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GLOBAL
GROWTH EXPERTS

fei canada
leadership beyond finance

International Transfer Pricing

Brazil China India Japan Singapore UK USA

WELCOME TO THE WEBINAR

Before we begin, a few logistical items:

Questions – Please send us your questions during the broadcast using the questions panel on the right-hand side of your screen.

- During the broadcast all attendees will be muted.
- We will respond to your questions at the end of the broadcast.

Technical Difficulties – If you encounter difficulties we suggest leaving the webinar and then rejoining.

Recording – This broadcast is being recorded and the recording will be made available to you within 24 hours.

OVERVIEW

Radius – Global Growth Experts

Radius helps companies expand and win globally.

Services include:

- International accounting
- Finance
- Banking
- Tax
- HR
- Legal
- Compliance services

Radius delivers support and expertise through managed services, advisory services and *OverseasConnect*, our integrated cloud-based software platform.

PANELIST

GIANLUCA QUEIROLI

Director, Advisory Services, Radius

Gianluca Queiroli is a Director on the Advisory Services team at Radius specializing in transfer pricing, compliance, tax withholding, accounting, and entity structuring.

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AGENDA

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- The Basics of Transfer Pricing
- Price Determination
- Transfer Pricing Questions to Ask Yourself
- Transfer Pricing Questions to Ask Your Preparer
- Additional Considerations
- Corporate Tax Risk Template
- Q&A

THE BASICS OF TRANSFER PRICING

- Why Transfer Pricing is important?
  - Transfer Pricing affects the profits of a business subject to tax in a particular country.
  - Tax authorities have become more aggressive in monitoring how taxpayers charge for intercompany services and sale of goods.
  - Greater public scrutiny: Amazon, Google, Starbucks
  - International efforts to attack tax planning (BEPS)

THE BASICS OF TRANSFER PRICING

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- What is Transfer Pricing?
  - Definition – Price at which an enterprise transfers (sells) physical goods, intangible property, provides services to an associated enterprise (related party)
  - Associated Enterprises – One of the enterprises participates directly or indirectly in the management, control, or capital of the other (ex. Parent/Sub) or the same enterprises (brother sister companies)
  - Arm's length principle
  - FAR (Assets, Assets, and Risks) analysis – base of comparability in Arm's length principle

POLLING QUESTION #1

Have you had a transfer pricing report prepared in the past?

PRICE DETERMINATION

- TP Methodology for price determination
  - CUP
  - CP
  - Resale
  - Other methods
- Cost Plus – goods or services market costs plus mark-up
- Direct Revenue – Invoicing and collections in the local country. Revenue all subject to tax locally, minus deductions for fees paid to associated entity

PRICE DETERMINATION

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- Commissionaire (EU countries) – local entity acting as reseller. Invoicing/collection in the local country. Fees % kept by commissionaire entity as revenue (guaranteed). Limited risks of PE for the principal. Customers only have recourse against the commissionaires
- Stripped distributors (US/Canada/UK) – customers have recourse not only to commissionaire but also to principal (Agency relationship)

POLLING QUESTION #2

Under what kind of revenue model does your company operate?

Brazil China India Japan Singapore UK USA

DOCUMENTATION – BASIC REQUIREMENTS

- Requirements vary by country, but in general:
- Intercompany service agreements
    - Sets out the terms of the services and ensures parties act within their remit
- Benchmarking studies
    - Used to identify appropriate comparables
    - Determine the appropriate mark-up % / margin
- Safe harbors
    - WARNING: may only provide limited protection

DOCUMENTATION – INTERCOMPANY SERVICE AGREEMENTS (1)

- The contract between the two parties

- Key points to include:
  - Parties to the agreement
  - Pricing, payment terms and taxes
  - Respective responsibilities and limits to authority
  - Ownership of goods / IP
  - Term and termination

DOCUMENTATION – INTERCOMPANY SERVICE AGREEMENTS (2)

- Contract terms, as well as price, should be ‘arm’s length’ – contract needs to replicate, as far as possible, normal commercial terms, entered into by unconnected parties
- Reduces risk of a taxable PE in the country through a dependent agent arrangement
- DOES NOT, on its own, mitigate risk of transfer pricing being challenged by tax authorities
- ISA is required documentation but not the only documentation

DOCUMENTATION – BENCHMARKING STUDIES

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- Identifies comparable entities / products / services
  - Detailed analysis of entities
  - Identification of relevant transactions
  - Consideration of:
    - Geographical boundaries
    - Regulatory environment
    - Functions / Assets / Risks
    - Pricing method: traditional transaction-based, or profit-based
- Manual process to decide which comparables are truly representative, then identify the appropriate profit / mark up % based on those
- Key document to support arm's length pricing and meet documentation requirements

DOCUMENTATION – SAFE HARBORS

- Appropriate safe harbor varies by country, goods/service being provided, etc
- Few countries have official safe harbors or prescribed rates (Brazil)
- Often unofficial safe harbors exist:
  - May reduce likelihood of being picked for an audit
  - Are NOT a substitute for a full benchmarking study

DOCUMENTATION – TIMING

- Requirements vary by country, but in general:
  - Need to have documentation up-to-date
  - Some countries implement strict rules with regard to content and how regularly documentation needed to be kept updated
  - May be tight time limits to provide documentation after commencement of an tax audit – better to have the documentation in place before it happens

TRANSFER PRICING: DID YOU KNOW?

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In 2006, reached a settlement agreement with Glaxo SmithKline Holdings (Americas) Inc. & Subsidiaries (“GSK”). At the time, it represented the largest tax dispute in IRS history. GSK paid the IRS approximately $3.4 billion as part of an agreement to resolve the parties' long-running transfer pricing dispute for the tax years 1989 through 2005.

TRANSFER PRICING QUESTIONS TO ASK YOURSELF

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- What countries are involved?
- What will be the parent company of the newly established entity?
- What activities will be performed in country?
- Who will be employed or provide services for the newly established entity?
- What contracts will exist with the newly established entity?
- How will the newly formed entity be financed?

TRANSFER PRICING QUESTIONS TO ASK YOUR PREPARER

- If someone is preparing a transfer pricing study for your company, ask them:
  - What mark-up do you use?
  - What is my audit/assessment risk?
  - When do I review my transfer pricing policy, ISA, TP Study, benchmarking?

WHERE RADIUS CLIENTS ARE NOW

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- Many clients have ISAs, but coverage is inconsistent
- Many are a few years old
- Minority are supported by benchmarking agreements
- Many clients believe they are ‘too small’ to be of interest to the tax authorities – big mistake!

WHERE RADIUS CLIENTS ARE NOW

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- Risk:
  - Outdated or no documentation
  - Insufficient support
  - Clients may have outgrown or their business evolved away from current documentation
  - Easy target for tax authorities

- Consequences:
  - Penalties and interest for incorrect returns
  - Penalties for no or insufficient documentation
  - One-sided tax audit adjustments

POLLING QUESTION #3

My role in my business' Transfer Pricing process is:

QUESTIONS

GIANLUCA QUEIROLI

Director, Advisory Services, Radius

Email: gianluca.queiroli@radiusww.com

Visit us at: www.radiusworldwide.com

WANT TO ACCELERATE THE PROCESS?

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