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ID-number: i615013
Year group: 2008/2009
LL.M in International and European Tax Law
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Total number of words: 10.140

TRANSFER PRICING AND INTANGIBLES IN THE CONTEXT OF BUSINESS RESTRUCTURINGS

1. INTRODUCTION

Differences in the tax burden in various jurisdictions - either by different rates or by different conformations of tax systems - encourages Multinational Enterprise Groups (MNE Groups)[1] to allocate its income and expenses among its subsidiaries located in various countries, giving rise to tax credits or incentives which reduce the overall tax burden.

Aiming to provide a fair taxation of these MNE Groups, a special scheme of pricing control is applied to transactions involving related parties. This system is called transfer pricing.

Transfer pricing involves investigating all aspects of inter-company pricing arrangements between related business entities, including transfers of intellectual property, goods, services and financing transactions which differ from arrangements that would have been made by unrelated parties.

The system is based in the arm's length principle which intents to provide similar taxation for dependent and independent parties when dealing with comparable transactions in similar circumstances.

However, investigating terms that would have been agreed by independent parties in similar circumstances when transferring intangible property becomes a challenge because a detailed analysis of specific elements is necessary before applying the OECD Transfer Pricing Guidelines.

From a transfer pricing perspective, the way intellectual property is created, used and shared drives the way profits are recognized for tax purposes. This is a relevant point in the taxation of MNE Groups whenever they change its structure.

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[1] A multinational enterprise (MNE) is a company that is part of a "MNE Group". An MNE Group consists of related corporations or similar entities operating in more than one country. Organization for Economic Co-operation and Development (OECD), *Transfer Pricing Guidelines for Multinationals Enterprises and Tax Administrations*, at G-6 (2001) [hereafter OECD Transfer Pricing Guidelines].

There are many drivers for business restructurings and many options arise when enterprises decide to try to make business more profitable, such as: whether to centralize research and development, and intellectual property ownership; where to locate manufacturing and how to manage capacity; how to determine the extent of cooperation with suppliers and even with other manufacturers.

These decisions will, in turn, establish where certain fundamental risks exist in the organization (particularly, these days, when capacity risk and future latent employment costs will be incurred) and, ultimately, how overall profits (or losses) for a group might be allocated. All these decisions interconnect and make the application of the arm's length principle very difficult.

The use of transfer pricing tax strategies has recently attracted a high level of international attention, due in part to the rapid rise of multinational trade, the opening of several significant developing economies such as China, India, Brazil and Russia, and transfer pricing increased impact on corporate income taxation. As multinational corporations evolve into true global enterprises, whose business strategies, supply chains, intellectual property and technology are no longer organized around regional boundaries, compliance with different requirements of multiple tax jurisdictions has become a complicated and expensive task.

This intense scrutiny implies significant risks for the unwary and the unprepared, particularly in a complex field such as transfer pricing, where each transaction must be analyzed under its own unique facts and circumstances to promote the arm's length principle. The OECD Transfer Pricing Guidelines acknowledge that this principle can be difficult to apply to intangible property because such property may have a special character. Also, for wholly legitimate business reasons, associated enterprises might sometimes structure a transfer in a manner that independent enterprises would not contemplate.

In this context, restructuring a business by transferring intangible property may have transfer pricing implications. The relevance of this matter was recognized by the OECD and in September 2008 the OECD Committee on Fiscal Affairs released a Discussion Draft regarding transfer pricing aspects on business restructuring.

In a recent research, Mr. Heinz-Klaus Kroppen explains the German developments in this area and emphasizes the tax authorities' increasing scrutiny of and aggressive challenges regarding transfer pricing implications in business restructuring as follows:

> *In spite of this OECD development, the German tax authorities have decided not to wait for the report, but rather to attack such restructurings today with a change in the law regarding the transfer of functions. The new law takes the position that a transfer of functions - that is, the move into a central entrepreneur structure - leads to a profit realization in Germany if the functions that were performed and the risks that were borne by the German entity are moved, i.e., to Switzerland. If such a change occurs, the law assumes that a "transfer package," which includes all the functions and assets transferred, has indeed been transferred, and the profit potential of that package must be determined. The minimum amount of this profit potential is the reduction in the German entity's profits multiplied by a factor normally used for business valuations, and the maximum is the increase in the foreign company's profits times a similar factor. In a case of doubt regarding the profit potential, the tax will be based on the midpoint number between both amounts.*
>
> *The above developments demonstrate the tax authorities' increasing scrutiny of and aggressive challenges regarding business restructurings. Thus, business restructurings must be undertaken very carefully to avoid potentially negative tax implications. It is important to show that, after a business restructuring, the local taxpayer is better off – or at least not worse off – than if the local company had stayed out of the new structure. And the tax authorities should not forget that tax law cannot force international groups to continue to invest in a specific group company in one jurisdiction – Germany, for instance – and therefore a local company has*

> *no guarantee that its profit level will remain at the same level in the future.*[2]

The recent developments in the field of transfer pricing and business restructurings need to be analyzed more carefully and this research is mainly to identify transfer pricing issues arising for MNE Groups whenever they decide to restructure their functions by transferring intangible property.

Also, this paper will identify what is an intangible property, who is considered to be the owner of the intangible, when a intangible is deemed to be transferred and how to achieve the arm's length price for the controlled transaction. Moreover, this research will analyze a few issues pointed out by the OECD in the Discussion Draft regarding transfer pricing aspects of business restructurings.

[2] *Business restructurings under attack*. Heinz-Klaus Kroppen, Deloitte. Text avaliable at: http://www.expertguides.com/default.asp?Page=10&GuideID=170&CountryID=87&ecAreaID=

2. TRANSFER PRICING AND INTANGIBLES

2.1 Centralizing functions in "low-cost" jurisdictions

Variation in the tax burden in different countries encourages MNE Groups to reallocate its functions among its associated enterprises located in various countries. This procedure aims to obtain economic advantages, which means that a transfer of the territorial situation of the operation usually takes place targeting the reduction of costs, which includes reduction of taxes as well.

In order to reduce these costs, it is common that MNE Groups change their structure model by stripping out functions, intangible assets and risks that were previously linked to local operations and transfer them to more centralized and specialized global units.

Therefore, whenever MNE Groups decide to centralize their functions, they look for jurisdictions which provide a more favourable regime, including: low wages, low raw material cost, low rent cost, low training cost and low overall tax burden.

2.2 Arm's length principle

The arm's length principle is an international standard which is used for determining transfer prices for tax purposes. The principle is set forth in Article 9 of the OECD Model Tax Convention as follows:

> *where conditions are made or imposed between two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reasons of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.*

The principle is based on the fact that when associated enterprises deal with each other, their relations may not be directly affected by external market forces in the same way it affects the relations of

independent enterprises. For this reason, the arm's length principle should govern the evaluation of transfer prices among associated enterprises.

Consequently, when calculating the prices used in transactions between dependent companies, tax authorities apply the so-called transfer prices in order to manipulate the value of the transaction to a fair market price.

2.3 Intangible property

In the modern world of business, the main force of economic activity and growth is intangible property. With the globalization of trade and investment, intangible property is increasingly important in contributing to an enterprise's competitive edge, and it has become indispensable to international competitiveness; the rapid advance of information and communication technologies has added to the importance of intangible property.[3]

In the field of transfer pricing, most of the countries apply the same rules that are used for tangible to intangible property. It seems that the United States is the only country that uses different rules for intangible transactions.

In order to find out if a transaction involves intangible property, it is necessary to define:

a. What is an intangible?;

b. Who is the owner of the intangible for tax purposes?;

c. When is an intangible deemed to be transferred?; and

d. How does one quantify the value of an intangible?

[3] Toshio Miyatake. *Cahiers de droit fiscal international*. Transfer pricing and intangibles. International Fiscal Association (IFA), 2007, Volume 92a, p. 19.

2.3.1 Definition

It is curious to note that most countries do not have a specific definition of intangible property in their regulations for transfer pricing purposes. Countries mostly refer to the OECD Transfer Pricing Guidelines.

The OECD Transfer Pricing Guidelines define intangible property as including: "rights to use industrial assets such patents, trademarks, trade names, designs or models, literary and artistic property rights, and know-how and trade secrets"[4]. The guidelines provide only examples of what is intangible property, thus they do not indicate the outer limits of the definition.

Intangible property is an item which derives its value not from its physical attributes, but from its intellectual content.[5] From a transfer pricing perspective, intangible property is any property that is not tangible, but is nonetheless still clearly property that can be exploited.[6]

It is sometimes said that intangible property allows a company to earn higher than average return on assets. Consequently, if a corporation is earning a higher than average rate of return on assets, it is said that intangibles are likely to be present. Nevertheless, it would be an abusive interpretation to attribute such high earnings to intangible property without clearly defining which intangible property is involved.

The amorphous nature of the concept of intangible property for transfer pricing purposes has created problems in identifying intangible property in practice. The failure of the mutual agreement procedure (MAP) between the United Kingdom and the United States in the Glaxo case which was the largest transfer pricing case in history, could be attributed to a lack

[4] Paragraph 6.2 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
[5] US Treasuty reg. §1º, 482-4(b)(6).
[6] UK International Tax Manuals.

of common understanding of the concept of intangible property for transfer pricing purposes.[7]

In this regard, the US Treasury regulations Sec. 1.482-4(b) provides a list of intangibles, including patents, inventions, formulas, and processes, and any other similar item that derives its value form, its intellectual content rather than its physical attributes. In many jurisdictions, however, only commercially transferable interests are regarded as intangibles for tax purposes. The OECD Transfer Pricing Guidelines provide some guidance, as well, as chapter VI distinguishes between marketing intangibles and commercial/trade intangibles.[8]

2.3.2 Marketing intangibles

The OECD Transfer Pricing Guidelines provides which intangibles are considered marketing intangibles. Paragraph 6.4 of the OECD Transfer Pricing Guidelines states:

> *Marketing intangibles include trademarks and tradenames that aid in the commercial exploitation of a product or service, customer lists, distribution channels, and unique names, symbols, or pictures that have and important promotional value for the product concerned. Some marketing intangibles (e.g., trademarks) may be protected by the law of the country concerned and used only with the owner's permission for the relevant product or services.*

In other words, marketing intangibles includes any kind of intellectual property which indicates the origin of the product or service, promotes the marketing, sale or advertising, and adds value to the business itself, such as trademarks, trade names, customer lists and distribution channels.

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[7] Toshio Miyatake. *Cahiers de droit fiscal international*. Transfer pricing and intangibles. International Fiscal Association (IFA), 2007, Volume 92a, p. 23.

[8] Giammarco Cottani. *Transfer Pricing and Intangibles: Summary of Discussions at the 61st IFA Congress in Kyoto*. International Transfer Pricing Journal, Volume 15, Number 1, January/February 2008, p. 59.

2.3.3 Commercial intangibles or Trade intangibles

The OECD Transfer Pricing Guidelines also provides which intangibles are considered commercial intangibles. Paragraph 6.3 states:

> *Commercial intangibles include patents, know-how, designs, and models that are used for the production of a good or the provision of a service, as well as intangible rights that are themselves business assets transferred to customers or used in operation of business (e.g., computer software).*

Patents are a grant made by a government that confers upon the creator of an invention the sole right to make, use, and sell a invention for a period of time. Designs and models may be patented or not, however this does not have any influence for transfer pricing purposes.

In practice, the problem with commercial intangibles is to identify know-how and differentiate it from service. In this regard, useful guidance is found in the commentary to article 12 of the OEDC Model Treaty, which provides a definition of know-how and a list of criteria to differentiate it from services, especially depending on the extent of the involvement that is required from the supplier upon the provision of services and there after.

Pursuant paragraph 11 of the commentary of article 12 know-how:

> *(...) generally corresponds to undivulged information of an industrial, commercial or scientific nature arising from previous experience, which has practical application in the operation of an enterprise and from the disclosure of which an economic benefit can be derived. Since the definition relates to information concerning previous experience, the Article does not apply to payments for new information obtained as a result of performing services at the request of the payer.*

The OECD Transfer Pricing Guidelines recognize in paragraph 6.3 that to develop such kind of intangible property the enterprise

has to go through risky and costly research and development activities and this is the reason the developer generally tries to obtain a return of the expenses through product sales, service contracts or license agreements. It is possible that the developer perform the research in his own name (with the intention of having legal and economic ownership of any resulting trade intangible). It is also possible that the developer is engaged in a joint activity to create the intangible (cost contribution arrangements) and there may be other more complicated arrangements as well. These points will be analysed in subsequent chapters.

2.3.4 Ownership

Normally, only one member of a MNE Group will be considered to be the owner of an intangible. On the other hand, it is possible that another member of the group assists the owner of an intangible to develop it or to enhance its value. In this case, the situation is solved by requiring the owner to pay arm's length compensation to the assistor. Also, it is possible that two or more parties are involved in a cost sharing agreement, which will lead to multiple ownership.

A key factor to be analyzed in transfer pricing is the ownership of intangibles. A proper transfer pricing analysis requires that compensation for the use of intangibles must be paid to the owner of the intangibles. It is noteworthy that differences in who is the owner of intangible property may lead to double taxation. To this end, there are three different kinds of ownership that must be investigated: legal ownership; economic ownership; and beneficial ownership.

2.3.4.1 Legal owner

From a legal perspective, intangibles may be registered and protected. Most countries have rules stating that legal ownership may be

obtained through registration or under legislation. If there is a legal protection available, the legal owner is considered to be its owner. However, it is common use that if such legal ownership is inconsistent with the economic substance of the underlying transactions, economic ownership should prevail.[9] This approach is used, for example, by the United States and Brazil.

2.3.4.2 Economic owner

By definition, economic owner is the party that bears the costs and risks associated with the development of the intangibles and is entitled to all the income attributable thereto.

Most of the time the economic owner is the legal owner, however if the intangible is not legally protected the economic ownership should prevail. It appears that economic ownership is more important than legal ownership. This type of ownership could override a legal title if a party without legal ownership had made a significant economic or other contribution to the development of the intangible concerned[10]. Austria adopts this kind of ownership.

2.3.4.3 Beneficiary owner

The ownership of intangible property may be determined by agreement. In this case, the beneficiary party will exercise practical control over the use of the intangibles in its business activities. In this case, the economic substance of the transaction is decisive because tax authorities may override the agreement based on its inconsistency with the economic substance.

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[9] US Treas. reg. §1.482-4T(f)(3).
[10] Toshio Miyatake. *Cahiers de droit fiscal international*. Transfer pricing and intangibles. International Fiscal Association (IFA), 2007, Volume 92a, p. 25-26.

2.3.5 Transfer of intangibles

The moment of the transfer of the intangible property to a related party is decisive to the application of transfer pricing regulations. That is because the obligation to charge the compensation is borne at the moment of the transfer. An intangible may be transferred when it is fully developed or when it is not fully developed and the transferee may undertake the remaining research and development work to complete it.

As stated by the OECD Transfer Pricing Guidelines in paragraphs 6.16 - 6.18, the transfer of an intangible usually takes the form of a sale or license, this is the moment when the transferor will be required to charge arm's length compensation for the intangible property transferred.

It is noteworthy that if a local subsidiary uses trademarks of the foreign parent company attached to the products the subsidiary purchases from the parent company and resells, it is not considered that the intangible in the trademark is transferred, as the trademark do not have a value independent of the products they are attached. There should be a passing of value of an intangible from one party to another.[11]

In business restructuring, three relevant aspects arise when transferring intangible property. They are: the problem of location savings; the assignment of employees; and the problem of foreign governments' regulations.

The issue of location savings is important given the current trend of MNE Groups to move their manufacturing bases to low-cost jurisdictions such as: Asia, Eastern Europe and Latin America. The location savings may be of a short duration as the advantage will diminish as competitors follow.

A MNE Group often realizes location savings by moving its manufacturing base to a plant owned by an affiliate in a foreign country due

[11] Toshio Miyatake. *Cahiers de droit fiscal international*. Transfer pricing and intangibles. International Fiscal Association (IFA), 2007, Volume 92a, p. 28.

to the lower wages and other lower costs. Location savings are not intangibles for transfer pricing purposes, however they have been discussed as if they were an intangible element of price differential advantage.

This advantage is a matter of evaluating the economic circumstances of the enterprise. The gross margin earned by a manufacturing subsidiary in a low-cost country should be equal to the gross margin earned by independent comparable manufacturers in the same country. This problem has a direct effect in competition.

Notice that if an uncontrolled taxpayer operates in a different geographic market from the controlled taxpayer, adjustments may be necessary to account for significant differences in costs attributable to the geographic markets. These adjustments must be based on the effect such differences would have on the consideration charged or paid in the controlled transactions given the relative competitive positions of buyers and sellers in each market.[12]

Nowadays, another issue that brings relevant discussions in the field of transfer pricing and intangibles is the assignment of employees with special technical knowledge and expertise to a foreign manufacturing subsidiary.

Countries like Germany, Japan, the United States and the United Kingdom take the view that this matter is subjected to transfer pricing regulations. However, there is a general trend of not recognizing the assignment of employees with technical knowledge and expertise as a transfer of intangibles as the intangible is personal to the employees. Austria, Belgium, Canada, Korea, Mexico and Norway adopt this point of view.[13]

The problem of foreign governments' regulations is a unique question because developing countries often require government approval

[12] US Treas. reg. § 1.482-1 (d)(4)(ii)(C).
[13] Toshio Miyatake. *Cahiers de droit fiscal international*. Transfer pricing and intangibles. International Fiscal Association (IFA), 2007, Volume 92a, p. 30.

for technology license agreements between a foreign licensor and a local licensee company, and they impose a ceiling on royalty rates in giving an approval, such as 5 per cent of net sales. For example, since 1958 Brazil has a legislation in which payments exceeding such ceilings are non-deductible by the Brazilian company as expenses for corporate income tax purposes. Moreover, with regard to patents, trademarks, royalties and technical assistance fees a government agency must give its prior approval to the amount to be paid. This agency rarely approves payments above the ceilings stated in the 1958 legislation.

In this case, a high value intangible may be licensed to a related company in such a country at a rate which is lower than the arm's length rate. The OECD Transfer Pricing Guidelines state in paragraph 1.55 that government interventions in the form of regulatory restrictions should be treated as conditions of the market in a particular country. In spite of that, there are certain countries like Sweden that may not accept foreign government regulations as market conditions.

2.3.6 Valuation of intangible property

The determination of the arm's length price for a transfer of intangible property should take into account both sides of the transaction[14] and represent a reasonable proxy of independent parties dealing at arm's length would have done. In the discussion draft on the transfer pricing aspects of business restructuring the OECD states that the arm's length price will be affected by a number of factors, such as: "the amount, duration, and riskiness of the expected benefits from the exploitation of the intangible property, the nature of the property right and the restrictions that may be attached to it (restrictions in the way it can be used or exploited, geographical restrictions, time limitations), the extent and remaining

[14] Paragraph 6.14 of the OECD Transfer Pricing Guidelines.

duration of its legal protection (if any), and any exclusivity clause that might be attached to the right.

Valuation of intangibles may be complex and uncertain. The general guidance on intangibles transfers that is found in Chapter VI of the OECD Transfer Pricing Guidelines is applicable to transfers of intangible property in the context of business restructuring[15].

Valuation of intangibles is a key factor to be taken into account in a transfer pricing analysis because traditional methods are not used in practice due to the lack of comparables.

When there is a situation for which there are no comparables, a key question is whether it can be resolved through pricing. To this end, the OECD Transfer Pricing Guidelines provides some guidance in paragraphs 1.36-1.41 by stating the basic principle that an examination by the tax authorities of a controlled transaction should start from the transaction undertaken by the tax payer applying its own methods.

Pursuant paragraph 6.4, in case of marketing intangibles, the valuation depends upon many factors, such as:

> *(...) the reputation and credibility of the tradename or the trademark fostered by the quality of the goods or services provided under the name or the mark in the past, the degree of quality control and ongoing R&D, distribution and availability of the goods or services being marketed, the extent and success of the promotional expenditures incurred in order to familiarize potential customers with goods and services (in particular advertising and marketing expenditures incurred in order to develop a network of supporting relationships with distributors, agents, or other facilitating agencies), the value of the market to which the marketing intangibles will provide access, and the nature of any right created in the intangibles under the law.*

[15] Organization for Economic Co-operation and Development. *Transfer Pricing Aspects of Business Restructurings: Discussion Draft for Public Comment*. OECD, Centre for Tax Policy and Administration, 2008, p. 29.

It is clear that problems regarding the valuation of intangibles will occur due to the extensive list of factors which influences the price of such property. As a result, a different interpretation of these factors may lead to a problem where tax authorities may want to disregard the structure adopted by the tax payer in entering into a controlled transaction.

There are two exceptions under which a transaction may be disregarded by the tax authorities:

a. When the economic substance of a transaction differs to its form; and

b. When a transaction is not commercially rational and practically impedes the determination of an appropriate transfer price.

The first circumstance allows the tax administration to disregard the parties characterisation of the transaction and re-characterise it in accordance with its substance. Paragraph 1.37 of the OECD Transfer Pricing Guidelines provides the following example:

> *(...) an investment in an associated enterprise in the form of interest-bearing debt when, at arm's length, having regard to the economic circumstances of the borrowing company, the investment would not be expected to be structured in this way. In this case it might be appropriate for a tax administration to characterise the investment in accordance with its economic substance with the result that the loan may be treated as a subscription of capital.*

The second exception arises when, while the form and substance of the transaction are the same, the arrangements made in relation to the transaction, viewed in their totality, differ from those which would have been adopted by independent enterprises behaving in a commercially rational manner and the actual structure practically impedes the tax administration from determining an appropriate transfer price. In this case,

paragraph 1.37 of the OECD Transfer Pricing Guidelines provides the following example:

> *(...) a sale under a long-term contract, for a lump sum payment, of unlimited entitlement to the intellectual property rights arising as a result of future research for the term of the contract. While in this case it may be proper to respect the transaction as a transfer of commercial property, it would nevertheless be appropriate for a tax administration to conform the terms of that transfer in their entirety (and not simply by reference to pricing) to those that might be reasonably have been expected had the transfer of property been the subject of a transaction involving independent enterprises. Thus, in the case described above it might be appropriate for the tax administration, for example, to adjust the conditions of the agreement in a commercially rational manner as a continuing the research agreement.*

It is imperative to address the problem that some tax administrations are routinely challenging business restructurings on the grounds that the restructuring would not have taken place at all or that the relationship between the parties is to be characterized in a completely different manner to that presented by the taxpayer.

However, there should only be a need to consider setting aside the transaction structured by the taxpayer if there is no non-tax commercial rationale for the restructuring. Virtually, in all other cases it should be possible to design pricing arrangements which share the commercial benefits of the restructuring between the parties affected in a way which ensures that, for each of them, participation in the restructuring leaves them as well off as they would be if they had adopted their realistically available next best alternative.

2.3.6.1 Valuation highly uncertain at the time of transaction

In order to solve this problem, paragraphs 6.28 - 6.35 of the OECD Transfer Pricing Guidelines provide a variety of steps that independent enterprises might undertake to deal with highly uncertain valuations. One possibility is to use anticipated benefits which take into account all foreseeable and predictable economic factors as a means for establishing the pricing at the outset of the transaction.

By contrast, independent enterprises might not find that pricing based on anticipated benefits alone provides an adequate protection against risks posed by the high uncertainty in valuing the intangible property. In such cases, independent enterprises might adopt shorter-term agreements or include price adjustment clauses in the terms of the agreement, to protect against subsequent developments that might not be predictable. Also, it is possible that independent enterprises would have fixed the pricing based upon a particular projection.

It is clear that tax authorities will look for arrangements that would have been made in comparable circumstances by independent enterprises even in highly uncertain valuations. Thus, it is extremely necessary that the taxpayer cooperates with the tax administration in order to help to find the arm's length price, because years later, when an audit takes place, tax authorities will be entitled to adjust the amount of consideration with respect to all open years up to the time of the audit which could lead to a major trouble to the taxpayer.

3. METHODS USED TO DETERMINE THE ARM'S LENGTH PRICE

The most direct way to find whether the conditions arranged between associated enterprises are at arm's length is to compare prices charged in a controlled transaction with prices charged in uncontrolled transaction. However, there will not always be comparable transactions available to allow reliance on this direct approach alone.

Consequently, it may be necessary to use other less direct path. These direct and indirect approaches are perfectly described in the traditional transaction methods under Chapter II of the OECD Transfer Pricing Guidelines.

3.1 Traditional transaction methods

Having identified a transaction between related parties, the next step in any transfer pricing analysis should be to explore the chance that a comparable uncontrolled price (CUP) exists (i.e. the same or similar transaction with a third party). An internal CUP would exist if a company licensed the same intangible to both related and unrelated parties. If there is a CUP, this should be used either in defence of the position or to highlight any significant differences.

The OECD Transfer Pricing Guidelines states that, in cases involving highly valuable intangible property, it may be difficult to find such a CUP. Also, license agreements held on public databases will rarely be comparable in terms of both product and level of market, so one is often required to search elsewhere for evidence.

However, uncontrolled agreements may serve as examples of arm's length agreements in the same industry, thus they may provide some evidence about the range of prices and royalty rates that unrelated licensors and licensees consider acceptable in a specific industry.

3.1.1 Comparable uncontrolled price method

The comparable uncontrolled price method (CUP) compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in similar circumstances. If there is any difference between two prices, this may indicate that the conditions of the commercial and financial relations of the associated enterprises are not at arm's length. Consequently, the price in the controlled transaction may need to be substituted for the price in the uncontrolled transaction.

3.1.2 Resale price method

The resale price method (RPM) begins with the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. This resale price is then reduced by an appropriate gross margin (the "resale price margin") representing the amount out of which the reseller would seek to cover its selling and other operating expenses and, in the light of the functions performed (taking into account assets used and risks assumed), make an appropriate profit. What is left after subtracting the gross margin can be regarded, after adjustment for other costs associated with the purchase of the product (e.g. customs duties), as an arm's length price for the original transfer of property between associated enterprises.

3.1.3 Cost plus method

The cost plus method (CPM) begins with the costs incurred by the supplier of property or services in a controlled transaction for property transferred or services provided to a related purchaser. An appropriate cost plus mark up is then added to this cost, to make an appropriate profit in light of the functions performed and the market conditions. What is arrived at after adding the cost plus mark up to the

above costs may be regarded as an arm's length price of the original controlled transaction.

3.2 Other methods

Most of the time, in a transfer pricing analysis, traditional methods are not used in practice due to the lack of comparables, although the resale price method may be appropriate in some cases.

For this reason, Chapter III of the OECD Transfer Pricing Guidelines describes other approaches that might be used to approximate arm’s length remuneration when traditional transaction methods cannot be reliably applied alone or exceptionally cannot be applied at all

The profit split method is increasingly being employed to resolve disputes regarding double taxation involving intangibles. Also, methods such as the discounted cash flow method and the market capitalization method are being used often as well.

It may be difficult to apply other methods to solve transfer pricing problems when the analysis hinges on comparing the profits (either gross or net) of the least complex party with a sample of third parties performing similar functions. This is particularly likely when both parties own valuable intangible property or unique assets used in the transaction that distinguish the transaction from those of potential competitors. In such cases, the profit-split method may be the best approach for testing the results of the two related parties. It is worth noting that, as tax authorities become more sophisticated, they will employ this method with increasing regularity.

Put simply, in applying the profit-split method, the OECD Transfer Pricing Guidelines suggest working out the routine profit that the license fee payer would earn as an independent (licensed) manufacturer and any extra profit that arises due to non routine factors such as intellectual property. When the components of intellectual property (brand, technology,

etc.) have been established, the non routine profits can be apportioned between the entities in some equitable way.

3.2.1 Profit split method

This method applies where transactions are very interrelated and it might be that they may not be evaluated on a separate basis. In this case, independent parties might decide to set up a form of partnership and agree to a form of profit split. The profit split method (PSM) first identifies the profit to be split for the associated enterprises from the controlled transactions in which the associated companies are engaged. It then splits those profits between the associated enterprises on an economically valid basis that approximates the division of profits that would have been anticipated and reflected in an agreement made at arm's length, taking into account the assets used and the risks assumed.

3.2.2 Transactional net margin method

The transactional net margin method (TNMM) operates in a manner similar to the cost plus and resale price methods. Therefore, in order to be applied reliably, the transactional net margin method must be applied in a manner consistent with the manner in which the resale price or cost plus method is applied. This means in particular that the net margin of the tax payer from the controlled transaction should ideally be established by reference to the net margin that the same taxpayer earns in comparable uncontrolled transactions. Where this is not possible, the net margin that would have been earned in comparable transactions by an independent enterprise may serve as a guide.

4. BUSINESS RESTRUCTURING OF A MULTINATIONAL GROUP

In the past few years, activities of MNE Groups have increasingly been restructured. The main goals of restructurings are to lower costs and increase efficiency due to the pressure of competition from other companies, the savings from economies of scale, the need for specialization and recently the economic crisis.

A common change in the structuring model consists of stripping out functions, intangible assets and risks that were previously linked to local operations and transferring them to more centralized and specialized global units. MNE Groups assert that tax savings is not the only reason for this model of restructuring, however when tax authorities from the host country see less money being collected, they tend to argue that a better tax regime is the only driver of a business restructuring.

4.1 Drivers of business restructuring

Restructurings are a reaction to global competitive pressures and changes in market demand. In reaction to market forces, a MNE Group may be able to retain its profit margins or recover recent losses from the economic crisis by only undertaking a restructuring. In a globalized economy, corporations are looking for new business opportunities in the world. Some people seem to think that business are all about saving taxes. However, there are quite some operational and business-orientated factors which may drive a MNE Group to restructure its business operations in a manner that ultimately reduces taxable income for the whole group, while increasing profits as well.

In order to create, maintain or even improve the above mentioned networks, the following drivers are important:[16]

a. Competitive drivers: New markets are being explored and companies usually consider whether goals can be achieved with the supply chain in place. Activities are being outsourced or shifted in low-wage countries after considering the impact on the value chain;

b. Compliance drivers: This refers to, for example, a number of regulatory requirements, anti-competition laws, environmental requirements, World Trade Organization (WTO) rules and tax legislation which influence the choice of a location (e.g. many countries introduced tax incentives with regard to research and development - R&D - in order to stimulate foreign investment). At the bottom line, these incentives can make a difference; and

c. Optimization drivers: Flexible business processes and optimal IT infrastructure lead to optimization of the results of the company.

The competitive drivers can be divided into the following categories:[17]

a. Demand chain: marketing, sales and services. When companies enter into new markets with existing products and/or new products, this often

[16] Deloitte Research. *Unlocking the Value pf Globalization: Profiting from Continuous Optimization*, Deloitte, 2005, p. 3. see also Peter Koudal and Douglas A. Engel, *Building Supply Chain Excellence in Emerging Economies*, Chapter 2, Springer, 2007, p. 38-66.

[17] Deloitte Research. *Unlocking the Value pf Globalization: Profiting from Continuous Optimization*, Deloitte, 2005, p. 3. see also Peter Koudal and Douglas A. Engel, *Building Supply Chain Excellence in Emerging Economies*, Chapter 2, Springer, 2007, p. 38-66.

entails a change on the side of the supply chain. Adjustments in the field of the service need to be made. For example in aerospace and defence maintenance, repair is the cornerstone of selling airframes and jet engines. In diversified manufacturing and industrial products service is an integral aspect in the eyes of customers;[18]

b. Supply chain: sourcing, manufacturing and logistics. In order to increase its profitability, a company needs to increase its sales and/or reduce its costs. In order to decrease their costs, companies relocate plants. Shortening the time market also brings along changes in the supply chain; and

c. Product development: Research and development, design, engineering, development and launch. This topic is becoming increasingly important as the life cycle of products shortens.[19] In the latter respect, just as it makes sense for multinational groups to rearrange their operations as far as tangible

[18] Caterpillar devotes considerable efforts to service. They provide 24-hour support, have customer service agreements and promote this e.g. on their web-site and in their annual reports. See annual report of 2007. See also the website of ABB (www.abb.com) and the ABB Group Annual Report of 2007. Another example is GE; see GE 2007 annual report, available at www.ge.com. Some service units are more profitable than primary business. see also Jeffrey J. Glueck, Peter Koudal and Wim Vaessen, "*Putting a Premium on Service*", "*Supply Management Review* (April 2006), p. 26-33.

[19] Despite having product innovation at the top of their growth agendas, few manufacturers seem to organize R&D and product life cycle management operations from a global perspective. For example, many companies seem to fail to take advantage of regulatory and tax issues when deciding where to locate their R&D facilities or to consider intellectual property rights in making such decisions. See "Unlocking the Value of Globalization: Profiting from Continuous Optimization" note 1, p. 13. Another interesting point: when discussing business restructurings, one frequently talks about the avoidance of corporate taxes. However, indirect taxes are sometimes even more important. Consider a company that changes a European subsidiary structure into commissionaire structure and the consequences it will have for VAT purposes.

> assets are concerned, it seems logical for them also to consolidate their intangible assets by establishment of intellectual property holding companies. However, from the perspective of tax authorities, this may be seen as a form of unduly aggressive tax planning, as intellectual property is increasingly seen as a means of avoidance in view of both its inherent mobility and its high economic value (considerably greater vis-à-vis that embedded in tangible assets).

4.2 Business restructuring and intangibles

Whenever a MNE Group decides to restructure its business, it will probably relocate tangible and intangible assets to a country which provides a more favourable regime. Low wages, low raw material cost, low rent cost, training cost and low overall tax burden will be analyzed in the first moment, however the allocation of intangibles play a very significant role in business restructurings.

Transfers of intangibles assets raise difficult questions both as to the identification of the assets transferred and as to their valuation. As previously discussed, identification may be difficult because not all valuable intangible assets are legally protected and registered.

Therefore, an essential part of the analysis of transfer pricing and intangibles aspects in the context of a business restructuring is to identify: intangible assets owned by the restructured corporation; intangible assets transferred during the restructuring; and the value of these intangibles.

As these subjects were previously discussed, the following sub-chapters will address a few aspects recently discussed by the OECD regarding the transfer pricing aspects of business restructurings.

4.2.1 Disposal of intangible rights by a local operation to a foreign related party

The discussion draft shows a concern with the disposal of intangible assets by a local operation to a central location situated in another tax jurisdiction, usually known as "IP company".

MNE Groups may have business reasons to centralize ownership and management of intangible property. An example in the context of business restructuring is a transfer of intangibles that accompanies the specialization of manufacturing sites within an MNE Group.

In a global business model, each manufacturing site can be specialised by type of manufacturing process or by geographical area rather than by patent. As a consequence of such a restructuring the MNE Group might proceed with the transfer of all the locally owned and managed patents to a central location which will in turn give contractual rights (through licences or manufacturing agreements) to all the group's manufacturing sites to manufacture the products falling in their new areas of competence, using patents that were initially owned either by the same or by another entity with in the group.

When such restructuring is done, an arm's length compensation should be paid. To this end, an evaluation of the conditions made or imposed between related parties is necessary in order to find the arm's length price. The conditions of the transfer should be assessed from both the transferor's and the transferee's perspectives, in particular by examining the pricing at which comparable independent enterprises would be willing to transfer and acquire the property.

The determination of an arm's length remuneration for the subsequent ownership, use and exploitation of the transferred asset should take into account the extent of the functions performed, assets used and risks assumed by the parties in relation to the intangible transferred. A problem

may arise because several countries have expressed a concern that relevant information on the functions, assets and risks of foreign related parties is often not made available to them.

From the perspective of the transferor, questions arise whether at arm's length it would have had other options realistically available to it that were clearly more attractive, including the option to refuse the transfer and, if so, whether an independent party at arm's length would have been willing to dispose of the intangible property in comparable conditions, taking into account the whole arrangement including the compensation, if any, for the transfer itself, as well as the remuneration for the post-restructuring transactions.

From the perspective of the transferee, key questions arise in relation to the determination of an arm's length remuneration both for the transfer and for the subsequent ownership, use and exploitation of the transferred asset.

In some cases, the transferor continues to use the intangible transferred, however does so in another legal capacity (*e.g.* as a licensee of the transferee, or through a contract that includes limited rights to the intangible such as a contract manufacturing arrangement using patents that were transferred; or a "stripped" distribution arrangement using a trademark that was transferred); in some cases it does not.

Where this is the case, the entirety of the commercial arrangement between the parties should be examined in order to assess whether the transactions are at arm's length. If an independent party were to transfer an asset that it intends to continue exploiting, it would be prudent for it to negotiate the conditions of such a future use concomitantly with the conditions of the transfer. Actually, there will generally be a relationship between the determination of an arm's length compensation for the transfer, the determination of an arm's length compensation for the post-restructuring transactions in relation to the transferred intangible, such as future license

fees that may be payable by the transferor to be able to continue using the asset, and expected future profitability of the transferor from its future use of the asset.

Thus, the common hypothetical example is: a local operator transfer a patent to the IP company for a price of 100 in 2010 and a license agreement is concluded according to which the transferor will continue to use the patent transferred in exchange for a royalty of 100 per year until 2020. The transfer of the patent for the price of 100 would raise serious doubts as to its consistency with the arm's length principle.

4.2.2 Intangible transferred when it does not have an established value

Difficulties can arise in the context of business restructurings where an intangible is disposed of at a point in time when it does not yet have an established value (pre-exploitation), especially where there is a significant gap between the level of expected future profits that was taken into account in the valuation made at the time of the sale transaction and the actual profits derived by the transferee from the exploitation of intangibles thus acquired. This raises the question of whether the valuation at the time of the transfer was an arm's length valuation that was arrived at in good faith on the basis of information reasonably available at that time. Where this is not the case, the price for the transfer may be adjusted.

Moreover, where the valuation was made in good faith on the basis of information reasonably available at the time of the sale transaction, the question arises of whether it may still be adjusted subsequently to account for the unexpectedly high profits or losses derived by the transferee from the intangible. In this case paragraph 6.34 of the OECD Transfer Pricing Guidelines states:

> *If an independent enterprise would have insisted on a price adjustment clause in comparable circumstances, the tax administration should be permitted to*

> *determine the pricing on the basis of such clause. Similarly, if independent enterprises would have considered unforeseeable subsequent developments so fundamental that their occurrence would have led to a prospective renegotiation of the pricing of a transaction, such developments should also lead to a modification of the pricing of a comparable controlled transaction between associated enterprises.*

The Discussion Draft points out that the main question is to determine whether the valuation was sufficiently uncertain at the time of the transfer that parties at arm's length would have required a price adjustment mechanism, or whether a development caused a fundamental change in the value and would have led to a renegotiation of the transaction. Where this is the case, tax authorities would be justified in determining the arm's length price for the transfer of the intangible on the basis of the adjustment clause or renegotiation that would be provided at arm's length in a comparable uncontrolled transaction.

In other circumstances, where there is no reason to consider that the valuation was sufficiently uncertain at the outset that parties would have required a price adjustment clause or would have renegotiated the terms of the agreement, there is no reason for the tax authorities to make such adjustment as it would represent an inappropriate use of hindsight.

4.2.3 Local intangibles

Another tax issue arising at the time of the restructuring is whether those affiliates to be stripped of functions have previously developed any intangibles assets related to the integrated activity. This could arguably involve, for example, a change from a full-fledged distributor to a commissionaire. Here, it must be determined whether the stripped distributor developed any marketing intangibles prior to the stripping (such as the development of a customer list) which will be transferred to other group affiliates. In case of a change from a full-fledged

to a contract manufacturer, there might be a transfer of locally developed process intangibles.[20]

Where a local full-fledged operation is converted into a "limited risk, limited intangibles, low remuneration" operation, the questions arise of whether this conversion entails the transfer by the restructured local entity to a foreign related party of valuable intangible assets such as customer lists and whether there are local intangible assets that cannot be transferred because they are inherent to the local operation.

In particular, in the case of the conversion of a full-fledged distributor into a limited risk distributor or commissionaire, it is important to examine whether the distributor has developed local marketing intangibles over the years prior to its being restructured and if so, what the nature and the value of these intangibles.

Where such local intangibles are found to be in existence and to be transferred to the foreign related party upon the restructuring, their transfer should be remunerated at arm's length. Where such intangibles are found to be in existence and to remain in the restructured entity, they should be taken into account in the remuneration of the post-restructuring activities. This can be achieved for instance via royalty payments made by the foreign related party which will exploit them as from the restructuring to the restructured activity that duly take account of the existence of local intangibles in the determination of the appropriate transfer pricing method and comparability analysis.

This issue was one of the first court rulings on the subject of transfer pricing implications relating to business conversion or restructuring is the Cytec Norge KS case in Norway. In that case, the Court of Appeal focused on the issue of whether the converted entity should receive an arm's

[20] Andrea Musselli and Alberto Musselli. *Stripping the Functions of Producing Affiliates of a Multinational Group: Addressing Tax Implications via Economics of Contracts*. International Transfer Pricing Journal, Volume 15, Number 1, January/February 2008, p. 15.

length compensation for a change in roles within the supply chain. The Court held that when a company, belonging to a multinational group, is converted from a fully fledged manufacturing and selling entity to a contract manufacturer for one of the group entities against the payment of a cost-plus type of remuneration, a transfer of significant trade and marketing intangibles is deemed to occur in favour of the principal company of the group. As the Norwegian taxpayer did not receive sufficient compensation for the transfer of such intangibles, it was liable to pay taxes in Norway with regard to a transfer pricing adjustment for such imputed arm's length compensation. The Court of Appeal concluded that the Norwegian taxpayer was the owner of substantial trade and marketing intangibles which it had developed over the years, and that no independent party would have surrendered such intangibles in favour of another entity in the course of a business restructuring where the taxpayer would operate as a stripped-risk contract manufacturer for the transferee company, without being paid commensurate compensation.[21]

4.2.4 Contractual rights

Contractual rights may be valuable intangible assets. Where valuable contractual rights are transferred between related parties, they should be remunerated at arm's length, taking account of the value of the rights transferred from the perspectives of both the transferor and the transferee.

Tax authorities have expressed concerns about cases they have observed in practice where an entity voluntarily terminates a contract that provided benefits to it, in order to allow a foreign related party to enter into a similar contract and benefit from the profit potential attached to it.

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[21] Anuschka J. Bakker and Giammarco Cottani. *Transfer Pricing and Business Restructuring: The Choice of Hercules before the Tax Authorities*. International Transfer Pricing Journal, Volume 15, Number 6, November/December 2008, p. 275.

The common hypothetical example is: manufacturer A has valuable long-term contracts with unrelated parties which carry significant profit potential for A. Assume that in a certain point, A decides to terminate its contract with its customers and the latter are commercially or legally obligated to enter into similar arrangements with manufacturer B, a foreign entity that belongs to the same MNE Group as A. As consequence, the contractual rights and attached profit potential that used to lie with A now lie with B. If the factual situation is that B could only enter into the contracts with the customers subject to A's surrendering its own contractual rights to its benefit and that A only terminated its contract with its customers knowing that the latter were commercially or legally obligated to conclude similar arrangements with B.

The OECD took the view in the Discussion Draft that this in substance would consist on a tri-partite transaction and it may amount to a transfer of valuable contractual rights from A to B that may have to be remunerated at arm's length depending on the value of the rights surrendered by A from the perspective of both A and B.

5. CONCLUSION

Business restructuring is attracting increased attention as tax authorities across jurisdictions compete for tax revenues. It is no secret that governments take the point of view that proper enforcement of transfer pricing rules can substantially increase tax collections and budgetary revenues.

This fact has significant repercussions for MNE Groups, which do not wish to be subject to double taxation or the inconvenience of lengthy tax audits. Although business restructuring has been widely debated by the OECD and the international community, a consensus has yet to be reached.

Despite the many reasons for restructuring a business, the relocation of intangible assets plays an important and complex role in transfer pricing. Most countries do not have a specific definition of intangible property for transfer pricing purposes in their regulations. These countries mostly refer to the OECD Transfer Pricing Guidelines

It is noteworthy that problems regarding the definition of intangible property, lead to the failure of the mutual agreement procedure (MAP) between the United Kingdom and the United States in the Glaxo case which was the largest transfer pricing case in history, could be attributed to a lack of common understanding of the concept of intangible property for transfer pricing purposes.

Another issue that appeared in practice is the problem with commercial intangibles. It is not an easy task to identify know-how and differentiate it from service. Know-how generally corresponds to undivulged information of an industrial, commercial or scientific nature arising from previous experience, which has practical application in the operation of an enterprise and from the disclosure of which an economic benefit can be derived. And services are the performance of work or duties

for another person or company. Nevertheless, every service has in itself a hidden know-how, which may lead to problems in classification.

It was pointed out that ownership of intangibles is crucial when applying transfer pricing rules. There are three types of ownership, legal owner, economic owner and beneficiary owner. However, the economic ownership is the most important one, because it is common practice that if the other types of ownership are inconsistent with the economic substance of the underlying transactions, economic ownership should prevail.

Furthermore, problems of location savings, assignment of employees and foreign governments' regulations play a major role in business restructurings.

Nowadays, the trend of business restructurings made the locations savings problem less important. It is a fact that MNE Groups are always following successful ideas from their competitors. Consequently, the economic impact of the location savings is diminished and there is almost no distortion in competition.

On the other hand, it is the author's point of view that the assignment of staff with special technical knowledge and expertise to a foreign manufacturing subsidiary shall not be considered to be a transfer of intangible property requiring, therefore, an arm's length remuneration.

It seems clear that the kind of intangible property discussed here is inherent to the employees and shall not be object of any type taxation on the hands of the corporation. In this kind of transaction, the author believes that it is only possible to apply transfer pricing rules to the regular supply of services between related parties.

The controversial issue of foreign governments' regulations is really a unique question. Most developing countries are importers of technology. Exportation of intellectual property or know-how is virtually non-existent, while importation is strictly controlled by the government.

In these countries, they often require government approval for technology license agreements between a foreign licensor and a local licensee company, and impose a ceiling on royalty rates in giving an approval, such as 5 per cent of net sales. In this case, a high value intangible may be licensed to a related company in such a country at a rate which is lower than the arm's length rate.

Pursuant paragraph 1.55 of the OECD Transfer Pricing Guidelines, government interventions in the form of regulatory restrictions should be treated as market conditions in a particular country. Therefore, if the ceilings are lower than the market price of the intangible, the transactions undertaken by the controlled parties may not be consistent with transactions between independent enterprises. When this is the fact, the tax payer will benefit from an unfair tax advantage

Valuation of intangibles is another issue that may lead to problem due to the extensive list of factors which influences the price of such property. As a result, a different interpretation of these factors may lead to a problem where tax authorities may want to disregard the structure adopted by the tax payer in entering into a controlled transaction. Tax authorities may do that when the economic substance of a transaction differs to its form or when a transaction is not “commercially rational” and practically impedes the determination of an appropriate transfer price.

If the latter possibility arises, it is the author’s opinion that if a restructuring is commercially rational for a MNE Group, judged at a group level, the transactions presented should not be subjected to re-characterization by tax authorities. Instead, non-arm’s length behaviour should, as far as possible, be dealt with on the basis of pricing adjustments, rather than by re-characterizing all or part of the actual transactions undertaken.

Furthermore, when valuation is highly uncertain at the time of transaction, tax authorities will always look for arrangements that would

have been made in comparable circumstances by independent enterprises. In this manner, cooperation from the taxpayer with the tax administration is decisive, because years later, when an audit is conduct, tax authorities will be entitled to adjust the amount of consideration with respect to all open years up to the time when the audit takes place which could lead to a major trouble to the taxpayer.

In order to find the arm's length price there are many methods which may be used and in each transaction one of the methods will best fit the situation. The issue here is not which method the taxpayer picked; however the concern of the tax authorities is if the chosen method leads to a fair market price. To this end, the comparable uncontrolled price method (CUP) and the profit split method (PSM) appear to be more often used for intangible transactions.

However, due to the lack of comparables and the many factors which have direct influence in the arm's length compensation for the transfer of intangible property the profit split method appears to be used more often than the comparable uncontrolled price method (CUP).

It would be much easier for the tax payer if tax authorities had a formula which could calculate the arm's length price, taking into account factors such as: the amount, duration, and riskiness of the expected benefits from the exploitation of the intangible property, the nature of the property right and the restrictions that may be attached to it (restrictions in the way it can be used or exploited, geographical restrictions, time limitations), the extent and remaining duration of its legal protection (if any), and any exclusivity clause that might be attached to the right.

The concern of the OECD with the disposal of intangible assets by a local operation to a central location situated in another jurisdiction shows that corporations are really specializing its manufacturing sites and this matter could not be disregarded.

The author believes that this issue is the most relevant one regarding the transfer pricing aspects in business restructuring and it sounds very logical to charge arm's length compensation to the transfer of such intangible property

In addition, the author also shares the OECD's point of view regarding the issue involving tri-partite transactions involving contractual rights. Consequently, if the rights are surrendered in order to enable an advantage which would not take place between independent parties and depending on the value of these rights, they should be remunerated at arm's length. However, there should be no presumption that all contract termination or substantial renegotiations implies to a right to indemnification.

Finally, despite all the guidance provided by the OECD, it seems evident that it is a hard task to obtain the arm's length compensation when transferring intangible property within a MNE Group. Therefore, a consensus must be reached and a uniform approach from tax authorities worldwide is necessary in order to bring more security and transparency to corporations when dealing with transfer pricing and intangibles in the context of business restructurings.

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