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TAXATION AND CUSTOMS UNION

Direct taxation, Tax Coordination, Economic Analysis and Evaluation

Company Taxation Initiatives

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Taxud/D1/

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EU JOINT TRANSFER PRICING FORUM

PSM presentation

on compensating/year-end adjustments

Meeting of 14 February 2013

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Year-end adjustments aka true ups

EU JTPF 14 Feb 2013

Agenda

- Current Landscape
- Technical aspects
- Challenges in practice
- VAT/Customs
- Wish

Current Landscape

No harmonisation or common process possible

Pos/Neg
Adjustments
Accepted?

To where in the
range do you
make the
adjustment?

When can you still
send an
adjustment
invoice?

Year result or
average of multiple
years?

Impact of
adjustment on
other adjustment?

VAT/Customs.....

Does an
adjustment impact
the risk profile of a
taxpayer?

If no adjustment,
can a loss be
reported?

Adjustment in
price during year?

Third party behavior

Adjustments are equally practiced among third parties

Price
adjustment
clauses

Price
protection
clauses

Renegotiation
clauses

Reps. and
warranty
clauses

Etc...

Technical aspects

The arm's length range



The Benchmarked set of comparables



Outside range
Comparable?

Outside range
Arm's length?

Range assumes
better and worse
performers

Range reflects
risk appetite

Why a Y/E adjustment?

Impossible to fully align underlying pricing with profit based and other TP-methods since...

Input Costs
vary

Prices vary

Turnover
varies

Exchange
rates vary

Weather
cannot be
forecasted

Politics and
economic
circumstances

Operational
impact

Productivity
varies

Efficiencies
vary

AND Tax authorities asking for it....

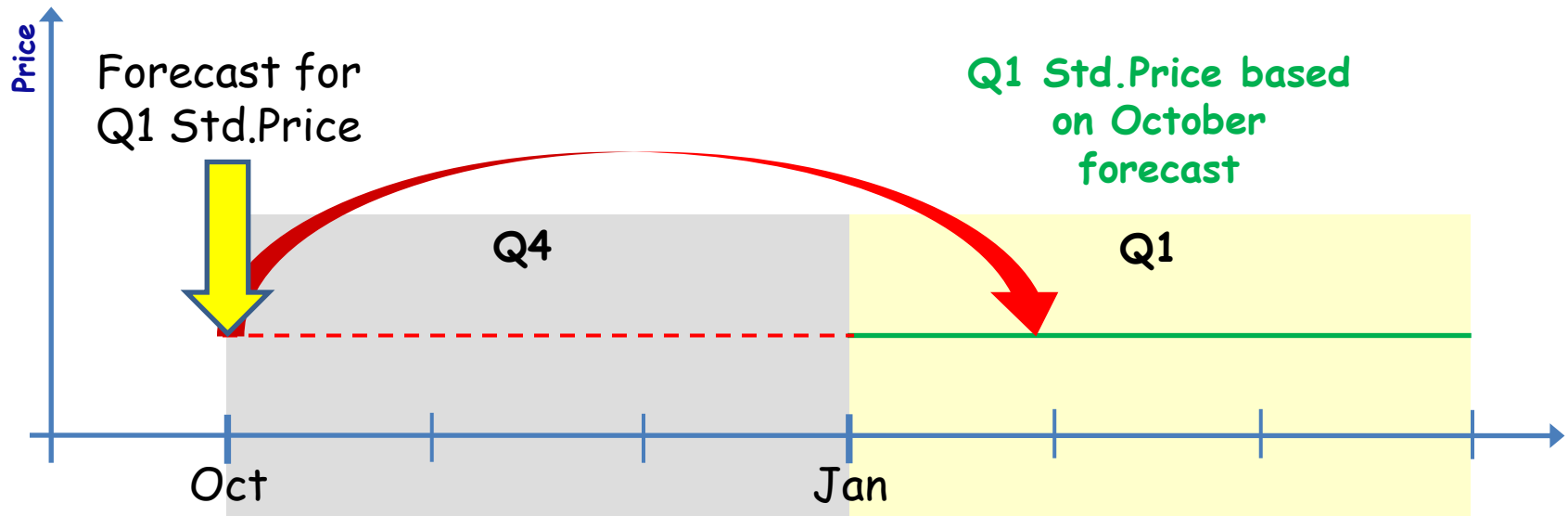
Example

Just a multinational in Europe:

- Over 30.000 different products
- Over 60 owned Factories
- Over 300 Warehouses
- Vulnerable to raw material pricing
- Sales sometimes impacted by weather
- Cross border transactions are the rule

Standard Price Calculation Methodology

- Standard Prices are calculated once a quarter
- For Q1 price, Procurement provide contract price and if no contract available the best estimated forecast price



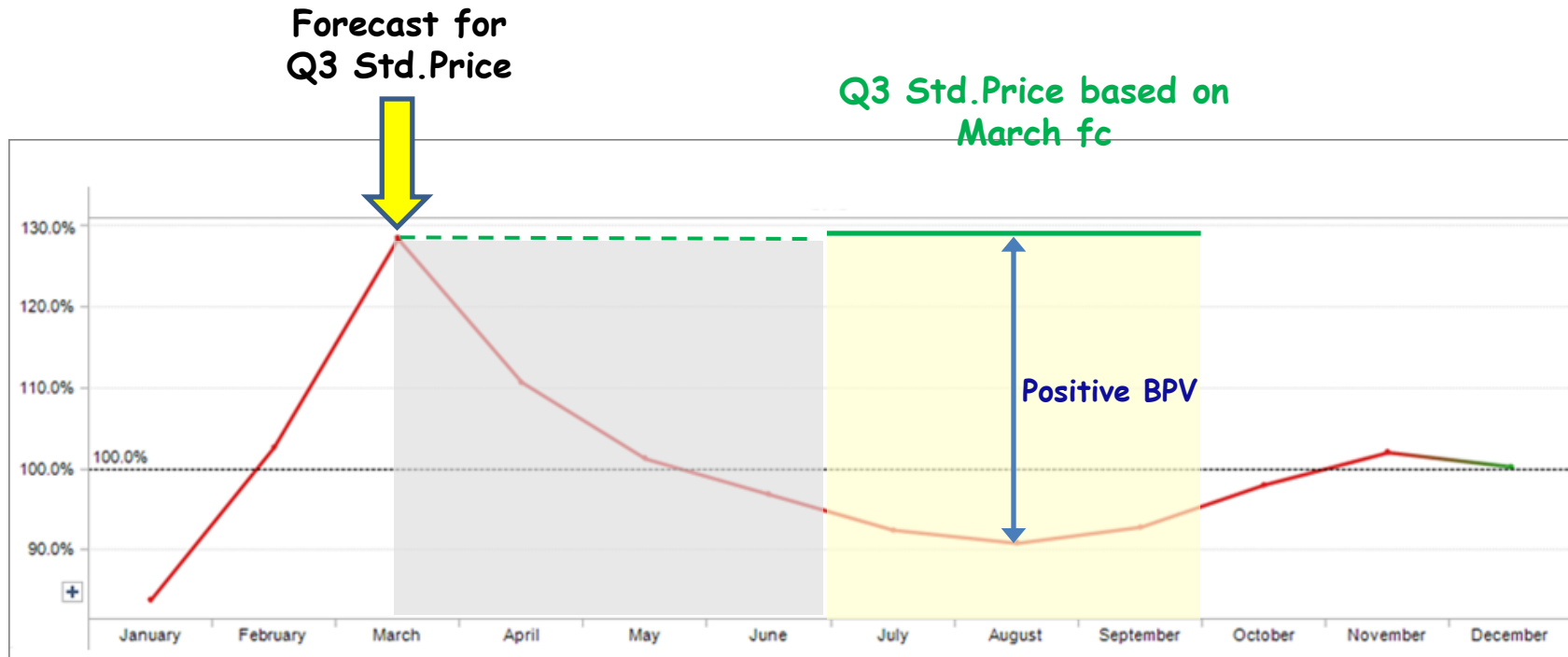
Example: Material A

Background

- In March, prices of material A went up tremendously
- Uncertain market situation at the time where Q3 prices have been forecasted
- Looking backwards the market recovered and prices went down

Result

- Forecast for Q3 Standard Price was too high
- Contract covered for material A in June when market went down again
- Positive Buying price variance (Q3 Std.Price vs. Contract price)



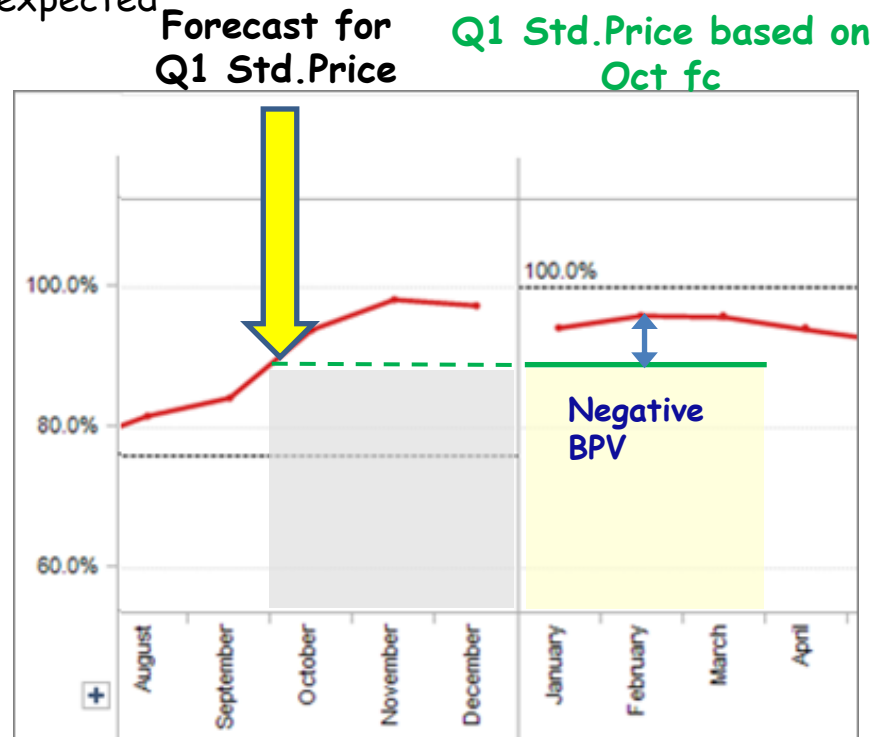
Example: Material B

Background

- Price increase for material B due to high global market demand
- Contract cover for material B is only 1 week
- Std.Price is forecasted 3-6 months in advanced
- Buyer forecasted the price for Q1 based on the official market report and personal evaluation

Result

- Market price increased more than expected
- Negative Buying price variance (Q1 Std.Price vs. Contract price)



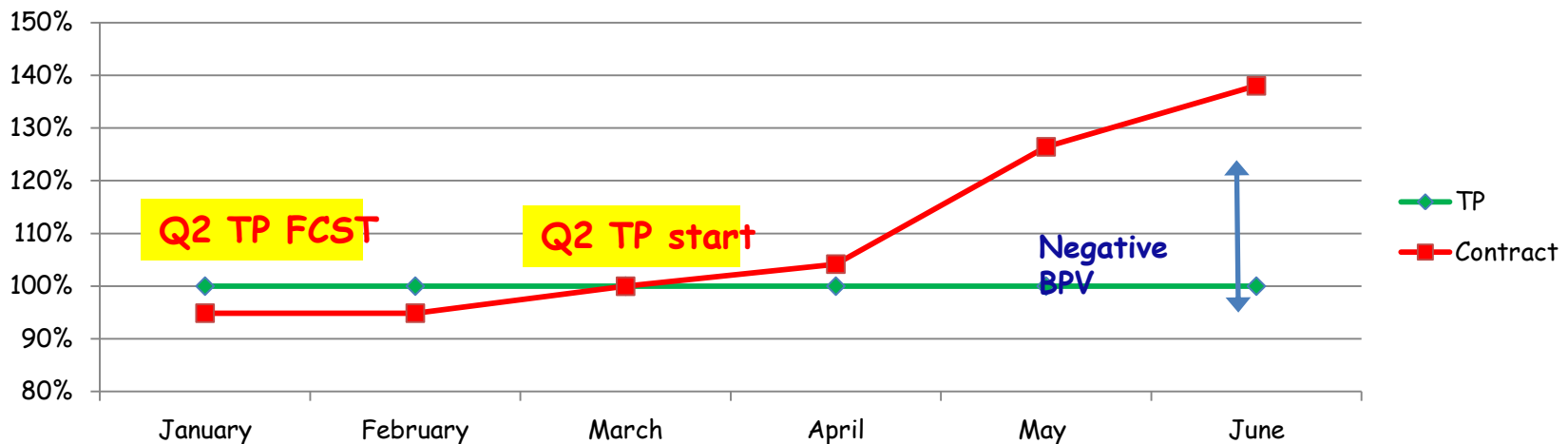
Example: Material C

Background

- Tremendous price increase for sugar in EU beginning in Sep 2011 with increase of more than 50% till beginning of 2012 due to tightening supply situation
- In January, material C prices were expected to remain stable for H1 2012
- Stable supply situation when Standard Price was set
- Looking backwards the market supply situation for UK got also tight

Result

- Standard Price for Q2 set in Jan 2012 with low prices
- Still at the same price levels, material C increased by 50% in May/June resulting from tight supply situation
- Negative Buying price variance (Q2 Std.Price vs. Contract price)



Technical aspects - Methods

All Transfer Pricing Methods are impacted by

Volume
variances

Cost
variances

Price
variances

Competitor
activity

Production
efficiencies

Customer
behaviour

Even a cost sharing agreement can be impacted

VAT / Customs

No harmonisation or common process possible

Highest VAT
rate

Average
VAT rate

Specify per
product
group

Penalty or
not?

Interest?

Revise all
returns or
one

Wish

The process accepted by the memberstates:

Adjustment: Yes!

Consistently and symmetrically

Accept debits and credits also after year-end

Issue a policy statement

Tax payers want to comply, facilitate that.....

Please talk to your VAT/Customs colleagues