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# TP Issues of Limited Risk Distributors (LRD)

## Speakers:

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# What is a Limited (Low) Risk Distributor?

## FUNCTION

- + Simple distribution function
- o Advertising
- o Negotiations
- o Acquisition of customers
- o Accounting
- o Collection
- o Logistic
- Market research
- Pricing policy
- Assortment policy

## ASSETS

- Intangible assets (Marketing)

## RISKS

- Warehousing
- FX risk
- Creditor risk
- Transport
- Market risk
- Delcredere risk
- Obsolescence risk
- Warranty risk

## TP Method

- + Transactional Net Margin Method
- o Comparable Uncontrolled Price Method
- o Mixing Methodologies

- Typical disputes
  - No clear definition of LRD
  - Applicable transfer pricing methods
  - Absence of comparables (adjustments)
  - Reorganizations (downsizing)
  - Non-recognition of losses
- When to deal with it
  - Tax planning / Tax ruling
  - Documentation
  - Litigation



# Transfer Pricing Discussions LRD

## RESTRUCTURINGS

- France v Piaggio, October 2019, Conseil d'Etat;

## EXPENSES -

- Aruba v PriceSmart Inc, 2019. –LRD or Buy-Sell Distributor
- Zambia vs Nestlé Trading Ltd, March, 2019
- Ban Sun Optics India, 2012
- Peru v Local Consumer Products Companies (ongoing)

## REVENUES +

- Colombia v Oil & Gas Commodities Distributors set as International Trade Companies (ongoing)

## TP Methods to find AL range

- Mitsubishi India, October 2014
- Colombian Tax Authorities, 2019

# Key Points LRD



LRD	COMPARABLES	TP METHOD	OPTIMUM DEFENSE FILE
<ul style="list-style-type: none"><li>• Characterization: Neither a full-fledged distributor nor a commissioner</li></ul>	<ul style="list-style-type: none"><li>• Services providers?</li><li>• Distributors?</li><li>• Others?</li></ul>	<ul style="list-style-type: none"><li>• Most appropriate</li><li>• Mixing methodologies? (OECD Guidelines)</li></ul>	<ul style="list-style-type: none"><li>• Risks assumed, Functions performed, assets used.</li><li>• Time and conditions of property</li><li>• Quality conditions</li><li>• Managing of the operation</li><li>• Budget</li><li>• Exchange rate risk</li><li>• Pricing risk</li><li>• Third party's liability</li><li>• History of the operation (origins and long run perspective)</li> <li>• Master File, Local File, etc</li><li>• Agreements (wording!)</li><li>• Accounting books and reality</li></ul>

## Controlled Foreign Companies (CFC) Regime (Art 7 and 8 ATAD)

- LRDs as CFC
- LRDs income as „income from as invoicing companies“ (Art 7 (2)(a)(vii) ATAD)
  - Goods and services purchased from and (or?) sold to associated enterprises
  - Add no or little economic value
- CFC taxation vs. Transfer Pricing Adjustment
  - Purchase or sale with controlling company
  - Purchase or sale with other companies
  - Controlling company affected?

# Contact Details



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