

**State of Tax, Legal & People**



# How to deal with indirect Tax aspects of transfer pricing

30 January 2024



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# Agenda

1. Introduction
2. Transfer pricing
3. VAT aspects
4. Customs aspects
5. Example scenarios & attention points
6. Wrap-up & next steps



01

# Introduction



# Introduction

- Over 70% of global trade happens inter-company
- TP adjusts value of transactions with related parties
- Arm's length is not commonly used in (European) indirect taxes
- Adjustments often have an indirect tax impact

02

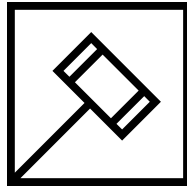
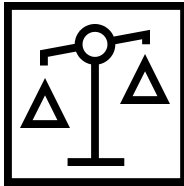
# Transfer Pricing



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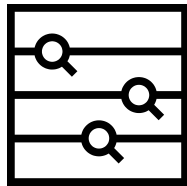
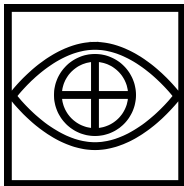
## Transfer Pricing and adjustments: Why? And why now?

Controversy



Global regulatory  
changes

Transparency



Control



# Transfer Pricing

## **Pillar 2 and Transfer pricing adjustments:**

- What: Safe Harbour: no detailed Pillar 2 calculations
- How: 3 tests based on CbCR
- When: FY 2024, 2025, 2026

Transfer pricing adjustments are critical for the simplified ETR test



# Transfer Pricing



## **Pillar 1 amount B:**

- What: fixed pricing for baseline marketing and distribution activities
- How: industry based fixed margins
- When: final report in 2024

Transfer pricing adjustments are critical to comply with Amount B

# Transfer Pricing

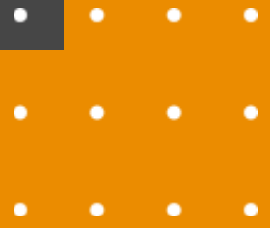
## **EU Transfer Pricing Directive:**

- What: harmonisation of transfer pricing principles within the EU
- How: incorporating the arm's length principle into EU law
- When: per 1 January 2026

Specific rules incorporated in relation to the arm's length range and corresponding adjustments

03

# Indirect taxes - VAT



# VAT

- Within EU common basis, equivalent system in many non-EU countries
- VAT taxable person, taxable events:
  - Supply of goods
  - Services
  - Intra-EU acquisition
  - Import of goods
- Rates, exemptions w/ and w/o credit
- Recoverability input VAT



# VAT

- Cross-border transactions
- Valuation (taxable amount vs. art 80 VAT Directive)
- Cost/profit allocation vs VAT taxable event (goods/service)
- ECJ decisions regarding discounts/rebates/credits

# VAT

- Connection between VAT and TP
  - Ground rule: adjustment impact on VAT taxable basis
  - Methodology
  - Documentation



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# Indirect taxes - Customs



# Customs

- Import from non-EU
- Applies to goods
  - Does not apply to services
  - Customs duties = Duty rate \* Customs value
- Customs value
  - Transaction value
  - Related party transactions acceptable





# Customs



- Customs value based upon TP
- Customs valuation vs TP valuation
  - Different goals
  - Substance & economic reality
- TP adjustments
  - Constant monitoring
  - Year end adjustments
  - Hamamatsu – ECJ decision



# Customs

- TP adjustments
  - Year end adjustments allocation to imports
  - Hamamatsu – ECJ decision
- IP & Royalty payments
  - Economic reality
  - Allocation of dutiable parts



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# Example scenarios



# Examples

To better explain the interaction, we designed three scenarios which we frequently see in multinational groups:

**Scenario 1)** non-EU principal company supplies goods to local EU distributing entity

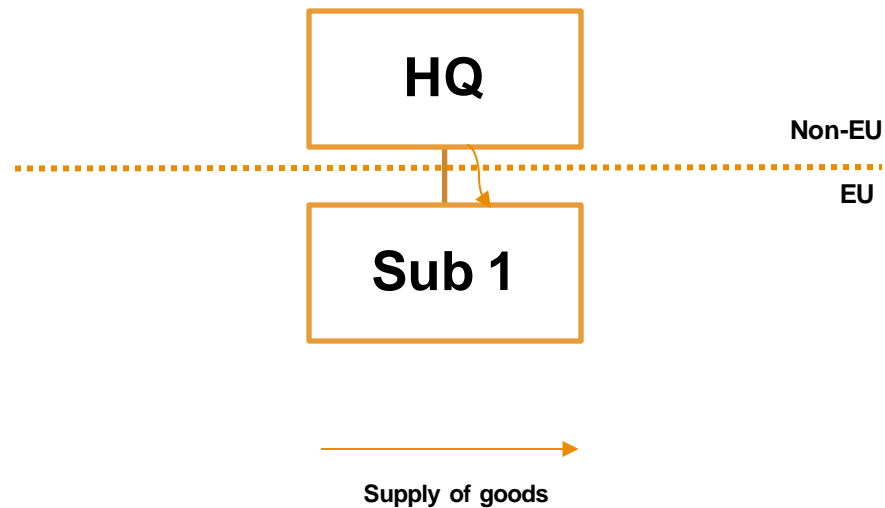
**Scenario 2)** non-EU HQ supplies goods and performs HQ services (in this case IT) to local EU distributing entity

**Scenario 3)** non-EU HQ provides a royalty-bearing licensing service to local EU mfg & sales entity



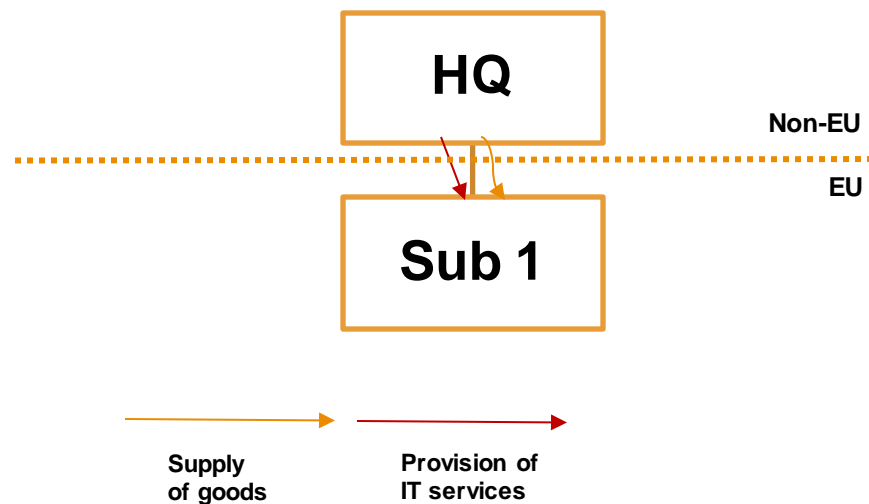
# Scenario 1

**HQ is the principal company, sub is local distributor**



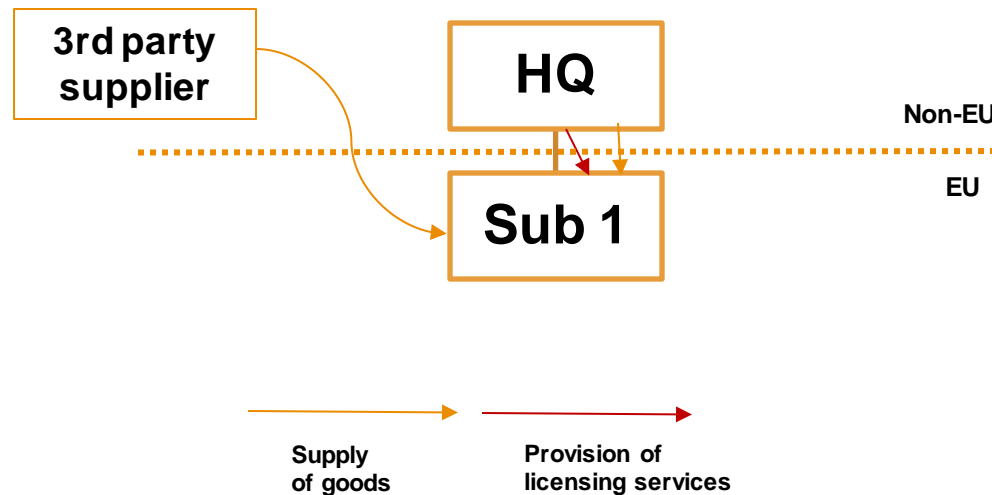
# Scenario 2

**HQ is the supplier & service provider,  
sub is local distributor**



# Scenario 3

HQ is the grants a royalty-bearing license to  
Sub 1, sub is local manufacturing & sales entity



# Summary

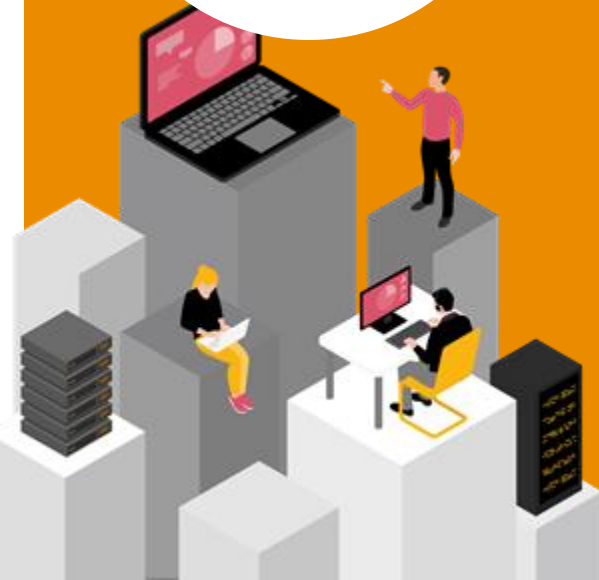


Differences	CIT	(EU) VAT	Customs
<b>Rules and regulations</b>	OECD Transfer Pricing Guidelines	Art. 80 VAT Directive to prevent tax evasion	WTO Valuation Code (GATT Valuation Code)
<b>Concept</b>	OECD Arm's length concept	Open market value	Customs Arm's length concept
<b>Focus</b>	Overall Taxable Income	Defining Value of Specific transactions	Defining Value of Specific product
<b>Methods</b>	Transfer pricing methods	Art. 72, comparable transactions etc.	Customs valuation methods



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Wrap up & next steps



# Key takeaways



TP: improve your operational transfer pricing and limit your adjustments, to become fit for the future



VAT: When adjustments are carried out, always review documentation and potential impact on taxable basis



Customs: look into potential impact on customs valuation of your TP actions

# Next steps



1) Map the inter-company flows within your organisation



2) Review the existing adjustment methods and documentation process



3) Determine the customs & VAT impact of the adjustments made and design and implement a robust process

# Contact



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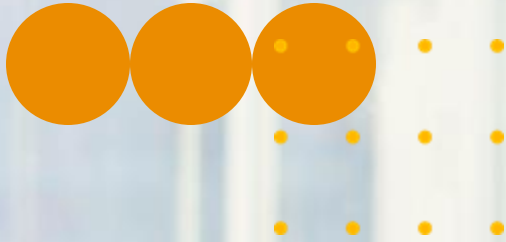


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Thank you!



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