Navigating tax and legal intricacies of the modern retail supply chain

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KPMG in Singapore

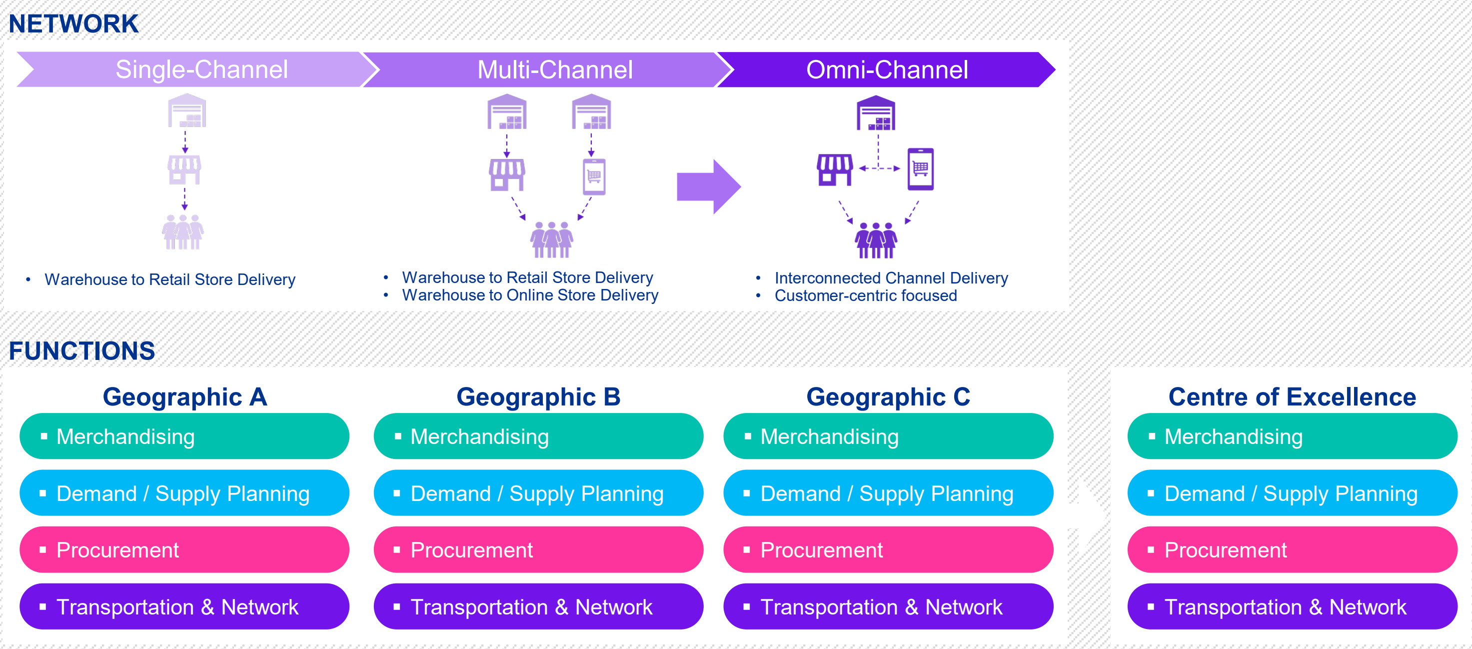
Contents

A shift to e-commerce highlights legal, tax, and trade considerations

Over the past decade, businesses in the Consumer and Retail (C&R) industry in Southeast Asia have continued to adapt their supply chain models to become more resilient, diverse, and sustainable.

This has seen them move from single channel to multi-channel and, most recently, to a customer-centric omnichannel approach, with interconnected channel delivery and Centres of Excellence (Figure 1).

Figure 1



Source: Unlocking Supply Chain Transformation: Navigating the Tax & Legal Terrain, KPMG (June 2024).

But with challenges set to continue, being future-ready is key. These transformative forces include digital developments and disruptions, as well as changes in consumer behaviour as retail shifts to what we call seamless commerce. Linked to this, e-commerce's share of retail globally is expected to reach 22.6% by 2027, up from around 17% in 2021.

Additionally, the COVID-19 pandemic amplified the need for C&R companies to diversify their brick-and-mortar channels, and to adopt new direct-to-consumer operating models to meet changing customer expectations: Our most recent research, for instance, shows 45% of customers in Asia Pacific now prefer an omnichannel experience.

Pressure on costs and margins have also forced firms to re-examine their supply chain management to ensure optimisation, while other drivers behind the ongoing trend of supply chain diversification, which can boost resilience, adaptability, and agility, include macro factors like inflation, geopolitical tensions, and labour shortages, as well as the need to ensure greater transparency and sustainability in supply chains.

Ultimately, C&R firms, and particularly those focused on youthful growth markets in the Asia-Pacific (APAC) region see the benefits of having a highly integrated supply chain. Integration, though, requires a centralised approach, including establishing Centres of Excellence in key markets (see sidebar).

Why Centres of Excellence are key to an omnichannel approach

Firms expanding into new markets might allow individual entities to pursue efficiency gains independently. However, this can create technological redundancies and geographic mismatches if their efforts are not coordinated.

An omnichannel approach, conversely, requires that firms stitch together different geographies and functions so that they adopt a standard set of processes.

What is necessary, therefore, is to apply a "supply chain first" mindset, which reinforces that all centralised processes will help to optimise the overall supply chain flow.

This is where a Centre of Excellence comes in: It plays a crucial role in streamlining and standardising best practices and methodologies across an organisation, ensuring new processes are adopted efficiently and consistently.

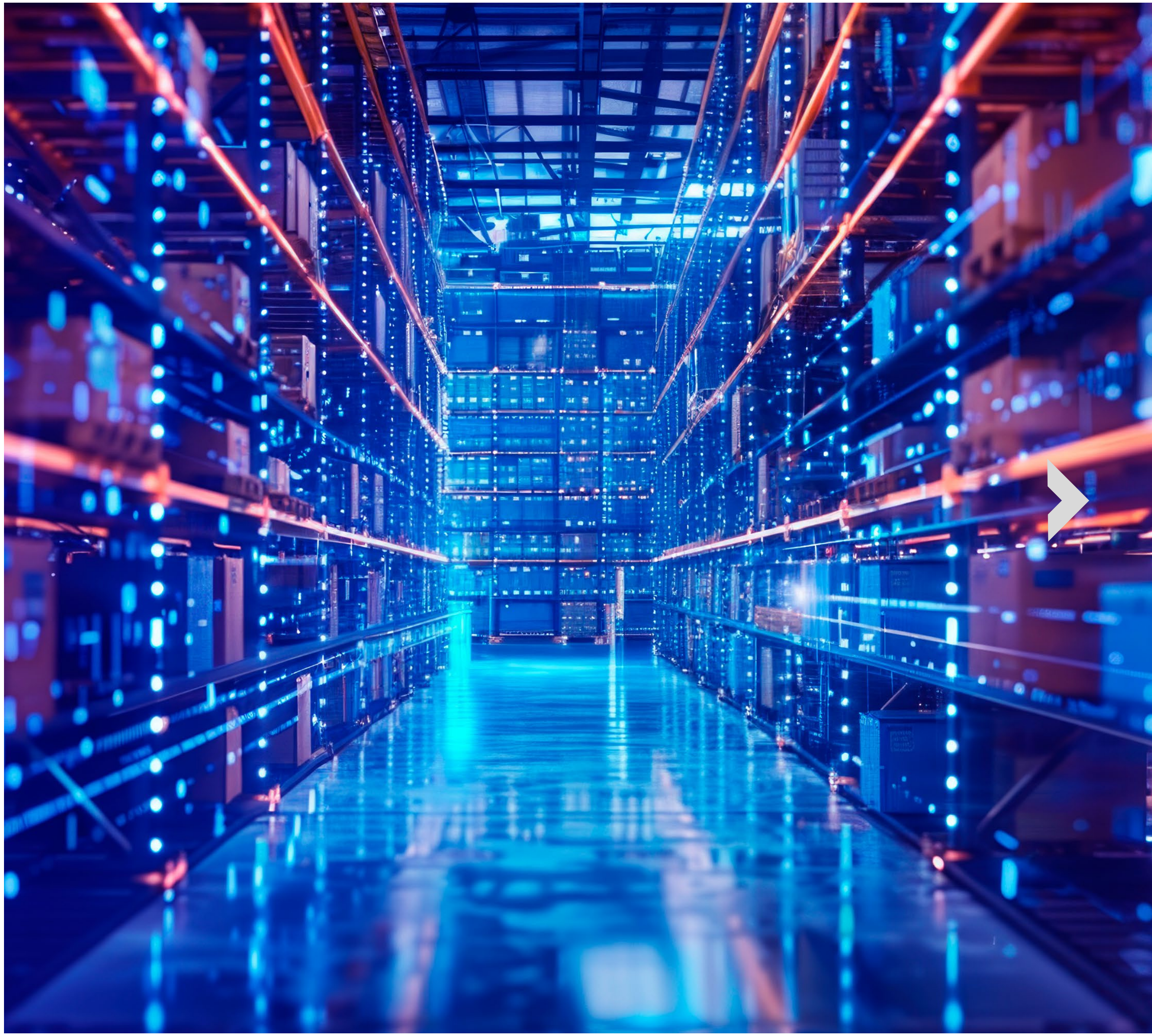
In turn this brings challenges with data, though they are surmountable: Firms should streamline data flows from the various regions to a central location providing access to real-time insights to effectively manage the business while ensuring they meet compliance and regulatory requirements for that data.

While there is no one-size-fits-all solution, an omnichannel approach can help firms position themselves to be compliant in all markets and to generate real-time insights and visibility across the supply chain – backed by the seamless integration of systems and technologies. Having Centres of Excellence is core to that success.

However, as businesses home in on their transformation strategies, they would also do well to arm themselves with a deep understanding of the tax, legal and regulatory considerations to ensure compliance and maximise benefits. Many local and international firms often overlook these factors that can determine their success or failure in the rapidly changing e-commerce environment. Expanding successfully into new markets will require that firms think beyond common practical issues like logistics, data management or understanding the needs of Gen Z customers in the APAC region.

As KPMG in Singapore's June 2024 seminar on unlocking supply chain transformation heard, and as this white paper explains, these considerations link directly to the ongoing trends of supply chain diversification and functional centralisation that an omnichannel approach requires, and incorporate aspects around trade compliance, licensing, and permits.

Having an understanding of the often-complex tax and legal issues, together with adopting a reimagined mindset towards technology and competencies, would help C&R firms achieve their strategic business goals in one of the world's most exciting e-commerce regions.



The omnichannel supply chain: Legal considerations

The legal challenges associated with an omnichannel approach are best divided in two: factors linked to supply chain diversification and factors linked to functional centralisation.

Supply chain diversification and the omnichannel approach
With diversification, issues include the need for due diligence and stringent internal controls, as well as sound knowledge of the existing laws, regulations, and standards that apply to a firm's target markets. Diversification also requires that firms focus on complying with varied standards and with changing laws and regulations, including Anti-Money Laundering (AML) considerations, Intellectual Property (IP) protection rights, and labour issues.

Additionally, different markets in the region have their own consumer protection laws, with compliance necessary in areas like sales practices, returns policies, and warranty terms. Advertising and marketing practices also vary, and firms need to follow the regulations that cover, for instance, false or misleading advertising.

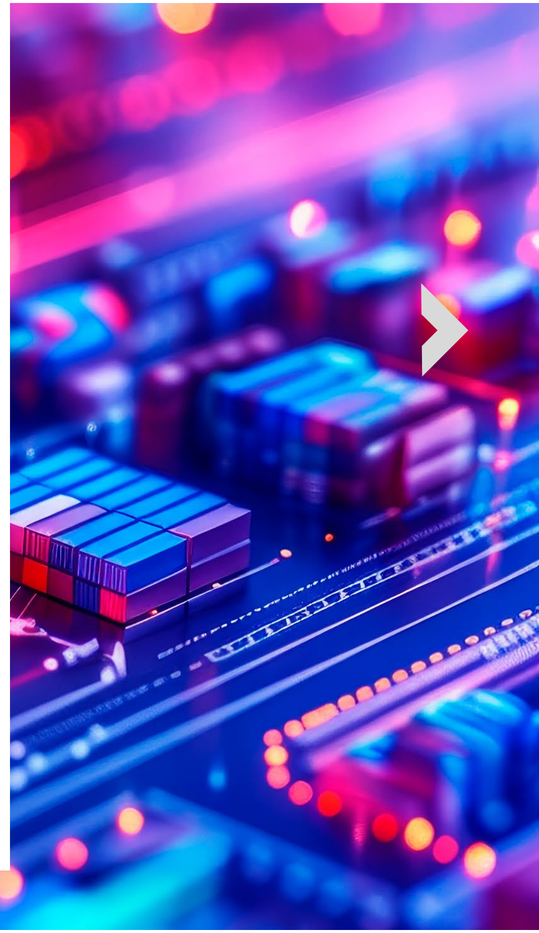
Knowledge of trade agreements is also important – firstly, for compliance reasons, but also so that firms can maximise any benefits to which they might be entitled.

Dealing with data
Data is an essential consideration when rolling out an omnichannel strategy, as this approach typically involves collecting customer data across multiple platforms and collating it centrally for use.

This raises significant data privacy and security concerns, which is why firms must know and comply with data protection laws in all relevant jurisdictions. Additionally, firms should consider cyber-security risks and the fact that a centralised database brings its own risks – not least that a single point of failure could result in a data breach.

Managing suppliers
Another consequence of diversification is that it involves multiple suppliers, which can increase the complexity of supplier management. As a result, supplier relationships should be governed by contracts that clearly outline each party's obligations and liabilities, with those contracts explicitly covering dispute resolution mechanisms given that the applicability of suitable forums can become a challenge.

Additionally, firms must comply with competition laws in different markets and ensure that, for instance, exclusive agreements with suppliers or retailers do not raise antitrust concerns.



Functional centralisation and the omnichannel approach

One significant risk of the emerging diversified supply chain landscape is how firms allocate roles. Currently, the responsibility to deal with supply chain risks are spread across different functions, which is inefficient. Centralising those functions, which is core to an omnichannel approach, is vital as it defines stakeholders' responsibilities and creates accountability.

Additionally, centralisation requires that firms have an ethical and sustainable supply chain. Ethical sourcing must be placed front and centre, with clean end-to-end processes.

In practice, this means complying with, for instance, standards on human rights, the environment, and labour-sourcing. This in turn requires that firms take a robust approach to Know-Your-Customer (KYC) requirements, and to add checks and balances to ensure their suppliers are consistently complying with these obligations.

Lastly, building transparency into supply chains means firms can report on their practices and suppliers accurately. This is not just good practice; it also helps to minimise reputational risk.

Licensing and trade factors

There are many overlapping areas firms need to consider when implementing an omnichannel approach. These include how this might affect licensing and permits, and the practical steps necessary to trade smoothly across borders.

As businesses expand into new markets, the complexity of compliance increases. That makes it essential to have valid operating licenses for those jurisdictions. These licenses can be thought of as passports that allow the firm to operate legally across borders while meeting international standards.

When it comes to trade, factors to consider include:

- The choice of Incoterms, which define buyers' and sellers' responsibilities in relation to transportation, insurance, and customs clearance.
- The effective management of trading documents to ensure seamless movement across borders.
- Understanding that international trade rules can change abruptly – and being prepared for that.

Awareness of new laws or changes to existing laws that affect trade is also vital. Two notable pieces of legislation that might affect firms are the EU's upcoming Carbon Border Adjustment Mechanism (CBAM) and Singapore's Carbon Tax, which is a first in Southeast Asia. There is also an array of Free-Trade Agreements (FTAs) that might be applicable to new markets.

From licenses to FTAs, each component plays a distinct role; collectively, they ensure a smoother, more efficient international trade process.

A useful approach is for firms to **create a centralised repository** that manages these licenses and permits. This helps them to meet compliance requirements more easily as they can rapidly identify any documents needed and then acquire them.

Due diligence and more

Firms must keep abreast of regulatory updates and understand the variety of regulations that might bring different levels of scrutiny and impact. This includes understanding export controls and issues surrounding trade restrictions, which adds layers of due diligence requirements and which in turn will affect firms' go-to-market timelines.

Additionally, as an omnichannel strategy typically involves cross-border trade – which refers to the selling of multiple products in different countries – firms might also encounter issues related to customs, import-export regulations, and international trade agreements.

Other considerations include:

- Ensuring that onboarded third parties meet due diligence needs, have specified contractual obligations, and comply with data protection requirements.
- Considering geopolitical sensitivities and the need to conduct due diligence to comply with sanctions laws.
- Protecting proprietary information and technology so the firm's intellectual property rights aren't violated. This requires robust protection strategies.
- Implementing enhanced internal controls and streamlining processes. Firms must monitor these for compliance reporting to ensure that, at a minimum, licenses and permits meet regulatory requirements.
- Considering legal issues around cross-border payments, including AML, KYC, and Ultimate Beneficial Owner ("UBO") factors, as well as those linked to forex exposure and the need to comply with local regulations on e-commerce.

Inventory issues

The final aspect with functional centralisation relates to inventory. Here, firms should ensure their policies are in line with their contractual obligations to suppliers and customers, and that they comply with health and safety regulations.

Linked to this is product compliance: Given that different categories of products might be subject to different regulations, firms must ensure all products comply with applicable laws and regulations, and that they have the necessary rights to store and sell products in their portfolio that are patented, trademarked or copyrighted.

Lastly, inventory forecasts must be accurate as inaccuracies might cause disputes with suppliers or customers. Additionally, if firms are using software solutions for category management, their use of those solutions must comply with the software license agreements.

The omnichannel supply chain: Tax considerations

In the dynamic world of retail, an omnichannel supply chain has become essential for meeting the evolving needs of consumers. This approach integrates various sales channels - whether in-store, online, or mobile - into a cohesive system, enabling businesses to deliver a consistent and seamless customer experience across all touchpoints. By harmonising inventory management, order fulfilment and logistics, an omnichannel supply chain enhances operational efficiency and responsiveness. However, this integration also introduces complexities, with heightened challenges in the realms of legal, tax and customs.

Navigating sales tax regulations, managing legal and tax compliance across different jurisdictions, and ensuring accurate tax reporting can be challenging as transactions occur via multiple channels. As consumer expectations continue to rise, mastering this integrated strategy while addressing the legal and tax implications is crucial for retailers aiming to remain competitive, compliant, and foster greater customer loyalty.

Base Erosion and Profit Shifting (BEPS) considerations

The Organisation for Economic Co-operation and Development (OECD) has launched a global initiative, known as BEPS, to modernise the international taxation system in line with economic substance and value creation.

Due to this, tax authorities may often request to explain any profit shifts and also challenge the tax-planning approach in which multinationals can decrease their overall tax burden by moving profits from high-tax jurisdictions to lower-tax jurisdictions.
It is critical to understand how BEPS may affect supply chain in both the profit reallocation proposals (known as Pillar One) and the global minimum tax measures (known as Pillar Two)[1].

The outcome of the OECD's efforts have led to new demands for internal resources, the need to revamp tax policies, and investment requirements to handle new and greater compliance obligations. Thus, firms might want to consider which factors are driving value in the omnichannel supply chain and then look to reattribute profits to various functions with BEPS in mind.

1. For more, see: BEPS 2.0: What you need to know

Goods & Services Tax (GST) and Value-Added Tax (VAT)

The complexities do not end there. A crucial first step for firms looking to expand in the region is whether when entering new markets, are the firms required to register for GST or VAT in that country.

Typically, the rules about the place of supply for goods or services differ depending on the jurisdiction. That means firms selling cross-border, or even within Singapore, need to assess whether they are providing a supply of goods or of services, and then consider whether they need to register for GST or VAT.

With cross-border e-commerce, firms might face GST or VAT impacts not only from selling into multiple jurisdictions, but also from the approach they take: Are they, for instance, using their own marketplace or leveraging that of a third party?

Additionally, different supply chain models might have GST or VAT consequences that depend upon:

- Whether a firm sells goods on consignment or concessionaire basis.
- Whether it sells low-value goods to overseas jurisdictions.
- How it deals with returned goods or refunds.
- Its policy on the Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) of intangibles, and how GST interacts with relevant adjustments for transfer pricing.[2]

Linked to much of this is the need to be aware of new areas to consider. Take for instance when supply chains shift from selling goods in brick-and-mortar shops to selling goods online. For example, if a firm also acts as a payment platform processor for the online sales, it will need to consider whether it is making exempt supplies for the platform fees it earns or whether it is making taxable supplies. That requires knowing whether the firm bears the risk from the transfer of monies and guarantees the payments. If this is the case, such fee would constitute an exempt supply for Singapore GST purposes.

On the other hand, simply providing a platform to facilitate the payment of transactions would be a taxable supply of services. Determining the GST treatment requires examining the law, any agreements, and the nature of the payments process itself. That can be a complex undertaking, as can another often-overlooked issue: rewards for customers (including free gifts with purchases) and loyalty points.

2. Transfer pricing provides a way to calculate arm's-length charges for related-party transactions, commonly for transactions that are cross-border.

Multi-redemption vouchers, for instance, are treated differently for Singapore GST purposes from non multi-redemption vouchers and other jurisdiction may have different GST/ VAT treatment for the different types of points or vouchers awarded by firms. Consequently, firms ought to get advice on the nature of their loyalty points or rewards scheme so that the correct GST/ VAT treatment is adopted.

Those considerations are important, too, for firms looking to establish a loyalty program, as these need to be designed appropriately. While that is less important for localised rewards, it is crucial for those like hotel chain programs where customers might earn points in one jurisdiction and spend them in another. A cross-border, multi-country program is far more complex in terms of tax, profit-allocation, and transfer pricing.

Taxing rewards

The issue of customer rewards goes deeper than GST and VAT considerations. When businesses create an app, for example, those are usually business- and technology-driven. That gives rise to issues around IP and intercompany transactions.

On the IP side, issues include:

- Where to recognise the IP by considering tax aspects around the effectiveness of the holding structure.
- Any support provided via grants and other incentives.
- How best to commercialise the IP.

There can also be considerations around the customer data these apps collect, which the centralised function would need to consider.

Taxable presence

While GST and VAT are fundamental tax considerations for an omnichannel approach, they are far from being the only ones. Another consideration relates to the taxable presence in the country or countries of operation.

While firms ought to be aware of their tax obligations in every new market, some do not grasp that, even though they lack a physical presence and have not set up a legal entity in those markets, they could still be taxed on profits. Should that market's tax authority learn of their presence and activity, the firm risks being handed a large tax bill. For this reason alone, firms considering selling into new markets need to plan and structure their tax presence appropriately.

A crucial part of this planning process concerns potential Permanent Establishment (PE) exposure. At the heart of this process is assessing how flexible the firm is regarding certain operational functions and the added value those create in that market. Consolidating certain high-value-added functions in one jurisdiction can, in some instances, make sense commercially as well as from a tax and transfer pricing perspective.

The complexity of supply chains can make PE considerations more challenging. Firms might source products in one location, market and sell them elsewhere, while customers might buy them in various locations and across different platforms.

That raises the allocation issue – determining where the firm earns its revenue and where those related expenses are incurred. Not only might a customer interact with the seller at different points along the supply chain; they might well purchase through a different channel. While the firm's marketing spend might be online, the customer might ultimately purchase the product in-store.

Consequently, firms should consider how to allocate the revenues and costs incurred along the entire supply chain in a way that fairly compensates all the parties that sought to get the customer to make that purchase.

Permanent Establishment

The term "Permanent Establishment" refers to a form of presence in the jurisdiction through which the business of the (foreign) enterprise is wholly or partly carried out. The PE may exist in different forms – fixed place PE (a fixed place of business, e.g. branch of office), service PE (provision of services in the other jurisdiction for a certain period of time), dependent agent PE (an agent acting on behalf of the foreign enterprise), construction PE (conducting activity on a construction site). PE rules and practice of their application heavily depend on the local legislation and double tax treaties.

Supply-chain financing

A further aspect that affects both tax and transfer pricing is how firms finance their supply chain. Some might pre-pay certain suppliers, for instance, while others might employ different financing solutions like equity or debt (external or intragroup) financing or combination of both models (including hybrid financing). In any case, there are tax implications worth considering.

Assessing how best to manage these needs can be as simple as determining the firm's holding and financing structures. For a large firm, for example, an in-house finance and treasury centre might be optimal. In this way, it could combine its working capital needs with the funds held in different locations to provide the necessary flexibility to operate in various markets.

Firms should also consider any tax or transfer pricing impacts linked to areas like instalment offers and embedded financing that some platforms offer.

Intellectual property

In the modern economy, IP stands as a cornerstone of innovation and competitive advantage, encompassing patents, trademarks, copyrights, and trade secrets. As businesses increasingly leverage IP to drive growth and value, understanding its implications for tax becomes crucial. IP not only plays a significant role in determining a company's financial strategy but also impacts its tax obligations, planning and transfer pricing.

The tax treatment of IP can vary widely depending on jurisdiction. It is therefore important to consider where the IP is registered, and this is linked to the effectiveness of the holding structure, financing operations related to the IP (as the IP-related payments could be subject to withholding tax), as well as the support provided via government grants and tax incentives available. Navigating these complexities requires a nuanced approach to ensure compliance and optimise tax outcomes while effectively managing and protecting valuable IP assets.

Regional Distribution Centres (RDCs)

RDCs have become integral to modern supply chain management, allowing businesses to optimise inventory distribution and enhance delivery efficiency across diverse markets. These strategic hubs enable companies to manage and streamline logistics, reduce shipping times, and better serve regional customer bases. However, the establishment and operation of RDCs also introduce complex tax implications, including transfer pricing considerations. Factors such as the jurisdiction where the RDC should be set up, indirect taxes (VAT or various forms of tax on sales) and local tax incentives must be thoroughly examined. The allocation of income and expenses across different jurisdictions can affect tax liabilities and compliance. As businesses expand their network of distribution centres, understanding and navigating these tax considerations becomes essential to maximising operational efficiency and minimising tax risks.

Smoothing the path: A technological helping hand

Firms currently perform many omnichannel tax processes manually because data collation is a major challenge. Firms often have different systems for inventory control, procurement, and point-of-sale. Some systems might be old or have been implemented without considering the tax implications.

This data challenge spills into other areas, not least for e-commerce retailers that process tens of thousands of transactions daily. Consider a request by the tax authorities to explain any profit shifts, which is a tax-planning approach in which multinationals can decrease their overall tax burden by moving profits from high-tax jurisdictions to lower-tax jurisdictions. Having to justify such an approach that might well stretch back years would place a major burden on the tax team if that work has to be done manually.

While firms face a plethora of legal, tax, and trade obstacles in their efforts to expand into new markets with an omnichannel offering, there are technological solutions that can help. At the heart of a successful approach is access to usable data in a connected, central location.

Integrating tax and technology by standardising a single source of truth and reconciling real-time reporting from finance and tax departments not only helps firms to file accurate and complete reports; it also has a significant impact on areas like GST and potential registrations, corporate tax, and transfer pricing decision-making, and it helps to highlight key issues related to customs.

The supply chain control tower

The single source of truth approach also links to the supply chain control tower. In this way, firms can consolidate data from different applications to provide end-to-end visibility across the supply chain (Figure 2).

Figure 2: The supply chain control tower

Types of control towers

Plan

Planning control tower
Drives central planning and harmonisation across disparate systems and sites

Execute

Core ERP Systems
Designed to manage execution inside the four walls of the enterprise

Collaboration control tower
Supports extending processes to trading partners across the end-to-end supply chain

Visibility control tower
Provides extended visibility to in-transits, inventory, capacity, and storage utilisation

Inside the "four walls" | **Outside the "four walls"**

Value Levers

- Globally integrated planning process
- Real time, fact-based decision-making
- Align demand and supply
- Evaluate business scenarios
- Support global collaboration
- Harmonise global planning
- Track performance against critical KPIs

Having this overarching view helps firms to better align supply and demand, and to work with their business partners to make faster, fact-based decisions.

For these reasons, the supply chain control tower is becoming a centralised, single source of truth for all functions – whether those are tax, operations or finance. Usefully, having a single source of truth also boosts efficiency, with areas like compliance operating more effectively under this approach.

Source: Seeking Visibility in Logistics and Distribution, KPMG (2022)

At KPMG, that technological solution is the Digital Gateway, a global cloud-based platform that bridges tax and legal, and streamlines compliance obligations, planning, and reporting. That is part of the support that the firm has built for clients, including analytics and proactive dashboards so they can effectively manage their tax function.

The concepts of consistency, centralisation, and standardisation, which are fundamental to the Digital Gateway, bring advantages across the board. For example, this approach helps firms to overcome the challenge that their operations might move ahead of tax law. By integrating the technology in a single place, tax moves alongside the business. That means firms can mitigate their tax obligations and risks proactively rather than reactively.

Applying such a solution brings other advantages, including the ability to trace back to the underlying transaction to support audit-related queries and defence of actions, automation of manual processes to boost efficiency and effectiveness, and detailed margin analysis across all transactions.

It also provides the ability to seamlessly assess the flow of transactions and the impact on the business, and it gives firms the means to perform analysis at a product level rather than just at an overall level. Furthermore, it offers a detailed assessment of the impact of all taxes on the business throughout the product lifecycle.

Forecasting and simulations

A further benefit comes from Digital Gateway's forecasting tools that can assess the impact of transactions with ease, simulating different scenarios and enabling much-improved scenario planning. In the past, such analyses would be a far more complex process. However, Digital Gateway's technology means it can quickly and accurately simulate and forecast potential impacts both on tax and the business as a whole.

In this way, firms can forecast how different scenarios might impact three linked aspects: their transfer pricing, the implication on GST when transfer pricing adjustments shift, and how that might inversely affect their customs obligations.

Applying this technology to these three aspects overcomes the problem of dealing with inconsistently available information that would otherwise require manual processing. In this way, firms can take greater advantage of opportunities that arise in different markets or distribution networks, mitigate their risk better, and plan with increased confidence.

Managing the transition to an omnichannel supply chain

The past decade saw trade centred around the narrative of globalisation, which led to simplified supply chains and the decentralisation of functions along with measures to minimise trade barriers and facilitate trade.

In recent years, this has changed. Protectionism has crept in, and the imposition of trade barriers is on the rise. Firms will need to navigate multiple trade compliance, licensing, and permit requirements when trading across borders, doing so successfully will be crucial to their success.

This has come even as firms in the region shift from single channel to omnichannel retail. Given the realities of the array of drivers, there is little chance these changes will be interrupted. C&R firms, then, need to reinvent their supply chains and move into new markets to expand their customer base and grow revenues. As they do so, they should proceed carefully – particularly when it comes to the diverse regulations and standards that they will encounter that relate to legal, tax, and trade in general.

It is vital that firms evaluate potential new markets comprehensively to understand how their business processes can adapt to specific hurdles, different compliance requirements, and the tax challenges that each market presents. In this way, they can identify areas where they need to refine their existing processes, which in turn lowers the chances that they will encounter problems when they do enter.

Doing so will also improve their awareness of FTA opportunities, government incentives, and industry gaps, all of which can generate significant advantages.

Similarly, evaluations can help businesses to identify Centres of Excellence in specific markets, which will prove to be valuable resources as their organisations grow.

Ultimately, many of the legal, tax, and trade issues that firms will need to tackle in new markets will stem from how they have divided their functions and delineated the risks between their various entities. Getting these aspects right ahead of time will help them to minimise or avoid problems later.

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