En cordée vers le sommet

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Partons ensemble pour une aventure commune (d'investissement) en cordée dans le but d'atteindre ensemble le sommet.

Alors que nous nous mettons en route sous la lumière de la nouvelle année 2025, un épais brouillard obscurcit la visibilité. Le chemin vers le sommet risque d'être difficile et semé d'embûches.

Nous portons tous notre sac à dos. Certains sentiers seront impraticables. Il faudra prévoir des passages escarpés et des descentes abruptes. Nous devrons nous orienter en permanence et, surtout, surveiller les conditions météorologiques. Nous devons être préparés.

Notre objectif ? Trouver un chemin où le soleil nous réchauffe et où, à la fin, une vue panoramique et époustouflante nous attend – notre performance annuelle. Ce n'est pas pour rien qu'on dit que plusieurs chemins mènent au but. Un voyage n'est généralement pas linéaire. Il existe de multiples itinéraires. Dans notre approche globale, il est essentiel de comparer les différentes options. Tout comme, lors d'une excursion en montagne, il ne suffit pas de considérer la nature du sentier, sa pente et sa longueur, mais aussi les conditions météorologiques, nous prenons en compte les fondamentaux dans nos décisions d'investissement.

L'écart entre les États-Unis et l'Europe devrait continuer à se creuser

L'aiguille de la boussole indique un taux de croissance réelle attendu de 2,5 à 3% pour les États-Unis. Les Américains envisagent donc l'avenir proche de manière nettement plus positive que les Européens. L'ancien continent peine à atteindre une croissance légèrement positive.

L'écart entre les États-Unis et l'Europe devrait continuer à se creuser. Alors que l'Europe sombre dans une dépression causée par l'instabilité politique et la bureaucratie, la nouvelle administration américaine fera tout pour maintenir le cycle économique actif. Une récession n'est pas en vue, surtout pas avec un président comme Donald Trump, qui a placé la promotion de la croissance économique en tête de son agenda. Nous prévoyons donc un climat propice sur notre chemin (environnement d'investissement). D'autant plus que les prévisions dressent un tableau positif.

Le marché du travail aux États-Unis se détend, l'inflation reste à un niveau confortable autour de 2,5%, et la Réserve fédérale maintient son cap de baisse des taux, bien qu'avec un peu plus de prudence qu'il y a deux mois.

Avec deux baisses de taux fin 2024, une prolongation des réductions d'impôts au-delà de 2025 et une série de mesures de dérégulation et de mesures fiscales, un environnement favorable à l'investissement et à la croissance devrait voir le jour aux États-Unis.

Sur le chemin qui mène au sommet, des dangers guettent toujours. Il y aura des passages délicats sur certaines portions du parcours. Les défis géopolitiques (deux guerres actuelles), les difficultés politiques intérieures en Allemagne et en France, ainsi que la crainte d'une nouvelle guerre commerciale pourraient forcer les marcheurq à changer d'itinéraire.

Reste à savoir si, comment et dans quelle mesure ces événements vont se mettre en travers du chemin – mais annuler l'aventure n'est pas une option. Se réorienter, trouver des itinéraires alternatifs ou fixer de nouveaux objectifs sont des solutions judicieuses dans une telle situation.

La visibilité est réduite au début de l'année d'investissement

Comme tout départ de randonnée dans la brume matinale, la visibilité est elle aussi réduite au début de l'année d'investissement. Il faut avancer à vue, et prendre les bifurcations lorsqu'elles se présenteront – c'est cela, une gestion active et flexible.

Le marché haussier persistant a fait grimper les valorisations – un poids qu'il faut savoir porter. Si les valorisations élevées sont comme un lourd sac à dos en début d'une randonnée, le niveau des taux d'intérêt est une mesure de la pente du sentier qui nous attend. Une pente (ou une montée) trop raide fatigue, on s'épuise plus vite, et certains pourraient trébucher. C'est pourquoi nous surveillons de près le niveau à l'extrémité longue de la courbe des taux.

Notre attente est claire : les niveaux de fin 2024 se situent à l'extrémité supérieure du spectre. Avec des taux d'intérêt plus bas en 2025, le fardeau devrait devenir plus supportable. Si la croissance économique se concrétise comme prévu ou dépasse les attentes, "le poids" se réduira, à l'instar des provisions qui s'allègent au fil de la marche.

The rise of captive insurance in Luxembourg and its transfer pricing implications

Captive insurance companies are growing in significance in the global insurance market, particularly in jurisdictions like Luxembourg. Established to underwrite their parent companies' risks, these specialized entities offer many strategic, financial and regulatory advantages. This article explores the relevance of captive insurance in Luxembourg and delves into the transfer pricing implications at play.

Luxembourg as a captive insurance hub: A market on the rise

The market's burgeoning interest in captives is fueled by several factors, including traditional insurers' retreat from certain risk areas, large corporations' growing exposure levels, and the broadening of risk profiles—especially for multinationals. The insurance fee surge has also driven companies to explore alternative risk management solutions.

Luxembourg is the EU's largest captive reinsurance market, and companies from around the world have established around 200 reinsurance undertakings in the Grand Duchy. This success is partially due to the efforts of the Luxembourg regulatory authority, the Commissariat aux Assurances (CAA), demonstrating extensive support and knowledge of the captive business model, the CAA has tailored its regulatory requirements to fit captives' unique nature, enhancing their appeal to multinational groups seeking to effectively manage their risks.

Luxembourg's pioneering role in European insurance regulation has also solidified its status as a premier market for captives. The country has embraced a forward-thinking approach, anticipating the EU's 2005 Reinsurance Directive(1) and establishing a prudential framework for reinsurance as early as 1991. This proactive stance has made Luxembourg an attractive jurisdiction for companies seeking regulatory foresight and efficiency.

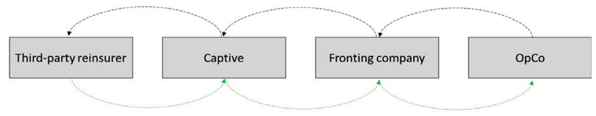
Understanding the captive insurance business model

Most reinsurance companies in Luxembourg are captives, which means they are created and wholly owned by a non-insurance group to underwrite risks for the parent company, its operating subsidiaries, or both. These "in-house" insurers operate outside the traditional commercial insurance market. Despite receiving regulatory and tax treatment similar to standard reinsurance companies, captives are usually exclusively focused on reinsuring their group members.

A captive's typical setup involves an operating company (OpCo) entering into an insurance agreement with a third-party fronting company. Captive insurance arrangements often involve fronting, as sometimes a third-party insurer is required for regulatory purposes.

The fronting company is generally responsible for issuing policies and providing claims-handling services, ensuring compliance while allowing the captive to reinsure the underlying risks. The captive retains a portion of the risk and usually seeks external reinsurance with a third or unrelated party for specific layers or proportions.

This structure allows multinational enterprise groups to cover risks that may be difficult or expensive to insure in the open market, such as low-frequency, high-severity risks like oil spills, contingency business interruptions, and product liability.



Captives also offer numerous commercial benefits, including reducing profit volatility at the OpCo level, stabilizing insurance premiums within the group, and securing lower premiums in third-party markets due to risk pooling and bulk discounts. As a result, captives are a vital part of many multinationals' risk management strategies.

Transfer pricing considerations

A critical aspect of managing a captive insurance company is ensuring compliance with transfer pricing regulations. These require that the price agreed in a transaction between two related parties must be the same as the price agreed in a similar transaction between two unrelated parties—known as the arm's length principle. Historically, multinational companies have not focused on transfer pricing for their captives. This is because a third-party entity is usually involved in the chain, so it is not mapped as a controlled transaction and considered outside the scope of transfer pricing rules.

However, tax authorities have increasingly turned their attention to these arrangements, particularly following the release of Chapter X of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines") in 2020.(2) Section E is dedicated to captive insurance companies, dictating that even if a third-party entity is involved in the chain, the actual controlled transaction is between the OpCo and the captive.

Section E of the OECD Guidelines' Chapter X focuses on the following main points.

1. Accurate transaction delineation and economic substance

This involves assessing whether the parties' behavior aligns with the legal contracts' written terms and evaluating whether the captive has sufficient substance to justify its profit level. In this context, substance refers not only to the captive's number of employees (many captives use approved third-party management companies) but also to the captive's oversight and decision-making authority. The OECD Guidelines introduce the "control over risk" and "financial capacity" concepts as key to determining proper risk allocation. These concepts emphasize that captives must demonstrate they actively manage and control the risks they assume, rather than merely acting as a risk transfer conduit.

2. Functional characterization

To support a captive's substance level, companies must conduct a thorough functional analysis. This involves a detailed fact-finding to understand the functions performed, risks borne and assets employed by the captive and related parties in the context of reinsurance services. From a Luxembourg transfer pricing perspective, this analysis is crucial as it:
i) Helps determine if the captive can be characterized as a fully-fledged insurer or as a routine entity, possibly with or without fronting functions; and
ii) Sheds light on the captive's governance structures, such as risk committees and decision-making processes, that oversee the risks it engages in.

3. Transfer pricing methods

Once a captive's characterization is established, the next step is to select the most appropriate transfer pricing method to test and document the intercompany transactions. Depending on the findings of the functional analysis, different approaches may be used. Chapter X of the OECD Guidelines outlines several transfer pricing methods suitable for captive insurance transactions, including the comparable uncontrolled price (CUP) method and the transactional net margin method (TNMM). The latter uses profit level indicators (PLIs) like the combined ratio and return on capital, benchmarked against third-party insurers or reinsurers.

Given these methods' inherent complexities, captive owners may also consider conducting an independent actuarial analysis. This involves evaluating the premiums paid to the captive, ensuring the key assumptions—such as claims history and expense loadings—are reasonable and aligned with industry standards. This approach, which the OECD Guidelines recognize as an "other" transfer pricing method, can provide additional assurance that the captive's pricing is consistent with market conditions.

If the captive's received premiums are not deemed at arm's length, tax authorities may adjust these premiums and potentially increase the captive's taxable income. Additionally, the deduction of premiums paid by the operating companies could be partially or fully denied, leading to double taxation risks and costly disputes with tax authorities. Therefore, performing a sound transfer pricing analysis in line with Section E of the OECD Guidelines' Chapter X is essential.

Conclusion

Captive insurance companies in Luxembourg are a powerful tool for multinational groups to manage their risks in a cost-effective and regulatory-efficient manner. However, these benefits come with complex transfer pricing challenges that require careful consideration and meticulous documentation. By understanding the regulatory landscape, accurately delineating transactions and choosing the right transfer pricing methods, companies can navigate these challenges and maximize their captives' strategic value.

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1) EUR-Lex, *Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC*, 16 November 2005.
2) OECD, *Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS: Actions 4, 8-10*, 11 February 2020.