



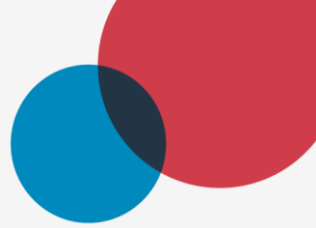
**CURRENT EVENTS  
IN TRANSFER  
PRICING DISPUTES  
AND THE FUTURE  
OF THE ARM'S  
LENGTH STANDARD**

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**Your global tax partner**

# CONTENTS

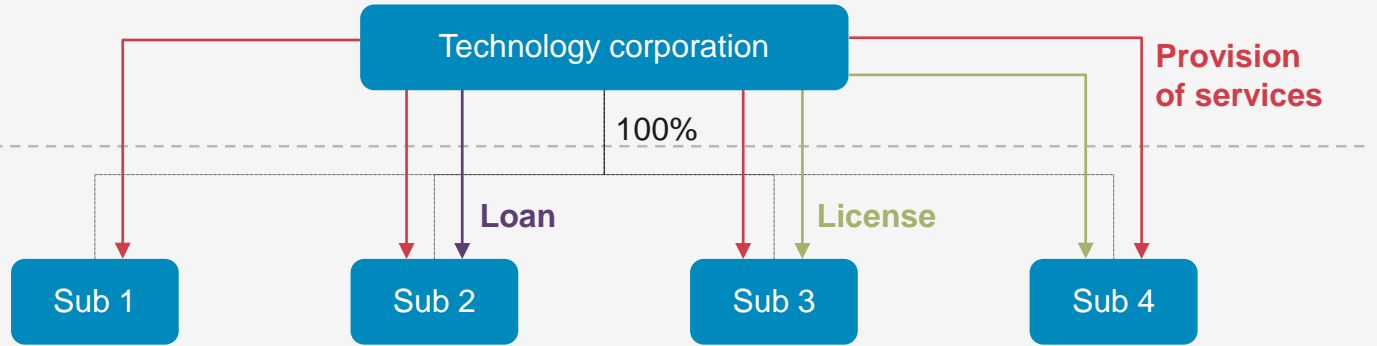
1. Case Study
2. Limits and Weaknesses of Arm's Length Standard
3. Options for the Arm's Length Standard





CASE STUDY

# CASE STUDY



## Transaction 1

Provision of IC services charged on the basis of an indirect C+ approach.



## Transaction 2

License of right to use trademarks and business system developed by US parent. License fee is documented on the basis of a CUP.



## Transaction 3

US parent grants Sub 2 a loan. The interest rate is determined on the basis of a CUP.



# PROVISION OF IC-SERVICES



Definition of shareholder expenses?



Application of an indirect charging approach → at arm's length?



Expected or actual benefit at subsidiaries?



Invoicing of services actually received?



Calculation of cost basis?



Inclusion of profit mark-up?



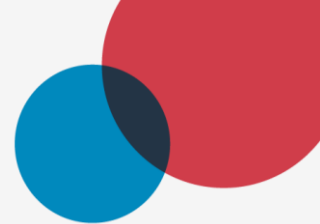
Determination of profit mark-up?



Is an agreement in writing necessary?



# LICENSE OF TRADEMARKS AND BUSINESS SYSTEM



Does the business system classify as IP?



Allocation of beneficial ownership of trademarks to US parent or subsidiaries?



Application of CUP (eg identification of market license rates)?



Application of profit split?



Is an agreement in writing necessary?



WHT on license fees?



Credit of WHT against CIT at level of Licensor?



# GRANTING AN IC LOAN



Classification of loan as debt or equity?



Acceptance of loan by tax administration?



Application of CUP?



Impact of refinancing of US parent?



Application of cost-plus approach?



Stand-alone or group rating?



Recognition of group-internal effects?



Impact of thin cap rules?





**LIMITS AND  
WEAKNESSES  
OF ARM'S  
LENGTH  
STANDARD**



# LIMITS AND WEAKNESSES OF ARM'S LENGTH STANDARD (1)



Intra-group business transactions are **not identifiable**



The application of the arm's length principle **depends on the ability to identify** and evaluate intra-group trade relationships.

A **comparable transaction** must also be determined 'on the market'.

**Internationalisation and globalisation**, plus rapid progress in communication technology, have intensified exchanges of services and '**dematerialized**' IC business transactions.

# LIMITS AND WEAKNESSES OF ARM'S LENGTH STANDARD (2)



## Problems of applying the arm's length comparison



The application of the **CUP method** often fails because comparability cannot be demonstrated.

The application of the **resale price method** is limited to supplies to distributors.

An external or internal business comparison to determine the appropriate gross margin often fails due to a lack of comparative data.

# LIMITS AND WEAKNESSES OF ARM'S LENGTH STANDARD (3)

Problems of applying the arm's length comparison



The **cost-plus method** raises questions as well. For example:

- ❖ How is the cost basis determined?  
Cost concept?  
Partial or full costs?  
Over what period?
- ❖ What is the appropriate profit markup?

Which value **within the arm's length range** should be used?



# LIMITS AND WEAKNESSES OF ARM'S LENGTH STANDARD (4)



The taxpayer's  
freedom of  
choice



The application of the arm's length principle **cannot mean** that the **allocation of functions** chosen by the taxpayer or the resulting business transactions **are rejected**.

Taxpayers are **free to finance** their business with equity or debt capital.

Establishment of **finance company** or IP company?

The arm's length principle is not suitable for **allocating synergy effects**





**OPTIONS FOR  
THE ARM'S  
LENGTH  
STANDARD**

# OPTIONS FOR THE ARM'S LENGTH STANDARD (1)



- ❖ In light of the problems surrounding arm's length comparisons, calls are growing for a **global profit split method** that incorporates key indicators. The EU's efforts to create a **Common Consolidated Corporation Tax Base (CCCTB)** must also be seen in this context
- ❖ However, the global profit split method has **considerable problems of its own:**

Appropriate  
allocation key.



Determining the  
total profit worldwide.



International agreement  
on the allocation key.



# OPTIONS FOR THE ARM'S LENGTH STANDARD (2)



- ❖ Given the need for international harmonisation and coordination, it seems doubtful (at best) whether the global profit split method can become a real alternative to the arm's length principle
- ❖ We must remember that global consensus has been reached on the arm's length principle
- ❖ That is a very valuable asset.



**SPEAKER  
PROFILES**



# SPEAKER PROFILE



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Vincent is a partner at Arsene. Vincent's field of expertise is transfer pricing and business structuring through the piloting and the execution of various transfer pricing projects. Such projects include design of transfer pricing policies, worldwide documentation studies or tax affective business restructurings for multinational clients in a number of industries such as energy, tourism or spirits. Vincent also specialises in economic issues applied to taxation such as valuation of assets.

Vincent has been a transfer pricing specialist since 2001. Vincent joined Arsene in 2006, after five years at Ernst & Young. He has been recognised as 'excellent' in transfer pricing by French magazine Décideurs.

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Xaver Ditz is based in Bonn, where he has been a partner at Flick Gocke Schaumburg, Taxand Germany, since 2005. His areas of specialisation include the taxation of corporate groups, international tax law, transfer pricing, tax audits and MAPs. Xaver is a lecturer at the universities of Trier, Zurich and Lausanne and a guest lecturer at the German Federal Finance Academy. He regularly publishes books and articles on recent developments in transfer pricing.

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Rohit is a senior partner at Economic Laws Practice in India. He specializes in international corporate tax and transfer pricing. He frequently works on complex business restructuring, tax advisory and dispute resolution.

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Andrey has represented taxpayers in lawsuits to identify the actual recipient (beneficial owner) of income, on applying international double taxation treaties and accounting for intra-group expenses in international companies.