

Group Discussion Session

CASE STUDY 5 - GERMANY

Group Discussion Session **(GROUP 1)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

1. *Is the Tested Party “one” legal entity or different divisions?*
 - some of us think that we should take two transactions and segmented/separated financial accounts
 - But sometimes it could be very challenging to divide costs in appropriate manner....

Group Discussion Session **(GROUP 2)**
CASE STUDY 5 - GERMANY

QUESTIONS/ISSUES FOR GROUP DISCUSSION

1. *Is the Tested Party “one” legal entity or different divisions?*

- Possible to separate expenses
- 2 activities – 2 tested divisions (activities) – 2 benchmarks

Group Discussion Session **(GROUP 3)**
CASE STUDY 5 - GERMANY

QUESTIONS/ISSUES FOR GROUP DISCUSSION

1. *Is the Tested Party “one” legal entity or different divisions?*

- If group policy is to separate functions for two transactions (Sales and manufacturing), they should stay separated.
- OECD TPG require accurate delineation of transactions.
- Probably the FAR analysis will show a much clearer separation of the transactions.
- Customs benefits would need more explanation. Who gets the benefit?
- However, in some cases the one entity approach could be considered.

Conclusion – in this cases two different divisions is the appropriate way of moving forward.

Group Discussion Session **(GROUP 4)**
CASE STUDY 5 - GERMANY

QUESTIONS/ISSUES FOR GROUP DISCUSSION

1. *Is the Tested Party “one” legal entity or different divisions?*

- Matrix Organisation
 - Separate Testing
- **Incentives can be included in the cost base**
- In an APA or MAP: Optionally look at it as one Entity: Operating Margin may be discussed to find a solution

Group Discussion Session **(GROUP 1)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

2. *How to handle Upfront Cost from change of production?*

- We think that approach to refund it through the several years is possible, but the cash flows should be adjusted for the interest rate...
- Some of us think that it should be remunerate in the years 21 and 22
- The changing of models is normal in car industry but there could be different circumstances and we should evaluated it on a case by case basis...

Group Discussion Session **(GROUP 2)**
CASE STUDY 5 - GERMANY

QUESTIONS/ISSUES FOR GROUP DISCUSSION

2. *How to handle Upfront Cost from change of production?*

- Remuneration should be completed – 10 Eur/car – not appropriate, too long term
- Decision is made by Funny cars AG

Group Discussion Session **(GROUP 3)**
CASE STUDY 5 - GERMANY

QUESTIONS/ISSUES FOR GROUP DISCUSSION

2. *How to handle Upfront Cost from change of production?*

- Discussions on the risks assumed to properly allocate costs
- Common agreement that generally the costs would be allocated to Germany. The main company makes strategic decisions. Company in Country X does not make such decisions.
- In some cases cost allocation might be affected by the independence level of the limited-risk entity.
- For Country B we should have some caveats in the APA agreement to ensure that the company in Country B is not over-/undercompensated. The 10 euro charge in a long-term period could raise issues (value of money, demand of Y series cars etc).

Group Discussion Session **(GROUP 4)**
CASE STUDY 5 - GERMANY

QUESTIONS/ISSUES FOR GROUP DISCUSSION

2. *How to handle Upfront Cost from change of production?*

- Capitalisation: Ok
- No Capitalisation: Costs need to be included in the Cost Base in the same year
- Mark-Up: Pass Through???
- Mark-Ups: Open for a discussion on lower margins in the two years
 - Start-Up Costs: No Mark-Up
 - Normal Mark-Up the rest of the cost (throughout the whole period)

Group Discussion Session **(GROUP 1)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

3. *Performing a Term Test or a single year test? If Term Test: How long is a “Term”?*
- most countries have to check single year,
 - Some countries are allowed to test several years or only one year. You can choose how to do it depending on the circumstances
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Group Discussion Session **(GROUP 2)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

3. *Performing a Term Test or a single year test? If Term Test: How long is a “Term”?*
 - Test each single year and term – each year

Group Discussion Session **(GROUP 3)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

3. *Performing a Term Test or a single year test? If Term Test: How long is a “Term”?*
- Possibly a Term Test of three years/three year average.
 - OECD TPG have a Term Test if it ensures reliability.

Group Discussion Session **(GROUP 4)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

3. *Performing a Term Test or a single year test? If Term Test: How long is a “Term”?*
- Generally: Single year
 - Business Reasons (e.g. Customs): Open for discussions on a longer Term in APA and MAP cases

Group Discussion Session **(GROUP 1)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

4. *Which years should a benchmark analysis include?*

- all countries use ex ante approach and use three closed years before the first APA year
- Some countries use even more than three years
- Some countries allow to use ex post approach in some APA cases, but not in audits.....

Group Discussion Session **(GROUP 2)**
CASE STUDY 5 - GERMANY

QUESTIONS/ISSUES FOR GROUP DISCUSSION

4. Which years should a benchmark analysis include?
- 3 years ex ante, not including tested year
 - Exception with Covid

Group Discussion Session **(GROUP 3)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

4. *Which years should a benchmark analysis include?*
- Generally, should include the same years as the Term Test. However, several obstacles could make the benchmarking study unreliable.
 - COVID issues
 - 2021/2022 change in production
 - Is the Company in Country B so limited-risk that it should be secured from all costs?
 - Test benchmarking with COVID years? If there are serious negative effects, exclude the years or shorten the APA period?
 - To not make the benchmark complicated possibly have a benchmark from 2018 to 2023 and find a point there.

Group Discussion Session **(GROUP 4)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

4. Which years should a benchmark analysis include?
- 3 years Weighted Average
 - Ex-Ante

Group Discussion Session **(GROUP 1)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

5. *How to deal with Local Tax Audit adjustments during the negotiation/APA period?*
- The adjustments in the period of negotiating APAs do happen in some countries
 - We would handle it on a case by case basis but it is difficult to handle it because the countries have different national legislations.....
 - Sometimes it is good to have some audit information
 - In some countries it is possible to ask for MAP when APA is pending
 - But most countries do not open an audit when negotiating APA

Group Discussion Session **(GROUP 2)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

5. *How to deal with Local Tax Audit adjustments during the negotiation/APA period?*
- Depends on legislation, but usually one of them stops

Group Discussion Session **(GROUP 3)**
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QUESTIONS/ISSUES FOR GROUP DISCUSSION

5. *How to deal with Local Tax Audit adjustments during the negotiation/APA period?*
- Opinions differ. Some would continue the APA, some would stop it.
 - We should think about avoiding possible MAPs.

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QUESTIONS/ISSUES FOR GROUP DISCUSSION

5. *How to deal with Local Tax Audit adjustments during the negotiation/APA period?*

We agree that there should be cooperation between Auditors and CA

- Information about APAs
- Usually the Auditors will/should not Audit the Transaction
- Results of the Audit will be part of the discussion in the APA