

Restructure. Separate. Profit.

IOTA Forum on BEPS

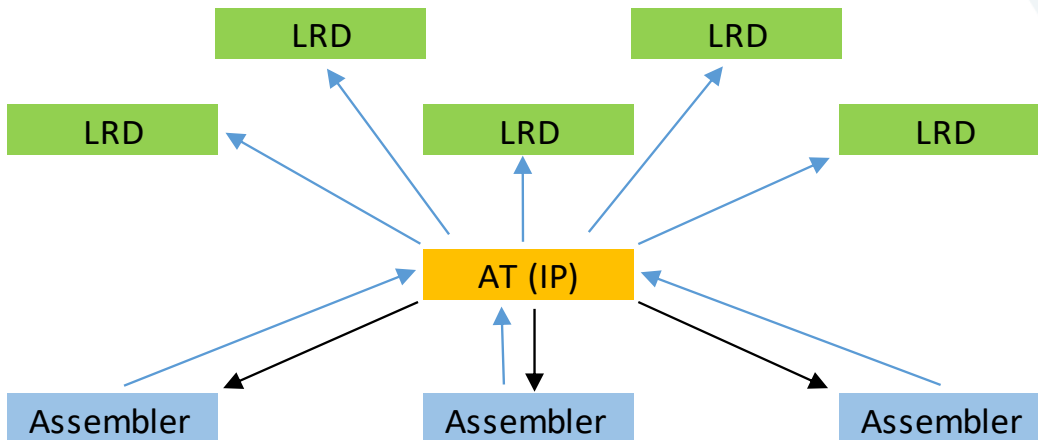
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Austrian Tax Authority for Large Traders
Budapest, 22.05.2025

The good old years

- Austrian entity was an entrepreneur
 - Production, Distribution, R&D, IP all in AT
 - IP self developed – Top product since more than 50 years
 - Partially patented; R&D in AT
 - Products sold world wide
 - Main product more or less the same since many years
 - A few related companies in the „AT-Group“: LRDs, Assemblers



The good old years



—————▶ parts

—————▶ finished goods

2000s onwards

- „AT-Group“ was bought by an MNE
- According to TP documentation AT was still seen as an entrepreneur
- Still owned the IP etc.
- First changes because of the MNE:
 - Many new IC transactions e.g. distribution – makes sense
 - Other new IC transactions that were not needed before e.g. cash pooling, „business fee“, factoring etc. – why?

Latest tax audit – Initial situation

- In addition to the already made changes in the IC transactions, the MNE made a „restructuring“
- Worldwide IP was sold intragroup to a new company in a low tax jurisdiction
- Austrian company was paying royalties

Latest tax audit – Findings

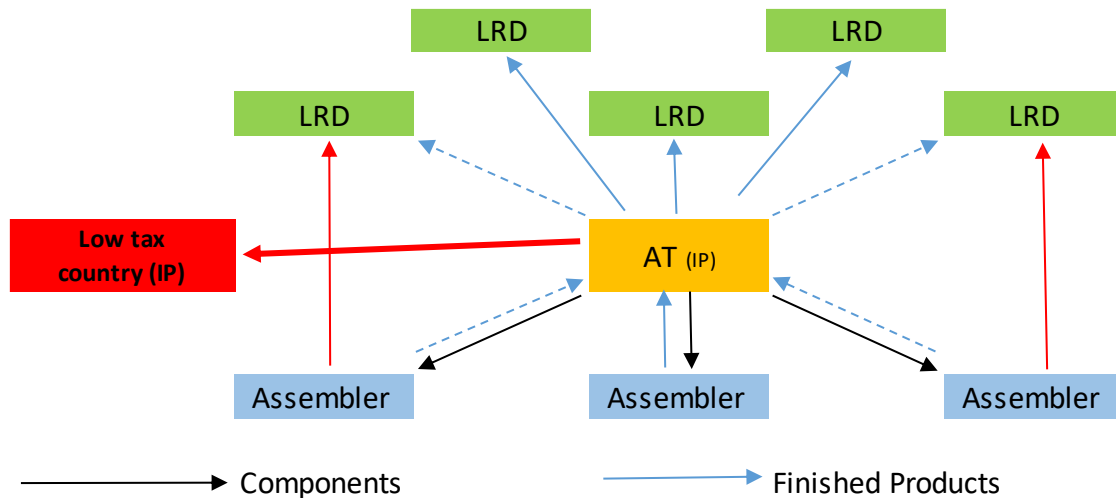
- The AT-IP was split in a **product** know how and a **production** know how
- Only the product know how was sold intragroup
- AT was still seen as licence manufacturer and „entrepreneur“ because they own the production IP (know how, best practice, good employees,...)



Latest tax audit – Findings

- AT pays royalty for the product IP
 - Royalty rate 7%
 - Base for royalty: third party sales made with the Austrian products (AT and LRDs + “Warehouses”)
- But: the base for the royalties was much higher than the Austrian sales to the LRDs- why?
- MNE had „forgotten“ to fully document all the sales made with the Austrian products – not all residual profit at the AT entrepreneur
 - Assemblers sold to Warehouses, LRDs, third parties directly – residual at the Assembler/ Warehouse/LRD?

Latest tax audit – Findings



IP-AT = production know how

AT - "licence manufacturer" & entrepreneur for LRD & Assembler

IP-low tax country = product Know-how

direct streams = sales through AT entity

indirect streams = sales directly to LRD/3rd party/Warehouse

→ royalty 7%

Latest tax audit – Additional facts

- Royalty rate: **7%**
 - CUP method
 - Mainly external agreements, but also 1 internal agreement (1,5%)
 - Comparability is at least questionable (IP plus trademark; last century contracts,...)
 - In addition the MNE made adjustments (regression analysis)
 - IQR before **2-5%**; after adjustments **5-8%**
 - Royalty per year € 29 Mio.

Latest tax audit – Additional facts

- Valuation of the product IP sold – selling price € 40 Mio
 - Relief from royalty method
 - Very low value
 - No ORAs documented – „not enough time“
 - No seller valuation
 - No further documentation for the IP-split (eg value chain analysis)

Questions:

- Is this split of the IP in product and production IP acceptable? Is it arms length? Is it not just an artificial split?
- Valuation of the IP sold?
- Percentage of the royalty at arms length?
- Why is AT paying so much royalties? Is the base for the royalties correct?

Questions:

- Is this a case of HTVI?
- How to solve the issue with the missing residual profit in AT? Is a TP adjustment possible if there is no direct transaction? Create a variable profit licence?
- DEMPE functions in the new company in the low tax country?
 - R&D still in AT – CP10% remuneration

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Case selection

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Latest tax audit – Selection

- Audit case selection because of the previous audit
 - Many findings regarding TP issues
- Audited years 2015-2019 for CIT (incl. TP), VAT, R&D premium,...
- Tax returns showed a decrease in EBIT and increase in expenses

Latest tax audit - Audit preparation

- Master file, local file
 - Was not delivered at the beginning of the audit
- DAC4
 - At the beginning of the audit 2019 only data from 2016+2017 were available
- DAC3, DAC6?
- Local financial statements, tax files
- Internet, stock market information, 10-k etc.
- MNE group reports

TP Audit Selection Considerations

- Risk analysis with CbCR (DAC4) possible?
 - Incorporation of a new entity in the low tax country: IP Holding and additional functions (CbCR Table 2)

	CBCR - Organisation			
	Low Tax country		AT	
Year	Sum Holding or Managing IP	Sum R&D	Sum Holding or Managing IP	Sum R&D
2016	0	0	5	5
2017	7	7	7	7
2018	5	5	0	5
2019	4	4	0	4
2020	4	4	0	4
2021	4	4	0	4
2022	4	8	0	4
2023	1	2	0	1
Sum	29	34	12	34

- Note: only one entity; entity listed several times per year

Master File Analysis

- Change in business strategy/business model? Value Chain? Supply chain? Restructuring?
- Documentation of Intangibles: change in IP strategy? New IP? R&D strategy?
- Documentation of new value chain, R&D etc.

Local File Analysis

- Changes in IC transactions, IC agreements, local business/market conditions?
- Documentation of IP sold
- New IC transactions (Royalties)
- DAC6?

CbCR (DAC4)

Year	countrycode	revenuesUnrelated	revenuesRelated	revenuesTotal	profitOrLoss	profitMargin	reportPeriodeTs	Data sent
2016	AT	€ 88.300.000,00	€ 268.600.000,00	€ 357.000.000,00	€ 3.600.000,00	1,0	31.12.2016	XX.03.2019
2017	AT	€ 93.900.000,00	€ 337.700.000,00	€ 431.600.000,00	€ 37.800.000,00	9,0	31.12.2017	XX.06.2019
2018	AT	€ 98.400.000,00	€ 309.600.000,00	€ 407.900.000,00	€ 900.000,00	0,0	31.12.2018	XX.12.2019
2019	AT	€ 118.600.000,00	€ 293.500.000,00	€ 412.100.000,00	€ 22.200.000,00	5,0	31.12.2019	XX.01.2021
2020	AT	€ 108.300.000,00	€ 304.200.000,00	€ 412.500.000,00	€ 14.800.000,00	4,0	31.12.2020	XX.12.2021
2021	AT	€ 117.200.000,00	€ 343.300.000,00	€ 460.400.000,00	-€ 6.900.000,00	-1,0	31.12.2021	XX.03.2023
2022	AT	€ 144.000.000,00	€ 387.200.000,00	€ 531.200.000,00	€ 700.000,00	0,0	31.12.2022	XX.12.2023
2023	AT	€ 143.600.000,00	€ 423.800.000,00	€ 567.500.000,00	€ 15.800.000,00	3,0	31.12.2023	XX.12.2024

Thank you for your attention!

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