

TP Issues of Limited Risk Distributors (LRD)

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What is a Limited (Low) Risk Distributor?

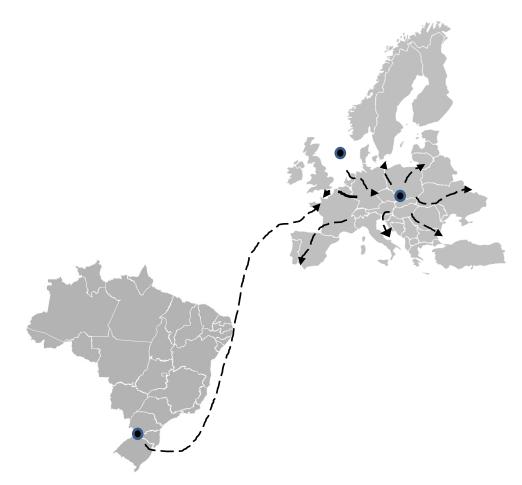


FUNCTION	ASSETS	RISKS	TP Method
+ Simple distribution function o Advertising o Negotiations o Acquisition of customers o Accounting o Collection o Logistic Market research Pricing policy Assortment policy	Intangible assets (Marketing)	Warehousing FX risk Creditor risk Transport Market risk Delcredere risk Obsolescense risk Warranty risk	+ Transactional Net Margin Method o Comparable Uncontrolled Price Method o Mixing Methodologies

Limited (Low) Risk Distributors



- 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	EXPENSES -	REVENUES +	TP Methods to find AL range
France v Piaggio, October 2019, Conseil d' Etat;	 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) 	Colombia v Oil & Gas Commodities Distributors set as International Trade Companies (ongoing)	 Mitsubishi India, October 2014 Colombian Tax Authorities, 2019

Key Points LRD



LRD	COMPARABLES	TP METHOD	OPTIMUM DEFENSE FILE
Characterization: Neither a full-fledged distributor nor a commissioner	 Services providers? Distributors? Others? 	 Most appropriate Mixing methodologies? (OECD Guidelines) 	 Risks assumed, Functions performed, assets used. Time and conditions of property Quality conditions Managing of the operation Budget Exchange rate risk Pricing risk Third party's liability History of the operation (origins and long run perspective) Master File, Local File, etc Agreements (wording!) Accounting books and reality

EU Anti-Tax-Avoidance-Directive (ATAD)



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?

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