Global Insight
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3D printing: a risky business for manufacturing supply chains?

Additive manufacturing is creating exciting new possibilities for manufacturers. But how can you protect your business from the new risks that come with this?

Additive manufacturing, also known as 3D printing, is rapidly changing the face of manufacturing supply chains. Sales of 3D printers and related materials, services, and software soared to US$1bn in 2015 and will surpass US$30bn by 2022.¹ Manufacturing executives already understand how 3D printing is revolutionizing their own operations and will change the face of the industry as new applications and 3D materials emerge daily. Yet for all its promise, 3D printing also creates risk by radically disrupting supply chains the world over.

Supply chain changes and their risks
Just as welding technologies gradually replaced blacksmithing, 3D printing will gradually replace current metallurgy techniques. Manufacturers will rapidly become less dependent on traditional production processes, and production facilities and incorporated supply chains will be redesigned to blend 3D printing with traditional processes. Executives will either turn to suppliers around the globe with 3D-printing expertise or develop internal talent.

Products and components can be copied by anyone with a digital file, posing serious new risks, particularly as cybercriminals can hack into databases across borders. Indeed, some experts believe that by 2018, 3D printing may result in the loss of $100bn annually in intellectual property (IP) rights.²

Fortunately, patent and copyright laws, such as the Digital Millennium Copyright Act (DMCA), protect products and the digital files used to create them, allowing companies to seek damages when IP designs are unlawfully shared or counterfeits are illegally marketed. However, they require deep pockets and resources to find and eliminate copycats. Savvy companies are preventing infringement by drafting strong supplier agreements that protect IP rights and require minimum-security thresholds. These firms also incorporate quality and compliance specifications that make it difficult to print inexpensive knockoffs.

Assess your company’s future
A rigorous additive manufacturing assessment will gauge the potential of 3D printing to reinvent your company and its supply chains and identify hidden risks. You can then develop a plan to test 3D ideas with modest investment before committing to a full 3D future.

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²“Gartner Reveals Top Predictions for IT Organizations and Users for 2014 and Beyond,” Gartner, 2013.
Creating a great client experience is key to business success

Listening to your clients and delivering exactly what they want, time after time, can be more valuable than trying to attract new business.

US businesses lose an estimated US$83bn\(^1\) a year due to poor customer service, while UK businesses lose an estimated £12bn annually. It is a given that first impressions are important. But in today’s hard-charging and rapidly changing business world, a good first impression is not enough. Every subsequent impression must also be as remarkable as possible. According to research, it takes 12 positive client experiences to make up for one bad one\(^2\), and 95%\(^3\) of dissatisfied customers will tell others about their negative experiences.

Here are some tips for creating client experiences that exceed expectations and make every impression a positive one.

Understand the significance of great client experiences
Successful companies know that keeping their customers happy is key to business success – research showed that 86%\(^4\) of clients will pay more for better experiences. Business leaders recognize that the future health of their business is in the hands of their clients. From Wall Street to Main Street, organizations realize they need to listen to customers more effectively and more often than ever before.

Listen to your clients
We all get tired of being asked to complete surveys. For customers, this is a chance to make an impact on the quality and desirability of products and services they buy. From the products that are developed to the way services are delivered, customers are now in the driver’s seat when it comes to creating the experience they want to have in the future. It is worth bearing in mind that a survey showed 70%\(^5\) of companies who provide best-in-class customer experiences use their reviews to improve their customer service.

Focus on what clients want most
Clients expect quality deliverables, on time, every time, without hassle. But they also want innovative ideas, proactive outreach and someone who cares about their financial future as much as they do. It is between six and seven times more expensive\(^6\) – to attract new clients than to retain existing ones, so delivering exactly what your clients want and more is well worth your time.
Take action today
Research has shown that 89% of customers have switched brands due to negative customer experiences, so the time to improve client experiences is now. Most companies really want to make client experiences special – opening up communication is the first step in making this happen.

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5 http://www.huffingtonpost.com/vala-afshar/50-important-customer-exp_b_8295772.html
6 https://www.salesforce.com/blog/2013/08/customer-service-stats.html
Due diligence heats up in the post-Brexit world
The expanding role of financial due diligence following the UK’s vote to leave the European Union.

The UK’s decision to exit the European Union shocked the business community and left many wondering how their business and growth strategies would be affected. While the exact outcome of Article 50, once triggered, is subject to intense speculation in the media, it is clear that the due diligence process will need to report on some additional areas.

**Re-examine EBITDA and adjust accordingly**
In the majority of due diligence assignments, quality of earnings is a key consideration for the acquirer. This usually involves analysing EBITDA (a company’s earnings before interest, taxes, depreciation and amortisation) and removing any one-off income or expenditure so that a true picture of the underlying earnings can be identified. In a post-Brexit environment it becomes even more critical to understand what adjustments need to be made to EBITDA. For example, the heightened volatility of foreign exchange (forex) movements in comparison to GBP may lead to more extreme forex differences in reported earnings through changes in sales prices, cost of goods sold or on revaluation of financial instruments. Due consideration will need to be given as to how the gains or losses should be treated and whether they mask underlying trends in the business.

It is possible that in future, a range of EU legislation will no longer apply in the UK and this could result in a higher cost base. For example, labour costs may increase if access to migrant workers is restricted or tariffs/duties are increased.

**Get a grip on the operational implications**
Further to the financial impact of Brexit, the operational effects will need to be considered. Where the target in a transaction uses a skilled European workforce, has suppliers or customers from outside the UK or is subject to tariffs or trading agreements it will be important to understand what the impact to the business will be if these relationships can no longer operate in the way they did previously. Suppliers and funders could use Brexit as an opportunity to renegotiate prices when arrangements are up for renewal and therefore it is important that all key contracts are reviewed as part of the due diligence process – this can fall to either the legal or financial due diligence providers. If UK businesses assess EU membership to be a key benefit to their business then they may need to review their corporate structure and group arrangements. It may even prove necessary to set up a subsidiary within the EU and channel their business through that entity.

The risk factors affecting businesses in the post-Brexit world are becoming increasingly diverse and complex. More worryingly, these factors are subject to change. It is therefore imperative that due diligence reports are scoped and agreed by all parties in advance and include a careful assessment of the quality of both current and projected earnings.

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Removing the fences: Singapore General Anti-Avoidance Provisions

Against a backdrop of increasing global tax scrutiny, the release of guidelines on the General Anti-Avoidance Provision by Singapore’s tax authorities shows the worldwide tax environment is becoming more complex and less forgiving to those who try to bend the rules.

On 11 July 2016, the Singapore tax authorities issued an e-Tax guide on the General Anti-avoidance Provision and its application.

The guide essentially sets out the Singapore tax authorities’ approach to the construction of the general anti-avoidance provisions in Section 33 of the Income Tax Act. It illustrates through examples the types of arrangements that the authorities regard as having the purpose of effecting tax avoidance within the meaning of Section 33. The guidelines and accompanying examples in the guide are not meant to be exhaustive.

The examples in the guide focus on certain selected scenarios:

• Circular flow or round-tripping of funds
• The setting up of more than one entity for the sole purpose of obtaining a tax advantage
• Changing business forms for the sole purpose of obtaining a tax advantage
• Attribution of income that is not aligned with economic reality

It makes expressly clear that arrangements not discussed or described should not be taken as falling outside the ambit of Section 33. The guide does not cover arrangements that form the subject of specific anti-avoidance provisions in the Income Tax Act and/or that involve tax evasion.

Scheme and purpose approach

In drafting the guide, the Singapore tax authorities have essentially adopted the principles outlined by a corporate restructuring case Comptroller of Income Tax v AQQ and another appeal [2014] SGCA 15. Indeed the structure of Section 33 is based on the “scheme and purpose” approach that formed the basis of the Court of Appeal’s ruling in the AQY case.
Overall, the guide appears to be an effort by the Singapore tax authorities to communicate their perspective on the construction and application of the anti-avoidance provisions that are already enshrined in the legislation, underpinned firmly by the principles extolled from the AQQ case. The authorities may update the guide with new guidelines and new examples of arrangements, where necessary. In a broader sense, this is perhaps unsurprising and possibly timely given the clear imperative of combating harmful tax practices as one of the action points being implemented under the Base Erosion and Profit Shifting (BEPS) initiative by the OECD.

**Asia region following suit**
Other countries in the region have also been steadily jumping on the anti-avoidance bandwagon in recent years. China issued its administrative measures on the General Anti-Avoidance Rule (GAAR) in late 2014, which came into effect in early 2015. And India has tabled its GAAR which is currently awaiting implementation in the 2017/18 financial year.

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Excluded property trusts and UK non-domiciliary reform

Act now before the UK’s non-domiciliary reforms come into effect in April 2017.

UK non-domiciliary tax reforms are due to be released in April 2017, with the key changes likely to be that non-UK domiciled individuals will become deemed UK domiciled once you have been resident in the UK for 15 out of 20 tax years (as opposed to 17 out of 20 tax years under the current rules). Once you become deemed UK-domiciled, all of your worldwide assets fall within the charge to UK inheritance tax.

Another major change is that once you are caught by the new deemed UK-domiciled provisions, you will be taxed in the UK on your worldwide income and capital gains, i.e. you will no longer be able to claim the benefit of the remittance basis of taxation. This could, depending on your circumstances, result in a significant increase in the total UK tax payable after April 2017.

Consider establishing an excluded property trust

There is a relatively simple solution to this potential increase in the amount of UK tax payable. Before these new rules come into force (i.e. before April 2017, assuming the rules are introduced as planned), establish an excluded property trust. An excluded property trust should ensure non-UK-based assets remain outside the scope of UK inheritance tax (regardless of whether you subsequently becomes deemed UK-domiciled). The trust will also shelter those assets from UK capital gains while the assets remain in the trust. The UK Government and HM Revenue & Customs are fully aware of excluded property trusts and their use by non-UK domiciliaries. There are specific UK tax provisions which apply to excluded property trusts and, therefore, their use in these circumstances should not be considered aggressive tax planning.

Tax planning is vital for worldwide citizens that consider spending time in the UK.

So, aside from the UK domicile reforms, if you are yet to become a UK resident, you should seriously consider establishing an offshore trust before stepping foot in the UK.

Spending a little effort now to establish an excluded property trust could save UK inheritance tax, which is currently 40% of assets above certain thresholds. In addition, assets can potentially grow free from UK capital gains tax. Making a trust takes time, the assets that form the trust can take time to be transferred and tax and legal advice will need to be sought to ensure that all relevant aspects are considered. Therefore it is important to act now to take advantage of the excluded property regime and its associated UK tax savings.

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Foreign nationals working in the US – beware!

A look at some of the numerous complex tax rules associated with working as a foreign national in the US.

If you’re a foreign national working in the US, it’s important to fully understand your worldwide income and report it to the US Government along with disclosing particular information about all your foreign financial accounts. The IRS penalties to foreign nationals for non-compliance with the rules are severe and could range in the hundreds of thousands of US dollars.

**Tax residency status**

If you obtain a green card, you will be a US tax resident from the day you enter the country. If you enter the US with a non-immigrant visa, generally, you may become a US income tax resident under a certain test under the US tax code that is based on the number of days that you are physically present in the US.

If you meet the criteria of being a US tax resident you must report certain information to the US taxing authorities. You must file certain tax forms by specified deadlines so that you are not monetarily penalized for not doing so.

You could qualify for an exception to meeting the US resident tests. Two of these exceptions are the ‘closer connection exception’ and the ‘income tax treaty tie-breaker’.

**Closer connection exception**

To meet the ‘closer connection exception’ you are required to meet certain conditions, including the following:

(i) You have a ‘tax home’ in a foreign country for the current year

(ii) You have a ‘closer connection’ with the same foreign country than with the US for the current year

(iii) You do not have an application for a green card pending at any time in the year, and you have not taken any steps to apply for green card status

(iv) You have notified the IRS of qualification for this exception on Form 8840, ‘Closer Connection Exception Statement for Aliens’

**Income tax treaty tie-breaker**

If you become a US tax resident, using the rules mentioned above, and you are also a tax resident of another country that has a tax treaty with the US, you may be eligible to be treated as a tax resident of the other country and not the US using the so-called treaty-tie breaker rules.

Generally, you would be treated as a tax resident of only one of the countries in the following circumstances:

1) Where you have a ‘permanent home’ available

2) If permanent homes are available in both countries, where you have your ‘center of vital interests’, i.e., where your personal and economic relations are closer

3) If your center of vital interests cannot be determined, or if no permanent home is available to you in either country, where you have ‘an habitual abode’

4) If an habitual abode exists in both countries (or neither), an individual may be treated as a resident of the country that they are a citizen of

5) If you are a citizen of both countries or neither, as determined under the treaty’s mutual agreement/competent authority procedure.
5) If you are a citizen of both countries or neither, as determined under the treaty's mutual agreement/competent authority procedure.

**Forms to complete**
The tax forms required to utilize the treaty tie-breaker rules and/or be compliant with the US tax code vary for residents, non-residents and US taxpayers according to their individual circumstances. So it’s important to consult with your tax accountant to ensure that you file the right tax forms correctly.

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Tax and divorce in the UK

Untangling tax liability in a complex system.

International couples are now more frequently seeking arbitration from UK courts in divorce cases. But the courts often need experts to make sense of the UK’s complex tax legislation and decipher the net value of assets to be divided between the parties. Determining the tax liabilities that arise on the transfer of assets between a couple can itself be an area of dispute in a contested divorce.

Seeing through the complications

Key issues requiring consideration, in addition to the location of assets, include the parties’ residence and domicile status for tax purposes, as well as the manner in which different jurisdictions recognise (or fail to recognise) the concept of nominee or trust ownership. Transparency hasn’t always been the order of the day, with beneficial ownership often hidden behind nominee structures. Some countries fail to look through legal ownership to the underlying economic ownership, which can lead to cross-border tax anomalies.

Taking the example of a couple resident in the UK, with one of the parties being domiciled abroad, the most tax-efficient way in which non-UK situated assets can be transferred from the non-UK domiciled spouse may involve use of the UK’s currently beneficial legislation for non-domiciliaries. However, new statutory provisions from 6 April 2017 may shift the landscape in such cases.

No ‘one size fits all’

In contrast to France, where marital property law is prescriptive, the UK does not have any specific legislation setting out how assets should be divided on divorce. The transfer of a French-located property between a UK-resident separated couple constitutes a disposal for UK capital gains tax purposes but is not treated as a disposal in France – another example of a mismatch between jurisdictions which, on this occasion, involves different timings for the disposal under French and UK tax rules.

In other cases, the different tax treatment of investment products between jurisdictions can also have a negative impact. For example, an Assurance Vie life insurance product may be tax-efficient in France and other parts of Europe, but the UK perspective is somewhat different, potentially bringing the UK’s punitive regime for ‘personal portfolio bonds’ into the equation.

Finally, as with all cross-border activity, the relevant provisions of any applicable double taxation agreement (DTA) between the UK and the overseas jurisdiction need to be considered. This isn’t always plain sailing, as some countries can be reluctant to apply the terms of the DTA, particularly if the agreement is historic and not in line with current OECD thinking.

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When conducting an interview in a workplace misconduct investigation, it is important to understand the fears and outside influences of the person being interviewed, and use positive persuasion which could help them to admit the truth.

Workplace misconduct can include theft, bribery, misbehaviour, harassment and other violations of the code of conduct of an organisation. If you are investigating a case of probable misconduct, you must gather evidence and conduct an interview of the subject in order to allow them to admit to their involvement. The manner in which you conduct the interview could have a substantial impact on its outcome.

The fear factor
The interviewee may be reluctant to admit to the whole truth due to fears, such as losing their job, restitution (repaying the losses caused by the misconduct), embarrassment or social stigma, or they may be worried about their own or someone else’s safety. These fears may not only drive them away from admitting to the act of misconduct but could also lead them to create a new alibi and divert the direction of the interview.

Factors that may influence someone to admit the truth
It is important to be aware of the factors that could influence someone to admit their involvement in misconduct. These may include:

• Belief of a possible lesser penalty: The interviewee may believe that admitting to the act of misconduct will lead to a lower penalty.
• Threat of exposure: The person may want to limit the possible threat of being exposed to the outside world and tarnishing their reputation.
• Loss of defences: The interviewee becomes overwhelmed by the evidence that you present them with.
• Moral conscience: The interviewee hopes that admitting to the act of misconduct will relieve them of mental pressure or the feeling of guilt.
Positive persuasion could be key
It is essential to understand that the person under investigation may not be a repeat offender and so the following key pointers may be critical in positively persuading the interviewee to admit to an act of misconduct.

• **Defocus the fear:** Move the conversation away from the interviewee’s core fears. As the conversation progresses, they may relax, giving you an opportunity to guide them towards admission.

• **Observe/understand the root cause:** The reason for an act of misconduct may be related to need, lifestyle (greed), intelligence (to enjoy the thrill of committing a crime) or accident. The interviewee might be more forthcoming if you are able to positively enforce any of their other actions, performance or behaviour, as they become comfortable with the interviewer. For example, mentioning the charity work that they participate in, may make the interviewee calm down and get a little comfortable with the interviewer.

• **Avoid promises or commitments:** As tempting as it may be to reassure the interviewee, it is important to avoid providing any information about the investigation, making a commitment or a promise to excuse him of the consequences.

• **Clarify whether the interviewee was involved, participated or aware:** It is possible that other people may actually be responsible for the misconduct and not the interviewee. Seek the interviewee’s side of the story and make your own judgement against the rest of the evidence you have gathered.

• **Positively persuade the interviewee towards admission by providing alternatives:** Encourage the interviewee to respond as to whether they were involved once or many times, if the incident was planned or whether it happened on the spur of the moment. Providing suggestions may help the person choose a lesser offence and feel better about themselves. This enables the investigator to get the first admission to the act of misconduct.

Adopting a structured approach towards understanding the person’s fear and factors that may influence them, along with using positive persuasion is a tried and tested way to conduct an investigation interview and get the best outcome for the organisation.

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Tanzania: A new source for the global gas supply

The recent discovery of natural gas in Tanzania is leading to dynamic changes in the country’s economy.

Following the recent discovery of natural gas reserves in Tanzania, the country has become strategically placed on the hydrocarbon map. With an estimated reserve of up to 50.5 trillion cubic feet (TCF), the Government has put in place a number of policies to consolidate the discovery. Under the ‘Big Results Now Initiatives’, a number of public-private partnership strategies have been formed, with US$1.2bn so far spent on gas industry infrastructure.

Previously, hydroelectric power generation had been insufficient for meeting local needs. Natural gas production has brought major reforms to the economy by supporting 36 industries, generating jobs and providing gas for domestic consumption. The demand for natural gas is significantly increasing and new gas reserves are being exploited.

The Government is optimistic that East Africa will become the world’s third-largest exporter of natural gas over the long-term. The International Monetary Fund has projected that it could increase export earnings in the region by more than US$3bn annually.

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Italy: What does ‘control’ mean for transfer pricing purposes?

A new ruling from the Supreme Court

The Italian Supreme Court has ruled that transactions between an Italian and a foreign company could be subject to transfer pricing rules if one business exercises a dominant influence (de facto control) over the other, regardless of the stakes owned (formal control).

As heard in a recent case (judgment no. 8130, 22 April 2016), an Italian company that lacked the resources to trade its own manufactured goods, appointed a San Marino legal entity as the exclusive distributor for its products. The San Marino legal entity owned 24% of the Italian company share capital.

The Italian tax authorities claimed that the San Marino entity, as exclusive distributor, de facto controlled the Italian entity. Therefore they applied the transfer pricing rules, claiming that part of the costs borne by the Italian company were not deductible as they had not been compliant with the arm’s length principle.

The Supreme Court upheld prior judgments from provincial and regional tax courts in favour of the tax authorities.

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