

# CASE STUDY 3

# BELGIUM

## Case submitter

**Jean-Sébastien Noville**

**Federal Public Service Finances of Belgium**

Telephone: +32470835469

Email: [jeansebastien.noville@minfin.fed.be](mailto:jeansebastien.noville@minfin.fed.be)

## Proposed solution

The Belgian Tax Administration (BTA) considers that the profit level indicator used to test the arm's length remuneration of the MPROC entity is not appropriate. Indeed, the profit indicator based on operating profit divided by sales (i.e., EBIT/Sales) is not independent of the controlled transaction. In the present case, MPROC sells its goods within the MSA group and purchases from third parties. Consequently, sales cannot be used as the denominator, since these sales form part of the controlled transaction whose compliance with the arm's length principle is being tested.

TP Guidelines Chapter 2 B.3.4. Weighting the net profit: 2.94. The denominator should be reasonably independent from controlled transactions; otherwise, there would be no objective starting point. For instance, when analysing a transaction consisting of the purchase of goods by a distributor from an associated enterprise for resale to independent customers, one could not weight the net profit indicator against the cost of goods sold because these costs are the controlled costs for which consistency with the arm's length principle is being tested.

Therefore, the profit level indicator used to assess the remuneration applied to MPROC cannot lead to an arm's length outcome.

Furthermore, regarding the profit indicator used, as mentioned above, a denominator independent from the controlled transaction must be selected. The BTA used the profit indicator "operating result over operating expenses (accounts 61 and 64 of the annual accounts)" (i.e., EBIT/OPEX). Operating expenses indeed represent a denominator that is independent of the controlled transaction.

Moreover, by selecting operating expenses instead of total costs, one avoids an artificial increase in the margin in the event that the cost of goods were to rise significantly. From a methodological standpoint, it would not be appropriate to remunerate MPROC more simply because the cost of goods increases.

The BTA made a segmentation between the service activity remunerated with a cost-plus method and the sourcing activity realised by MPROC in order to isolate OPEX and EBIT directly linked to the procurement activity.

The BTA also carried out a new benchmark study taking into account the absence of risk of the management of a warehouse for MPROC. Indeed, the goods and products purchased by MPROC are delivered and stored directly at MLOG without passing through MPROC. For this new benchmark study, the BTA used the same criteria used in the benchmark study provided by the group, adding a criterion requiring that inventories must not exceed 10% of the operating income.