Non recognition of actual transactions undertaken in transfer pricing scenarios

Main issues

TREATY ISSUES
- OECD Comm. Value
- Art.9 scope and aim
- Guiding principle (Par. 7-12 Comm. art.1)

TP ISSUES
- Arm’s lenght scope and aim
- TPG value
- Contractual terms
- Non-recognition (1.64-1.69 TPG)
- Business restructuring (chapter IX TPG)

DOMESTIC LAW ISSUES
- Restriction of domestic law by the DTC
- TP domestic law scope and nature
- Application of domestic anti avoidance rules in DTC context

Points of discussion

1. OECD soft law texts are not binding
2. Art.9 Arm’s lenght shall be considered as a purely neutral valuation regime (correction of profits)
3. Art.9 restricts application of domestic law
4. OECD non-recognition system is based exclusively on Soft Law OECD statements
5. OECD Guiding Principle applied to arm’s lenght transactions shall be highly criticised

Aitor Navarro is a PhD Student in Carlos III University of Madrid, recipient of an FPI Scholarship granted by the Spanish Ministry of Economy.

SUPERVISOR
Prof. Dr. Juan Zornoza Pérez, head of the Finance and Tax Law Area, Carlos III University of Madrid

CONTACT INFO
Carlos III University
126 Madrid St.,
Getafe 28903
Tel. 0034 91 624 9276
aitor.navarro@uc3m.es

This thesis is outlined in the research project DER2010-20000 financed by the Spanish Ministry of Economy and directed by Prof. Dr. Juan Zornoza Pérez.