

Valuation Treatment of Distribution Fees and Payments Based on Projected Net Profits

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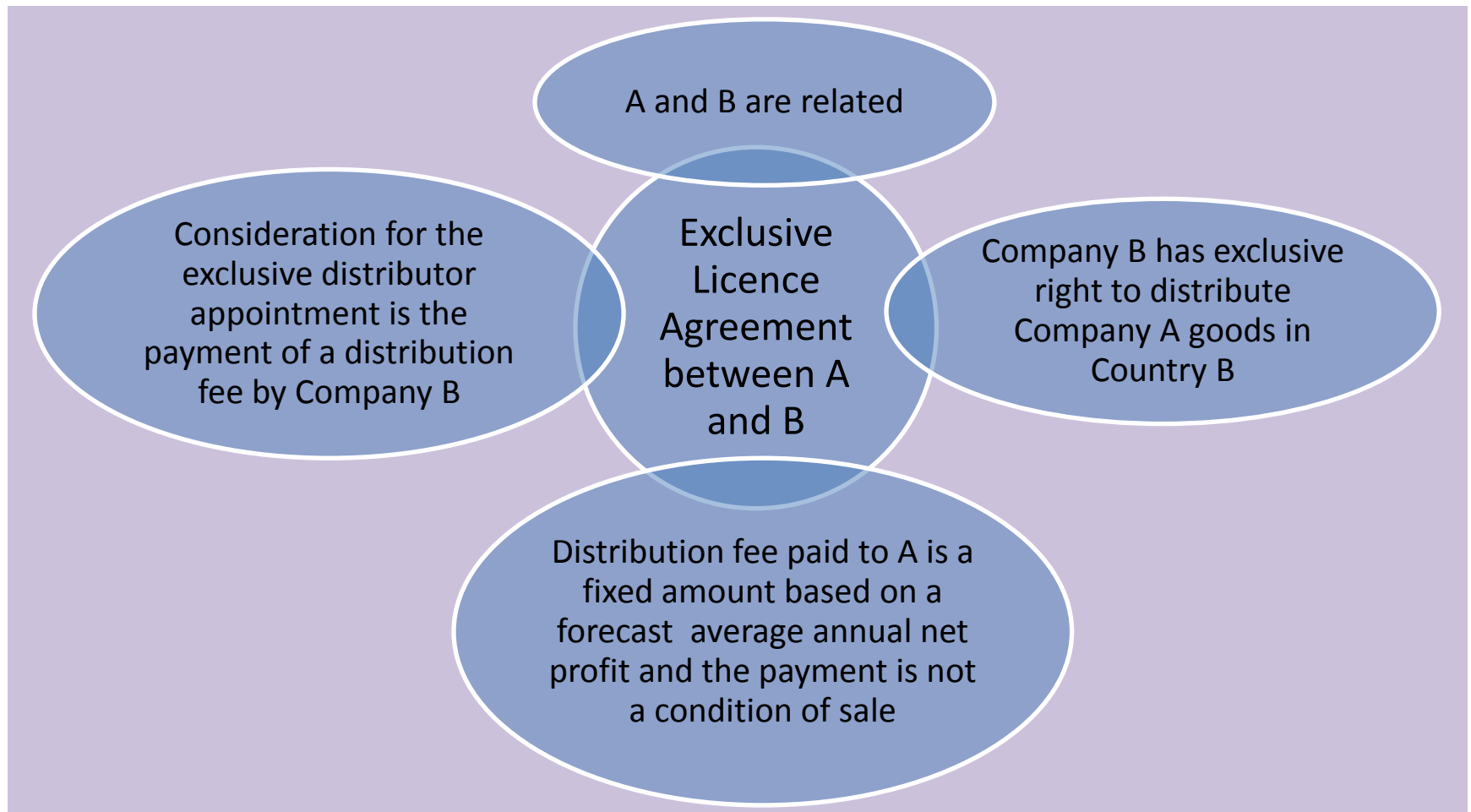
Facts of Transaction:

1. Company A (in exporting country A) is a manufacturer of branded vehicles well known to consumers and Company B (in importing country B) is a distributor. Company B has entered into an exclusive distributorship agreement with Company A.
2. The exclusive distributorship agreement provides:
 - Company B be appointed as the exclusive distributor, with the exclusive right to distribute Company A's branded vehicles to retailers and end users in country B.
 - The consideration for this appointment is the payment of a distribution fee of 1 mil c.u. per annum by Company B to Company A.
 - This fee represents the arm's length commercial value of the territorial market to Company B and has been calculated and determined with reference to an agreed proportion of the average annual projected net profit for the next 5 years based on reasonable budget forecasts mutually agreed by both parties..
 - The distribution fee is wholly and solely in consideration of benefits arising from Company B's right to be the exclusive distributor of the branded vehicles of Company A within Country B.
 - This fee is not determined with reference to or associated with the volume of sales from Company A to Company B and in no circumstance the payment of this fee constitutes a condition of the supplier's sale of such product.
3. Company A and Company B are related within the meaning of Article 15.4(f) of the Valuation Agreement.

Additional Information

4. Without the appointment as exclusive distributor, Company B will be able to import and distribute branded vehicles of Company A and other distributors may be appointed by Company A in Country B.
5. Company B was able to prove that the price of goods traded is unaffected by its relationship with Company A via Article 1.2(b) (ii) and was thus acceptable for the purposes of Article 1 of the Agreement.

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Issues for determination:

Whether the distribution fee is:

- part of the price paid or payable under Article 1 of the Valuation Agreement,
- to be added to the price paid or payable as an adjustment under Article 8.1(c) or
- to be added to the price paid or payable as an adjustment under Article 8.1(d) of the Valuation Agreement?