
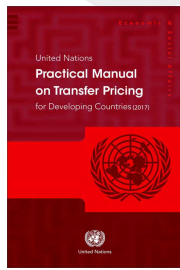

**UN-ATAF Workshop on Transfer Pricing
Administrative Aspects and Recent Developments**
 Ezulwini, Swaziland
 4-8 December 2017



**DISPUTE AVOIDANCE
AND RESOLUTION**
Case example: APA

Friday, 8 December 2017
 2.00pm – 3.00pm



Meters Group

The purpose of this case is to analyze in a practical manner when Dispute Resolution may be required and what dispute resolution options may be available.

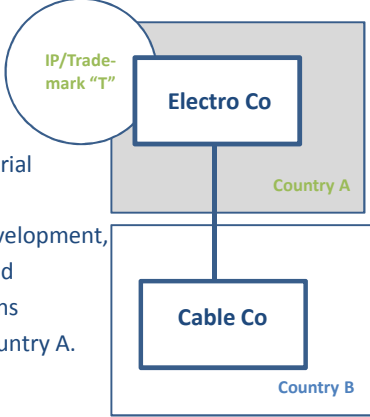
The case regards the (fictitious) Meters Group. The Group is engaged in the business of making available smart solutions for the energy business: it develops, produces and distributes electronic meters for public utility companies and households, including the development of software solutions, energy monitoring and electronic payment systems.

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Facts of the case

Electro Co is incorporated and resident in Country A;

Electro Co owns patents, industrial know-how and naming rights related to software solution development, energy monitoring, invoicing and electronic payments. It also owns Trademark "T," registered in Country A.



```

    graph TD
      subgraph Country_A [Country A]
        Electro_Co[Electro Co]
      end
      subgraph Country_B [Country B]
        Cable_Co[Cable Co]
      end
      Electro_Co --- Cable_Co
      T((IP/Trade-mark "T")) --- Electro_Co
  
```

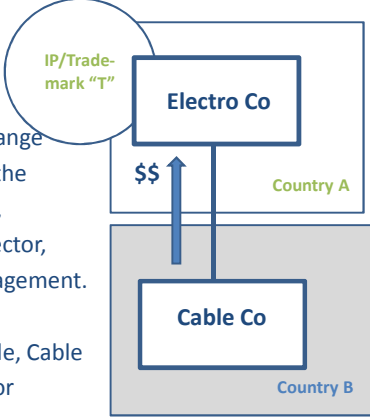
3

Facts of the case

Cable Co is incorporated and resident in Country B;

Cable Co manufactures a wide range of electronic energy meters for the power generation, transmission, distribution and consumption sector, and for electricity revenue management.

For purposes of our case example, Cable Co pays a royalty to Electro Co for technology it uses to manufacture.



```

    graph TD
      subgraph Country_A [Country A]
        Electro_Co[Electro Co]
      end
      subgraph Country_B [Country B]
        Cable_Co[Cable Co]
      end
      Cable_Co -- "$$" --> Electro_Co
      T((IP/Trade-mark "T")) --- Electro_Co
  
```

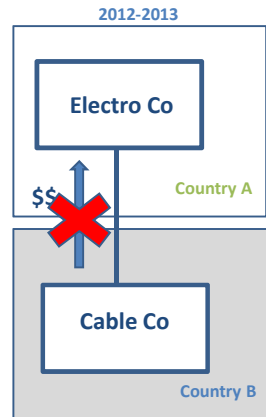
4

Additional Facts

Cable Co had been reporting a net operating loss (NOL) for the years 2012 and 2013 and was audited;

The Country B tax authorities disallowed the full royalty paid by Cable Co.

Cable Co had no transfer pricing documentation in place and settled with reporting cost plus 15%;

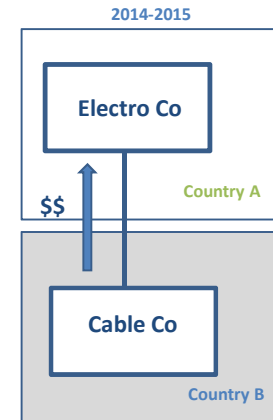


5

Additional Facts

For 2014 and 2015, Cable Co again pays (and deducts) the full royalty;

It has made sure it has a transfer pricing report in place to support the arm's length nature of the intercompany royalty;



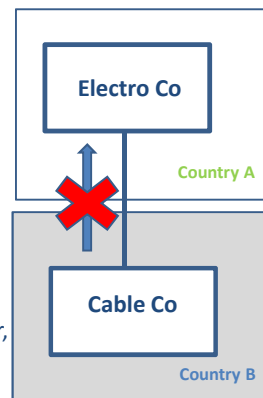
6

Additional Facts

Upon review, the Country B inspector disallows the royalty charge for 2014;

In response, Cable Co submits the transfer pricing report supporting the arm's length nature of the intercompany royalty;

During discussions with the tax inspector, Cable Co indicates they don't want ongoing disputes on this matter.



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The Importance of Dispute Resolution

Questions

- What dispute resolution mechanisms do you think are available in light of the current facts and considering the previous audit (2012 and 2013)?
- Please discuss why you chose the dispute resolution mechanism you picked in answering the above question, and what framework and resources you believe are required to make those dispute resolution mechanisms work successfully;
- Would you favor a unilateral (one-sided) or a bilateral (two-sided) dispute resolution mechanism in this case, and why?

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Additional Facts

Unrelated Co → $$$$ → **Electro Co**

Cable Co → $$$$ → **Electro Co**

IP/Trade-mark "T"

Country A

Country B

Cable Co's transfer pricing report supports the arm's length nature of the intercompany royalty based on Electro Co making available its "T" Trademark to an unrelated party in Country A.

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The Importance of Dispute Resolution

Questions

- In light of these additional facts, would you favor a unilateral (one-sided) or a bilateral (two-sided) dispute resolution mechanism to resolve this case, and why?
- What information do you think you would need to determine whether the intercompany royalty paid by Cable Co is at arm's length? and what mechanism would be available to collect the information that you need?
- What do you expect the position would be of the Country A tax authorities when they are presented with the facts of the matter and asked to give a corresponding adjustment for the Country B adjustment?

10

Additional Facts

Unrelated Co → $$$$ → **Electro Co**

Cable Co → $$$$ → **Electro Co**

IP/Trade-mark "T"

Country A

Country B

Cable Co suggests to resolve the royalty dispute by filing a bilateral APA. Country A has a well functioning APA program in place.

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The Importance of Dispute Resolution

Questions

- Cable Co has suggested that a bilateral APA be considered to resolve the debate on the intercompany royalty. Country A has a well functioning APA program. Country B does not have an APA program in place. Do you think it is possible to enter into a bilateral APA?
- Do you think it would be beneficial for Country B to move forward with a bilateral APA?
- What would be needed to move forward with a bilateral APA?

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Approach to APA

Country B agrees to negotiate a bilateral APA. If you are the Country B tax authority what questions do you have for the taxpayer before you adopt a negotiating position vis a vis Country A?

What additional facts do you believe Cable Co. should provide?

How does the APA process help you develop those facts?

What negotiating position do you think Country B should adopt in its first interactions with Country A Tax Authorities?