CASE STUDY 4

SWITZERLAND

Case submitter

Jakob Lanz

Swiss Federal Tax Administration FTA
Telephone: +41584624670
Email: jakob.lanz@estv.admin.ch

Proposed solution

- **What is the set-up regarding the burden of proof in your country?**

Transfer pricing documentation in Switzerland
Legal obligation to prepare a country-by-country reporting if group revenues are larger than 900 MCHF

- No legal obligation to prepare transfer pricing documentation beyond that
- Effectively, Local-und Masterfile equivalent documents are requested at the start of an audit
- General Documentation Obligations
- General obligation to cooperate, provide information, and furnish evidence for income and capital taxes: Art. 126 DBG / Art. 42 StHG
- Corresponding obligations also apply to other types of tax (Art. 39 VStG/ Art. 35 StG/ Art. 68 MWSTG)

Cooperation-oriented distribution of the burden of proof and de facto documentation obligation

- Obligations to provide evidence and cooperate; in most cases, the transfer pricing documentation is already prepared
- There is an information asymmetry between the taxpayers and the FTA; taxpayers must provide the tax authorities with all relevant data to verify arm's length prices

- The obligation to cooperate is limited by the principle of proportionality: see Art. 5 para. 2 of the Federal Constitution
- The obligation to cooperate is limited by the practical significance
- Taxpayers must provide evidence of tax-reducing facts (e.g., additional expenses or lower income)
- The tax authority must prove that the transfer price does not correspond to the arm's length principle

In international cases, there is an increased obligation to provide evidence: see Ger2C_118/2021, E. 2.4.2

- **What additional data would you ask for, if any?**

OECD: “Transfer pricing is not an exact science but does require the exercise of judgment on the part of both the tax administration and taxpayer.”
OECD: “Taxpayers should not be expected to incur disproportionately high costs and burdens in producing documentation. Therefore, tax administrations should balance requests for documentation against the expected cost and administrative burden to the taxpayer of creating it.
FTA Approach:

- Reason for Request: IC gross margins are low compared to the third-party gross margin
- We asked what kind of data they can provide without undue costs to reflect the comparability concerns raised by them (e.g. segmentation)
- They provided us with data segmented into 20 product groups, trade levels, volumes and margins per customer
- We asked for an adjustment to reflect only the largest 10 customers per product group, due to comparably small volumes for smaller customers.

- **What transfer pricing method would you chose to test the pricing?**

1. CUP was not considered due to disproportionately high costs and burdens for both the taxpayer and the FTA
2. Tested party should be the less complex one: Data from IC-counterparties is not available
3. Chose Colours3 AG as tested party

Costplus method or TNMM?

- Accounting Consistency: Yes due to internal comparables
- Differences in expenses: Possibly distribution costs
- Accounted for using trade level of customers (see next slide)
  ⇒ Cost plus Method (Gross Margins)
- OECD Transfer Pricing Guidelines Para. 2.55: “In principle historical costs should be attributed to individual units of production.... Averaging also may be appropriate across product groups or over a particular line of production.“

- **Which comparability issues would you consider within your method? How would you take them into account?**

1. Product range: Due to readily available controlling data we were provided with segmented data based on product groups.
2. Trade level:
    - For each customer, a trade level was provided: Reseller, distributor, industry, end customer
    - IC customers where most comparable with resellers and distributors.
    - Resellers and distributors were comparable due to negotiation power
    - Resellers and distributors required almost no sales and marketing expenses
    - Products sold to industry and end customers products are often individual specifications
    - Resellers required no additional service, distributors required some additional services
    - IC-customers required some additional services, however, to a lesser degree than distributors
3. Volumes: We asked them to exclude small volume customers due to comparability and ended up with a list including only the top 10 customers, with their volume being relatively comparable to that of the group companies.

- **In case you end up with a range of comparable values, would you apply statistical tools to narrow the range? How would you narrow the range?**

Technically, we had two ranges:

1. Range of values from the top 10 customers in each product range: We only considered the (weighted) average margin.
    - The top 10 customers are not equivalent to a full range of comparables
    - Had we considered all customers, the margins would increase due to small volumes and more individual products
    - In case we narrow the range down purely based on volumes the two largest customers with relatively small margins would be excluded
    - Narrowing the range based on products would be disproportionately burdensome
    - We were also determining an average for the IC sales for both group companies, though they did not have identical volumes.
    - The mean was almost identical to the average margin
    - Pragmatic Approach due to the revenue volumes
2. Range from resellers and distributors
    - We applied this “range” to reflect the costs for additional services / after sales customer care.

30

IOTA

Intra-European Organisation
of Tax Administrations

Years of Cooperation, Knowledge Sharing, and Trust