

## DEMPE FUNCTIONS AND INTANGIBLES

### DEFINITION, PRACTICAL APPLICATION AND ANALYSIS IN THE CONTEXT OF LICENSE MODEL

#### Intangibles and TP

- Intangibles are increasingly important and constitute **majority of the value of global economy**
- Vulnerable to BEPS through various exploitation models and posing valuation issues
- Challenge: a **fair-allocation of profits** coming from commercial exploitation of intangibles
- Possible solution proposed by OECD: **DEMPE functions**

#### Research Questions

- Issue: DEMPE is a concept with **no guidance**
- How to understand DEMPE and what is its relation to Art. 9 OECD MC?
- How to apply DEMPE and perform a fair division of intangible-related profit?
- How does the DEMPE concept affect the application of the license model?

#### **D**evelopment

- Ⓣ **Wide meaning**
- Ⓣ **The difference between obtaining and creating an intangible** has to be considered
- Ⓣ Various ways to obtain and to create an intangible
- Ⓣ CCAs issue
- Ⓣ **DEMPE**

#### **E**nhancement

- Ⓣ **Further development** of an existing intangible
- Ⓣ **Continuous enhancement** to maintain the competitiveness of an intangible, can also lead to the **creation of new intangibles**
- Ⓣ **Ownership issues**

#### **M**aintenance

- Ⓣ Related to the development and enhancement, but also to protection
- Ⓣ Meaning will **depend on the type of intangible**
- Ⓣ Due to its character and proximity to other functions **seems redundant**

#### **P**rotection

- Ⓣ Necessary actions **depend on the type of the intangible**
- Ⓣ **Securing legal rights** protecting intangibles
- Ⓣ **Defining protection strategies**
- Ⓣ **Defense against protection breaches**

#### **E**xploitation

- Ⓣ Not relating to the substance, but to the use of an intangible
- Ⓣ **Market- and product-use**
- Ⓣ **Stand-alone intangibles; combined intangibles; bundles (also with goodwill)**
- Ⓣ **DEMPEP**

### How to apply DEMPE Concept in practice?

#### Qualitative Model

- Based on general **descriptions** of contributions performed by the entities
- The model has **subjective** character
- May be used for an **estimated** attribution of intangible-related profit
- Preferred by MNEs

#### Quantitative Model

- Based on determination of key value-drivers and estimation of the role of the entity in the value chain
- The model should provide more **objective** results
- May be used for the attribution of intangible-related profit based on **quantifiable** factors

#### Other tools

- **Functions, Assets and Risks Analysis (FAR)**
- **Value Chain Analysis (VCA)**
- **Key Value Drivers**
- **RASCI Matrix** (Responsible, Accountable, Supporting, Consulted, Informed)
- The above tools have a **supportive role** in the analysis

#### DEMPE and the License Model

- Various licensing models (i.e. centralized, decentralized)
- General issue: determination of the AL royalty rate and the choice of the correct TP method (CUP or RPSM as the most relevant)
- DEMPE-related issue: **contribution to the value** of the intangible by the licensee and the **appropriate attribution of the intangible-related profit**

#### Preliminary conclusions

- DEMPE is more part of functional analysis than an entirely new concept
- **Application-related issues** around the world with some tax authorities already using concept in practice
- The analysis shall consider **type of intangibles and the definition of each contribution** in the context of an MNE's activity
- DEMPE as such is inherently subjective; the qualitative model should provide more objective results
- Various additional TP tools might be useful in performing the DEMPE analysis to support its results