



TRANSFER PRICING AND CORPORATE GOVERNANCE

Foundation for International Taxation
International Tax Conference –2008
Mumbai, India

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Tax

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December 5, 2008



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Discussion Topics

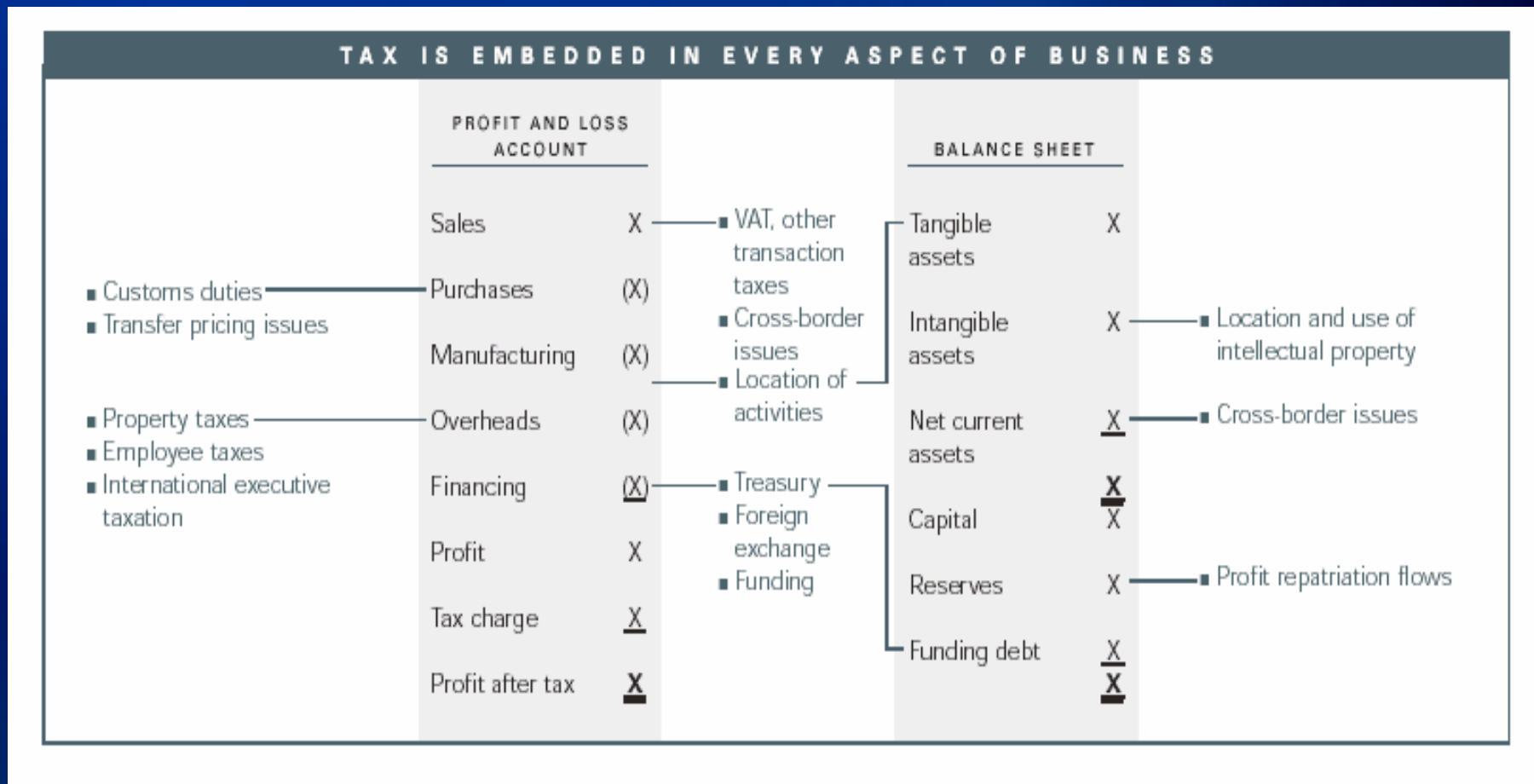
- ◆ **Tax Risk in General**
- ◆ **Tax Risks in the International Business Context**
- ◆ **Identification and Management of Transfer Pricing Risks**
- ◆ **Governing Tax Risk**

Tax Risk Defined

◆ **Tax risk encompasses all sources of risks that may create an unexpected outcome from a tax position. Sources of tax risk include:**

- Operational risk
- Transaction risk
- Compliance risk
- Financial accounting risk
- Controversy risk

How Tax Risks Affect A Company



Source: KPMG LLP's *Tax Risk and Responsibility* publication

Tax Risks in the International Business Context

- ◆ Permanent Establishment (PE) Risks
- ◆ Organization, Acquisition and Disposition (M&A) Risks
- ◆ Tax Return Financial Data Risks
- ◆ Transfer Pricing Risks

Identification and Management of Transfer Pricing Risks

- ◆ Why is Transfer Pricing Important for Corporate Boards
- ◆ Identifying Transfer Pricing Risk
- ◆ Quantifying the Risk
- ◆ Managing the Risk in Advance of a Controversy
- ◆ Settling Controversies

Identifying Transfer Pricing (TP) Risk

◆ Corporate Control Processes

- Identifying material intra-group transactions
- Relationship with the business side
- Relationship with finance function
- Managerial vs. Legal Entity Account
- Understanding the TP environment in country
- SOX 404

Quantifying Transfer Pricing (TP) Risk

◆ Corporate perspective

- Effective tax rate impact; FIN 48
- Tested party results
- Price adjustments
- Double tax vs. Differential tax rates
- Disclosure
- Reputation

Managing Transfer Pricing (TP) Risk before the Controversy

◆ TP Policies and Models

- Interaction with business objectives and incentives
- Locus of risk and intellectual property
- Hub and spoke model (trade flow consolidation)
- Interaction with other taxes, e.g. VAT, and customs

◆ Implementation

- Intercompany Agreements/Contracts
- Systems
- Legal entity accounting
- True-ups

Settling Transfer Pricing (TP) Controversies

- ◆ **Choice of forum – single tax relief**
 - Audit
 - Administrative Appeals
 - Litigation
 - Alternative Dispute Resolution Mechanisms
- ◆ **Choice of forum – double tax relief**
 - Competent Authority
 - APA and rollbacks
 - Arbitration
- ◆ **Factors to consider to choosing the right forum**

Governing Tax Risk

- ◆ “How To”
- ◆ The Role of the Audit Committee
- ◆ The Role of the Tax Department

”How To”

- ◆ **Identify Company's Risk Tolerance Policy for Taxes**
- ◆ **Announce or Implement the Agreed Upon Policy**
- ◆ **Execute the Agreed Upon Policy**
- ◆ **Periodic Monitoring and Remediation**
- ◆ **Periodic Assessment and Benchmarking**

The Role of the Audit Committee

◆ **The Audit Committee needs to understand who is responsible for key tax functions and how tax risks are:**

- Identified
- Communicated
- Assessed
- Controlled, managed and monitored
- Accounted for
- Disclosed
- Audited

The Role of the Audit Committee

◆ **Tax Risk Assessment Process**

- Audit Committee’s oversight process over taxes should take into consideration key elements of effective oversight, including:
 - The depth and experience of the tax personnel involved (internal and external)
 - Management’s processes to assess and evaluate compliance with tax laws and regulations
 - The strength and completeness of internal controls over tax accounting and risk mitigation
 - Significant tax judgments and estimates
 - The adequacy of external and internal audit activities associated with tax issues

The Role of the Tax Department

◆ Formal reporting on tax risk to Audit Committee, including:

- Company's current overall tax posture
- Significant risks and potential impact
- How tax risks are strategically aligned with overall corporate risk profile
- Key tax procedures and controls over tax accounting
- Review of company's financial statement tax footnote

The Role of the Tax Department

- ◆ **The Tax Department needs to proactively execute identification, assessment, management of tax risks**
 - Both “owned” and “not owned” by Tax Department
 - Take lead in communications and mitigation
 - “Share the burden” of tax risks with management



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