

PRACTICAL SOLUTIONS DELIVERED

# COVID-19 TRANSFER PRICING CONSIDERATIONS

The unprecedented COVID-19 crisis has affected the cash flow of otherwise healthy organisations, reducing revenue with little or no reduction in costs. Established transfer pricing policies may no longer give rise to arm's length outcomes due to extreme disruptions to global workforce, supply chains, and customer demand. To avoid future challenges by tax authorities, companies should review their transfer pricing policies now and consider whether – and what – adjustments are necessary.

## KEY CONSIDERATIONS

**1. Risk** Limited risk entities, usually remunerated to achieve a low but stable profitability, may also be impacted by the COVID-19 crisis. They may see a decrease in remuneration, or even losses, due to unfavourable economic conditions and legitimate business factors. The key question is, if the allocation of extraordinary expenses/losses are consistent with market conditions and consequently with the functional profile of the respective entities.

**2. APAs and rulings** APAs or rulings may need to consider the impact of COVID-19. Companies should take a proactive approach and reach out to the tax authorities for discussion. Internal comparables or economic regressions based on the change in different economic variables in previous crises (e.g., 2008) could be used as a proxy to estimate the COVID-19 impact when revising or renewing APAs or rulings, even if the impact will be seen only in 2020 financial year.

**3. Cash flow pressures** Intercompany finance is key due to the cash flow pressures generated by COVID-19. Access to cheaper financing resources (e.g., government support) and the high volatility in the current financial markets needs to be considered when performing benchmark analysis (short and long term). Loans, cash pooling, guarantees, and any other financial transactions have to be adjusted based on the current situation, considering the best available alternatives.

**4. Substance/DEMPE** Due to COVID-19, many countries implemented travel or movement restrictions; those measures could have a relevant impact on the DEMPE functions since 'virtual/remote' control could be difficult to demonstrate to tax authorities. These temporary measures should be appropriately documented to ensure that the economic ownership of the intangibles is not diluted and negatively impacted.

**5. Permanent establishment** As a consequence of movement restrictions, many people are working from home; in some cases, their home is not in the same country of employment. This situation could trigger permanent establishment risk for the companies. Some countries, like (e.g., The Netherlands and Germany) are incorporating special clauses on cross-border worker taxation in light of COVID-19.

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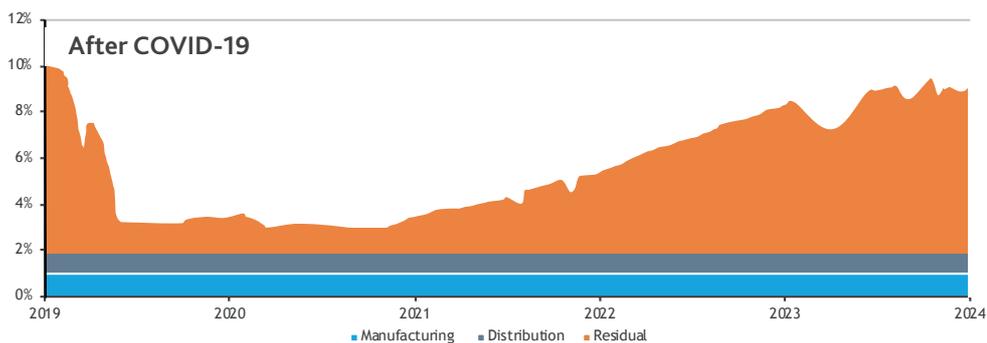
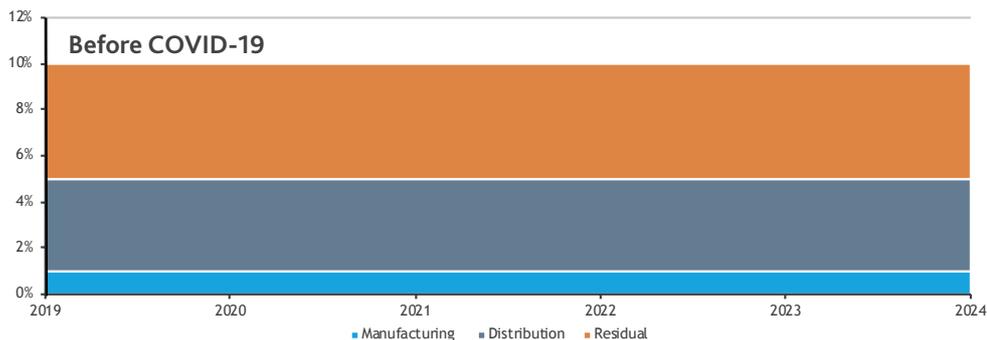
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## TRANSFER PRICING OPPORTUNITIES

### INTANGIBLE COMPENSATION AND RELOCATIONS?



**Excess of profit – Intangible value**

During and after the COVID-19 crisis, many multinational enterprises are expecting lower residual profits (or losses). The value of an intangible is derived from the profits/cash flow it generates. Therefore, intercompany royalty schemes and IP relocations should be reviewed since the IP value may be significantly lower due to COVID-19.

### CONCLUSIONS

Multinational enterprises should take a proactive approach to tackle the COVID-19 crisis. This includes reviewing and adjusting transfer pricing policies in line with market behaviour – and reaching out directly to the tax authorities. They also need to align risk crystallization/management with allocation of extraordinary expenses/losses. The measures and length of the COVID-19 crisis may vary between countries. In this sense, despite the global nature of the crisis, companies may find that it is not justifiable to make the same level and type of adjustments for all entities with similar functional profiles. At BDO Switzerland, our team of experts looks forward discussing the various transfer pricing implications for your organisation and exploring effective alternatives for you. A proper transfer pricing policy review may not only mitigate tax risks, but also reveal opportunities when considering the numerous measures, subsidies and stimulus packages being implemented.

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