Morison KSi

H1 2017

Global Opportunities Bulletin

Editorial

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Global risks provide opportunities

In the last issue of Global Opportunities Bulletin, member firms were asked to consider ways that they could jointly bid for opportunities that they could not otherwise offer to do alone. Morison KSi is a vast association of capable firms and professionals that you can enlist to help expand your practices. For an association with over $1 billion in combined revenue, members certainly have the ability to pursue many more joint opportunities than already in place. Morison KSi encourages you to enlist the support of your regional Board of Directors to assist you with ideas for growth and introductions to those who may be able to help you.

Many of the articles submitted for inclusion in this issue consider areas of risk that you as accountants and advisors are adept at addressing. There are evolving business risks all over the world. This is not unique to this era or limited to any particular region. There are always patterns of concern at country and regional levels that provide opportunities for firms to expand their practices. Firms first need to understand the concern or problem, so that they can usefully develop initiatives to engage with clients and prospective clients in responding to these risks. Identifying the risks may be the difficult part. Others can help you develop the appropriate initiatives. Just ask, and your fellow member firms will respond.

For example, on a global scale, two economic risks – unemployment or underemployment, and energy price shocks – are among the top concerns for doing business in half of the 140 largest economies. The failure of national governance, fiscal crises, asset bubbles and cyberattacks follow in importance. Surely, these global risks affect your clients at the local level as well.

Economic risks predominate in Europe, including fiscal crises, unemployment, asset bubbles and energy price volatility. Brexit presents risks (and opportunities) throughout the UK and Europe. The top concern in Canada is also energy price volatility, while executives in the USA are increasingly concerned about cyber-related risks and attacks. That must be true of Europe and Asia, given the events of recent months. Russia and Central Asia have concerns about fiscal crises and unemployment, along with the risks of unmanageable inflation and interstate conflict. Environmental risks worry business leaders in East Asia and the Pacific, alongside energy prices and asset bubbles.

In South Asia concerns include energy prices, together with fiscal crises, unemployment and failure of national governance – which is the top concern in Latin America and the Caribbean, followed by energy price shock and unemployment. Executives in the Middle East and North Africa likewise worry about energy prices, together with unemployment, terrorist attacks and interstate conflict. In Sub-Saharan Africa, the business community's top concerns include unemployment, energy prices, the failure of urban planning and the failure of critical infrastructure.

One can mitigate many of the common risk themes across regional levels. Manage energy price volatility through derivative contracts. Mitigate cyber-security risks by better protecting your own data (and the data of your clients) by implementing proper procedures and controls. Work with others to implement well-established governance processes and controls to protect your clients.

Understanding the presence of asset bubbles may be the most important factor in proactively managing that risk.

The beauty of our business is that with every 'problem' comes an opportunity. Listen to your clients, learn of their concerns, and then lean on your fellow members for solutions you can profit from.

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On boarding a new transfer pricing client

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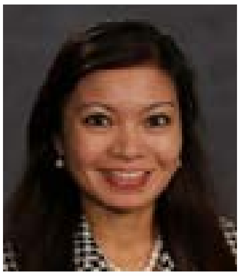

One of the fundamental challenges when starting a transfer pricing engagement with a new client is acquiring a good general understanding of their business – and securing sufficient details about their operations – in order to develop the appropriate transfer pricing policy and methodology.

Many micro-multinational small and medium-sized businesses (SMEs) are generally unfamiliar with the technical language customarily used by the tax organisations of large multinationals. In other words, the tax departments for large multinationals are the ones who usually deal with these issues via their accounting firms. In micro-multinationals, on the other hand, there are seldom accounting departments, so their COOs or CEOs must deal with these tax matters.

In order to enable communication and employ language that is familiar to business owners and entrepreneurs, tools are required that speak the language of business rather than that of tax regulations. One such tool that we have found particularly useful is the business model template devised by Alex Osterwalder, the Swiss business theorist.

Based on his PhD thesis in Management Information Systems from the University of Lausanne, Osterwalder's business model was designed to help entrepreneurs who are starting a new business to describe, design, challenge, as well as document and reinvent, existing business models. The model is essentially a visual chart that describes a firm's or product's value proposition, its infrastructure, customers, and finances. Its aim is to help companies align their actions by indicating possible trade-offs. As a bonus, Osterwalder's model also serves as a good foundation for understanding a business for the purpose of transactions taxes – evaluating 'nexus' for state and local tax (SALT) purposes in the USA. Nexus is defined as 'sufficient physical presence' or connection with a state that would allow such state to impose taxes on the out-of-state company. Through Osterwalder's model, connections become visible. Performing both exercises – transfer pricing and SALT evaluation – together allows a client to see the total picture and make suitable trade-offs.

The Osterwalder model contains nine elements which, taken together, provide a coherent view of the business along with the key drivers. First is the 'value proposition', which identifies:

- The problem you are solving, or the needs you have identified
- Why you are uniquely positioned to solve the problem or satisfy the needs
- Why your customers prefer your solutions to those of your competitors.

On the customer revenue side, there are four components:

- Customer segment
- Customer relationships
- Business channels
- Revenue streams.

In discussing these variables, one can discover how a business defines and acquires its clients. Is the customer acquired remotely, from outside the country? Is there a very long sales cycle with many 'hands' involved in the process? Are business partners used as agents to drive sales?

Such discussions will create a profile of whether 'comparable uncontrolled transactions' exist; how much value is generated by the sales organisation; and whether connections for SALT purposes are being created by the sales process and sales support functions. Finally, what are the tax consequences of various revenue streams (services, sales or royalties)?

On the cost side, there are also four components:

- Key activities
- Key resources
- Key partnerships
- Cost structure.

Which activities are the most important in delivering the value proposition to the customer and which resources will be required? Distribution? Ongoing customer support? Acquisition or use of intellectual property? Existence of legacy relationships generated by a related party? Role of partners in assisting you to deliver the solutions to your customer?

These discussions will familiarise the client with the key elements of transfer pricing and will illustrate how various related parties will work together to contribute to the success of the global enterprise. Many of the important 'covered transactions' that will have to be evaluated in order to establish 'arm's length' prices will begin to be revealed.

Having established the necessary communication framework, it is then appropriate to begin the systematic task of defining each legal entity in terms of the criteria:

1. The functions undertaken by employees or contractors – sales, business development, research and development (R&D), software development, services, customer support
2. The risks incurred – R&D, product development, long-term contracts, supply chain, market risks, credit and bad debt risks, foreign exchange risks
3. Functions performed by one legal entity for another – fundraising, provision of loans, strategic directives, administrative services, customer referrals, lists
4. The intangible and tangible assets deployed – technology, know-how, trademarks and trade names, corporate reputation, inventory, warehouse goods, real property assets, leaseholds
5. The competitive landscape and how one's business is similar or different from competitors.

For SMEs that are micro-multinationals, painting the 'business picture' is the first step in the transfer pricing exercise. This process will become a 'rite of passage' into the global game where tax authorities stake out their claim and exert their taxing rights over multinational companies in order to properly divide the global tax 'pie'.

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Tax incentives in Pakistan

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This article aims to provide an insight into the incentives currently available to investors in Pakistan under various schemes.

Pakistan's economy is the 26th largest in the world in terms of purchasing power, and the 44th largest in absolute dollar terms. Pakistan has a semi-industrialised economy, which mainly encompasses textiles, chemicals, food processing, agriculture and other industries. The growth poles of Pakistan's economy are situated along the Indus River; the diversified economies of Karachi and Punjab's urban centres coexist with less developed areas in other parts of the country.

Over 60 languages are spoken in Pakistan. English is the official language, and is used in official business, government, and legal contracts; Urdu is the national language. The population of Pakistan as of 1 July 2017 was over 196 million, making it the world's sixth most populous country with a growth rate of 4.71% (2016).

Economic development

Economic development is vital to Pakistan; the government has done a great deal to relax its foreign direct investment (FDI) rules and, as a result, has succeeded in attracting a substantial amount of foreign investment. In fact, the country's current investor-friendly investment policies are ideally suited to the needs of foreign investors.

Policy overview

Unlike many other countries that supposedly welcome FDI, all of Pakistan's economic sectors are open to foreign investors; local and foreign investors alike receive equal treatment regarding taxes, regulations and relevant laws. Equally attractive, 100% foreign equity is permitted with no government sanction required. Pakistan also allows the remittance of royalties, technical and franchise fees, capital, profits and dividends.

Tax incentives

Export processing zone

An export processing zone (EPZ) is a designated area that is free from normal trade barriers such as tariffs and quotas, and where incentives are offered to investors in order to boost exports.

In Pakistan, the Export Processing Zone Authority was established through Ordinance IV of 1980, with the mandate to plan, develop and operate EPZs in Pakistan. Their first project was to establish the Karachi EPZ in 1981; since then, many others have been set up, including Risalpur, Sialkot, Gujranwala and Gwadar. Various projects such as Saindak Copper and Gold Mines, Duddar Lead and Zinc Mines, Tuwairqi Steel Mill, Reko Diq Metal Mines and Khalifa Coastal Refinery have also been declared EPZs.

The incentives available to EPZ investors under income tax, sales tax, customs duty and other laws are summarised below.

Reduced rate of income tax for exporter
Industrial undertakings located in EPZs are required to pay income tax at a rate of 1% of export proceeds.

Industrial undertaking in Gwadar
Profits derived by a taxpayer from an industrial undertaking set up in Gwadar EPZ are exempt from income tax for a period of 10 years, beginning with the month and year in which the industrial undertaking is set up or commercial operations commenced, whichever is later.

Customs duty on import of capital assets and other materials
The industrial undertaking is exempt

from customs duty on the import of plant and machinery and other materials.

Customs duty and other taxes on export goods
Goods removed from the EPZ for exportation purposes qualify for exemption from customs duty and taxes.

Zero-rated status to supplies of raw material
Goods exported from the EPZ will be zero-rated, but any supply to the tariff zone will be taxable at a rate of 17%. Since supplies of raw material for the manufacture of goods in the EPZ are treated as zero-rated for the purpose of sales tax, there will be no input tax.

Zero-rated status for supply of locally manufactured plant and machinery
Supply of locally manufactured plant and machinery – including ancillary apparatus, mechanical and electrical controls and transmission gear for their adapted use – to manufacturers in the EPZ shall be treated as zero-rated for the purpose of sales tax.

Foreign Exchange Regulations Act, 1947
This Act is not applicable to EPZs, including permissions relating to the export of shares.

Insurance Acts
As the EPZ is exempt from all provisions of the Insurance Act, 1938 and Pakistan Insurance Corporation Act, 1952, there is no restriction on payment of insurance premiums to foreign insurance companies.

Capital gains tax on industrial undertakings
Capital gains derived by an industrial undertaking from the sale of shares set up in an EPZ are exempt from income tax.

Exemption from labour laws
EPZs are exempt from the provisions of the following legislation:

- Workmen's Compensation Act, 1932
- Factories Act, 1934
- Payment of Wages Act, 1936
- Minimum Wages Ordinance, 1961
- Provincial Employees' Social Security Ordinance, 1965
- Industrial Relations Ordinance, 1969.

Special economic zone

'Special economic zone' (SEZ) refers to various well-defined geographic areas where certain types of entity operating in specific economic activities are promoted through investor-friendly policies in order to promote business in that area.
In Pakistan, the SEZ framework was laid down through the Special Economic Zone Act, 2012, and later amended through the Special Economic Zone (Amendment) Ordinance, 2015.

The main tax incentives offered to SEZ enterprises are summarised below.

Customs duty on import of plant and machinery
SEZ enterprises are entitled to one-time exemption from customs duty and tax on plant and machinery imported into Pakistan for installation in that zone, subject to verification by the Board of Investment.

Income tax
SEZ enterprises are exempt from all taxes on income for 10 years from the date of commencement of commercial operations.

Tax credit from income tax to newly established industrial undertakings

A tax credit is available to companies formed for establishing and operating a new industrial undertaking between 1 July 2011 and 30 June 2019 with at least 70% equity raised through issuance of new shares for cash consideration. The tax credit is computed on the basis of the formula provided in the Ordinance. The credit covers a period of 5 years, beginning with the month in which the industrial undertaking is set up or commercial production is commenced, whichever is later.

Exemption from income tax to specific industrial undertakings:

To encourage corporate investment, the government has introduced income tax exemptions for industrial undertakings in various economic sectors.

These exemptions are offered for a specified number of years (usually 5–10 years), subject to certain conditions – for example, an entity should not be formed as a result of any type of reconstruction; capital assets should be freshly acquired, not transferred from an existing entity, and must be owned and managed by the company formed for operating said project.

Income tax exemptions offered to various sectors are summarised below.

Exemption to electric power generation project
Profit and gains derived by a taxpayer from an electric power generation project set up in Pakistan on or after 1 July 1998 are exempt from income tax.

Industrial undertaking in KPK and Balochistan province
Profit and gains derived by a taxpayer from an industrial undertaking set up in the provinces of Khyber Pakhtunkhwa (KPK) and Baluchistan between 1 July 2015 and 30 June 2018 are exempt for

5 years, beginning with the month in which the industrial undertaking is set up or commercial production commences, whichever is later.

LNG terminal operator
Profits and gains derived by liquefied natural gas (LNG) terminal operators and terminal owners are exempt for 5 years, beginning from the date when commercial operations commenced.

Coal mining project
Profits and gains derived by coal mining projects in Sindh, supplying coal exclusively to power generation projects, are exempt.

Exemption to transmission line project
Profit and gains derived by a taxpayer from a transmission line project set up in Pakistan on or after 1 July 2015 are exempt for 10 years.

Exemption for start-up IT businesses
Profit and gains derived by information technology (IT) start-up business certified by the Pakistan Software Export Board (PSEB) are exempt for the tax year in which the business starts up and for the following two tax years. In addition, payments received by such start-ups are exempt from withholding tax.

Going forward

Foreign companies contemplating a move into Pakistan's fast-growing economy should be aware that they will not be alone. As the US Department of Commerce points out, there are hundreds of local firms representing [foreign] companies in the market. Some leading … companies doing business in Pakistan include Pepsi-Cola, Coca-Cola, Procter & Gamble, NCR, Pfizer, DuPont, Oracle, Microsoft, Dell, 3M, IBM, Monsanto, McDonald's, KFC, and Caterpillar.[1]

The China–Pakistan Economic Corridor (CPEC) is a major ongoing development project that will connect Central Asia, Middle East and Africa, transforming Pakistan into a regional economic hub. Pakistan is a varied and interesting place to do business, and, like most foreign ventures, demands flexibility, sensitivity and perseverance.

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Footnote

1. From: Global Investment & Business Center, Pakistan: Doing Business and Investing in Pakistan. Washington, DC: International Business Publications, p. 159.

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Recent Cyprus tax incentives

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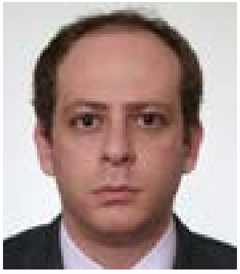

In an effort to maintain tax competitiveness in the continually changing global tax environment, Cyprus has introduced new incentives for doing business in Cyprus and becoming a tax resident there.

Business incentives

Notional interest deduction
As a way of deleveraging businesses in Cyprus, as well as aligning tax treatment of equity financing with that of debt financing, the Cypriot government has introduced the Notional Interest Deduction.
This deduction is based on new equity injected into a Cypriot company or a permanent establishment of non-Cyprus tax resident company.

Key aspects of the deduction:

- Treated in a similar way as actual interest expense
- Calculated after determining the company's taxable profit
- Cannot exceed 80% of the taxable profit of the company/ permanent establishment
- This is merely a tax adjustment, thus no accounting entries are required.

Intellectual property
The new intellectual property (IP) regime is fully compliant with the recommendations of the Organisation for Economic Co-operation and Development (OECD) regarding base erosion and profit shifting (BEPS) Action 5. It attempts to establish a nexus/relationship between expenditure, IP assets and income generated by these.

Under the new IP regime, 80% of the qualifying profits (see following formula) generated from qualifying assets will be considered tax-deductible expenses.
Qualifying assets are those acquired, developed or exploited by a person in the course of their business and that relate to IP, result from R&D expenditures, and of which the person is the economic owner. IP relating to marketing such as trade names, brands, trademarks and image rights is specifically excluded.

Qualifying profits are calculated using the following formula:

$$\frac{(QE+UE)}{TE} \times OI$$

QE = Qualifying Expenditure
UE = Uplift Expenditure
TE = Total Expenditure
OI = Overall IP Inome

Individual incentives

The key existing incentives for new Cyprus taxpayers are:

- 50% tax exemption on gross employment income of more than €100,000, which can be used for the first 10 years of residency
- 20% tax exemption on gross employment income (capped at €8,550 p.a., and applies to the years following first year of employment), which can be applied for the first 5 years, until 2020, when it will be abolished
- Non-domiciled Cyprus tax resident individuals are exempt from the special defence contribution (SDC). SDC legislation imposes taxes on interest, rent and dividend income, with exemption given for 17 years.

In addition to these, the following new incentives have been introduced.

Start-up business incentives

There are new tax incentives to support new and innovative businesses, with the main goal being the promotion of innovation in Cyprus.

Tax exemption on start-up businesses will be granted to individuals who invest in innovative activities directly or through investment funds. The investment can take the form of shares, loans or provision guarantees.

Incentives provide exemption of the investment from the investor's taxable income up to 50% of the taxable income, with a maximum annual amount of €150,000.

Visa start-ups

On 15 February 2017, the Council of Ministers of Cyprus decided on the creation of a Start-Up Visa Scheme to attract non-EU and non-EEA investors to set up an enterprise in Cyprus.

Those who establish successful start-ups will be granted a licence for permanent residence and work in Cyprus, allowing them to employ people and enjoy family reunions as well as other benefits.

The scheme will be run on a trial basis for 2 years, from when it will become effective for up to 150 residence permits.

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Those who establish successful start-ups will be granted a licence for permanent residence and work in Cyprus, allowing them to employ people and enjoy family reunions as well as other benefits.

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Malta: An ever-present non-domicile alternative

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With its non-domicile fiscal legislation remaining unchanged for many years, Malta has always been a highly attractive jurisdiction for individuals and companies wishing to obtain this status in an EU member state. Recent changes in the legislation of other jurisdictions have brought Malta's non-domicile regime even more under the spotlight.

Consistently being ranked among the best countries to live in by various international surveys, Malta's numerous territorial and fiscal traits have long attracted expatriates – high net worth or not – to take up residency there and adopt the non-domicile regime. Without any complications, minimum thresholds or charges, Malta's non-domicile status (for individuals or companies) allows for any foreign income and capital gains other than income earned during the year to be received into Malta without any tax charges.[1]

Although an individual could acquire Maltese residency but not domicile status through the normal operation of tax law, particularly by proving that Malta has become part of their regular life, Malta offers a number of other formal residence non-domicile schemes, summarised below.

Residence or Global Residence Programme (for both EU and non-EU nationals)
Beneficiaries are subject to a beneficial flat tax rate of 15% on foreign income earned during the year and remitted to Malta, with a minimum tax liability of €15,000 p.a.

Malta Retirement Programme
Beneficiaries are subject to a flat tax rate of 15% on foreign income earned during the year and remitted to Malta, with a minimum tax liability of €7,500 and an additional €500 for any dependent or special carer.

Highly Qualified Persons Programme (for senior professionals in the financial services, gaming and aviation industries, both EU and non-EU)
Eligible applicants enjoy a beneficial 15% tax on their employment income, and pay no income tax on any earnings exceeding €5 million.

United Nations Pensions Programme (for both EU and non-EU nationals)
This exempts beneficiaries who are in receipt of a pension or a widow(er)'s benefit from the United Nations, and offers a beneficial flat tax rate of 15% on any other foreign income earned during the year and remitted to Malta.

In addition, to date Malta continues offering the only EU-endorsed Citizenship Programme, enabling successful applicants to enjoy full EU citizenship together with all its associated rights and benefits.

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Footnote

1. From: Article 4(1) Imposition of Income Tax, Income Tax Act of Malta, p14

Mitigation of damages: Professional obligations for the expert witness computing damages

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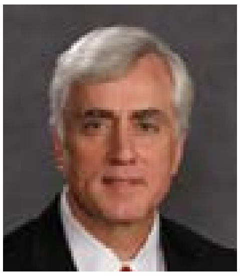

Economic damages experts are often confronted with legal theories that must be carefully applied to their casework within the context of the economic analysis. One example is the Mitigation of Damages Doctrine.

The Mitigation of Damages Doctrine is actually quite straightforward. It simply says that anyone who has suffered a loss or an injury of some sort is expected to take realistic steps to prevent further loss or injury, except if doing so would be impossible financially or result in severe hardship. In fact, if a plaintiff refuses to take steps that would be considered prudent and reasonable, a court can justifiably reduce the amount of money recoverable by the plaintiff or eliminate damages entirely. However, it is normally the defendant's responsibility to prove that the plaintiff failed to properly mitigate or eliminate damages entirely.

Consider the following hypothetical case: the plaintiff is crossing a street when the defendant drives through a stop sign and hits the plaintiff with their car, breaking the plaintiff's arm. Now, if the plaintiff seeks immediate medical care and recovers completely, with full and unaffected use of their arm, a court may well decide that the defendant is liable for the injury and require that the driver pay damages – that is, the driver must cover the costs of tests, medical care, and therapy for the injury.

Suppose, on the other hand, that the plaintiff does not seek medical care; that they refuse to consult a doctor and, as a result, becomes permanently disabled. In this case, the court might reasonably conclude that the plaintiff failed to mitigate damages. So, even if the court still holds the defendant liable for the accident, the compensation received by the plaintiff may amount to no more than they would have received had they sought the appropriate medical care. The plaintiff would not be entitled to the amount their now permanent disability might cost them, such as lost salary, reduced career prospects, lack of mobility, and so on.

In another example, an owner of a commercial building experiences a serious problem in one of the rental units, caused by the actions of another tenant, leading to the vacancy of the affected unit. The owner cannot just leave the damaged space unrepaired, then claim damages. Instead, the owner should take the necessary steps to fix the problem and make reasonable efforts to secure a new tenant.

If such efforts, which the original tenant can prove could have been made, but were not, the tenant can agree to have damages reduced or eliminated. It is the expert's job to consider the economic impact of actual or possible mitigation.

Nothing in law is easy, but the hard part in such cases is determining what an expert witness will need to consider when called upon to provide a damage computation for a plaintiff; that, and how that expert witness computes an offset to the damages for mitigation of loss where such mitigation was or is still feasible. When damages are forecast into the future, the impact of potential mitigation continues to exist and ought to be considered when quantifying damages for lost net profits.

A distinction should be made between the kinds of expert who might be called to testify in a case involving economic damages. On the one hand, there are fact witnesses who will testify about liability. There may also be experts called upon to testify to issues of liability, whose main role is to establish whether or not a particular action taken by the defendant did, or did not, result in harm being done to the plaintiff. As the damages expert knows, the fact of damages must be proved before there can be an economic consequence.

However, the expert who is called upon to assess damages has one single, solitary purpose: to determine the 'value' – the dollar amount – of the injuries or impairments suffered by the plaintiff. Contrary to popular belief, such experts are not required to testify as to who caused the damages at issue. They simply create a causal link between the action(s) that led to the proposed loss and then apply a series of complex formulas and intricate calculations to the testimony rendered by the damage experts to arrive at the dollar amount awarded once the facts have been proved.

Once again, nothing is as simple as it seems. Although experts on economic damages may concur on the nature and extent of the injuries sustained by the plaintiff, that is where any agreement will probably end. There is every chance that the 'value experts' retained by counsel for the plaintiff and the defendant will disagree on what constitutes a 'fair' financial settlement.

This is to be expected even though the experts on either side of the courtroom or deposition table might employ similar methodologies or assessment approaches. The reasons for the divergence may vary, but it often comes down to the fact that the 'values' they assign are probably founded on conflicting assumptions about the extent of the 'suffering' alleged by the plaintiff or how the facts have been applied to the particular case.

Loss comes in many forms: lost net profits, lost future income streams, increased costs due to delay, etc. In many cases, the loss of income also generates saved costs, which must be considered as reduction of damages.

So, what can a court reasonably expect of 'value experts'? What are 'value experts' able to contribute to the proceedings? They focus on those elements that can be assigned a quantifiable market value. For example, net profits before and after a specified event or series of events can be measured with the delta equating to the loss. When the loss is projected into the future, there is a need for the expert to reduce the projected damages to present value (normally date of trial), using an appropriate discount rate. Discount rates will vary, depending on the particular industry and the relative time frame involved in the matter. Experts for both plaintiff and defendant will likely have differing views on the most appropriate discount rate.

However, 'value experts' are not restricted to determining potential lost net profits. They can also project the other costs a plaintiff might face, such as the increased expenses due to delay caused by the actions of the defendant. In cases where there is an impact of delay, the damages expert should consider the potential impact of higher costs of inflation or other factors.

As long as a 'value expert' can formulate estimates (for the losses of the injured plaintiff) based on evidence or reliable testimony in the case, then the expert's testimony will likely be found to be based in sound logic. The use of proper methodology and the correct application of facts to build opinions will be essential to survive a Daubert challenge.

Some experts make a grave mistake by failing to consider mitigation. They may be unduly influenced by their client – likely the plaintiff, who prefers to claim economic damages against one or more parties instead of taking reasonable and available steps to recoup projected losses through new efforts, thereby reducing damages they otherwise might be able to claim. I believe the damages expert should consider the issue of mitigation even when their client prefers they ignore it. Failure to raise the concern at the time of proposed retention could lead to a possible clash of philosophies between the expert and the attorney.

Otherwise, the model of damages preferred by the expert will be subject to rebuttal from the defence expert. Therefore, due consideration of this potentially offsetting damage element can help to decrease the plaintiff's vulnerability to dilution of credibility of their claim, were mitigation to be completely ignored or inadequately measured.

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