

Normative versus Pragmatic



When someone moves to another country for a longer period of time, one of the crucial challenges is to understand the new culture. It's obvious that all societies have similar and differing characteristics. At a higher level of abstraction of analysis, similarities might be more salient; however, the more in-depth examination, the more qualitative and quantitative differences become prominent. These variations between two cultures can make the process of profound comprehension truly difficult and demanding. This

regardless one's readiness and skills to observe, describe and interpret differences, as well as the ability to temporarily abandon the own perspective in the process of acquiring insights in the new culture.

One of the most interesting dimensions that distinguish the Polish and Dutch cultures concerns the normative versus pragmatic approach to difficult and broadly debatable social issues such as drugs, abortion or prostitution. There seems to be a general consensus between and within both countries that these problems have a negative impact on the well-being of many individuals as well as the society at large, and as such should be properly addressed. The discrepancies show when it comes to premises behind policies designed (that

consequently also differ) and implemented to deal with these issues. Let me take drugs as an example to illustrate the point.

The Polish approach is primarily led by norms. Narcotic drugs are morally bad and as such forbidden by law and addressed as a criminal problem in the first place. Their production, distribution and possession are prosecuted and severely punished; no distinction is made between soft and hard drugs; and state institutions involvement in provision of drugs is out of question.

In the Netherlands both soft and hard drugs are formally speaking illegal. However, as drug addiction is predominantly seen as a medical problem, soft drugs are tolerated and under strict conditions can be possessed and sold. The rationale for these legal provisions lies in results of scientific research that systematically shows that the introduction of this distinction eventually leads to a lower number of hard drug addicts.

Similarly, there are official medical care programmes under which methadone is provided to untreatable cases of heroin addicts. From the pragmatic point of view it pays for at least three reasons: (1) these people stay under medical control; (2) they do not commit crimes to obtain resources to obtain a daily dose they desperately need; and (3) criminals who deal in drugs lose a share in the market.

The choice seems to be between an unequivocal moral position combined with limited effectiveness and efficient prevention programmes that necessitate some moral concessions.

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Intellectual Property, Polish subsidiaries & Taxation



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Often Polish subsidiaries of international groups operate in Poland using intellectual property created and owned by the parent company or other group members. This usually is either a trademark, a patent, a copyrighted work (e.g. software), know-how or a combination thereof. From time to time directors of such subsidiaries should ask themselves the question, how the use of these rights is documented, remunerated, and whether they are properly protected in Poland. Within a group of companies this may not seem so important from a legal perspective, but the wrong decisions can have severe adverse tax consequences.

Transfer pricing is the pricing of intercompany transactions, which take place between related entities. Differences in tax systems between various jurisdictions give an opportunity to arrange for such a structuring of intercompany transactions that solely aim at minimising the tax burden. This natural tendency is restricted by tax laws, which provide tax authorities with efficient counter-measures to combat tax avoidance. In general, all transactions

between related entities should be entered into according to the arm's-length principle, i.e., under market conditions that independent entities would have agreed upon.

Intangible assets, the tax and accounting synonym of intellectual property rights, play a special role in transfer pricing. This is mainly because these assets have their own specificity and being highly sensitive often remain an intra-group property. Furthermore, since it is rather difficult to talk about say a trade mark license market, a proper "market" valuation of intra-group intellectual property (intangibles) transactions remains not an easy task. The OECD Transfer Pricing Guidelines provide well-established assistance in that respect, but unfortunately are not a recognised source of law.

Recently published data by the Ministry of Finance relating to the transfer pricing of tax audits reveal an interesting trend. Where the number of such tax audits fell from 338 in 2008 to 278 in 2009, the resulting increase in tax income grew from 27.88 MPLN to 88.06 MPLN. These data clearly demonstrate that tax authorities transfer pricing "efficiency" has drastically improved, which, combined with statistics showing that only 30% of tax authorities decisions are reversed by administrative courts, should give some "food for thought". Moreover, transfer pricing tax audits will continue to be one of the central focus areas of the Polish tax authorities.

From a legal perspective it remains crucial that transfer pricing transactions relating to intellectual property rights are well grounded and structured, in particular regarding trademarks and know-how. It happens far too often that there is a trade mark license between a Polish subsidiary and e.g. the Dutch mother company, where the trademark is not protected in Poland. Protection is crucial in assessing whether the intangibles in question have a "market value". After all, the tax authorities look at the intra-group payments asking whether rational unrelated entities would have entered into a similar transaction.

In short, tax considerations are another good reason to properly manage your company's intellectual property rights.