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# UK-US Case Study

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# Background

- This is an ongoing client case with advice being given by HW Fisher LLP and Marcum LLP

- There is no right or wrong answer

- An interactive discussion will be welcomed – particularly from US colleagues



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# The Facts

- US Co purchased UK Co in 2018. This was a share acquisition.
- There was a 5 year earnout so the structure could not be changed until now.
- US Co is part of a worldwide group that operates databases of academic publications.
- UK Co has potentially three elements of intellectual property ("IP")

    - Content – non-exclusive licences from third party publishers

    - Platform – software through which the content is accessed

    - Brand – the tradename has prior recognition in the UK
- UK Co has minimal employees

# The Facts (continued)

- UK Co has licences providing access to over 2 million academic articles/e-books which can be accessed by schools, teachers and students for academic purposes
- The licences are non-exclusive and US Co could approach the licensors and obtain comparable licences for no cost
- All sales, marketing and administrative functions are undertaken by US Co
- US Co has developed a new platform and all customer access will be via that platform within the next 6 months
- Client revenue is all earned by US Co
- UK Co charges a fee to US Co for access to its Content, Platform and Brand

# What is the commercial issue?

- US Co does not need UK Co – the business can be operated solely from the US
- UK Co is profitable and pays tax at 25%
- The costs of operating UK Co are unnecessary – audit fees, tax compliance, VAT etc
- The amount of management time required to maintain UK Co is onerous



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# What is the tax issue?

- UK Co is tax resident in the UK and owns IP
- A transfer of the IP from UK Co to US Co will be deemed to take place at market value for UK tax purposes
- If the IP has material value, this will crystallise a UK corporation tax liability for UK Co at 25%
- UK Co has no tax losses which can be used to shelter the gain

# Option 1 – transfer all IP to US Co

- This will prima facie result in a taxable gain for UK Co.
- However, what is the value of the IP?
- The platform is effectively obsolete
- The licences are non-exclusive and easily replicated by US Co
- What is the value of the UK Co brand? There is no registered trademark and the service delivery and sales and marketing is undertaken by US Co.
- Could a low/negligible valuation be supported?



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# Option 1 – tax risks

- There is no mechanism to agree the valuation of the IP in advance with HMRC
- A final tax return will need to be filed disclosing the IP sale and HMRC may open an enquiry
- An enquiry may take months to resolve and will incur professional fees and management time

# Option 2 – gradual wind-down of UK Co

- This would involve a gradual transfer of UK Co’s activities to US Co
- US Co would need to acquire new licences to the Content currently held by UK Co
- UK Co would not renew its existing licences and allow them to lapse over time
- The UK Co brand would still need to be transferred

# Option 2 – tax risks

- The UK tax risks would be low.
- However, the process to wind down UK Co may take several years and the ongoing administrative costs and tax leakage would continue
- HMRC may still challenge the valuation of the UK Co brand when the company finally ceases to trade

# Option 3 – transfer pricing approach

- UK Co would be retained.
- A transfer pricing study would be undertaken to critically review the intercompany pricing
- If the transfer pricing study supports a materially reduced profit margin for UK Co, the tax cost of maintaining UK Co may be reduced
- However, there will remain the ongoing cost of preparing statutory accounts and tax returns

# What have we missed?

- Do the proposals cause any US issues?
- How long would it take for US Co to replace the licences held by UK Co?
- Does the UK Co brand really have any value and does it need to be retained?
- Can US Co really operate solely from the US? Will there be a need for UK based sales staff – which could create a UK taxable presence?
- Is there another strategy?