

Case Study IX:

Structuring Intangibles in a MNE by using Cost Contribution Arrangements (Cost sharing/ Umlagen/ Pools)

Modul 6

Facts:

German based **Techno Ltd**, a globally operating company, has decided to employ **new** management and funding structures for its “**product related research and development activities**” and the related **intangibles**.

In consultation with research, legal, tax and finance experts, the following solution is being considered:

- **Decentralised product-related research & development activities**, organised and financed **by two operating companies** being “centres of excellence” and future owners of the intangibles by way of a **cost contribution arrangement**, with technology transfers by way of licence arrangements to other operating companies in the Group

The following conditions should apply to the proposed solution:

- **Legal ownership** should be concentrated in **one** of the two companies entering into a cost contribution arrangement.
- **Contract research and development** activities for all R+D areas should be possible to be undertaken in the most appropriate locations, i.e. group companies with centers of expertise.

The questions:

Please comment on key aspects in using a **Cost Contribution Model (cost sharing model)** under the respective rules of the new OECD guidance in OECD TPG 2017 in Chapter VIII and the Austrian TP rules (VPR).

Please focus in your comments on the following topics:

1. **Legal and Tax Qualification** of a cost contribution arrangement (CCA) ("Poolvertrag") - Which are the taxpayers? Is a CCA taxed like a partnership?
2. What are the **requirements for potential participants** in a CCA (Members)?
3. What **Cost definition** to be applied (actual, budget, scope –full or direct costs)?
4. What **Allocation formula** to be applied to ensure reasonably **anticipated benefits**?
5. How to deal with any **third party license income** generated by allowing the CCA intangibles to be used by other group companies?
6. What are the **documentation requirements**?

Literature:

- Skript Modul 6 Cost sharing
- VPR Tz 112-128
- OECD TPG 2017 Chapter VIII
- BMF(D) Schreiben, Grundsätze für die Prüfung der Einkunftsabgrenzung durch Umlageverträge zwischen international verbundenen Unternehmen IV B 5 - S 1341/0:003, vom 5.7.2018
- **Loukota, Helmut**, OECD beendet das Poolkonzept bei Kostenverteilungsverträgen, in SWI 2016, S. 151 f
- **Storck, Alfred/Stradinger, Theresa**, Das Poolkonzept im Bereich Forschung und Entwicklung, in Handbuch der Verrechnungspreise, Linde Verlag Wien 2012, S. 475 ff