

## Day 4, Session 4

# Workshop: Resolving Transfer Pricing Disputes

### Questions to be resolved individually:

When a TP adjustment is made and you agree to the adjustment, what are your treaty options for obtaining a corresponding adjustment?

The treaty between country A and country B has a filing period of 3 years (correct starting point). The taxpayer files a MAP request with the CA of country A for a TP issue after 40 months.

Can A's competent authority deny access taken into consideration BEPS Action 14?

- a) Yes
- b) No

The treaty between country A and country B has a filing period of 2 years (correct starting point). The taxpayer files a MAP request with the CA of country A after 30 months.

Can A's competent authority deny access taken into consideration BEPS Action 14?

In which country do you need to file a MAP request in an art. 9 TP case?

- a) In the country where the adjustment was made
- b) In the country that needs to make the corresponding adjustment
- c) In both countries
- d) Other?

Would the answer to the previous question be different if it were a PE attribution case?

- a) Yes
- b) No



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Which of the following tools would you use for a dispute between Norway and Belgium?

- a) The DTT between Belgium and Norway
- b) The arbitration convention
- c) The EU dispute resolution directive

You have a TP case between your country and another country you have never dealt with before. You do not know the CA of that jurisdiction. Where can you easily find that info? Give as many options as you can think of.

Give 2 reasons why it can be important to file for MAP as soon as possible while the treaty gives you a 3-year filing period?

## **Case Study (in groups of 5):**

Parent Co is a multinational business supplying IT equipment and services. It is parented in Canada and is one of the top 10 MNEs in its sector.

In 2010, it acquired Sub Co a previously independent UK parented group which specialised in providing laptops to both business and consumer customers. Sub Co was an established business primarily operating in the UK market – rated as a top 5 brand in that market.

At the time of the acquisition Parent Co and Sub Co entered an agreement whereby Parent Co licensed its trademark and associated IP to Sub Co in return for a license fee of 0.5% of turnover (the same agreement exists in respect of similar business acquired in the US, Japan and Brazil).

Whilst initially there was very little visibility of the Parent Co brand in the UK market this has increased over time – from 2019 all products are co-branded. In addition to access to its brand Parent Co also provides a wide range of strategic and commercial facilities to Sub Co including: brand management, commercial strategy, routes to market, corporate culture/ethos and staff training at its in-house University. No other charges are made for these facilities.

HMRC audited the transaction and concluded that at arm's length a third party would pay nothing for use of the Trademark from 2013 to 2018 and a reduced rate of 0.25% thereafter. The audit took a long time to resolve – it started in 2016 and concluded in June 2021 with the issue of final assessments for all years to 2016. HMRC consider that penalties may be due for all years to 2017.

An application for resolution of the double taxation created by the adjustment was submitted to both tax administrations in April 2022 setting out full details of the UK audit and supporting analysis detailing the commercial relationship between Parent Co and Sub Co.

The MAP article in the UK/Canada treaty contains an arbitration provision – mandatory binding arbitration takes place after a 3 year MAP period.

Adjustments:

Year	Determined royalty rate	Profit adjustment £'000
2013	nil	320
2014	nil	380
2015	nil	445
2016	nil	525
2017	nil	560
2018	nil	720
2019	0.25	420
total		3,370

**Discussion Points**

1. What prospect does Parent Co have of resolving the double tax created by the audit?
2. What steps can the taxpayer take to avoid having to suffer actual double tax whilst MAP continues? Can you mitigate the interest that will be charged by HMRC? Can you mitigate any penalty?
3. What actions can you suggest to move the debate away from merely a narrow consideration of the value of the Parent Co trademark towards a wider consideration of the transaction?
4. How could you resolve the later years not in MAP to avoid further double taxation?
5. The competent authorities are struggling to reach agreement so you start to consider arbitration. What issues arise around how you access and approach arbitration?