



World Tax Service
WTS Aktiengesellschaft
Steuerberatungsgesellschaft

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Comments on OECD discussion draft "Transfer Pricing Aspects of Business Restructurings", especially non-recognition of a transaction

Dear Mr. Owens,

WTS wants to take the chance to comment on the discussion draft "Transfer Pricing Aspects of Business Restructurings". We want to focus on one main topic, which is issue note 4, paragraphs 207-213.

According to the discussion group, a short summary and the following conclusions can be made. The non-recognition of a transaction is very difficult to enforce because of two main problems. Firstly, the lack of commercial rationale is very hard to prove because the whole environment of the company must be considered. Secondly there are so many business models between MNE's that it is really difficult to find for each one of them comparables that are based on reliable data.

Facing so many problems in connection with the regulation of the non-recognition of the transaction it must be said clearly that this regulation is more confusing than helpful. The biggest priority for the OECD is to find the arm's length price regarding the restructuring. As long as there is the possibility of an adjustment to an arm's length price, there is no need for further consideration of the concept of non-recognition of transactions. Therefore WTS argues that the part concerning the "non-recognition of transactions" can be removed.

If the mentioned parts of the paper can't be removed, there should be serious clarifications considering this point. The OECD should give practical and very limited examples for transactions that are not to be recognized as business restructurings.

With kind regards,

WTS Aktiengesellschaft
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