



Stowarzyszenie Centrum Cen Transferowych
(„Transfer Pricing Centre” Association)
ul. Foksal 10,
00-366 Warsaw, Poland
e-mail: kontakt@cct.org.pl

Warsaw, 1 October 2013

Working Party No. 6 of the Committee on Fiscal Affairs

TransferPricing@oecd.org

sent by e-mail

Subject: COMMENTS ON THE REVISED DISCUSSION DRAFT ON TRANSFER PRICING ASPECTS of Intangibles of July 30th, 2013

Dear Sirs and Madams,

“Transfer Pricing Centre” Association (“TPCA”) welcomes the opportunity to provide comments on the Revised Discussion Draft on Transfer Pricing Aspects of Intangibles (the “Draft”).

“Transfer Pricing Centre” Association (“TPCA”) is a non-profit organization aimed at promoting transfer pricing knowledge in Poland, founded by specialists working for capital groups in Poland, mainly in energy and industry sector. Hence we hereby present the comments as representatives of business.

We would like to confirm that we have no objections with posting our comments on the OECD website.

We appreciate the intention imbedded in the White Paper to launch a global conversation on transfer pricing aspects of intangibles, especially in the area of ownership of intangibles and transactions involving the development, enhancement, maintenance and protection of Intangibles.

We wish to thank the Transfer Pricing Unit and the Working Party No 6 of the OECD for the opportunity to express our views on the considerations for intangibles and for the work pursued to clarify the related valuation aspects. We are at your disposal to discuss any aspect of our comments. We look forward to developments and further discussions on the considerations for intangibles.

Yours faithfully,

Andrzej Podrzywałow
Member of the TPCA Program
Council

kontakt@cct.org.pl



The Committee on Fiscal Affairs invited public comments on the Revised Discussion Draft which includes changes made to the 6 June 2012 Discussion Draft. We consider that Revised Discussion Draft a work in process strictly related with aims expressed in the BEPS Action Plan.

We appreciate the efforts made to develop precise solutions in a very complex area of transactions involving intangible assets, whereas such assets are unique and difficult to value. We believe the Revised Discussion Draft is much more precise and coherent document in comparison with the original version published in 2012. We want to point out the important problem of understanding the know-how as in the meaning of intangible property. In our opinion this issue needs to be clarified.

The following comments are referenced to specific points according to the numbering used in the document.

17.

It should be accepted that the transfers or secondments of one or more employees may, depending on the facts and circumstances, **be associated with** the transfer of valuable know-how from one associated enterprise to another. We do not think that transfers or secondments of one or more employees **in any case result in** the transfer of valuable know-how.

The essence of know-how treated as intangible property defined on the basis of industrial property rights, shows that this knowledge has to have a material character (in the meaning of recording data on physical media), some level of internal protection (at the organizational level of the owner of know-how), and transferability to a different business environment.

In transactions of transfer of know-how in particular used in the process of research, there is always a strong relationship with the intellectual capital (knowledge) possessed by assembled workforce but we should not put an equal sign between the know-how defined on the basis of industrial property rights and knowledge possessed by a person or team of people.

18.

In the cited example 18 we find simple situations in which restructuring takes place almost immediately after the acquisition (as part of a comprehensive project). We believe that in the event of a significant gap in time between the identified actions (purchase of equity and restructuring), the valuation of the transferred assets will be needed for the purpose of determination a transfer price using AL principle and such example would be very welcomed.

54.

From the description of the know-how, we can conclude that this intangible property does not have to be registered in a material form. Do we need to understand that the know-how exists only in the human brain? If so, by what right do we treat it as an fixed asset in balance sheets and separately from assembled workforce? By using such a definition of know-how one can easily come to the conclusion that any hiring or transfer of skilled people results in a transfer of know-how.

Warsaw, October 1st, 2013