

Case Study II: Transfer Pricing Methods, Associated Enterprises, Comparability, Databases and Pricing Ranges Comparison OECD TPG vs. Austrian TP rules (VPR)

Modul 3

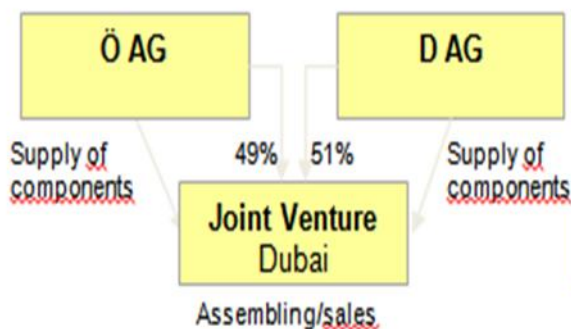
Topic 1: Joint Venture (49% / 51%) and Transfer Pricing

Facts:

Austrian AG (49%) and **German AG** (51%) operate a Joint Venture company in Dubai for the assembling of products and the sales of its products. The JV sells the products mainly in the region.

Austrian AG supplies components to the JV for a price of 100 Euro each.

Being a third party supplier sells similar products to the JV for 120 Euro each.



Questions raised by the Austrian tax authorities during a tax audit:

1. Can Art 9 OECD MC or § 6 Z 6 ESTG be applied on the relationship Austrian AG and the JV?
 - Is the JV an “associated” enterprise for the Austrian AG under OECD TPG and Austrian VPR 2010?
2. Can Austrian authorities adjust the TP from 100 to 120 EURO (and increase taxable profits) with reference to the third party supplier?
 - Is the third party price a good comparable? What speaks in favour, what not? List some arguments.

Literature:

- VPR Richtlinien 2010 insbesondere Tz 5-7; 12-16; 20-49; 50-62
- **Rosar, Werner/Stradinger, Theresa**, Verrechnungspreismethoden und deren Anwendung in der Praxis im Überblick, in: Bernegger/Rosar/Rosenberger, Handbuch der Verrechnungspreise, Linde Verlag Wien 2012, S. 59 ff

Topic 2: Transfer Pricing, Ranges and Adjustments

Facts:

German based **Industrie AG** sells its products to Austrian based **Distribution AG** (a 100% sub), which on - sells the products to local and selected international customers.

The TP between German based Industrie AG and Austrian based Distribution AG is based on the **resale – price- method (RPM)** and benchmarked with European Comparables. This is documented in detail in the TP documentation of Industrie AG.

The European Benchmark Study provides for comparable gross margins of 35% (lower quartile) till 40% (upper quartile) with a median of 37% (no Austrian comparables in the data). Austrian based Distribution AG applies a margin of 35 %.

The questions:

1. Are European Comparables acceptable to define an arm`s length price for an Austrian company and under what conditions?
2. Can the Austrian Tax authorities adjust the 35% **gross** margin (selected by the tax payer) and use the 40% **gross** margin, because Austrian based Distribution AG realises **effectively a net loss**.
 - Is such an adjustment acceptable?
 - Can price setting in advance be adjusted by ex post outcomes?
3. Can the Austrian Tax authorities disregard **the resale – price- method** (RPM) and request the application/use of the **TMM** method on Distribution AG because it will allow a positive net income to be taxed?

Literature:

- VRP Richtlinien 2010 insbesondere Tz 17-19; 63-67
- **Rosar, Werner**, Datenbankstudien, in: Bernegger/Rosar/Rosenberger, Handbuch der Verrechnungspreise, Linde Verlag Wien 2012, S.271 ff
- **Loukota, Helmut**, Die österreichischen Verrechnungspreisrichtlinien, in: Bernegger/Rosar/Rosenberger, Handbuch der Verrechnungspreise, Linde Verlag Wien 2012, S 37 ff