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CMS Bureau Francis Lefebvre CMS Cameron McKenna LLP CMS DeBacker CMS Derks Star Busmann
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Transfer Pricing

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A full range of services

CMS has extensive experience of dealing with tax authorities in many countries on transfer pricing cases and of successfully bringing such cases to a positive end. This practical experience together with a strong expertise in transfer pricing economics enables CMS to provide robust, strategic advice. This expertise covers the full scope of transfer pricing issues, from the most advanced planning to the downstream management of transfer pricing tax audits, through global or local documentation, integration of transfer pricing policies with other tax and legal issues etc, and more specifically includes:

A client-oriented approach to transfer pricing planning aimed at increased tax and legal security:

The scope of our work covers risk assessment studies, the setting-up of transfer pricing planning strategies and advice on business reorganisations.

Assistance with transfer pricing documentation to ensure compliance with local legal requirements:

Almost all European countries have implemented provisions which oblige organisations to document their transfer pricing policies. In some jurisdictions (e.g. Germany), there are severe penalties for failure to have certain documentary evidence in place in the event of a transfer pricing adjustment to a tax return.

Consequently, every multinational group should ensure its transfer pricing policies are properly established, recorded and are subject to regular review. All major pricing decisions relating to intra-group transactions should be fully documented and such documentation should be preserved. This should help to avoid unpleasant surprises such as penalties and significant defence costs in the event of a tax audit.

Financial and economic studies:

Financial and economic studies have become essential to support an organisation's transfer pricing methodology and documentation requirements. It should be noted that tax authorities have established and use financial databases to justify their tax adjustments.

Management of transfer pricing policies for intellectual property such as trademarks and R&D activities:

Intangibles represent a significant component of the transfer pricing policy of an MNE as a tool for tax optimisation and cash repatriation. Location of intangibles and corresponding cross-border flows are therefore one of the major items to be addressed in a global transfer pricing scenario.

Assistance with tax audits:

Tax audits have, over the past years, increasingly focused on transfer pricing adjustments and, as alluded to above, these can lead to double taxation. As a consequence, it may be imperative for MNEs to defend their current transfer pricing policy.

Negotiation of advance pricing agreements with tax authorities:

MNEs may confirm in advance the arm's length nature of their intra-group transfer prices by entering into advance pricing agreements with one or more tax authorities. Such agreements can remain effective for a period of 3 to 5 years. In some jurisdictions, only unilateral agreements are available (e.g. Italy) while in others (e.g. France), bilateral and even multilateral agreements have developed quite significantly.

Setting and justifying transfer prices have become an increasing concern for multinational enterprises ("MNEs"). This is, in part, due to a growth in cross-border transactions, new legislation, more tax investigations and tax adjustments which give rise to double taxation. CMS has an international team of advisers who can help MNEs deal with their transfer pricing concerns.

- ✔ A full range of services
- ✔ An integrated tax and economics approach
- ✔ A coordinated international team
- ✔ A proven track record and a prestigious client base
- ✔ CMS contact details

Resolution of double taxation cases through the bilateral competent authorities procedure and European Arbitration Convention:

These two procedures are the last two actions that can be taken to avoid double taxation when a tax adjustment in one state is not taken into consideration by an automatic corresponding adjustment in the other state.

An integrated tax and economics approach

CMS has developed an integrated transfer pricing practice with its own economics resource.

This team is able to provide a full range of economic analysis from the most standard comparables searches to the more complex studies such as activity-based costing, business or asset (including intellectual property) valuation.

In addition, this Europe-based economics team has managed and coordinated the work of recognised local experts in North America and Asia, and so is able to deliver truly global advice.

A coordinated, international team

CMS has a global team composed of tax lawyers and economists who specialise in transfer pricing. This team forms a subgroup of the CMS tax group, known as the Transfer Pricing Practice Area Group (the "Group") and has representatives in more than 20 countries.

In addition, the Group benefits from the technical support of CMS lawyers specialised in other areas including intellectual property law, customs and excises duties, and VAT. Further, CMS commercial lawyers can assist in drafting the agreements which are necessary to formalise their chosen transfer pricing policy.

Through the Transfer Pricing Practice Area Group, lawyers share their own experience and practice in their own jurisdiction, and elaborate common positions on specific issues. Lawyers in the Group work together on a regular basis. Cross-border and multi-disciplinary teams can be assembled upon short notice to provide a seamless transnational service.

The Group knows and understands the importance of the client having a main contact partner, who will be in charge of the coordination of the team specifically dedicated to the client's purposes.

The Group is chaired by Bruno Gibert, who is a partner of CMS Bureau Francis Lefebvre and a recognised transfer pricing expert. In addition, Professor Pietro Adonnino, a former chairman of the International Fiscal Association and a partner of CMS Adonnino Ascoli & Cavasola Scamoni, acts as special counsel to the Group. He has been appointed as a member of the European Advisory Commission of the EU Arbitration Convention.

A proven track record and a prestigious client base

CMS has been retained to negotiate several advance pricing agreement ("APA") procedures. In addition to this APA work, CMS has successfully resolved a major case within the framework of the new Italian procedure of "International Ruling".

CMS also has been involved with the successful management of numerous competent authority procedures between various countries including France, the

USA, Switzerland, Spain, Japan, Australia, and Germany.

Other recent MNE engagements have included:

- ✔ The implementation of license arrangements for technological know-how in countries throughout Europe, North and South America;
- ✔ The design of a transfer pricing policy in relation to the licensing of international trademarks throughout Europe and the USA;
- ✔ Advising on the transfer pricing implications of the reorganisation of supply chains;
- ✔ Advising on the transfer pricing implications of outsourcing certain services to entities based in Eastern Europe and Asia;
- ✔ Successfully managing a several tax adjustments exceeding € 100 million.

"The Group knows and understands the importance of the client having a main contact partner, who will be in charge of the coordination of the team specifically dedicated to the client's objectives."

CMS is advising a number of MNEs in connection with transfer pricing. For example, CMS Bureau Francis Lefebvre advises 10 MNEs out of the French index CAC 40.

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