Sayee Prasanna
WU Transfer Pricing Center, Institute for Austrian and International Tax Law, Vienna University of Economics and Business, Welthandelsplatz 1, Building D3, 1020 Vienna, Austria
Email: sayee.prasanna@wu.ac.at
LinkedIn: www.linkedin.com/in/sayeeprasannagr

Topic: Transfer Pricing Implications of Business Restructurings arising from Digitalization of Business Models

Business reorganisations triggered by:
∞ Artificial Intelligence (AI)
∞ Cloud Computing
∞ 3D Printing
∞ Internet of Things (IoT)
∞ Other enablers of automation

Tax treaties, domestic law and soft law
∞ Article 9 of the OECD MTC
∞ Chapter 9 of the OECD Transfer Pricing Guidelines
∞ Treatment in domestic transfer pricing laws and evidence from judicial precedents

Research Questions
∞ Does the arm’s length principle apply differently to “digitally induced” cross-border reorganisation of commercial and financial relations?

∞ Are the yardsticks for non-recognition and re-characterisation of business restructuring transactions cognizant of newly identified elements of “values” subjected to transfers?

∞ To what extent are the traditional triggers for exit charges sustainable? What is the appropriate basis for determining the compensation for restructuring per se and the post-restructuring transactions?

∞ Need for structural changes to address “digitally induced” business restructurings within the scope of the arm’s length principle, in the absence of alternate policies.

∞ Proposal for an augmented approach to analyze functions, risks and assets (FAR), and set modified comparability criteria by incorporating digital themes in entity characterizations (IBFD ITPJ, 2018 Vol. 25, No 6)

∞ “No legal or universally accepted definition of business restructurings” - Para 9.1, OECD Guidelines, 2017

∞ State of the art rules and emerging solutions continue to rely on traditional transactional archetypes to accurately delineate and recognize business restructurings

∞ Reliance on hypothetical arm’s length approaches undermining the applicability of the principle to reorganizations of unique transactional structures

EATLP 2020
© Sayee Prasanna