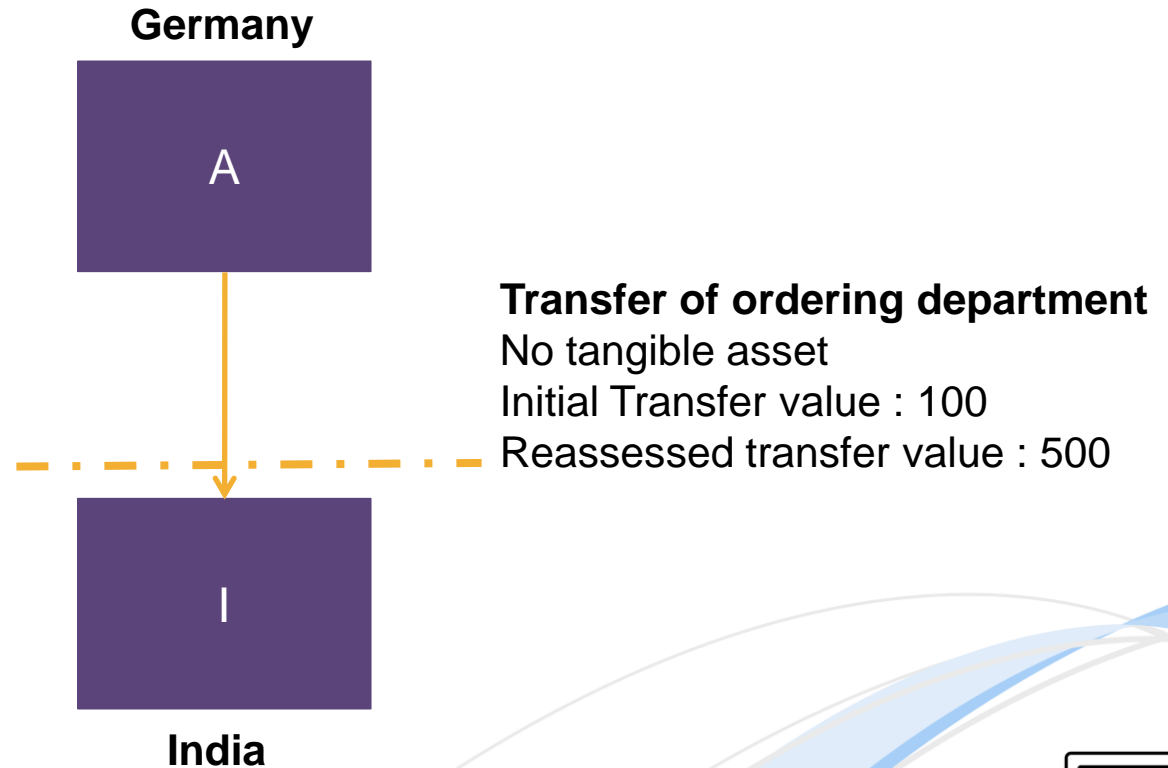
TRANSFERRING FUNCTIONS

Transfer of a product line from Germany to China



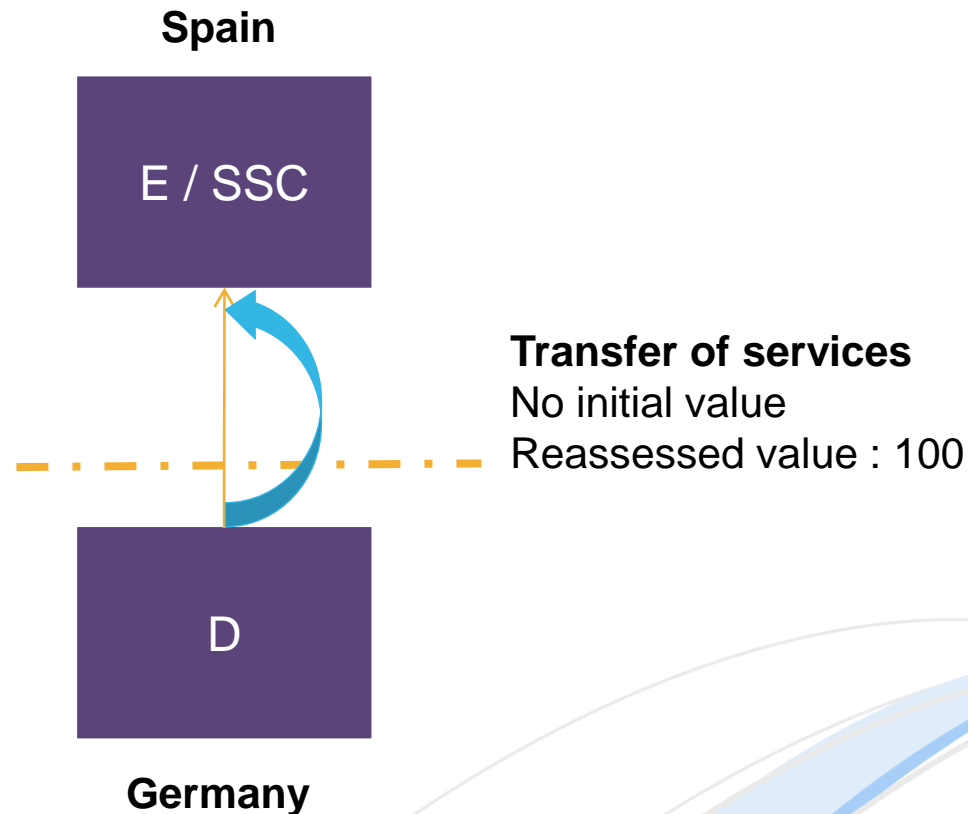
TRANSFERRING FUNCTIONS

Transfer of a service line from Germany to India



TRANSFERRING FUNCTIONS

Creation of shared services



TRANSFERRING FUNCTIONS

- ❖ Beneficiaries vs. KERTs: who should pay compensation costs?
- ❖ Set up of intermediary structures as profit centres
- ❖ Low risk distributor should not be in loss position
- ❖ Transfer pricing enforcement resulting from last Canadian budget
- ❖ 2010 TP documentation regulations in France

PRE-PAY ROYALTIES

- ❖ Valuation of pre-payments
- ❖ Selection of licensees to make pre-payments
- ❖ Tax deductibility for pre-payments

PRE-PAY ROYALTIES

- ❖ Justify the need for pre-payment
- ❖ Benchmark royalty rate and discounting rate
- ❖ Analyse regulatory issues
- ❖ Consider foreign exchange controls
- ❖ Implications of potential true-ups

INTER-COMPANY SALES OF IP RIGHTS

- ❖ Achieved via intercompany sale or cost sharing arrangement
- ❖ Need to define and value the IP to be transferred
- ❖ Need to implement structure for ongoing IP development, if relevant

INTER-COMPANY SALES OF IP RIGHTS

- ❖ Determination of sale price and analysis of capital gains
- ❖ Minimise potential exit charge – incorporation of a branch and fragmentation of the IP
- ❖ Prepare for audits
- ❖ Contribution of affiliates to IP

CHARGE GUARANTEE FEES

- ❖ Performance

- ❖ Bank borrowings

- ❖ Robust methodology for calculation of fees

CHARGE GUARANTEE FEES

- ❖ Commercial expediency
- ❖ Benchmarking
- ❖ Formal vs. informal guarantees
- ❖ Credit rating of guarantor
- ❖ Thin-cap rules on back-to-back loans
- ❖ New UK guidance

CONCLUSIONS

- ❖ Transfer pricing planning enhances the bottom line
- ❖ Short term and long term benefits if business motive
- ❖ Technical and legal grounds and adequate documentation make cases defensible in case of any dispute (litigation or competent authorities procedures)

KEY CONTACTS

This presentation was given on behalf of Taxand's global transfer pricing team. Please contact our Chair speaker or the relevant panel Taxander with any queries about this presentation. For specific transfer pricing queries please contact your nearest transfer pricing advisor.

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Dale is the key Canadian member of Taxand's Global Transfer Pricing team and is also a partner of Gowling Lafleur Henderson LLP, Taxand Canada. Dale is also the national leader of the Gowlings transfer pricing and competent authority team. As a partner in the Ottawa office, he works in conjunction with the firm's national tax practice group to help organisations optimise their global tax positions and reduce exposure to unfavourable audit assessments through proper tax planning and implementation strategies.

Since 1997 and before joining Gowlings in 2005, Dale was involved in international transfer pricing with the Canada Revenue Agency (CRA). During his tenure as a senior manager with the CRA's International Tax Directorate, he participated in more than 40 advanced pricing agreements with numerous countries, as well as hundreds of competent authority requests relating to international transfer pricing adjustments on vast array of issues. He is also experienced in other international tax areas including interest deductibility, guarantee fees, imputed interest, notional expenses, tax avoidance, ACAP, penalties and appeals.



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Antoine leads Taxand's Global Transfer Pricing team and is also a partner with Arsene Taxand, Taxand France. Antoine began his professional career in 1983 as a qualified engineer with the French Ministry of Public Works, Housing and Transport, then joined the French Ministry of Economy, Finance and Industry in 1991 where he held various positions. In 1995, he worked for Aérospatiale as assistant general counsel in charge of the tax department before he returned to the Ministry of Economy, Finance and Industry in 1997, where he was appointed Head of the Tax Audit Office and the Office of International Affairs of the General Management Division of the French tax authorities, in charge of transfer pricing and advance pricing agreements. In 2000, Antoine joined Arthur Andersen International as a partner, and, following the merger with Andersen in 2002, was part of Ernst & Young, where he was in charge of the Transfer Pricing practice. Antoine is now in charge of the transfer pricing service line at Arsene Taxand.



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Dennis is the key Chinese member of Taxand's Global Transfer Pricing team and is also a founding partner of Hendersen Taxand, Taxand China. He has more than 11 years of experience and is a leading Chinese advisor in the areas of corporate tax, mergers and acquisitions, international tax and investment structuring. Hendersen Consulting was established in 2004; by 2007 it had grown to 50 practitioners, changed its name to Hendersen Taxand and is now ranked as one of the leading tax firms in China by International Tax Review. Dennis began his professional career with Arthur Andersen. He has worked with at least 100 major global and domestic corporate clients including Fortune 500 companies, growth companies and new business start-ups. After Andersen, Dennis joined General Electric as China tax manager, where he gained an in-depth understanding of business operations. He was actively involved in all GE mergers and acquisitions and new business set-ups in China, and he won a number of GE management awards. In 2004, Dennis founded Hendersen Consulting. He maintains good relationships with Chinese state and local governments and has been advising the government on a number of projects. He is a frequent speaker at major tax events in China and has authored various articles in domestic and international tax publications.

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Mukesh is the key Indian member of the Board of Taxand and key member of Taxand's Global Transfer Pricing Team. Mukesh is also a partner and tax practice leader of BMR Advisors, Taxand India, and is based in New Delhi. He is an acknowledged expert in international tax and transfer pricing, with more than 23 years experience advising several Fortune 500 multinationals on various cross-border tax structuring, transfer pricing, mergers and acquisitions, and investment structuring matters. Mukesh is the former tax practice leader and international tax partner at a Big 4 firm.

Mukesh regularly interacts with India's Inland Revenue, CBDT and is a member of OECD's Business Restructuring Advisory Group and ICC, Paris Taxation Commission. He actively participates in Indian affairs of the International Fiscal Association and has been its Secretary General. Mukesh is a regular speaker at significant national and international tax conferences. He regularly contributes to leading tax journals including ITR, Asia-Pacific guide of IBFD. LexisNexis Butterworths recently published his treatise 'Transfer Pricing-An Indian Perspective'. He is actively associated with IFA India's International Fiscal Academy.



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Ramón is the key Spanish member of Taxand's Global Transfer Pricing team and is a director with Garrigues, Taxand in Spain, working in the firm's Madrid office. He joined the international tax division of Garrigues in 1996 after working for various multinationals located in Paris, Frankfurt, Munich and New York.

Ramón heads the Garrigues national practice on transfer pricing, which has been awarded the distinction of best transfer pricing firm in Spain for two consecutive years. In connection with this line of activity, Ramón has actively participated in the EU Joint Transfer Pricing Forum.

Ramón has contributed to a significant number of projects related to the design and implementation of transfer pricing policies within multinationals. He has also been involved in various supply-chain and operative reorganisation processes, as well as the negotiation of advanced pricing agreements (APAs).

Ramón has extensive experience in tax and transfer pricing planning with intangibles and cost-sharing structures. He has also advised various major companies on dispute resolution and mutual agreement procedures.



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Shiv is the key UK member of Taxand's Global Transfer Pricing team and is also a Managing Director with Alvarez & Marsal LLP, Taxand UK, and brings many years of senior business experience as an international tax and transfer pricing advisor.

Shiv has assisted clients across several industry sectors, including financial services, investment management, real estate, fast moving consumer goods, entertainment, retail, pharmaceuticals, manufacturing, technology, telecommunications and energy.

Prior to joining A&M Taxand, Shiv was with Ernst & Young, where he led a number of large projects such as tax effective value chain optimisation for FTSE 100 groups; thin capitalisation studies for high-profile, private equity backed buyouts; and transfer pricing risk/opportunity assessments for FTSE midcap and fledgling groups. Mr. Mahalingham also spent two years with a major fortune 500 company, establishing in-house transfer pricing risk controls, systems and planning structures.



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Mike is the key US member of Taxand's Global Transfer Pricing team and is also a Managing Director with Alvarez & Marsal Taxand, LLC, Taxand US, and serves as National Practice Leader of the firm's Transfer Pricing practice. With more than 13 years of experience, Mike has provided transfer pricing planning and documentation services to clients on matters involving: procurement and logistics management, shared services, headquarter service fee charge outs, equipment and facility leasing, contract and toll manufacturing, commissionaire and stripped distributor structures, IP licensing / valuation and migration, interest rate and guarantee fee determination, acquisition / integration planning, global transfer pricing planning and FIN 48 documentation.

Mike has also advised clients on cross-border and domestic transfer pricing across a wide range of industries. Prior to joining A&M Taxand, Mike was with Deloitte & Touche, where he served as the head of the firm's Mid-America Transfer Pricing Practice in Dallas. Previously, he was a partner with the Office of Federal Tax Services of Arthur Andersen in Washington, D.C.



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Manuel is the key Venezuelan member of Taxand’s Global Transfer Pricing team and is also a managing partner of Candal Taxand, Taxand Venezuela. With more than 20 years of experience in local and international tax, Manuel has extensive knowledge of international tax and tax restructuring, including aspects related to the analysis of cross-border transactions and transfer pricing matters.

Manuel is a public accountant who graduated from the Universidad Central de Venezuela. He also has a Master’s degree in financial tax laws (1996) from the Universidad Catolica Andres Bello (UCAB), and a postgraduate degree in international taxation from the Universidad de Salamanca, Spain (2005).



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ABOUT TAXAND

Taxand provides high quality tax advice across nearly 50 countries. Our tax professionals—nearly 400 tax partners and 2,000 tax advisors—grasp both the fine points of tax and the broader strategic implications, helping you mitigate risk, manage your tax burden and drive the performance of your business.

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