



How BEPS influenced the Transfer Pricing

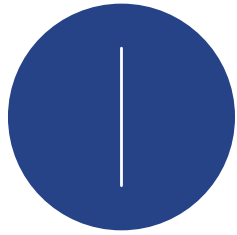
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A quick look to BEPS

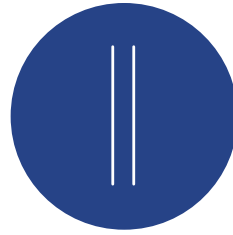


The three pillars of BEPS

Coherence in domestic regulation:
reducing loopholes.

Reinforce international standards of
substance requirements.

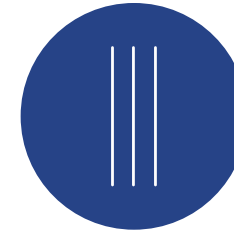
Improve transparency.



Framework for action 10

Alignment of TP with the value
generation chain:

A8 Intangibles,
A9 Risk and Capital,
A10 High risk areas.
A13 Documentation.



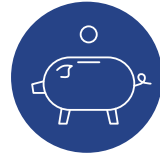
Treatment of services

Simplify the benefit test.

A plan based on 15 Actions



Digital Economy



Deductibility
Financial Expenses



Permanent
Establishments



Other Risk
Transactions



Country by
Country Reporting



Hybrid
Mechanisms



Preferential
Arrangements



Intangibles; Value
Creation



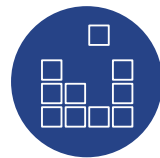
Methodology for
BEPS measurement



Amicable Procedures
and Arbitration



CFC regulation



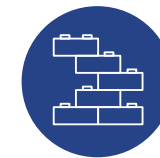
Abuse of
Covenants



Risk and Capital



Transparency in
aggressive tax
planning



Multilateral
Instrument

A new tax environment

BEPS challenged the „status quo“ of international tax – MNEs had to re-visit their tax model.



A worldwide coordinated tax reform



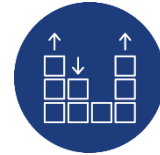
Strengthen substance requirements



Aligning transfer pricing and value creation



Higher relevance of key people functions



Transparency – new information requirements



Pay taxes where value is created

Topics under scrutiny

- Disconnection between the operating model and fiscal policy
- The existence of inadequately remunerated intangibles

Documentation requirements (Action 13)

Action 13: Objectives

Action 13: Focus

Assist tax authorities in assessing risk arising from transfer pricing policies.

„Country by Country Reporting“ (CbCR)



The CbCR contains information that has not previously been provided to the tax authorities.

Ensure that taxpayers set their policies in accordance with the „arm’s-length“ principle.

Master File (MF)



The Master File contains some information that has not previously been provided to the tax authorities.

Providing specific information on transactions linked to the tax authorities.

Local File (LF)



The Local File is practically aligned with what the companies have already been preparing.

Need for consistency

Approach from the tax authorities

A more business focused vision



Global vision of the business and value chain



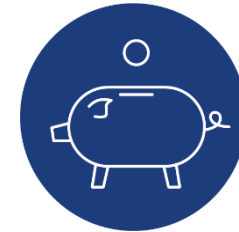
Functions in the development of intangibles



Control and decision-making power over risks



CbCR assessment in a broader context



A new approach to financing

With a new way of doing things



Introduce new substance requirements

One of the three BEPS pillar



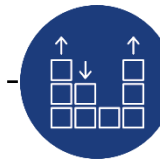
Relevance of functions/persons

Contractual assignment



Contributing to creating value in the Group

Functions and value generation



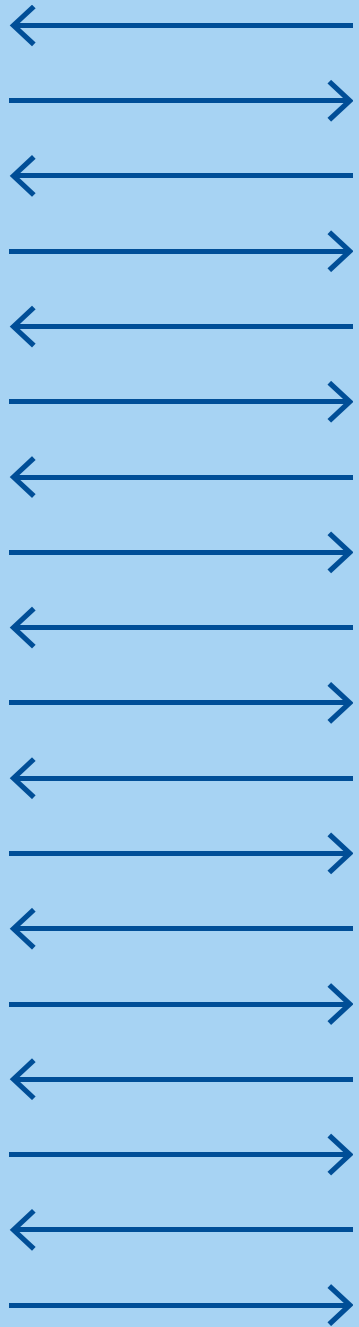
Then we're talking value chain!

In the line with the new objectives of the new FM?



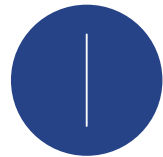
Balance of transfer pricing and value generation

A key objective



Intangibles

Intangibles: new approach



Legal ownership alone does not entail attribution of profits.



The benefits correspond to whoever performs the DEMPE functions.



Without exercising control functions, there will not be an entitlement to remuneration beyond the risk-free rate



Identification of the relevant assets (intangibles) - "value drivers" of the business.



Analysis of contractual terms - **legal** ownership of intangibles and assumption of inherent risks.



Function DEMPE analysis

Development
Improvement
Maintenance
Protection
Exploitation



Consistency with the **conduct of the parties** and compliance with contractual terms.



Financing capacity linked to control functions.



Determine the "arm's length" **price** of the transaction.

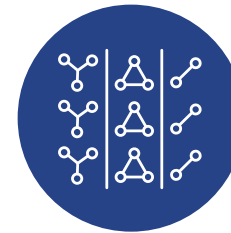
Intangibles: challenges



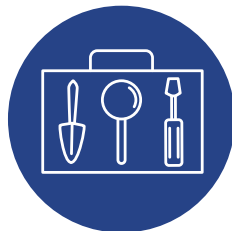
Lack of **comparability** between intangibles and also between transactions



Several companies developing DEMPE functions



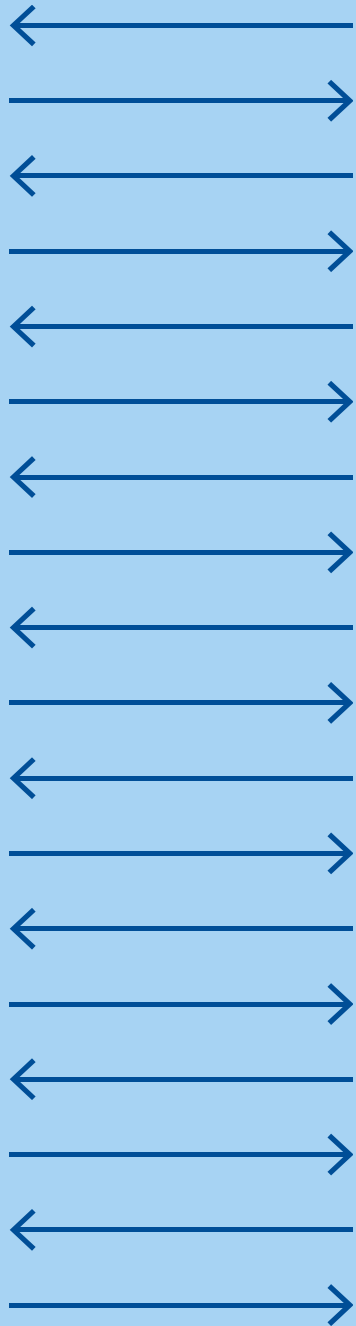
Contractual clauses



Use of **different** intangibles by **different** companies



Intangible assets generated over different **time periods**



RISKS

Risks: how to analyze them



Risk



Uncertainty



Opportunity



Identification of the risks



Determine how the parties **contractually** assume these risks



Functional analysis –who and how **manages the risk**



Consistency with the **conduct of the parties** and compliance with contractual terms



Assign risks to those who exercise control functions and have **financial capacity**



Valuation - determine transaction **price** based on evidence