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Intercompany cost plus agreement template

The net cost plus method is that used to determine the selling price of a product or service between affiliated parties. It is therefore aimed at determining the gross profit margin. In certain circumstances (e.g. where it is difficult to find a comparable gross profit margin but easier to identify a comparable net profit margin and for certain functions such as tolls), the objective of the cost method plus is to determine the net profit of the company. In this case, the correct name of the method is the net profit margin transaction method (TNMM) with costs plus as a profit indicator. Marie-Lise Swinne, corporate tax partner at the tax consultation in Belgium and head of the recently launched Alliott Group on Transfer Pricing, explains how this comprehensive international tax concept is applied in practice. In both cases, despite the level of mark-up applied, attention should be paid to how the cost base is determined. While it's very well known that some companies apply the actual or net cost plus method, it is often ignored by others. Fully loaded costs (including direct and indirect costs) are often used in the application of the cost-based transaction net margin method. In practice, multinationals and group companies tend to include all operating costs associated with the provision of their services and simply apply a mark-up to those costs when what they should be doing is excluding shareholder costs and/or switching costs. This could quite clearly raise questions from the tax authorities during the tax audit! The question may therefore arise as to whether it is acceptable and to what extent to treat a significant part of the taxpayer's costs as partially thousaying to which no element of profit is attributed (i.e. as costs that are potentially excluded from the denominator of the net profit indicator) or as costs of shareholders. The quantitative and qualitative content of the cost group usually raises concerns: all reasonable costs should be excluded within the group and any improper costs excluded, i.e. reimbursement/mixed costs and costs of shareholders. The costs carried forward are expenditure initially borne by the service provider but generally passed on separately to the recipient, such as third-party services such as the purchase of advertising space on behalf of the members of the group. Although these external expenditures relate to functions performed by the provider, they do not guarantee any additional remuneration, since there is no doubt that the service provider generates no added value (it does not perform any significant functions or assume any risks). These costs relate to the functions performed by the service provider, but do not justify remuneration in addition to passing on those costs. As a general rule, whether costs are combined in such cases depends on whether the independent entity will charge a profit margin when passing on such costs. The answer should not be based on the classification of these costs as internal or external costs. Shareholders' costs are the costs incurred in providing shareholder activity. The OECD Guidelines (July 2017, paragraph 7.10) define shareholder activity as: intra-group activity that can be carried out in relation to group members, even if these group members do not need this activity (and would not be willing to pay for it if they were independent enterprises). Such an activity would be an activity carried out by a member of the group (usually a parent company or regional holding company) solely by reason of its ownership interest in one or more other members of the group, i.e. as a shareholder. This type of activity should not be considered as intra-group services and would therefore not justify a fee to other members of the group. Instead, the costs associated with this type of activity should be borne and allocated at shareholder level. This type of activity may be referred to as a shareholder activity. Shareholders' costs include, for example, those related to: shareholder meetings Reporting requirements (consolidation of reports) Preparation of consolidated financial statements. READ The above costs should be excluded from the cost base. However, it can be seen that their identification is the subject of discussion/interpretation. As with many questions, nothing is ever black and white! A proper cost base analysis minimises the provider's profit – from the group's point of view, this will be attractive as it will reduce the impact of a high mark-up if necessary and reduce the risk to the payment company in the event of a tax audit. For these reasons, we strongly recommend that you regularly review your cost plus method with your tax advisors. This is essential in a post-BEPS environment! For more information, contact Belgian transfer policy and international tax expert Marie-Lise Swinne in Brussels. Intercompany agreements govern transactions between related parties in different tax jurisdictions. As such, they are crucial if the tax authority seeks to evaluate the validity of the underlying transactions and should support the tax payer's position in the field of transfer pricing. The general purpose of transfer pricing rules is to establish contractual terms for transactions between parties in different jurisdictions. In most cases, they mainly apply to related party transactions. However, in Australia, for example, the new transfer pricing regulations may not only apply to related party transactions and the new rules do not specify any control requirements or ownership thresholds. . The OECD (Organisation for Economic Co-operation and Development) guidelines have issued various guidelines for the transfer pricing of multinationals and tax administrations. Although these guidelines do not have legal status, they are generally accepted and the main recommended methodologies are briefly set out below. Cost Plus MethodArguably Most Popular because of its apparent simplicity! The method is based on the provision of a mark-up to the costs of the supplier (generally a subsidiary or other related party) on goods or services. Costs are costs incurred by the supplier in providing the goods or services of an affiliated company. Given the relationship between the two parties and the ability to agree on terms appropriate to each other, this transaction is referred to as a controlled transaction. The parties shall then agree on an appropriate mark-up to be added to the cost of making a reasonable profit to cover the functions performed. The question is, of course, what is appropriate and what would constitute an independent condition if the transactions were uncontrolled transactions, i.e. they were between independent parties. The problem is to ensure that the brand is the same as that earned by an independent provider in an uncontrolled transaction. In order to achieve this objective, the mark-up should be indicated by a bench, i.e. the mark-up should be compared with a cost surcharge from comparable uncontrolled transactions. This methodology is not considered suitable for the sales organisation. CUP: (Comparable uncontrolled price) MethodBriefly, the CUP method compares the price charged for goods or services provided in a controlled (see above) transaction with the price that would be charged for goods or services if they were transferred in an uncontrolled transaction in comparable circumstances. If any difference can be found between them, the tax authority may seek to replace the prices of uncontrolled transactions instead of controlled transactions if this would increase taxable profits. The comparison is usually made by reference to accepted profit and price information databases. The disadvantage of this method is the difficulty of applying it to any product with specific features, as this would have an impact on the uncontrolled price compared to other products on the market. Resale price method The resale price method compares the gross margin achieved by purchasing a product from an affiliated undertaking at an agreed price (A) with the price (B) at which it was resasued to an independent enterprise. This gross margin is then compared with gross margins in comparable uncontrolled transactions. If the gross margin of the controlled transaction is higher, then this price (B - resale price) is reduced by a reasonable gross margin (hereinafter referred to as the resale price margin determined by comparison with gross margins in comparable uncontrolled transactions. This adjusted gross margin would be the length of the arm from which the seller would seek to cover its sales and other expenses and make a profit also on the basis of any other functions it may perform. This method applies in particular to sales and marketing operations, in particular, typically, to distributors. Transaction net margin method (TNMM) This method (TNMM) examines the ratio of net profit relative to the appropriate basis chosen such as costs, sales, assets that the taxpayer obtains from a controlled transaction with a net profit that would be achieved in comparable uncontrolled transactions. What would be the net gain arm based on internal or external comparable data. The net profit earned on the controlled transaction can be compared with the net profit made by the same taxable amount in comparable uncontrolled transactions (referred to as internal comparable transactions). Alternatively, the net profit obtained from the controlled transaction may be compared with the net profit achieved by the independent company in comparable transactions (hereinafter externally comparable)In general, the net profit in the application of the TNMM is weighted against the costs of the various functions, i.e. the costs of production and service activities, the sale of sales activities and asset-intensive assets, etc. The method is therefore useful if the organization has many functions and activities. Transaction profit distribution method (TWG) If there are a number of controlled transactions between associates, the TWG method requires the identification of the combined gains resulting from those controlled transactions. The TWG method then distributes these combined profits among the affiliated undertakings in such a way as to approximate the distribution of profits that would be expected between independent enterprises. The division must, of course, be on a commercially sound basis. Ideally, the basis of distribution should be close to the actual profits that would be generated between independent third parties. However, this is often not possible and the distribution must be supported by internal transaction data such as sales to unrelated parties. The main strength of the TWG method is that it can offer a methodology for very diverse and complex global operations for which a unilateral method would not be appropriate Other methodologiesBrazil: it does not follow OECD guidelines and instead sets out its methodology based on the nature of the transaction: imports or exports. The Brazilian version of the resale price method for imports sets statutory gross margins which are within the limits set by the tax authorities. Other Regulations apply to exports. India: allows 5 OECD model methods or any other method that may be appropriate. This other method can be used for selected, often one-off transactions, e.g. Italy: In addition to the above methods, Italy also authorises the profitability method of the invested capital and the gross margin method in the economic sector. The above are just three examples of countries using or allowing other methods - it is not an exhaustive list of such other countries or methods. These are general guidelines, for more information about your particular country or situation, please contact us. Us.

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