

# Structuring Multinational Insurance Programs: Addressing the Taxation and Transfer Pricing Challenge

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## Structuring Multinational Insurance Programs: Addressing the Taxation and Transfer Pricing Challenge

By Suresh Krishnan, Richard Sica, Lucia Fedina, Aaron Maguire

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### I. Overview

Sophisticated buyers of multinational insurance programs demand that their insurers provide consistent coverage of their worldwide exposure to risk. Multinational insurers typically respond to these demands in one of two ways: either by offering stand-alone local policies with appropriate local coverage grants and limits, or, by offering a traditional master insurance policy for the parent company, with local policies for the parent's various foreign subsidiaries, affiliates, and joint ventures. The master policy fills the coverage gaps in the local policies and provides the certainty of expected insurance coverage, with consistent terms and conditions applying to the worldwide exposures of the buyer.

Multinational enterprises also demand execution certainty with respect to claims handling and indemnification. Regardless of whether the insured has purchased a master policy for the parent company, or a series of local policies for its subsidiaries and affiliates, the insured does not intend to assume regulatory and tax risks. Indeed, sellers, purchasers, and intermediaries all want their insurance products to be materially compliant in all jurisdictions in which they are subject to regulatory and legal oversight. Yet, these programs all raise significant compliance issues, particularly income tax issues. In this paper, we seek to review some of these issues, particularly the complex issue of transfer pricing. Following a summary of how multinational insurance programs work, we discuss the importance of using an arm's-length, bargained-for exchange standard for allocating premium and loss recoveries. Entering into an arm's-length, bargained-for exchange, objectively documenting the negotiations, and having an unrelated, independent third party assess the risks involved, are all critical elements of any successful

transfer pricing analysis. This article ends with a consideration of factors that risk managers and their financial colleagues should consider with respect to transfer pricing, when designing and implementing a multinational insurance program.

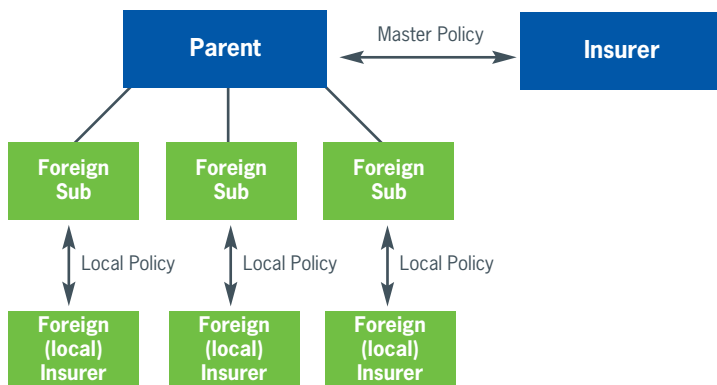
### II. Multinational programs

#### A. Demand for Consistent Coverage

Multinational enterprises purchasing global insurance coverage have particularly complex requirements. They wish to have consistent limits as well as types of coverage and risk transfer terms for their worldwide exposures. They want to control the type and scope of coverage purchased at the local level. They try to obtain the most favorable risk transfer terms and pricing available from a consolidated purchase of insurance coverage. They also want service from their insurer including consolidated loss information with respect to each of their subsidiaries, affiliates, and joint ventures (i.e., their "affiliated entities").<sup>1</sup> Moreover, as many multinational companies consolidate risk management functions in the parent office, the parent often takes the lead in negotiating and arranging insurance policies that provide consistent worldwide coverage and consistent limits to its worldwide interests. The multinational markets have typically fulfilled this need by offering a master "broad-form" policy to the parent, in addition to local policies covering its foreign affiliated entities. For example, a local jurisdiction may restrict the amount of insured limits, or require certain conditions to be insured under local policies (e.g., the peril of earthquakes<sup>2</sup>). Under the current master policy model, the subsidiaries and operating units are often listed as insureds. Difference in limits (DIL) and difference in conditions (DIC) clauses identify the conditions and enable payment, if losses suffered overseas exceed the limits of the locally issued policies, or fall outside the local coverage. The purpose of the master policy is to fill coverage gaps and to provide consistent limits.

Structuring a compliant global insurance program is rarely simple. Unless certain conditions are met, many countries do not allow companies or persons operating within their borders to purchase coverage for local risks from insurers that are not legally established in those jurisdictions. Other countries may allow the purchase of insurance from so-called “non-admitted insurers,” but impose significant taxes (or other restrictions) on those who take advantage of the privilege. Brazil<sup>3</sup> and India<sup>4</sup> are well-known examples of the former; Canada is often highlighted as a case of the latter. It is also not always clear which entity (e.g., the parent or its subsidiaries, affiliates or joint ventures) is liable to pay insurance premium taxes in the jurisdiction in which such taxes must be paid.

The following illustrates an example of a master policy issued by an insurer to a multinational parent corporation in a larger multinational insurance program:



**B. Using “Insurable Interest” as the Foundation of a Compliant Multinational Insurance Program**

The concept of “insurable interest” is a reasonable starting point to develop a more compliant multinational insurance program.

**Insurable Interest Under U.S. Laws:**

In most U.S. states, a parent has an insurable interest in its affiliated entities’ risks to the extent that it has a direct pecuniary interest in the preservation of those entities’ property, or would otherwise suffer a direct, pecuniary loss.<sup>5</sup> It is generally accepted that a parent has an insurable interest, either to the extent that a parent or its affiliates could be held directly liable under applicable law, or to the extent to which the parent would otherwise suffer a pecuniary loss as a result of the affiliated entities.<sup>6</sup> Moreover, the existence of such an interest does not require an actual title in, lien upon, or possession of, the property of the other entities.<sup>7</sup> The general measure of the insurable interest is the parent’s equity interest.<sup>8</sup>

**Insurable Interest under English and European Laws:**

English law approaches the concept of insurable interest in a different manner, but reaches a similar result. Under English law, a parent company does not have an insurable interest in the property or assets of its subsidiaries, affiliates, and joint ventures, and therefore cannot procure a policy that directly covers such property.<sup>9</sup> However, the parent does have an insurable interest in its financial interest in those affiliated entities. It may, therefore, obtain financial loss insurance, a form of liability insurance that covers the parent’s financial interest in those entities. This solution provides coverage and terms that are substantially similar to current “broad-form” master policies, while mitigating the risk that a regulator will attack the master policy as constituting unauthorized insurance in a “non-admitted” jurisdiction. Furthermore, a master policy may measure the parent’s financial loss by reference to the affiliated entities’ actual losses. This “agreed value” approach, in which the issuer of the master policy and the parent agree, in advance, on the value of the parent’s financial interest in its affiliated entities, is legally enforceable not only in the U.K., but throughout most European countries.<sup>10</sup>

“ Although insurance regulatory compliance has historically fallen on the shoulders of insurers and insurance brokers, issues related to transfer pricing are largely the concern of the companies purchasing such insurance. ”

### III. The Transfer Pricing Challenge

Developing a globally compliant insurance program is not an easy task. Naming the parent as the insured under the master policy and applying the principles of insurable interest provides measurable compliance, and forms the basis for providing consistent terms and insurance coverage to the parent and its worldwide interests. Challenges usually arise in navigating the often inconsistent laws of multiple jurisdictions that invariably govern cross-border insurance programs. In particular, the concept of insurable interest can introduce complex inter-company allocation issues. The parties to the multinational insurance program must document the business purpose of the transaction as well as ascertain the appropriate payment by the affiliated entity to the parent,<sup>11</sup> for the insurance policy procured by the parent. With respect to claim payments, the documentation must also support the parent's payment to the affiliated entity of claim payments it received from the insurer.

Inter-company payments between related parties (i.e. payments between a parent and its affiliated entities) typically raise the critical issue of transfer pricing, an internationally recognized process that is essential to the proper recognition of local taxable revenue and deductions involving inter-company transactions. The basic principle behind any inter-company transaction (including the allocation of insurance premiums and payments for income tax purposes) is establishing an appropriate and reasonable transfer price and supporting, with appropriate documentation, that the exchange or transfer of services, goods, etc., are priced at arm's-length.<sup>12</sup>



### IV. Transfer Pricing Principles and Implications

#### A. The Arm's-Length Principle

Many countries have provisions that allow local tax authorities to adjust the income, deductions, credits, or allowances of commonly controlled taxpayers to prevent evasion of taxes, or to clearly reflect their income.<sup>13</sup> For example, member countries of the Organization for Economic Co-operation and Development ("OECD")<sup>14</sup> such as Australia, Canada, France, Germany, the United Kingdom and the United States, and certain other countries<sup>15</sup> like China and India, treat each enterprise within a multinational group as a separate entity, whose profit may be adjusted to reflect the correct income for tax purposes. Under the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (the OECD Guidelines),<sup>16</sup> a controlled transaction (i.e., a transaction between or among affiliated entities with a common corporate structure) meets the arm's-length standard, if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers (i.e., unaffiliated or independent third party entities) had engaged in the same transaction under the same circumstances (arm's-length result).<sup>17</sup>

#### B. Transfer Pricing Analysis

The income tax laws and/or regulations of OECD members and other countries reflect the arm's-length standard; accordingly, in order to enforce arm's-length pricing in inter-company allocations, tax authorities may unilaterally consider whether an allocation is arm's length, and, if not, may adjust such allocation to their satisfaction.<sup>18</sup> The adjustment to reflect an arm's-length dealing occurs regardless of any contractual obligation. In general, tax authorities recognize that there may be a different requirement for regulatory purposes. In certain cases, in addition to the tax adjustment, a country may impose transfer-pricing penalties.<sup>19</sup>

Although there is no universal approach to determine an arm's-length price, the OECD guidelines list several methods for determining the appropriate arm's-length transfer price. Accordingly, the first step of a transfer pricing analysis is to select a transfer pricing method that is "most appropriate for a particular case" based on the facts and circumstances of each transaction.<sup>20</sup> "Because transfer pricing is not an exact science, often the application of the most appropriate method or methods results in a range of figures, all of which are relatively equally reliable."<sup>21</sup> It is therefore important to consult with competent accounting, tax and financial specialists.



### C. Documentation

It is also important to document every significant aspect of the transfer pricing arrangement. As the OECD Guidelines note, “it is a good practice for taxpayers to set up a process to establish, monitor, and review their transfer prices, taking into account the size of the transactions, their complexity, the level of risk involved, and whether they are performed in a stable or changing environment.”<sup>22</sup>

Reasonable documentation of the prices allocated for a multinational insurance program are influenced by the rules governing the burden of proof in each jurisdiction and may include: 1) a global inter-company policy, in relation to the insurance arrangement; 2) a signed agreement for each inter-company arrangement; and 3) a report with the analysis confirming that the prices charged between affiliates are arm’s length.

A global transfer pricing policy describes the company’s approach to setting transfer prices, e.g., which risks are covered under the local policy and which under the master policy, as well as how the companies share premiums, and so forth. Although it is often not legally required, a global transfer pricing policy provides evidence of a consistent approach to transfer pricing, which is often favorably looked upon by tax authorities during an audit.

Inter-company agreements reflecting a legitimate business purpose, and signed by all parties, are also important to demonstrate the arm’s-length nature of the transaction, for, in their absence, tax authorities may attempt to re-price a transaction’s transfer price.

A transfer pricing report generally contains an analysis supporting that the transactions are arm’s-length. In general, this report may serve multiple purposes, such as to protect against penalties, satisfy legal requirements, or be a useful tool in the event of an audit by a taxing authority. For example, in the United States, an Internal Revenue Service auditor, at the beginning of each audit cycle, is required to issue a written Information Document Request asking for a copy of any transfer pricing documentation prepared by the multinational taxpayer, pursuant to section 6662(e) of the US Code. This documentation has to be provided to the auditor within 30 days of the request.

### D. Transfer Pricing Implications for a Multinational Insurance Program

The principles of transfer pricing require that a corporate parent be adequately compensated by its affiliated entities for the service it renders, such as that performed in procuring a master insurance policy. Similarly, if a covered claim is paid to the parent for a loss connected with its insurable interests in its affiliated entities, appropriate contractual arrangements should be negotiated and agreed upon between the parties, in order for the parent to pay an amount equal to the covered claim to the relevant affiliated entity, without unintended, adverse tax consequences. In addition to exploring the applicability of transfer pricing and other tax issues to the specific facts in a multinational program, diligence should also be made to ensure that local insurance regulations are appropriately considered, so that tax issues and regulatory issues do not conflict and lead to unintended consequences.

For example, a parent company domiciled in the United States or in the United Kingdom may purchase a policy covering its insurable interests in a foreign subsidiary. If the foreign subsidiary suffers a loss (e.g., the foreign subsidiary’s factory is destroyed, or a director or officer of the foreign subsidiary is sued and is not otherwise covered by a local policy), the parent will be indemnified under its policy (the “master policy”) and will, in turn, pay a similar amount to the foreign subsidiary for the loss. From an economic (not necessarily regulatory) perspective, the foreign subsidiary should incur the cost associated with the premium paid for the policy. Appropriate transfer pricing documentation and arrangements should be negotiated and agreed upon in advance, which will allow for the reasonable allocation of the cost of the premium paid by the parent, plus its procurement costs, in relation to the insurance from which the foreign subsidiary would ultimately benefit.

By entering into appropriate transfer pricing agreements, the purchaser of a master policy may be reasonably assured that a covered claim received under its insurance policy and paid by the purchaser to its foreign subsidiaries, affiliates, or joint ventures, will receive the appropriate income tax treatment.

By entering into appropriate transfer pricing agreements, the purchaser of a master policy may be reasonably assured that a covered claim received under its insurance policy and paid by the purchaser to its foreign subsidiaries, affiliates, or joint ventures, will receive the appropriate income tax treatment. Also, the uncertainties inherent in current master policy provisions, such as a “tax gross-up” where the insurer pays any frictional costs associated with the parent paying an amount equal to the claim amount to an foreign subsidiary, affiliate, or joint venture may be effectively minimized.

It should be noted that the common practice of a parent company allocating premiums and policy limits evenly and proportionately to each entity in which it has an insurable interest, regardless of the actual benefit to be received by such entity may not withstand transfer pricing scrutiny. A multinational insurance program that has a parent ultimately allocating the master policy premium to its insurable interests should have documentation that such allocated amounts are consistent with an arm’s-length, bargained-for exchange with independent third parties—whether such parties are insurers providing the coverage, or independent actuaries analyzing the pricing and the allocations. The premium allocations resulting from a negotiated exchange, in which an independent third party assesses the underlying exposures, are valuable elements for a transfer pricing study and analysis.

## V Examples of Transfer Pricing Arrangements

The following are examples of transfer pricing arrangements. These examples are for illustrative purposes only. Parties to a multinational insurance program should consult their financial and tax advisors to assess the structure in the context of their specific situation, relevant jurisdiction, and cash flows.

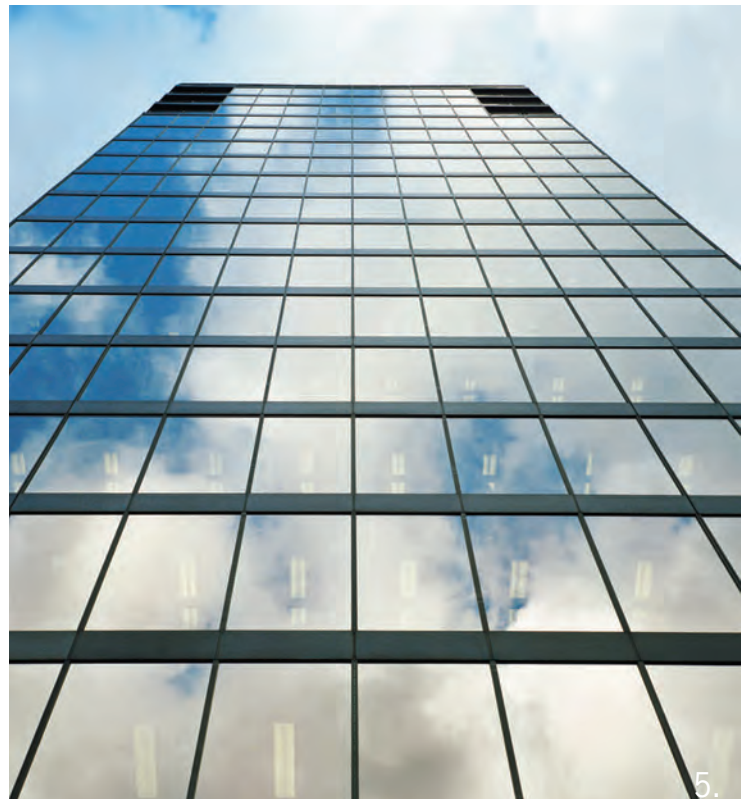
### Example 1 – Premium Allocated in Master Policy:

Company A’s affiliated entities own properties in several countries where they conduct business. In addition to local policies insuring such properties, Company A purchases a master policy to cover any losses that exceed the local policy limits. The master policy thus covers the parent company’s insurable interest in such properties. The master policy could contain information about how the master policy premiums are determined in relation to the coverage with respect to the parent’s insurable interest in its subsidiaries. Thus, the amount of the master policy premium allocated to each subsidiary may be identified directly from the allocation reflected in the master policy.

In this example, Company A may act as a paying agent between the master policy insurer and Company A’s affiliated entities, in which case the parent’s services (purchasing the master policy for the benefit of its insurable interests in its subsidiaries) should be compensated at arm’s-length. In addition, the transfer pricing documentation should reflect various elements, including the premium charged by the master policy insurer.

### Example 2 – Parent Company Allocates Premium:

Company B purchases a master policy to cover reimbursements to its affiliated entities for payments made by those entities to defend and indemnify their officers and directors. Unlike Example 1, the master policy does not provide a detailed break-down of premiums relating to Company B’s insurable interest in its affiliated entities’ obligations. To determine a reasonable allocation of the master policy premium to each foreign subsidiary, Company B may allocate the total premium in proportion to the benefits to be received by each subsidiary. These benefits generally depend on the probability and the amounts paid to such a subsidiary by Company B, in connection with a covered claim under the master policy.<sup>23</sup> Alternatively, Company B could determine the amount each subsidiary would pay to an unrelated insurer for similar coverage and allocate the master policy premium accordingly. Either a “top-down” allocation of the total amount, or establishing an arm’s-length “ground-up” price for each agreement, is acceptable under the arm’s-length standard.



**Example 3 – Allocation of Claim Payments:**

After receiving casualty insurance claim payments from its master policy insurer, Company C chooses to pay its affiliated entity a different amount than the amount it received under the master policy. Assume a casualty loss in the country where the foreign subsidiary is located exceeds a certain amount, and Company C makes a determination to cease operating in that country and closes down operations there. Company C, provided that an arm's-length pricing and terms were established in relation to its course of conduct, may choose to pay its foreign affiliate less than the amount it claimed, even though the foreign affiliate's losses are equal to or greater than the amount Company C claimed under its master policy.<sup>24</sup>

Any amounts paid by Company C to its subsidiary should be consistent with the rights and obligations created by the transfer pricing policies and documentation.

**VI Recommendations and Conclusion****A. Recommended Questions**

Companies seeking insurance, together with their brokers and financial consultants, should be prepared to address the following types of questions, when preparing a multinational insurance program:

- If the parent pays the premium under the master policy, what is the income tax treatment for the premium paid under the tax rules of the jurisdiction in which the parent is domiciled or incorporated? If the policy is attributable to one subsidiary, what type of agreement should be in place that would satisfy home country transfer pricing requirements, local transfer pricing requirements, and local insurance regulators, as applicable? Furthermore, if a foreign subsidiary were to reimburse the parent for such master policy premium, what is the income tax treatment for such payment in both the subsidiary's jurisdiction as well as the jurisdiction applicable to the parent? With respect to a joint venture, what is the understanding of the partners to the joint venture, when addressing which shareholder will procure the insurance for the venture and how such costs will be allocated between and among the joint venture shareholders?

- If a covered claim is paid under the master policy, what is the tax treatment for such claim payment in the jurisdiction where the parent is located? If the parent were to pay an amount equal to or less than such loss to its subsidiary, how will such payment be characterized from a financial perspective, and how will such payment be treated for tax purposes, both under the laws of the parent's jurisdiction and the subsidiary's jurisdiction?

- In connection with the parent's or a joint venture shareholder's purchase of a master policy to insure its financial interests, what type of transfer pricing policies and documentation needs to be agreed upon and executed in order to suitably sustain such party's payment of the insurance recoveries to the subsidiary or joint venture? What is the local tax treatment and regulatory treatment of such payment to the subsidiary for the subsidiary's loss?

**B. Conclusion**

Compliance with multinational insurance laws is critical, but in and of itself, is insufficient to establish a robust and measurably compliant multinational insurance program. Companies entering into such programs need, at the outset, to understand the income tax consequences of any multinational arrangement. Moreover, although insurance regulatory compliance has historically fallen on the shoulders of insurers and insurance brokers, issues related to transfer pricing are largely the concern of the companies purchasing such insurance.

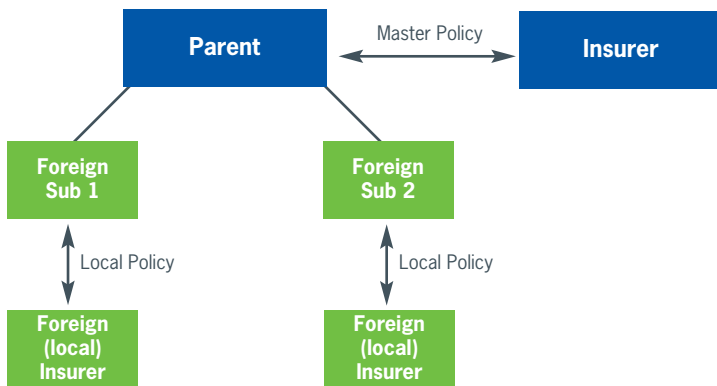
When designing and implementing a multinational insurance program, clients, brokers, and insurers should be aware of the issues introduced and analyzed in this paper and the importance of an independent third party's documented assessment of the ultimate consideration charged for the multinational insurance program, and the subsequent allocations made of such consideration to various related parties. Risk managers and buyers of multinational insurance programs and producers should work with a global insurer, and an independent financial and tax advisor, to address many of the issues addressed in this paper. Working with experienced accounting, tax, and financial specialists to design a comprehensive global transfer pricing program (with documentation and supporting contractual arrangements fitting the specific needs and goals of multinational enterprises) should result in a measurably compliant international insurance program and also ensure that the program ultimately satisfies the collective objectives of the client, insurance broker, and insurance carrier.



Appendix - Detailed Example

*The following is an illustrative summary and is for informational purposes only. Parties to a multinational insurance program should consult their financial and tax advisors to assess the structure in context of their specific situation, relevant jurisdiction and cash flows.*

Assume a parent company purchases a master policy to provide DIC and DIL coverage with respect to property insurance regarding its two foreign subsidiaries. Sub 1 has twice the exposure as Sub 2. The master policy premium is \$3,000 and the aggregate limit is \$50,000. In this general example, insurance may be for Property, Liability or a specialty line such as Directors and Officers Liability.



**Q- If the parent pays the \$3,000 premium to the insurer, what is the income tax treatment of the premium paid by the parent in the parent’s taxable jurisdiction?**

A – Premiums paid for an annual insurance contract are generally considered deductible expenditures in the year paid (subject to any rules on capitalization).

**Q- If the master policy is attributable to the foreign subsidiaries, how should the master policy premium be allocated among the subsidiaries?**

A – There are various transfer pricing methodologies that could apply. Since Sub 1 has twice the exposure as Sub 2, Sub 1 could be allocated \$2,000 while Sub 2 could be allocated \$1,000.

**Q- What would be the parent’s income tax treatment of any amount received from the subsidiary through the transfer pricing arrangement?**

A – If the parent receives \$3,000 from its foreign subsidiaries, it may be considered taxable income to the Parent. This taxable income would potentially offset the tax deduction for the premium paid making the parent tax neutral.

Assume Sub 2 incurs a \$10,000 loss that would generate an insurance recovery under the master policy to the parent.

**Q – How would the loss incurred by Sub 2 be treated by the parent for income tax purposes?**

A – Since the loss was incurred by Sub 2, the parent may have an economic loss equal to the amount of the loss incurred by the subsidiary or the parent’s investment in Sub 2 for accounting purposes may be reduced, but that may not necessarily be deductible for tax purposes in the parent’s jurisdiction.

**Q – How would the loss incurred by Sub 2 be treated by Sub 2 for income tax purposes in its local country?**

A – Depending on the jurisdiction, the loss incurred by Sub 2 may be considered a tax deductible event.

**Q – How would the insurance recovery paid by the master policy insurer and received by parent be treated by the parent for income tax purposes?**

A – Generally, insurance recoveries would be considered taxable income to the entity receiving the payment.

**Q- What would be the income tax treatment of the payment if the parent paid the \$10,000 recovery it received to Sub 2?**

A – Assuming the transfer pricing documentation in place created an obligation for the parent to indemnify Sub 2 for the loss incurred, the payment may be considered a tax deductible expenditure for the parent.

**Q- What would be the income tax treatment of the payment received by Sub 2 from the parent if the parent paid the \$10,000 recovery it received to Sub 2?**

A – Depending on the jurisdiction and the transfer pricing documentation that created the right to receive the payment, such remittance received by Sub 2 may be considered a taxable event which would offset the deduction for the original loss.





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**Endnotes:**

- <sup>1</sup> For purposes of this article we assume that the majority shareholder in a joint venture assumes the contractual or legal obligation for purchasing insurance for the joint venture, however, parties to a joint venture may contract for any partner in the joint venture to assume this obligation.
- <sup>2</sup> In Japan, for example, earthquake insurance coverage is not permitted as a stand-alone policy, and is only permitted as part of fire coverage. Item 3 of Paragraph 2 of Article 2 of the Act on Earthquake Insurance (Act No. 73 of 1966); Paragraph 2 of Article 1 of the Ordinance for Enforcement of the Act on Earthquake Insurance (Ordinance of the Ministry of Finance of Japan No. 35 of 1966).
- <sup>3</sup> Brazil — Coverage of risks located in Brazil is regulated under Article 6 of Decree-law No. 73/66, which only permits placement of insurance and reinsurance abroad when coverage is not available in Brazil or coverage thereof is not convenient to the national interests. When insurance is placed with nonadmitted insurers, according to articles 44, I, “d”, and 81, of Decree-law no. 73/66, the Brazilian Reinsurance Institute (IRB) is responsible for intermediating and promoting placement abroad of insurance and reinsurance where such insurance is not available in the domestic market. An insured may not turn to the nonadmitted market until after it has obtained either 10 declinations or, if there are not 10 domestic carriers in that line of business, a declination from each local insurer in that business.
- <sup>4</sup> India — Proviso 3 of Section 2C (1) of the Insurance Act of 1938 provides that no insurer other than an Indian insurance company can carry on any class of insurance business in India on or after the commencement of the Insurance Regulatory and Development Authority Act of 1999. Furthermore, there is a requirement of registration under Section 3 of the Insurance Act of 1938, which provides that no person can carry on the business of insurance in India unless it has obtained from the Insurance Regulatory and Development Authority a certificate of registration. Regulation 3(i) of the Foreign Exchange Management (Insurance) Regulations of 2000 provides that (a) a person resident in India may take or continue to hold a general insurance policy issued by an insurer outside India; provided, that the policy is held, under a specific or general permission of the Central Government or (b) a person resident in India may continue to hold any general insurance policy issued by an insurer outside of India when such person was resident outside India. Furthermore, Regulation 5 of the Memorandum of Exchange Control Regulations, relating to the General Insurance in India (issued by the Reserve Bank of India vide AP (DIR Series) Circular No. 18) (Sept. 12, 2002) provides that persons, firms, companies and others resident in India cannot take insurance cover of any kind with insurance companies in foreign countries without the prior permission of the Reserve Bank of India. Further, permission of Government of India under General Insurance Business (Nationalization) Act of 1972 is also required to be taken in such cases.
- <sup>5</sup> *Scarola v. Ins. Co. of N. Am.*, 340 N.Y.S.2d 630 (N.Y. 1972); *Sapp v. Georgia Farm Bureau Mut. Ins. Co.*, 424 S.E.2d 871 (Ga. Ct. App. 1992). As the Pennsylvania Supreme Court explained, “[t]he requirement of an insurable interest is founded upon the public policy against wagering which provided that the policyholder must have an interest that will be damaged before he will be permitted to recover for the loss against which he was insured.” *Van Cure v. Hartford Fire Ins. Co.*, 435 Pa. 163 (Pa. 1969).”
- <sup>6</sup> See *Scottsdale Ins. Co. v. Glick*, 240 Va. 283, 397 S.E.2d 105 (Va. 1990); N.Y. Ins. Dept., Off. of Gen. Counsel, Opin. No. 2005-87 (Apr. 4, 2005); N.Y. Ins. Dept., Off. of Gen. Counsel, Opin. No. 04-03-12 (Apr. 3, 1912).
- <sup>7</sup> *Tri-State Ins. Co. of Minnesota v. H.D.W. Enterprises, Inc.*, 180 F. Supp. 2d 1203 (D. Kan. 2001); *Hartford Fire Ins. Co. v. Stanley*, 644 S.W.2d 628 (Ark. 1983); *De Witt v. American Family Mut. Ins. Co.*, 667 S.W.2d 700 (Mo. 1984).
- <sup>8</sup> *Jam Inc. v. Nautilus Ins. Co.*, 128 S.W.3d 879 (Mo. App. Ct. 2004); *Riggs v. Comm. Mut. Ins. Co.*, 125 N.Y. 7 (N.Y. 1890); *Holbrook v. St. Paul Fire & Marine Ins. Co.*, 25 Minn. 229 (Minn. 1878); *Miller v. Stuyvesant Ins. Co.*, 223 App. Div. 6 (N.Y. App. Div. 1st Dept. 1928); *Thompson v. Trinity Universal Ins. Co.*, 708 S.W.2d 45 (Tex. App. 1986).
- <sup>9</sup> See *Macaura v. Northern Assurance Company Limited*, [1925] App. Cas. 619 (H.L. 1925).
- <sup>10</sup> Spanish Insurance Agreement Act, Act 50/1980; Swedish Insurance Contract Act, 2006, Chapter 6, section 1; In Germany, Strnad HAVE/REAS 2007, 345 ssq, Armbruster, VerR 2008, 853 ssq, Lagheid/Grohe, VW 2008, 1510 ssq, Mazenauer, VW 2008, 19 ssq, Laupicher, VW 2008, 914 ssq, Lagheid/Grohe, 630 ssq; French Insurance Code Arts 121, 1964.
- <sup>11</sup> Further reference to a “parent” in this article also refers to a majority/controlling shareholder in a joint venture.
- <sup>12</sup> The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (the OECD Guidelines), Chapter 1.
- <sup>13</sup> For the U.S. purposes see Sections 1.482 and 1.6662-6 of the U.S. Treasury Regulations.
- <sup>14</sup> Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.
- <sup>15</sup> For example China, India. Argentina and effective in 2011 Russia.
- <sup>16</sup> See the OECD Guidelines, Preface, Paragraph 5.
- <sup>17</sup> The transfer pricing analysis assumes a valid business purpose for the transaction.
- <sup>18</sup> This paper focuses on the income tax treatment of the transaction. Insurance transactions may be subject to various other taxes including Value Added Taxes, Withholding Taxes, Federal Excise Tax and/or Insurance Premium Taxes. However, these taxes are beyond the scope of this article and are not discussed.
- <sup>19</sup> Section 1.6662-6 of the U.S. Treasury Regulations
- <sup>20</sup> The OECD Guidelines, Paragraph 2.1
- <sup>21</sup> The OECD Guidelines, Paragraph 3.55
- <sup>22</sup> The OECD Guidelines, Paragraph 3.82
- <sup>23</sup> Actuarial and/or financial analysis is often necessary to determine these benefits.
- <sup>24</sup> With respect to a payment from the majority shareholder of a joint venture of the amount received by the majority shareholder under the master policy, such payment may be governed by the terms of the joint venture agreement.