

France v. SAS Piaggio France [2019, Conseil d'État]

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1. Facts

SAS Piaggio France was incorporated in 1977 and, until 2007, acted as exclusive distributor of Piaggio-brand motor vehicles in France, purchasing, importing, and reselling them in its own name to a network of dealers. Its share capital was indirectly wholly owned by the Italian company Piaggio & C. SpA, the owner of the trademark, in respect of which Piaggio France held an exclusive right of use and exploitation.

As part of a group restructuring, an agreement dated 2 January 2007 converted the French company from an exclusive distributor into the commercial agent for its Italian parent. It received no compensation in connection with that change.

On audit, the French tax administration concluded that the contractual change had resulted in the uncompensated transfer of the clientele previously exploited by the French company and that an independent enterprise would not have relinquished that value without compensation. It therefore added EUR 7,969,529 to Piaggio France's taxable income for the financial year ended in 2007 under Article 57 of the French General Tax Code, which gives effect to the arm's length principle. For withholding tax purposes, the administration also treated the advantage granted to the parent company as a deemed distribution of profits.

The Administrative Courts of Montreuil and Cergy-Pontoise dismissed the company's claims in 2015 and 2016. The *Cour administrative d'appel* de Versailles, by judgment of 30 January 2018, partially allowed the appeal and reduced the taxable bases¹. On the Minister's appeal, the *Conseil d'État* quashed the relevant part of that judgment for an error in the legal characterisation of the facts and remitted the case to the same court. On 6 July 2020, the appellate court upheld both the primary adjustment and the withholding tax².

¹ FRANCE. *Cour administrative d'appel de Versailles*. Decisions Nos. 15VE02906 and 16VE02158, *SAS Piaggio France*. Decided on 30 Jan. 2018.

² FRANCE. *Cour administrative d'appel de Versailles* (1st Chamber). Decisions Nos. 19VE03376 and 19VE03377, *SAS Piaggio France*. Decided on 6 Jul. 2020.

1.1. *Arguments of the parties*

For the tax administration, the decisive point was Piaggio France's functional profile before the conversion³. As an exclusive distributor, the company purchased and resold the vehicles, owned the inventory, bore the customer credit risk, financed product promotion, and developed and managed a dealer network. The administration therefore maintained that Piaggio France had developed a customer base of its own.

Under the 2007 agreement, the functions previously performed and the risks previously assumed by Piaggio France were reallocated to its Italian parent. The tax administration argued that the relationships with the dealers passed with those functions and risks: the parent thereafter exploited the French customer base directly, while Piaggio France received only a commission. Independent enterprises, it contended, would have required compensation for the handover of an established customer base and dealer network. The absence of such compensation therefore evidenced an indirect transfer of profits abroad within the meaning of Article 57 of the French General Tax Code.

Piaggio France advanced two main arguments. First, it contended that nothing had been transferred because it continued to interact with the same clientele in a different capacity. Although it no longer bore external development costs, such as the costs of promotional campaigns, it continued to bear internal costs, particularly those associated with the employees responsible for maintaining relationships with the dealer network.

Second, it challenged the administration's discharge of its burden of proof. No contractual instrument expressly transferred the clientele, and the alleged transfer rested solely on the administration's interpretation of the circumstances surrounding the end of the distribution arrangement. At most, the company argued that a distributor might be entitled to indemnification for the abrupt termination of an established commercial relationship, an issue that the administration accepted was not before the court.

2. Court's decision

Ruling in favour of the tax administration, the *Conseil d'État* focused its analysis on Piaggio France's functional profile before the conversion⁴. Although the French company held only a right to use a trademark owned by its parent, it had developed an autonomous strategy for introducing the group's products into, and

³ The synthesis of the parties' positions in this subsection is reconstructed from the decisions and from the conclusions of the *rapporteur public*. The position of the tax administration is reconstructed primarily from the decision of the *Conseil d'État*, whereas the taxpayer's position is drawn mainly from the decision of 6 July 2020 of the *Cour administrative d'appel de Versailles*.

⁴ FRANCE. *Conseil d'État* (10th and 9th Chambers sitting together). Decision No. 418817, SAS Piaggio France. Decided on 4 Oct. 2019, para. 3.

penetrating, the French market. It had built and managed an extensive dealer network, determined the volumes and models to be purchased, and set its own policies on pricing and after-sales service. It also bore the inventory risk as owner of the stock and the commercial risks associated with unpaid invoices and unsold goods.

On that basis, the court reached the conclusion that was dispositive of the case: Piaggio France had created clientele of its own, consisting of the dealer network and existing independently from the strong reputation of the Piaggio brand in France. The appellate court had thus mischaracterised the facts when it denied that Piaggio France had gratuitously transferred that clientele to its parent company. The *Conseil d'État* accordingly quashed the judgment on that ground and remitted the case to the same court.

On remand, the *Cour administrative d'appel de Versailles* clarified that the *Conseil d'État* had determined both that Piaggio France possessed its own clientele before the restructuring, together with the corresponding *fonds de commerce*, and that the clientele had been transferred to the parent company⁵. The fact that Piaggio France continued to interact with and promote the dealer network did not mean that it had retained the clientele, because those activities were now performed on behalf of the Italian principal. Since Piaggio France received no compensation for the transfer and failed to establish sufficient compensating benefits in return, the court upheld the EUR 7,969,529 adjustment.

3. Critical analysis

The following analysis is organized in four subtopics: the meaning and scope of “something of value” in the context of business restructurings (3.1); the attribution of clientele and the commercial autonomy of the distributor (3.2); the importance of functional analysis before and after a business restructuring (3.3); and Article 26 of Law No. 14,596/2023 and the lessons of the case for Brazil (3.4).

3.1. The meaning and scope of “something of value”

The arm's length principle does not require compensation merely because a business restructuring reduces an entity's profit potential; an independent enterprise would not necessarily be compensated for that consequence⁶⁻⁷. The conversion of a full-fledged distributor into a commissionaire or limited-risk distributor illustrates the point: the lower expected return generally accompanies a corre-

⁵ FRANCE. Cour administrative d'appel de Versailles (1st Chamber). Decisions Nos. 19VE03376 and 19VE03377, SAS Piaggio France. Decided on 6 Jul. 2020, paras. 3 and 6.

⁶ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 2022. Paris: OECD Publishing, 2022, para. 9.39.

⁷ MONSENEGO, Jérôme. *Introduction to transfer pricing*. 2. ed. Alphen aan den Rijn: Kluwer Law International, 2023, p. 142.

sponding reduction in the risks assumed. The supplier is therefore not, solely for that reason, required to indemnify the restructured entity⁸.

Rather, the relevant inquiry is whether (i) “something of value” was transferred between the parties or (ii) existing arrangements were terminated or substantially renegotiated, and whether independent enterprises would have agreed compensation in comparable circumstances⁹⁻¹⁰. Not every change in the contractual allocation of functions and risks meets this threshold; what matters is not the change itself but what accompanies it¹¹.

The *Conseil d'État's* decision in *France v. SAS Piaggio France* illustrates that inquiry. It was undisputed that Piaggio France had been converted from an exclusive distributor into a commercial agent and that functions and risks had consequently been reallocated to the Italian parent. Those facts alone, however, did not establish an entitlement to compensation. The central issue was whether the restructuring also transferred something of value from Piaggio France to its Italian parent.

The OECD TPG do not offer an exhaustive definition of “something of value”. Instead, they identify typical examples of items falling within it, including transfers of tangible assets, such as equipment and inventory; transfers of intangibles and rights in intangibles, such as rights to use patents, trademarks, designs, or models; and transfers of activities constituting an ongoing concern¹². The concept is deliberately broad, as it is intended to encompass the various circumstances in which compensation may be required¹³.

Intangibles show how far the notion can reach¹⁴. They encompass non-physical and non-financial items capable of being owned or controlled for use in commercial activities¹⁵, and their treatment for transfer pricing purposes does not

⁸ KROPPEIN, Heinz-Klaus; SILVA, José Carlos. General Report. *Cahiers de droit fiscal international*. Rotterdam: International Fiscal Association, 2011, v. 96a-Cross-border business restructuring, p. 55.

⁹ MONSENEGO, Jérôme. *Introduction to transfer pricing*. 2. ed. Alphen aan den Rijn: Kluwer Law International, 2023, p. 141-148.

¹⁰ See also: PADWALKAR, Abhishek. Introduction to business restructuring. In: LANG, Michael; PETRUZZI, Raffaele (ed.). *Transfer pricing and business restructurings: current developments, relevant issues and possible solutions*. Vienna: Linde, 2023, p. 6-7.

¹¹ PRASANNA, Sayee. Chapter 14: transfer pricing and business restructurings. In: PETRUZZI, Raffaele; COTTANI, Giammarco; LANG, Michael (ed.). *Fundamentals of transfer pricing – Volume I: Principles and Practice*. Alphen aan den Rijn: Wolters Kluwer, 2025, p. 536.

¹² OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, paras. 9.48.

¹³ MONSENEGO, Jérôme. *Introduction to transfer pricing*. 2. ed. Alphen aan den Rijn: Kluwer Law International, 2023, p. 142.

¹⁴ PRASANNA, Sayee. Chapter 14: Transfer pricing and business restructurings. In: PETRUZZI, Raffaele; COTTANI, Giammarco; LANG, Michael (ed.). *Fundamentals of transfer pricing – Volume I: Principles and Practice*. Alphen aan den Rijn: Wolters Kluwer, 2025, p. 534.

¹⁵ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, para. 6.6.

depend on their recognition in the accounts¹⁶. In practice, however, business restructurings may create considerable uncertainty as to whether an intangible was transferred and, if so, which one¹⁷.

Clientele is a clear illustration of an intangible of this kind. French commercial courts have consistently recognised clientele as the principal element of a business¹⁸. Against that background, the clientele identified in *France v. SAS Piaggio France* readily falls within the OECD TPG notion of “something of value”. That conclusion does not depend on separate accounting recognition: it is sufficient that the item can be owned or controlled for use in commercial activities and can generate economic benefits.

3.2. Attribution of Clientele and the Commercial Autonomy of the Distributor

Once clientele is recognised as potentially valuable, the next question is whether it was attributable to Piaggio France before the restructuring and, if so, whether it was transferred to the Italian parent. Two attributions were possible: to the parent, as owner of the trademark, or to Piaggio France, as exclusive distributor. Had the clientele been attributable to the parent from the outset, no compensation would have been due.

Determining the source of a clientele’s attachment is not straightforward. Relevant factors may include the functions performed by the companies in the supply chain, the brand, the geographic location, and the technology employed¹⁹. The factors considered in *Piaggio France* were clearly summarised in the *rapporteur public’s* conclusions. Drawing on French case law, three cumulative conditions were identified for a distributor to be regarded as owning its own clientele: (i) it must act on its own account rather than as a mere agent of the supplier; (ii) it must enjoy genuine commercial autonomy; and (iii) it must bear the operating risks associated with its investments and potential losses, particularly the risk arising from the loss of the clientele²⁰. All three conditions were considered to be satisfied in the case.

¹⁶ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, para. 9.55.

¹⁷ KROPPE, Heinz-Klaus; SILVA, José Carlos. General Report. *Cahiers de droit fiscal international*. Rotterdam: International Fiscal Association, 2011, v. 96a-Cross-border business restructuring, p. 39.

¹⁸ LECLERCQ, Laurent; SEROIN, Patrick. France. *Cahiers de droit fiscal international*. Rotterdam: International Fiscal Association, 2011, v. 96a-Cross-border business restructuring, p. 341.

¹⁹ LECLERCQ, Laurent; SEROIN, Patrick. France. *Cahiers de droit fiscal international*. Rotterdam: International Fiscal Association, 2011, v. 96a-Cross-border business restructuring, p. 341.

²⁰ FRANCE. Conseil d’État. *Ministre de l’action et des comptes publics v. SAS Piaggio France*: conclusions of the rapporteur public, No. 418817. 10th and 9th Chambers sitting jointly. Hearing held on 16 Sept. 2019; decision delivered on 4 Oct. 2019. Rapporteur public: Alexandre Lallet. Paris: Conseil d’État, 2019.

These criteria are consistent with the OECD framework. The TPG require essentially the same inquiry when a full-fledged distributor is converted into a low-risk structure: whether the distributor developed local marketing intangibles over the years and, if so, whether those intangibles were transferred as part of the restructuring²¹. Only if both conditions are met does the arm's length principle require an assessment of whether compensation is due.

The main merit of treating the distributor's commercial autonomy as a condition for ownership of the clientele is that it enhances legal certainty for taxpayers. Where such autonomy is absent, the distributor cannot be regarded as owning the clientele and no compensable transfer of that asset can occur. In *Bupa Insurance* (2022)²², for example, the *Conseil d'État* upheld the finding that a French branch lacking genuine commercial autonomy could not be regarded as having developed clientele of its own, distinct from that of its head office. Accordingly, no gratuitous transfer of clientele capable of constituting an indirect transfer of profits was established.

This approach is sound because, as noted above, a mere decline in the restructured entity's profits does not itself give rise to an obligation to pay compensation. Where the transfer of something of value is alleged, the analysis must identify the item and establish which entity developed, owned, or controlled it. A comparative functional analysis of the associated enterprises before and after the restructuring therefore becomes particularly important.

3.3. The importance of functional analysis before and after a business restructuring

The foregoing analysis of whether clientele may be attributed to a distributor illustrates the importance of functional analysis in applying transfer pricing rules to business restructurings. To determine the arm's length compensation, if any, due for the restructuring itself, it is essential to accurately delineate the restructuring and compare the functions performed, assets used, and risks assumed by each associated enterprise before and after the restructuring²³⁻²⁴. This comparison reveals not merely that the parties' operations changed, but whether an asset, right, or business opportunity moved from one enterprise to another.

²¹ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 2022. Paris: OECD Publishing, 2022, paras. 9.64-9.65.

²² FRANCE. Conseil d'État (9th and 10th Chambers sitting together). Decision No. 450796, *Ministre de l'économie, des finances et de la relance v. Bupa Insurance Limited*. Decided on 21 Dec. 2022.

²³ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 2022. Paris: OECD Publishing, 2022, paras. 9.15-9.18.

²⁴ PRASANNA, Sayee. Chapter 14: Transfer Pricing and Business Restructurings. In: PETRUZZI, Raffaele; COTTANI, Giammarco; LANG, Michael (ed.). *Fundamentals of transfer pricing – Volume I: Principles and Practice*. Alphen aan den Rijn: Wolters Kluwer, 2025, p. 529.

As already noted, the cross-border reallocation of functions, assets, and risks does not, by itself, trigger an obligation to pay compensation. Those elements are nevertheless central to determining whether something of value was transferred. In *Piaggio*, the change in the use and control of the dealer relationships evidenced the transfer of clientele from Piaggio France to its parent company. Before the restructuring, Piaggio France used and controlled those relationships in carrying out its distribution activities, and they formed part of the commercial value employed in its business. After the restructuring, the parent company became the principal entitled to exploit those relationships directly and assumed the corresponding functions and risks, while Piaggio France acted on its behalf. It was this before-and-after comparison, not the decline in Piaggio France's profitability alone, that revealed the transfer.

The relevance of this comparative analysis is also illustrated by *Sopebsa* (2012)²⁵. In that case, the *Cour administrative d'appel de Paris* held that the conversion of a buy-sell distributor into a commissionaire did not entail a transfer of its local clientele. Central to that conclusion was the fact that, after the restructuring, the French company continued to deal directly with customers and to conclude contracts in its own name, albeit for the account of its principal. The court also considered that its post-restructuring remuneration was proportionate to the functions and risks it retained and that the company had returned to profitability.

This contrasts with *Piaggio*, where the French entity became a commercial agent acting in the name and on behalf of its parent, which thereafter directly exploited the dealer relationships. The comparison shows that the post-restructuring allocation of customer-facing functions, particularly the identity of the entity contracting with customers, may be decisive, although that formal element must be assessed together with the functions and risks retained.

A similar analytical discipline can be found in a 2023 decision of the German *Bundesfinanzhof*²⁶. The case arose after a Bosnian sister company began supplying directly to a customer previously served by the German entity. The court held that the production activities associated with that customer did not constitute an autonomous and organic part of the German company's business and therefore could not be treated as a transferred function. It nevertheless remitted the case for the lower court to determine separately whether the customer relationship had been transferred without remuneration and whether an independent enterprise would have demanded compensation.

The lower court had denied the existence of a transferred function partly because the migration of the customer was driven by the market and competitive

²⁵ FRANCE. Cour administrative d'appel de Paris (9th Chamber). Decision No. 10PA00748, *Société de participations et d'études des boissons sans alcool (SOPEBSA)*. Decided on 31 Dec. 2012.

²⁶ GERMANY. Bundesfinanzhof (1st Senate). Judgment I R 54/19, *Einkünftekorrektur bei Produktionsverlagerung auf eine Schwestergesellschaft im Ausland*. Decided on 9 Aug. 2023.

conditions facing the German company, but the *Bundesfinanzhof* held that this consideration did not dispose of the separate question whether an independent party would have demanded payment for the customer relationship, which it treated as a possible transfer of a business opportunity. The judgment thus reinforces the distinction between the migration of an activity and the transfer of a specific asset or business opportunity. A comparative functional analysis is necessary to identify what the restructured entity relinquished and what the related party acquired.

3.4. Article 26 of Law No. 14,596/2023 and the lessons of the case for Brazil

The analysis conducted in Piaggio bears directly on the Brazilian regime. Business restructurings are specifically governed by Article 26 of Law No. 14,596/2023, and Article 1, Paragraph 4, of Normative Instruction RFB No. 2,161/2023 adopts the 2022 OECD TPG as a subsidiary source for interpreting and integrating that regime, except where inconsistent with Brazilian law. Accordingly, many of the considerations developed by the French *Conseil d'État* are directly relevant to the Brazilian context.

Article 26 defines a business restructuring as a modification of the commercial or financial relations between related parties that results in the transfer of profit potential, or in benefits or detriments to either party, and that would have been remunerated between unrelated parties under the arm's length principle. Paragraph 1 associates profit potential with expected profits or losses arising from the transfer of functions, assets, risks, or business opportunities; Paragraph 2 extends the rule to profit potential transferred through the renegotiation or termination of relations with unrelated parties; Paragraph 3 requires the compensation analysis to consider both the costs borne by the transferring entity and the profit potential transferred; and Paragraph 4 provides that compensation for the transferred profit potential must consider the value of the transferred items taken as a whole²⁷.

At first sight, the statutory reference to "profit potential" may appear broad enough to encompass any restructuring that reduces a Brazilian entity's future profitability. Read as an integrated whole, however, Article 26 does not support that conclusion. The *caput* is limited to changes that independent parties would have remunerated; Paragraph 1 links profit potential to transferred functions, assets, risks, or business opportunities; and Paragraph 4 refers expressly to the

²⁷ For a discussion of the challenges relating to the taxation of business restructuring transactions in Brazil, see: SANCHES, Gustavo Carmona; TRAVIESO, Arhayliz. Desafios da implementação e tributação da reestruturação de negócios no Brasil. In: DONIAK JR., Jimir; PEIXOTO, Marcelo Magalhães; FERRARI, Bruna Camargo (coord.). *Preços de transferência e o padrão OCDE (Lei n. 14.596/2023 e IN n. 2.161/2023)*. São Paulo: MP, 2023, p. 309-317.

value of the “transferred items”²⁸. A decline in expected profits is therefore not itself the object of compensation. It is an economic consequence that may result from the transfer of an identifiable asset, right, opportunity, or ongoing activity. The preliminary question remains whether the restructuring involved either (i) the transfer of “something of value” between the parties or (ii) the termination or substantial renegotiation of existing arrangements and, if so, what precisely was transferred, terminated, or renegotiated²⁹.

The questions examined in *Piaggio* therefore arise under Brazilian law, and the decision’s reasoning is especially relevant to the conversion of a full-fledged distributor into an agent, commissionaire, or limited-risk distributor. A Brazilian distributor should not be regarded as having transferred clientele merely because its post-restructuring margin is lower. It is necessary to examine whether, before the conversion, it pursued an autonomous commercial strategy, contracted with customers on its own account, controlled the relevant relationships, and bore the associated risks³⁰. The post-restructuring analysis must then determine whether those relationships continued to be used by the Brazilian entity or became available for direct exploitation by another group member.

Accordingly, the tax administration should not infer a compensable transfer from a fall in revenue or profitability alone. It must identify the transferred item (or the terminated or substantially renegotiated arrangement) and demonstrate why an independent party would have required compensation, as the French tax administration did in the case examined in this article.

4. Conclusion

The *Piaggio* decision demonstrates that the transfer pricing consequences of a business restructuring cannot be inferred from a change in an entity’s formal status or remuneration alone. The conversion of *Piaggio France* from an exclusive distributor into a commercial agent was compensable because the functional analysis showed that the French company had developed and exploited clientele of its own and that, after the restructuring, its parent company became entitled to exploit those dealer relationships. Clientele may therefore constitute “something of value” even when it is not recorded as a separate accounting asset.

At the same time, the case does not establish a general rule that every conversion of a full-fledged distributor requires an exit payment. The existence of a

²⁸ TOMAZELA, Ramon. *Manual dos preços de transferência: a adoção integral do padrão “arm’s length” no sistema tributário brasileiro* pela Lei n. 14.596/2023. São Paulo: Thomson Reuters Brasil, 2024, p. 357.

²⁹ FRANCISCO, João Victor De Nadai. *Novas regras de preços de transferência: reestruturação de negócios e a integralização de capital em bens e direitos a valor de custo pelas pessoas físicas. Revista Direito Tributário Internacional Atual* v. 12. São Paulo: IBDT, 2023, p. 111-132, p. 116-117.

³⁰ MONTEIRO, Marco Antonio Moreira. *Preços de transferência: o sistema brasileiro no cenário global* – Lei n. 14.596/23. São Paulo: Quartier Latin, 2024, p. 356.

compensable transfer depends on identifying the relevant asset, right, or business opportunity; determining which entity developed, owned, or controlled it; and comparing the parties' functions, assets, and risks before and after the restructuring. *Sopebsa*, *Bupa Insurance*, and the *Bundesfinanzhof* decision, discussed above, converge on this point: neither a reduction in profitability nor the migration of activities is in itself sufficient to give rise to an entitlement to compensation.

These conclusions are also relevant to Brazil. Article 26 of Law No. 14,596/2023 expressly addresses business restructurings within the Brazilian transfer pricing system. In applying that provision, the reasoning developed in *Piaggio* may assist in accurately delineating the restructuring, identifying what was transferred or terminated, determining to which entity the relevant value was attributable, and assessing whether arm's length compensation is due.

The enduring contribution of *Piaggio* is therefore methodological and evidentiary. It shows how the arm's length principle may protect the tax base when value attributable to a local entity is transferred without compensation, while avoiding the automatic taxation of restructurings that merely redistribute functions and risks or reduce expected returns.