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Liquidity Management in Latin America AFP Global Corporate Treasurer's Forum

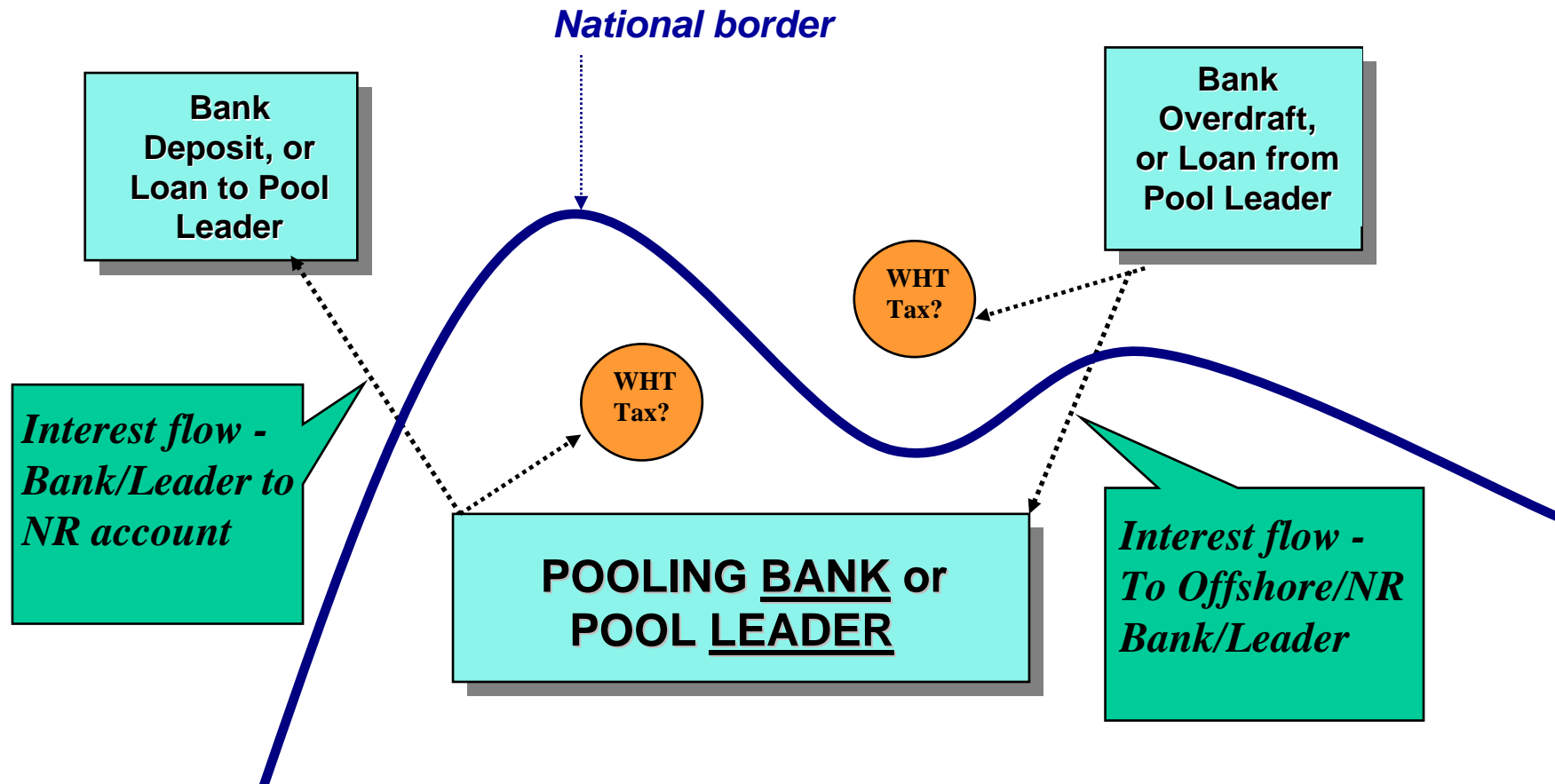
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Liquidity Structures & Pooling

- » **Cross-border pooling and cash concentration gives rise to complex legal, regulatory, accounting and tax considerations**
 - › (Re)Characterization of interest transactions
 - › Withholding tax, business tax, debit tax, stamp duties, deemed dividends, etc.
 - › Choice of pool leader or owner of master account is critical
- » **Local regulations often restrict inter-company movements or require central bank approval and reporting**
- » **An entity may not be permitted to participate in or enter into a pool agreement**
 - › Bank's right of offset must be valid and enforceable
 - › Regulatory restrictions with respect to inter-company relationships
- » **In complex environments, cross-border movements, foreign exchange, and/or ability to hold offshore and FCY accounts is highly regulated**
 - › LatAm and Asia present the most challenging environments
 - › Most solutions incorporate offshore, non-resident accounts held in a suitable pool jurisdiction
- » **Seek internal tax and legal counsel and work with an experienced, global provider**
- » **Be flexible – follow the 80/20 rule**
- » **One size does not fit all!**

WHT Implications of Cross-Border Liquidity Structures



Where a structure involves a U.S. participant or subsidiaries of a U.S. company, special care must be taken to address a number of onerous tax rules and issues, including but not limited to 'earnings stripping' rules.

It is important to engage tax counsel early in the process

Liquidity Management in Latin America

- » Latin America is a complex and highly regulated region
 - › **Currency exchange controls**
 - › **Restrictive policies with respect to offshore accounts and cross-border movements**
 - › **Policies on inter-company transactions between resident and non-resident companies**
 - › **Debit and local transaction taxes applicable in several regimes**
 - › **Limited overnight investment options**
 - › **Sovereign and currency risk**
- » But, regional liquidity structures are feasible and offer opportunities to optimize cash efficiency
 - › **Gradual liberalization**
 - › **Off-shore USD consolidation**
 - › Extension of existing USD structures



A Glossary of Terms: Liquidity Tools

» One-way / two-way target balancing

- › Single automated movement to consolidate excess or fund shortfalls; or movement with return

» Cross-border Target Balancing

- › Movement across borders to a consolidation point, typically in a tax and pool friendly jurisdiction, or to a major money center, i.e. New York and London. Many banks offer automated cross-border target balancing

» Physical Cash Concentration / Pooling

- › Utilization of target balancing to move and consolidate balance positions. Involves actual movement, often into a single concentration account(s) or a single location.

» Notional Pooling

- › A structure in which funds are held in individual accounts, with interest calculated on the net position. May involve use of an overlay, or second tier account structure, as funds are up-streamed to the pool jurisdiction. Cross-border notional pooling may also include accounts held in different jurisdictions ----- but,
- › Bank must establish a valid and enforceable right of offset to provide full benefit

» Reference Account Pooling

- › A single entity opens accounts on behalf of participating entities. May be achieved as a single or two-tier process.

» Cross-currency Interest Enhancement / Interest Optimization

- › A basket of currencies are notionally converted into a base currency for the purposes of calculating a net position and net interest.
- › Domestic or cross-border structures where a “relational” benefit is provided

Things to Consider

- » It is critical to understand and analyze **all** aspects of the structure:
 - › **Single entity versus multi-entity structures; characterization of interest**
 - › **Transactions between resident and non-resident accounts**
 - › **Place of incorporation and location of participating branches / subsidiaries**
 - › **Choice of pool site and pool leader – differentiate**
 - › **Potential to automate and/or outsource liquidity transactions**
 - › **Investment strategy for excess liquidity**
 - › **Integration of systems for reporting and accounting**
 - › **Multi-bank capabilities**
 - › **ERP integration and cash application**
 - › **Tax impacts: WHT, stamp duties, debit taxes, business taxes, transaction taxes.**
 - › **Additional regulatory reporting requirements; e.g. central bank reporting**
 - › **Documentation requirements including legal agreements, intercompany lending agreements, cross-guarantees**
 - › **Regulatory and legal restrictions**

Only your internal tax and legal advisors can determine the full impact of a global liquidity structure given the individual facts and circumstances of the enterprise. Structures should always be carefully reviewed with internal tax and legal counsel .

Regulatory Update: Homeland Investment Act

- » **The President of the United States signed the “American Jobs Creation Act of 2004” into law on October 22, 2004**
 - › This legislation represents the biggest revision to the U.S. tax code since the 1986 Tax Reform Act
 - › Among the significant elements of the Act is a one-year special Dividend Received Deduction (DRD) for U.S. corporate taxpayers to repatriate foreign earnings and profits of their CFC’s at an effective (approx.) tax rate of 5.25% (the “Homeland Investment Act”)
 - › Revision called New Code 965: Deduction to Reinvested Dividends distributed from Controlled Foreign Corporations (CFCs)

HIA: What It Means To You

- » **Estimated \$300B - \$500B in repatriation (155 companies/\$255B publicly announced)**
 - › Some delays in execution as companies await additional technical clarifications
 - › Many are now “staging” cash balances for movement
- » **Impact to U.S. CFC’s**
 - › Potential liquidity impact
 - › Restructure of local balance sheet
 - › Majority of dividend flows expected out of Europe and Asia
 - › Impact will depend on company and country facts
 - › Cash more likely to stay in country if:
 - › Reinvestment returns are high, excess foreign tax credits are not available
 - › Cash more likely to be repatriated if:
 - › Reinvestment returns are low, excess FTC are available

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Disclaimers

- » Global Liquidity Structures are inherently complex. However, when they are created properly, corporations can derive significant benefits from their use. Please note that only a tax advisors can determine the impact of a particular global liquidity structure on your company's tax situation. Therefore, Citigroup strongly recommends that the client reviews its liquidity structures with its tax and legal counsel prior to entering into any arrangement. Citigroup has the in-depth experience and expertise needed to guide clients through the process of establishing an effective global liquidity structure.
- » Although the information contained herein is believed to be reliable, we make no representation as to the accuracy or completeness of any information contained herein or otherwise provided by us. The ultimate decision to proceed with any transaction rests solely with you. We are not acting as your advisor or agent. Therefore, prior to entering into any proposed transaction you should determine, without reliance upon us or our affiliates, the economic risks and merits, as well as the legal, tax and accounting characterizations and consequences of the transaction, and independently determine that you are able to assume these risks.
- » In this regard, by acceptance of these materials, you acknowledge that you have been advised that (a) we are not in the business of providing legal, tax or accounting advice, (b) you understand that there may be legal, tax or accounting risks associated with the transaction, (c) you should receive legal, tax and accounting advice from advisors with appropriate expertise to assess relevant risks, and (d) you should apprise senior management in your organization as to the legal, tax and accounting advice (and, if applicable, risks) associated with this transaction and our disclaimers as to these matters.
- » The terms set forth herein are intended for discussion purposes only and subject to the final expression of the terms of a transaction as set forth in a definitive agreement and/or confirmation. This proposal is neither an offer to sell nor the solicitation of an offer to enter into a transaction.