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TRANSFER PRICING NEWS

INTRODUCTION

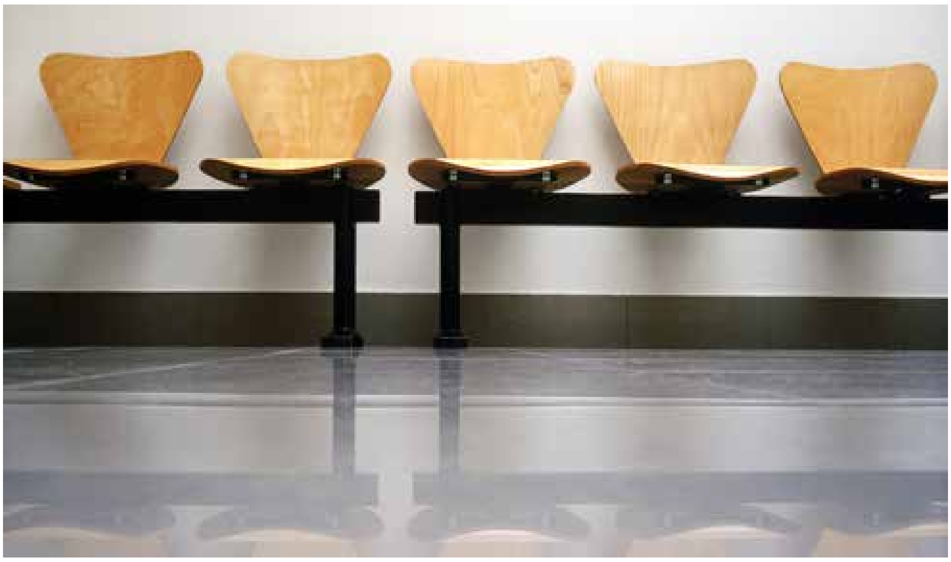
Transfer pricing is increasingly influencing significant changes in tax legislation around the world. On top of the legislative changes, many important Court cases nowadays deal with transfer pricing. This 11th issue of BDO's Transfer Pricing Newsletter focuses on recent developments in the field of transfer pricing in Australia, Belgium, Italy and Ireland. In this newsletter you will also find interesting contributions about recent case law in Canada and Norway.

We are very pleased that we can present you this 11th issue of BDO's Transfer Pricing Newsletter, which we were able to produce in close co-operation with our colleagues from the above-mentioned countries.

BDO comments on the OECD discussion drafts
How to deal with (valuable) intangibles has become an important issue within the transfer pricing area. In June 2012, the OECD published two draft discussion papers: 'Revision of the special Considerations for Intangibles in Chapter VI of the OECD Transfer Pricing Guidelines and related Provisions' and 'Draft on timing issues relating to transfer pricing' for public comments.

In 2011 and 2012, BDO provided the OECD with its comments on the above mentioned draft discussion papers:
- Comments on administrative aspects
- Comments on timing issues
- Comments on safe harbours
- Comments on intangibles

Please contact Anton Hume of BDO UK for more information (anton.hume@bdo.co.uk).



SEMINAR

BDO will organise a Transfer Pricing Seminar in London on 10 May 2013. Various aspects of important transfer pricing issues will be on the agenda. Our keynote speaker will be Mr Stefaan De Baets of the OECD.

If you would like to receive detailed information about this seminar, please contact any of the persons listed on the last page of this newsletter or your normal BDO contact.

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AUSTRALIA

NEW TRANSFER PRICING RULES – EXPOSURE DRAFT RELEASED

The transfer pricing rules are to be reformed. The new rules align with the OECD Transfer Pricing Guidelines, which allow transfer pricing adjustments based on a profit split basis, rather than the traditional transactional basis provided for under the existing law. There are also new record keeping requirements and a limitation of the period for amended assessments.

An Exposure Draft of the proposed legislation was released by the Assistant Treasurer, David Bradbury, on 22 November 2012. The start date for these new rules has not been announced, but it is expected to be the date of Royal Assent of the amending legislation.

These proposed amendments are in addition to recent retrospective legislation that aligned the Australian transfer pricing rules with the arm's length rules in Australia's Double Tax Agreements (DTA). This recent legislation has retrospective application from 1 June 2004, but only applies to arrangements with entities resident in countries where a DTA exists. In contrast, the proposed new rules are not retrospective and will apply to arrangements with residents in any foreign country, whether or not a DTA exists.

New measures

The Exposure Draft provides for the repeal of Australia's existing transfer pricing rules in Division 13 of Part III of the Income Tax Assessment Act 1936, and the insertion of their replacements, as Subdivisions 815-B to 815-E of the Income Tax Assessment Act 1997.

The proposed new measures differ from the existing rules in a number of material respects, as discussed below.

Self-assessment

The new measures are self-executing, in accordance with self-assessment principles, and thus do not require a determination by the Commissioner that the provisions apply, as is required by the existing rules.

Methodologies

There is less of a focus on the pricing of individual transactions and more of a focus on whether overall outcomes reflect those that would arise as though the parties to the cross-border arrangements or relationships were dealing at arm's length.

The cancellation of a 'transfer pricing benefit' will apply in an income year where the conditions, which operate between the Australian entity and another entity in connection with their cross-border commercial or financial relations, depart from arm's length conditions.

There will be a transfer pricing benefit where, assuming arm's length conditions applied, one of the following outcomes would arise:

- The amount of the Australian entity's taxable income for the income year would be greater;
- The amount of the Australian entity's loss of a particular sort for the income year would be less; or
- The amount of the Australian entity's tax offsets for the income year would be less.

The rules also provide that the most appropriate transfer pricing calculation method must be used, having regard to specified criteria.

Consistency with OECD guidelines

There is an explicit requirement that the provisions be interpreted so as to best achieve consistency with:

- The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the OECD, as last amended on 22 July 2010; and
- Such other documents as are prescribed by regulation.

Interaction with thin capitalisation

There are explicit rules for the interaction of the transfer pricing rules with the thin capitalisation rules. First, the arm's length interest rate is to be determined under the transfer pricing rules, which may require an adjustment to the amount of debt deductions claimed. Then, in doing the thin capitalisation calculation, the arm's length rate is applied to the debt interest the entity actually issued, which may result in a further reduction of debt deductions under the thin capitalisation rules.

Permanent establishments

The rules provide for the calculation of the profits of a permanent establishment, *'such that amounts brought to tax in Australia by entities operating permanent establishments are not less than they would be if the permanent establishment were a distinct and separate entity engaged in the same or comparable activities, but dealing wholly independently with the other part of the entity'*.

This is a departure from the existing law. Currently, permanent establishments are not treated as separate entities, but rather an apportionment of the income and expenses from each transaction of the permanent establishment must be made between the permanent establishment and the entity of which it is a part.

Record keeping failure – no remission of penalties

There are 'optional' record keeping requirements regarding the application of the arm's length principles. However, while these rules are not mandatory, failure to satisfy them will result in the affected taxpayer being automatically penalised on any adverse transfer pricing assessment, on the basis that the taxpayer cannot have adopted a reasonably arguable position. The base penalty rate will therefore automatically be 25% of the tax shortfall.

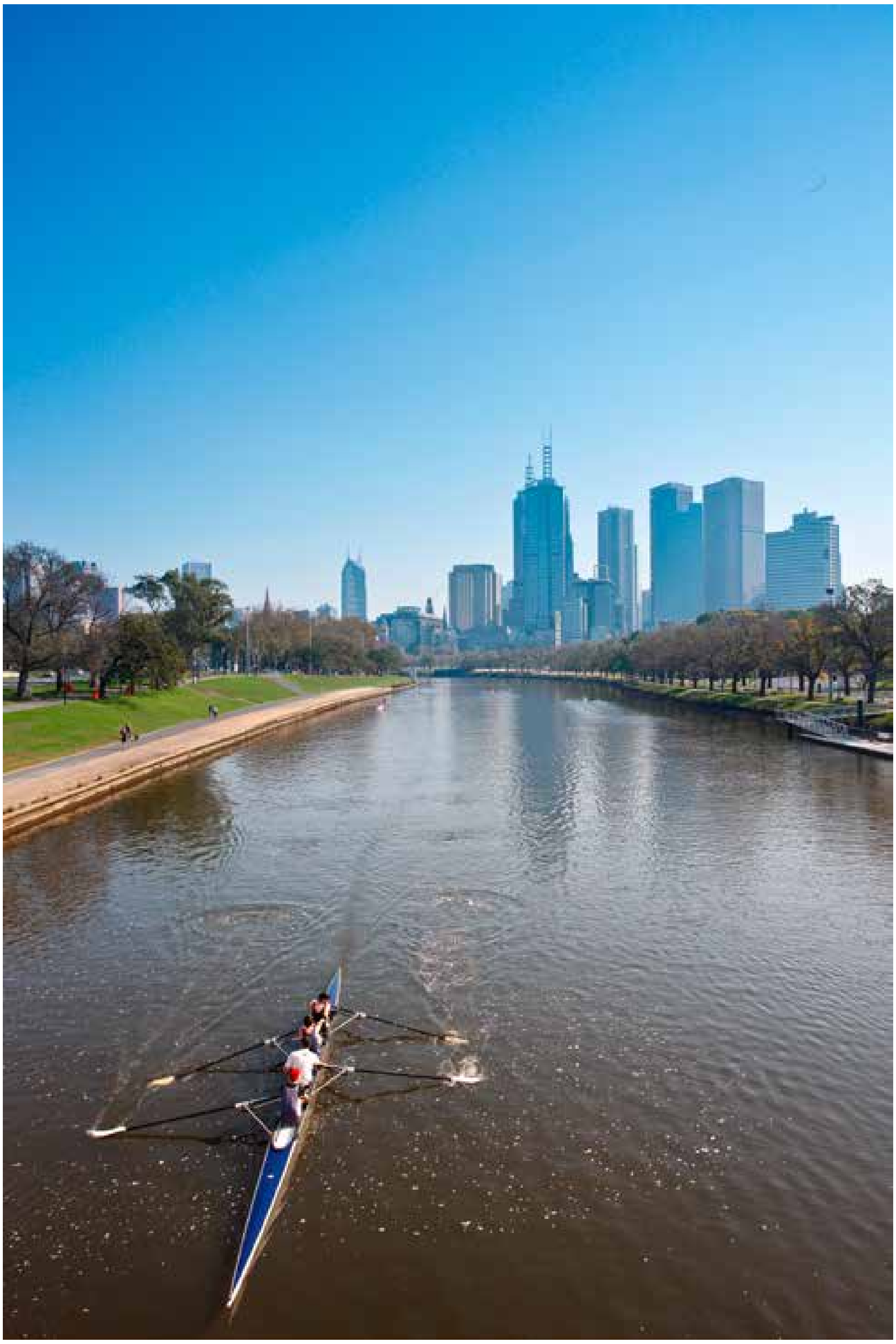
Amendment period

The new rules restrict the Commissioner to an eight year period in which to amend assessments. This is in contrast to the current unlimited amendment period for transfer pricing adjustments.

Consistency

Areas where the new rules remain consistent with existing rules include:

- The transfer pricing rules are given primacy, in the event of any conflict with other provisions of the Assessment Acts;
- Consequential adjustments flowing from any transfer pricing adjustments are not self-executing, but instead require the exercise of a power by the Commissioner.



Comment

The changes largely reflect a response to the Commissioner's loss in the Full Federal Court decision in the SNF case last year. In that case the Commissioner unsuccessfully argued for the use of the 'transactional net margin method' of adjusting transfer prices over the comparable uncontrolled price method.

Arguably, the new rules accord more closely with the way in which the Commissioner purported to apply the current rules prior to the SNF case. While the new rules will initially introduce a degree of uncertainty into the taxation affairs of those operating across Australia's borders, it is to be hoped that the rules, in accordance with a number of statements in the exposure draft explanatory memorandum, more closely align Australia's rules with those of major trading partners.

Taxpayers with international non-arm's length dealings will need to consider their documentation in detail. The automatic penalisation of taxpayers where there is inadequate documentation means that prudence will now require all taxpayers who may be subject to the rules to maintain documentation about their international dealings.

Your BDO contact in Australia:
RAY FORRESTER
ray.forrester@bdo.com.au

BELGIUM

THIN CAPITALISATION: NEW DEBT:EQUITY RATIO FOR INTRA-GROUP LOANS

The thin capitalisation debt:equity ratio has been reduced to 5:1, with effect from 1 July 2012.

The previous thin cap rule provided for a 7:1 debt:equity ratio, but only for loans where the beneficial owner of the interest is not subject to income taxation, or where he is subject to a tax on interest that is substantially more beneficial than in Belgium.

The 5:1 debt:equity ratio also now applies to intra-group loans. Interest expenses on intra-group loans will no longer be tax deductible to the extent that the 5:1 ratio has been exceeded, for any particular individual company.

What is a group?

A group comprises all affiliated companies as defined by Belgian company law. Companies are legally deemed to be affiliated when one company has control over the other or is being controlled by the other, or when they are part of a consortium.

Control is defined as the legal or factual power to have a decisive influence on the appointment of the majority of the members of the Board of Directors or on the policy of the company.

The existence of legal control is deemed to be irrefutable when:

- It stems from the ownership of the majority of the voting rights based on shareholder status or on an agreement with other shareholders;
- A shareholder has the right to appoint the majority of the directors;
- A shareholder has control, based on the bylaws of, or an agreement with, the company; or
- There is joint control.

Factual control arises from situations of control other than those mentioned above in respect of legal control. There is a refutable presumption of factual control in the hands of a shareholder exercising a majority of the voting rights at the last two general shareholders' meetings.

A consortium includes all companies under a central management. There is an irrefutable presumption of central management when:

- The central management stems from a contract or from the bylaws of the company;
- The management bodies are, for the majority, composed of the same members.

There is a refutable presumption of central management when the majority of the shares of the different companies is held by the same people.

What is debt?

Debt includes all loans, with the exclusion of bonds, other debt issued by public offering, and loans granted by financial institutions.

The concept of "beneficial owner" will allow certain financial structures to be disregarded in the case of guaranteed loans and indirect loans.

What is equity?

Reference is made to fiscal equity, being the sum of the taxed reserves at the beginning of the taxable period and the paid-up capital at the end of the taxable period. Where the taxed reserves are negative (losses), fiscal equity equals paid-up capital.

Exceptions

The following companies are exempt from the thin-cap rule and the deduction limitation associated with it:

- Real estate leasing companies and companies which are primarily engaged in factoring or real estate leasing within the financial sector - insofar as the borrowed capital is effectively used for leasing and factoring activities;
- Companies primarily engaged in a public-private partnership project awarded in accordance with the regulations concerning government procurement contracts.

Netting of cash pool positions

Cash pooling companies – conducting treasury activities for other group companies as their main activity - are not excluded from the 'thin cap' regulations, but the interest income and interest expenses can be offset against each other within the framework of the modified regulations, i.e. 'netting' is allowed on condition that the companies can submit an intra-group cash pool agreement which comprises a number of specified conditions.

Additional issues with the 'thin cap' regulation

The 'thin cap' regulation introduces a specific anti-abuse regulation if a third party provides the necessary guarantees, or if a third party has extended the necessary funds to the creditor to finance loans, and if this transaction has tax avoidance as its main objective.

Your BDO contact in Belgium:
MARK VERBEEK
marc.verbeek@bdo.be

CANADA

GLAXO CANADA "WINS" THE ISSUE BUT NO FINAL OUTCOME ... YET!

On 18 October 2012, in The Queen v. GlaxoSmithKline Inc., the Supreme Court of Canada (SCC) dismissed the Appeal filed by Her Majesty The Queen, and the cross-appeal filed by GlaxoSmithKline Inc. (Glaxo Canada). This case concerns the issue of whether Glaxo Canada was charged an unreasonably high price for its purchase of ranitidine, the Active Pharmaceutical Ingredient (API) used in Zantac, from its Swiss affiliate, Adeschsa.

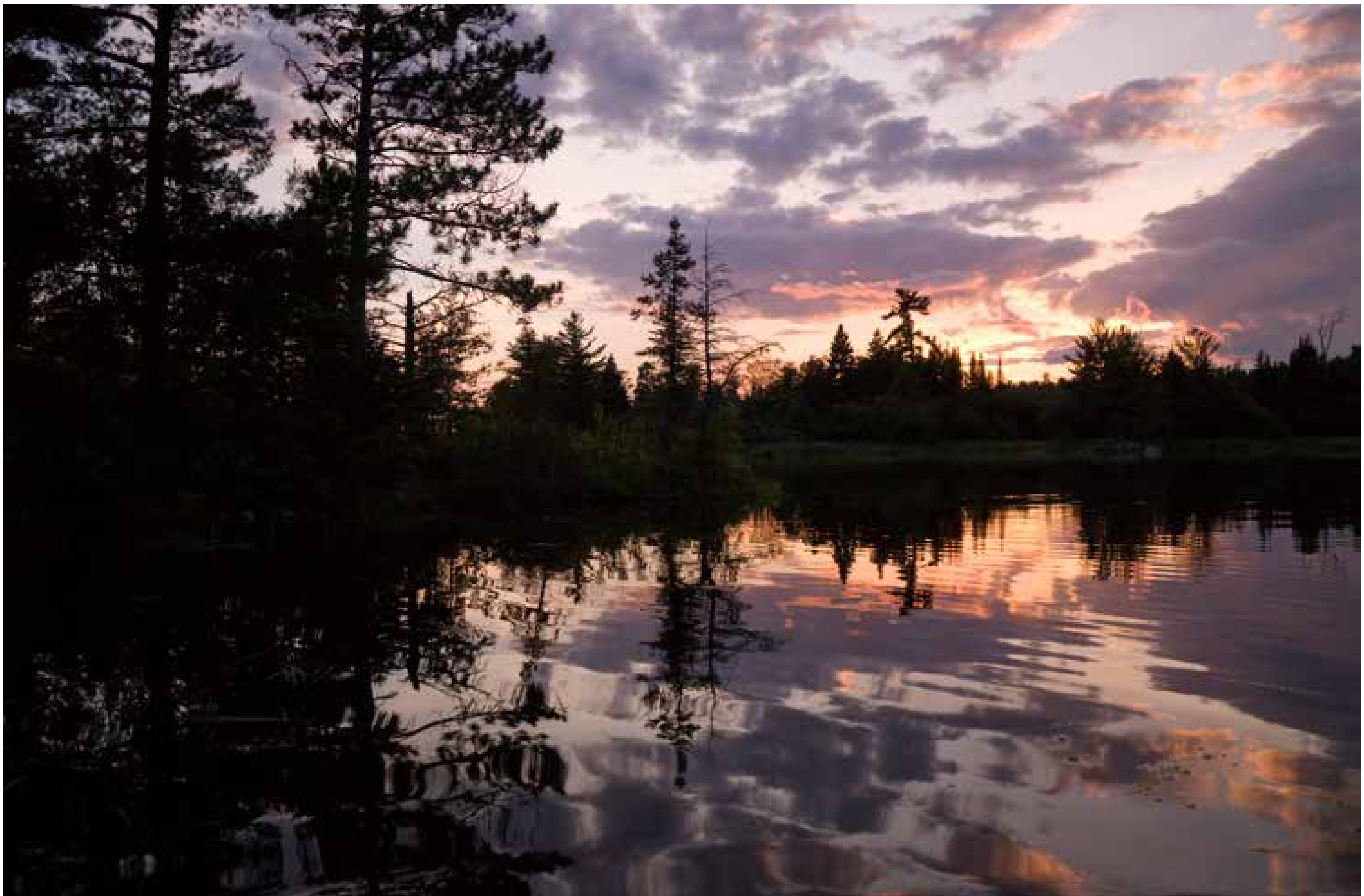
The case involves the Canada Revenue Agency's (CRA) reassessment of Glaxo Canada's income for the years 1990 to 1993. During that time, Glaxo Canada purchased ranitidine for a purchase price that was five times the amount that generic drug makers paid for the same API. The CRA reassessed Glaxo Canada's transfer prices by applying a lower purchase price based on the price a generic drug maker would have paid an arm's length manufacturer for the API. Glaxo objected to the reassessment and argued that the purchase price was justified when considered in conjunction with a License Agreement (the Agreement) between Glaxo Canada and Glaxo UK that provided Glaxo Canada with access to a range of patented drugs, know-how and the right to use intellectual property related to Zantac. Glaxo Canada argued that the rights and benefits conferred on it under the Agreement are relevant and should be considered in the determination of the transfer price.

This case was brought to the Tax Court of Canada (TCC) in 2008, where the CRA's reassessment was accepted, and it was decided that the Agreement and the Supply Agreement for the transaction should be considered independently. Therefore, the TCC deemed the rights and benefits under the Agreement irrelevant in determining the appropriate arm's length price. It was argued that the purchase price paid under the Supply Agreement should be considered separately, and as a result Glaxo Canada should have paid a price similar to the price paid by generic drug makers. The TCC's acceptance of CRA's reassessment was appealed to the Federal Court of Appeal (FCA) in 2010. The FCA, however, reversed the decision in favour of Glaxo Canada, arguing that the TCC failed to consider the "business reality" that existed, given that the Agreement, and the rights and benefits under the Agreement should, in fact, be considered in determining the purchase price that Glaxo Canada paid for the API.

This latest ruling from the SCC concurs with the decision of the FCA in favour of Glaxo. Justice Marshall Rothstein explained "It appears that Glaxo Canada was paying for at least some of the rights and benefits under the license agreement as part of the purchase prices for ranitidine…." He said that other factors, such as the use of intellectual property, can be taken into consideration when determining reasonable arm's length prices. The decision was made that the rights and benefits under the Agreement are linked to the price paid for the property under the Supply Agreement, and the consideration of the two needs to be taken into account in determining an arm's length purchase price.

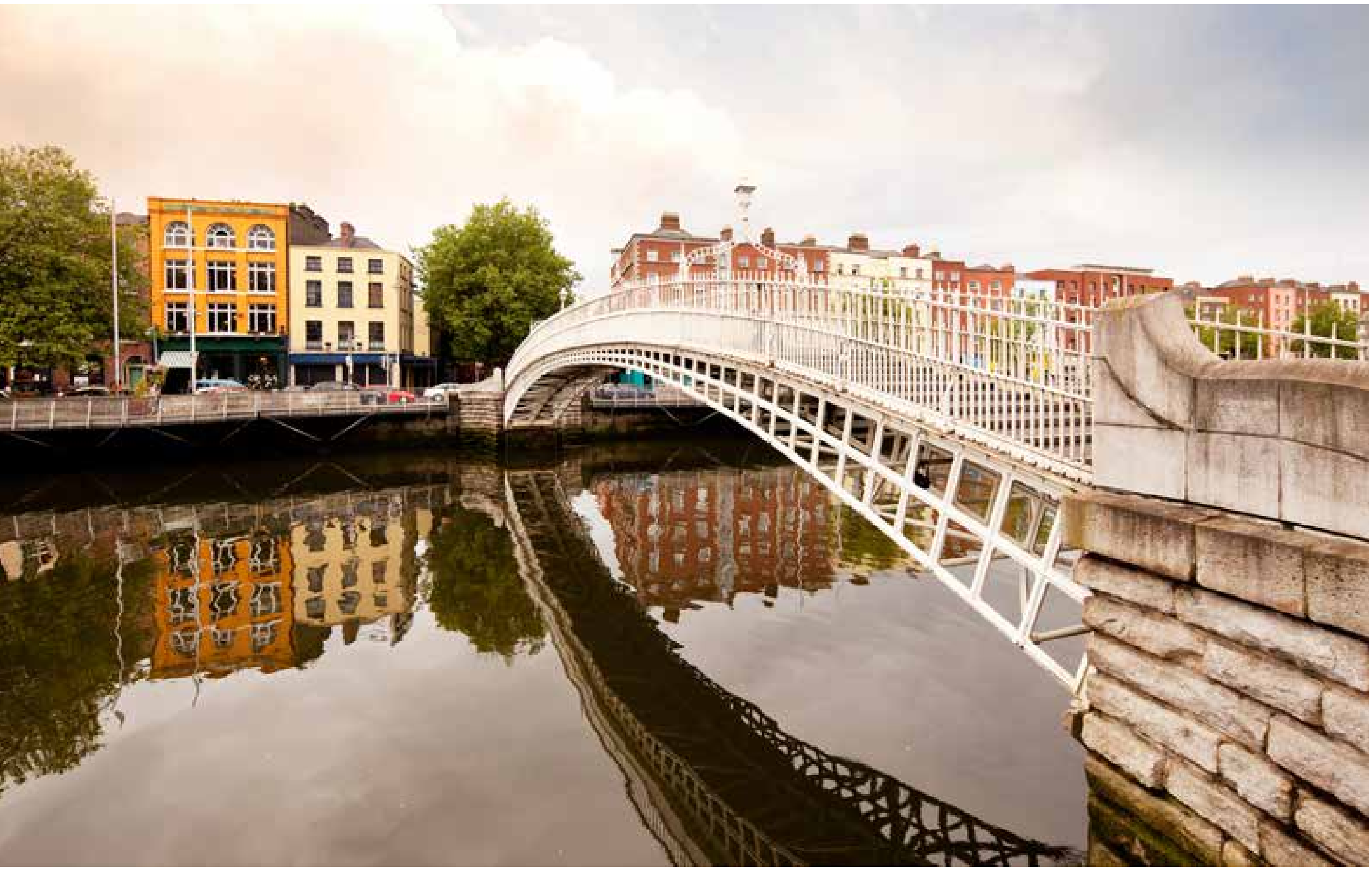
The case will now be handed back to the TCC for redetermination of the "reasonable amount" payable by Glaxo Canada for ranitidine. After almost 20 years, Glaxo Canada has "won" on the issue, but is still without a final outcome.

Your BDO contact in Canada:
MELISSA YONG
myong@bdo.ca



IRELAND

TRANSFER PRICING COMPLIANCE REVIEWS



The Irish Tax Authorities, the Revenue Commissioners (Revenue) have recently published extracts from their internal operations manual concerning their monitoring of transfer pricing compliance since its introduction in Ireland (with effect from 1 January 2011).

These extracts were published in accordance with Irish freedom of information laws and provide an overview to Revenue's approach to monitoring transfer pricing compliance, beginning with a Transfer Pricing Compliance Review (TPCR).

Overview

A TPCR is a self-review carried out by a company/corporate group. It is portrayed as an opportunity for the relevant company/group to review its transfer pricing compliance and to provide Revenue with an assessment of that compliance. It will also provide Revenue with information that they would otherwise generally not obtain outside of the regular audit process.

Revenue intends to initially focus on a number of cases across the range of large companies/groups operating in Ireland.

Conduct of a TPCR

Revenue will issue written notifications to relevant companies/groups requesting that they conduct a self-review of their transfer pricing compliance. The notification letter will generally request the relevant company/group to address the following matters during the self-review:

- The group structure;
- Details of each category or type of related party transactions and the identity of the parties involved;
- The pricing structure and transfer pricing methodology used for each category or type of transaction;
- A summary of the functions, assets and risks of the relevant parties;
- A summary list of relevant documentation available and reviewed; and
- Details of the basis on which it has been established that the arm's length principle is satisfied.

The relevant company/group will also be requested to provide to Revenue, within three months, a copy of a report detailing the outcome of the self-review, addressing each of the above matters.

However, where a transfer pricing study or report exists for the purposes of compliance in another jurisdiction, such study or report will suffice, provided it addresses all of the above matters.

Outcomes from a TPCR

Revenue will issue a post review letter. This may convey that no further enquiries are necessary, or it may highlight issues for further consideration or discussion within the TPCR process.

A case selected for a TPCR may be escalated into an audit, depending on Revenue's assessment of risk. While not a basis for automatically triggering an audit, Revenue may consider an audit to be appropriate where a company declines to complete a self-review or where the output from the TPCR, and any follow up information, indicates that the transfer pricing is not in accordance with the arm's length principle.

Your BDO contact in Ireland:
KEVIN DOYLE
kdoyle@bdo.ie

Your BDO contact in Ireland:
ROB STACK
rstack@bdo.ie

ITALY

INLAND REVENUE OFFICE ISSUES INSTRUCTIONS ON MUTUAL AGREEMENT PROCEDURES

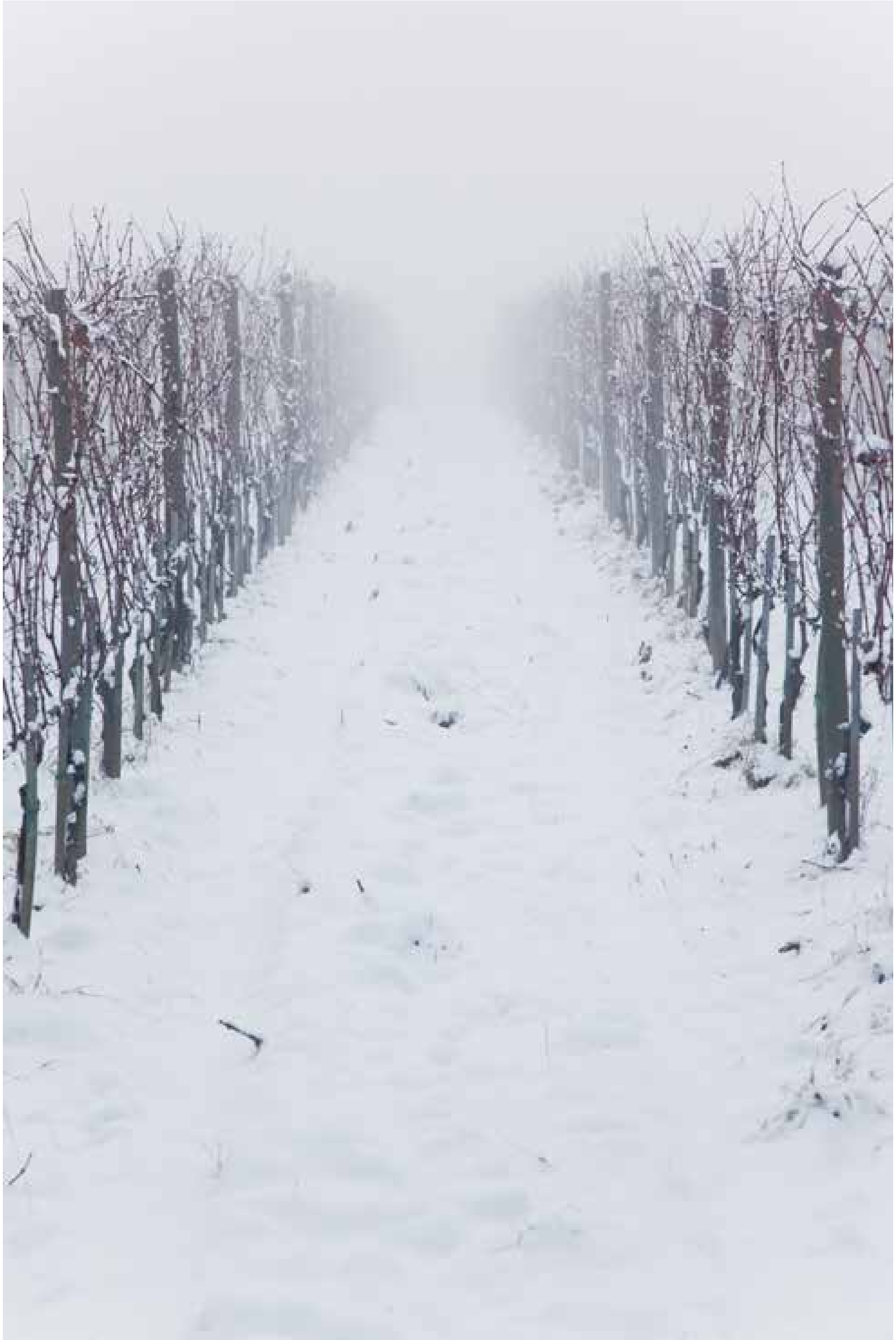
On 6 June 2012 the Italian Inland Revenue Office (Agenzia delle Entrate) issued Circular Letter No. 21/E concerning international tax dispute settlement, with specific comments on the mutual agreement procedures (MAPS) included in Article No. 25 of the OECD Model Tax Convention against double taxation on income and property, and on the EU Arbitration Convention 90/436/CEE of 23 July 1990.

The interest shown in these matters by *Agenzia delle Entrate*, which had been almost nil until the above Circular Letter was published, is due to the apparent increase in double taxation and litigation cases at an international level over the last three years. This led to *Agenzia delle Entrate*'s involvement in consulting and supporting the Ministry of Finance - Department of Economy and Finance – i.e. the office in charge of handling MAPs. The need therefore arose to instruct *Agenzia delle Entrate*'s regional and provincial offices on how to share practices and operating criteria with regard to inquiry activities, aimed at handling litigation cases at an international level, to ensure transparency and good results.

Taxpayers will also benefit from *Agenzia delle Entrate*'s instructions: they will be able to take the necessary measures to resolve any international dispute (and eliminate double taxation) in addition to, or as an alternative to, the measures under the Italian law which are aimed at "unilaterally" resolving a case, by interacting with the Tax Authorities on the basis of a common framework for interpreting the relevant legislative provisions and instructions.

The issues dealt with by the Circular Letter include domestic and international standard provisions, subjective and objective profiles, MAP application deadlines, the progress of applications, and more controversial issues such as the relationship between applications and domestic litigation procedures, along with aids to resolving litigation matters established by the Italian law, and allowing suspension of tax collection during MAPs.

The main issues addressed in the Circular Letter are summarised below:



Subjective profile

The institutions entrusted with handling MAPs are the Ministry of Economy and Finance, Department of Finance (the competent entity for Italy) and *Agenzia delle Entrate*. The competent authorities ensure the bona fide application of the various provisions and practices pertaining to MAPs, whilst *Agenzia delle Entrate* will provide technical support and the necessary cooperation to the competent authorities, especially during the inquiry stage and while drawing up the position paper[1] to be forwarded to the competent authorities of the foreign country.

With regard to entities that are entitled to file an application for a MAP, the Circular Letter points out that in respect of the Double Tax Treaty's MAP procedure, the application can be filed on the initiative of the taxpayer (individuals or legal entities resident for tax purposes in the territory of

[1] *The position paper is a document in which the competent authorities provide - at the closure of proceedings - the technical/legal reasons supporting their thesis.*

one or two contracting States of the bilateral Convention) or of the competent authorities. With regard to the procedure set out in the EU Arbitration Convention, the entities entitled to file an application are resident companies belonging to a Group of companies with intercompany transactions with related companies in another EU Member State, and companies belonging in another Member State with a permanent establishment in Italy. An application can be made whenever the Italian Tax Authorities or tax authorities of another Member State intend to adjust/have adjusted profits which do not comply with the arm's length principle.

Objective profile

Article No. 25 of the OECD Model Tax Convention covers all double taxation issues in respect of individual or legal entities, both from an economic and legal perspective.

Within the EU Arbitration Convention, double taxation cases may undergo judgment by the competent authorities when profits of a company are assessed in a way which does not comply with the arm's length principle (as provided by Article No. 110, paragraph No. 7 of the Italian Income Tax Consolidated Law). In this respect, the reference in the above Circular Letter to non-admissibility of applications concerning double taxation due to other provisions (such as those set out in Article No. 109, paragraph No. 5 or provisions concerning absence of a "non-relevant" criterion) becomes relevant.

Relationship with domestic litigation procedures

With regard to domestic litigation cases, significant differences exist between the MAPs procedures in double tax treaties and the EU Arbitration Convention.

With regard to double tax treaty provisions, Article No. 25 establishes that the procedure may be started irrespective of the appeals provided for by the domestic law, i.e. even on the basis provided by most treaties/conventions signed by Italy, provided that a domestic litigation procedure has been started. This is aimed at avoiding the possibility of assessed taxes becoming final and, therefore, not amendable.

In this respect, if the competent authorities come to an agreement eliminating double taxation, a condition required for its execution is the taxpayer's acceptance, and a waiver of the right to continue litigation. If, instead, a court judgment comes first, without resolving the double taxation case, double taxation still exists and can only be avoided upon the foreign competent authorities' resolution. It is up to the taxpayer to request suspension of legal proceeding to enable the competent authorities to resolve the matter on a mutual basis, before a ruling is issued by a local judge.

With regard to the EU Arbitration Convention, on the basis of its provisions, and the fact that Italy is included amongst the jurisdictions that do not allow administrative authorities to derogate from a judgment issued by a court, the filing of an appeal and the issue of a judgment prevent taxpayers from availing themselves of arbitration, which can only be implemented if the appeal filing deadline has expired or the company gives up an appeal before the judgment is issued.

Relationships with local tax settlement procedures

The relationship between MAPs and local tax settlement procedures, as recently highlighted by the Italian Inland Revenues Office, is of particular interest.

With reference both to the MAP pursuant to Article No. 25 of the OECD Model Tax Convention against double taxation and to the EU Arbitration Convention - though based on different criteria – reaching an agreement with the Italian Tax Authorities on the basis of one of the tax settlement procedures provided for by the Italian law seems to prevent the Italian competent authorities from reaching an agreement aimed at reviewing the tax as resulting from the decision issued by the Inland Revenue Office and then eliminating the double taxation. Avoidance of double taxation for amounts related to tax settlement is only possible on the initiative of the foreign competent authorities.

Serious penalties

The EU Arbitration Convention states that access to the procedure will be denied where serious penalties have been imposed. In this respect, the Council of the European Union, in its Code of Conduct[2], invited the Member States to clarify the unilateral statements attached to the Convention so as to regard penalties imposed in relation to fraudulent acts as serious.

The statements, set within the domestic law (criminal penalty) framework should be interpreted as referring to Articles No. 2 and 3 of Legislative Decree No. 74/2000, i.e. to tax returns which are fraudulent due to the use of invoices, other documents relating to non-existent operations, or further frauds that do not normally occur in relation to transfer pricing matters. Breaches in such matters might rather constitute what is described in Article No. 4 of Legislative Decree No. 74/200, i.e. a negligent tax return. Nevertheless, in this respect, a penal law crime might exist only if evidence of a criminal intent of tax evasion is provided and, in any case, it would not be relevant if it were included within an exemption-from-punishment framework established for appraisals or items subject to valuation.

Suspension of tax collection

With reference to MAPs pursuant to Article No. 25 of the OECD Model Tax Convention, the Circular Letter points out that no specific provisions have been established to suspend tax collection: the ordinary provisions of the Italian legal system in respect of administrative and procedural law are still in force. However, with regard to the EU Arbitration Convention, the Circular Letter expressly states that suspension of tax collection must be granted. The Circular Letter clarifies that suspension of collection is closely linked to the admissibility of the application, hinting that suspension will automatically follow where an application has been declared admissible, irrespective of considerations of *fumus bonis iuris* (a presumption of sufficient legal basis) and *periculum in mora* (a risk of impairment of rights), which characterise the granting of suspension under the administrative law and local jurisdiction framework.

Your BDO contact in Italy:
SUSANNA SCAPIGLIATI
s.scapigliati@studiosala.com

Your BDO contact in Italy:
ATTILIO TORRACCA
a.torracca@studiosala.com

[2] *Code of Conduct for the implementation of the Convention against double taxation in the event of adjustment of profits of related parties, enforced by the Council of the European Union on 22 July 2009.*

NORWAY

THE NORWEGIAN COURT OF APPEAL RULES ON TNMM

In the second largest Norwegian tax case this year (soon after the Statoil captive case) the Norwegian Court of Appeals ruled in favour of VingCard/Elsafe (VCE) and their application of the transactional net margin method (TNMM) for intra-group adjustments between manufacturer and distributor.

Hans Olav Hemnes from BDO Advokater AS was the companies' legal counsel during the trial.

Background

The court ruled on pricing adjustments between VCE and VCE's US distributor, AHH, for 2004 and 2005. For 2005 the group carried out a transfer pricing analysis to ensure that all price adjustments were in accordance with the arm's length principle. The transfer pricing analysis concluded that TNMM was the most appropriate method. The study was accompanied by a North American benchmark study and economic analysis.

The Norwegian Tax Authorities claimed that the transfer pricing policy resulted in an income reduction for VCE. Consequently, they simply denied all price adjustments without substantiating their view with a transfer pricing analysis of their own.

TNMM

VCE applied TNMM on an aggregated level, on the grounds that they produced safety systems/locks, whilst at the same time they had developed an integrated system for installation, service, maintenance and repair of the products. The additional services were performed by the local distributor, but VCE had the right of ownership to all technology. The customers bought a finished product to which the distributor contributed with local installation and aftermarket services, but the technology and IP were developed, delivered and owned by VCE.

The Norwegian Tax Authorities challenged the application of TNMM on an aggregated level and claimed that VCE did not sell an integrated product. In their opinion, the services rendered by the distributor were separate, and VCE could therefore not make transfer pricing adjustments in accordance with the transfer pricing study. They claimed that the price adjustments were a transfer of risks that in reality made it impossible for the distributor to lose money.

However, the companies claimed that an independent distributor never loses money over a period of time, in the same way that it does not make a large profit over time. In uncontrolled transactions this is regulated by market conditions. The only way to determine the pricing policy in a controlled transaction is to compare it with uncontrolled transactions over a period of time.

By applying TNMM over a period of time, a group distributor will earn the same profits as an independent distributor. The fact that TNMM prevents the group distributor from showing a deficit is therefore an argument that applies to other transfer pricing methods as well, but they cannot be disregarded on that ground.

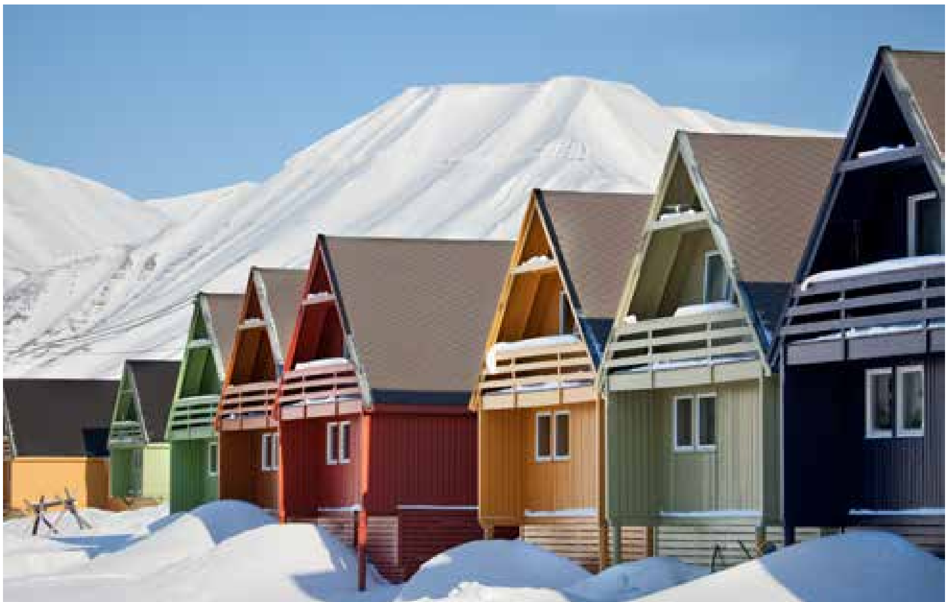
The ruling

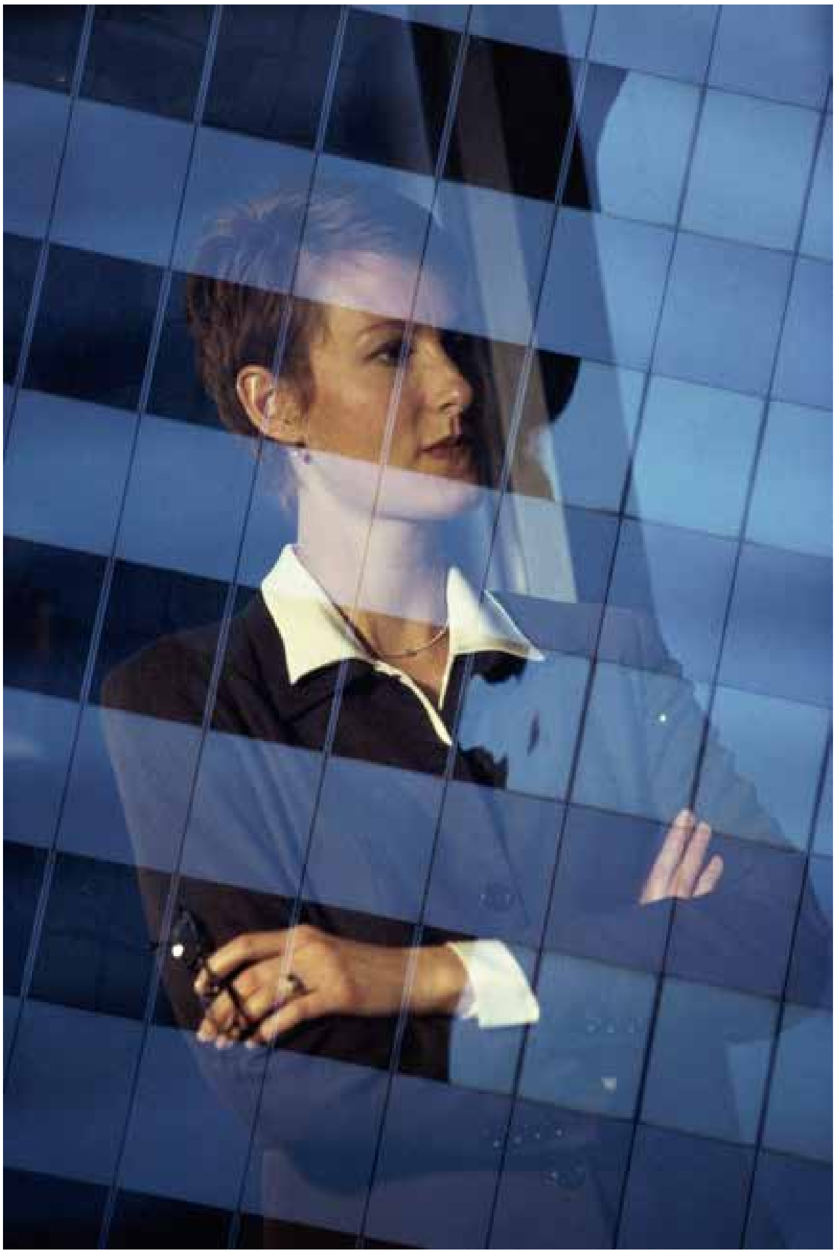
The court agreed with the arguments from the companies and accepted that VCE applied TNMM on an aggregated level. The TP policy was therefore, in principle, accepted for 2005 and all later years.

The court also found that the benchmark study gave a reasonable result and that it had to be accepted. However, it made a reservation, stating that a premise for using the TP policy is that no extraordinary conditions (costs) have affected the financial figures in AHH. In our opinion this is a somewhat odd reservation. The entire point of the transfer pricing analysis is to compare net profit margins with independent distributors over a period of time. Only by a comparison over time can one eliminate the effects of extraordinary costs (and profits) that all distributors experience from time to time.

The court also denied price adjustments for 2004, primarily because there was no transfer pricing study in place for this year. This illustrates the importance of complying with the transfer pricing requirements within multinational groups.

Your BDO contact in Norway:
THOMAS MARTENS
thomas.martens@bdo.no





LIST OF CONTACT PERSONS

Dan McGeown International Tax Department BDO Toronto	Tel Fax e-mail	+1 416 369 3127 +1 416 865 0887 dmcgeown@bdo.ca
Dirk Elbert International Tax Department BDO Frankfurt am Main	Tel Fax e-mail	+49 69 95 941 438 +49 69 95 941 326 dirk.elbert@bdo.de
Michiko Hamada International Tax Department BDO New York	Tel Fax e-mail	+1 212 885 8577 +1 212 697 1299 mhamada@bdo.com
Anton Hume International Tax Department BDO London	Tel Fax e-mail	+44 207 486 5888 +44 207 487 3686 anton.hume@bdo.co.uk
Norbert Rosmalen International Tax Department BDO Rotterdam	Tel Fax e-mail	+31 10 242 4600 +31 10 242 4624 norbert.rosmalen@bdo.nl