

Ações Relacionadas a Preços de Transferência

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Aligning TP with Value Creation

Existing international standards for tp rules can be misapplied:

arm's length (art. 9 OECD + UN)

shared interpretation in OECD TP Guidelines

Contractual allocations of assets, functions and risks vulnerable to manipulation and outcomes not corresponding to value created

Actions 8 – 9

8: Misallocation of profits generated by valuable intangibles has contributed to BEPS

9: Contractual allocation of risks and resulting allocation of profits not corresponding with activities actually carried out

Capital rich MNE group member with returns not corresponding to actual activities allocated only risk-free return or less if transaction not commercially rationale and non recognition applies

Action 10

Transactions not commercially rational for individual enterprise (re-characterization)

Allocation of synergistic benefits to members contributing to them

Neutralising use of certain types of payments between members of MNE group

Profit Split Method

Action 10 (cont.)

Risks: allocated to party actually exercising control and with financial capacity to assume risks

Intangibles: legal ownership alone does not generate right to returns, companies performing functions, controlling risks and contributing assets entitled to return for value of their contributions

Commodities

Low value-adding intra-group services

Actions 13 - 14

Master file

Local file

CbCR

MAP

OECD TP Guidelines

Not member, not bound, no reference to TPG
(Argentina, Bolivia, Brasil, Colombia)

Member, actively using TPG (Mexico, Spain)

Member, not following TPG

Associated BEPS (Argentina & Brazil)

Not changed regulations (all)

TP Rules

ALS (Bolivia, Colombia, Mexico, US)

Fixed Margins rebuttable (Brasil)

ALS with departures (Argentina, Spain)

Broader application than Associated Enterprises (Latin America)

Options actually available

No concept (Brazil)

Strengthening comparability (Colombia)

Not such level of analysis yet (Spain)

Proposed Legislation (US)

Domestic tested party (Argentina)

Commercially irrational

No meaning (Argentina, Bolivia)

No meaning but used in cases (Brasil, Spain)

Equivalent to 'buen hombre de negocios' (Colombia)

Economic substance doctrine (US)

Recharacterization

Yes (Bolivia, Colombia, US)

Triangulation (Brasil: Marcopolo, reversed in 4 subsequent cases)

Financing (Spain: BICC reversed in Peugeot Citröen, MM)

No (Argentina)

Low value added services

No provision (Brasil)

Prorrated expenses likely challenged (Bolivia)

Prorrated expenses challenged (Argentina)

Prorrated expenses non deductible (Colombia)

No objection provided if meets TPG (Spain)

Specific rules (US)

WHT on gross (all)

Intercambio de información

Administration not ready (Argentina, Bolivia, Colombia)

Reduced impact on tp (Brazil)

Spain: more efficient audit resources allocation

Extensive and promoted, opposes automatic exchange of CbCR information, it would only do so bilaterally and only with countries that won't expose US MNE information (US)

CbCR

Only local (Bolivia)

Not implemented (Argentina, Colombia, Brasil)

In place Master File, Loca File y CbCR (Spain)

In place CbCR (US)

Bias to shift profits to location of highly skilled people not where market is created (Brazil)

Cherry picking (Argentina)

Improved documentation (Colombia)

Moving people rather than documents, more compliance costs and uncertainty (Spain)

Future not clear, especially master file & confidentiality of CbCR, no changes in substantive law expected (US)

¡Muito Obrigado!

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