Institute for Austrian and International Tax Law Vienna
WU Transfer Pricing Center

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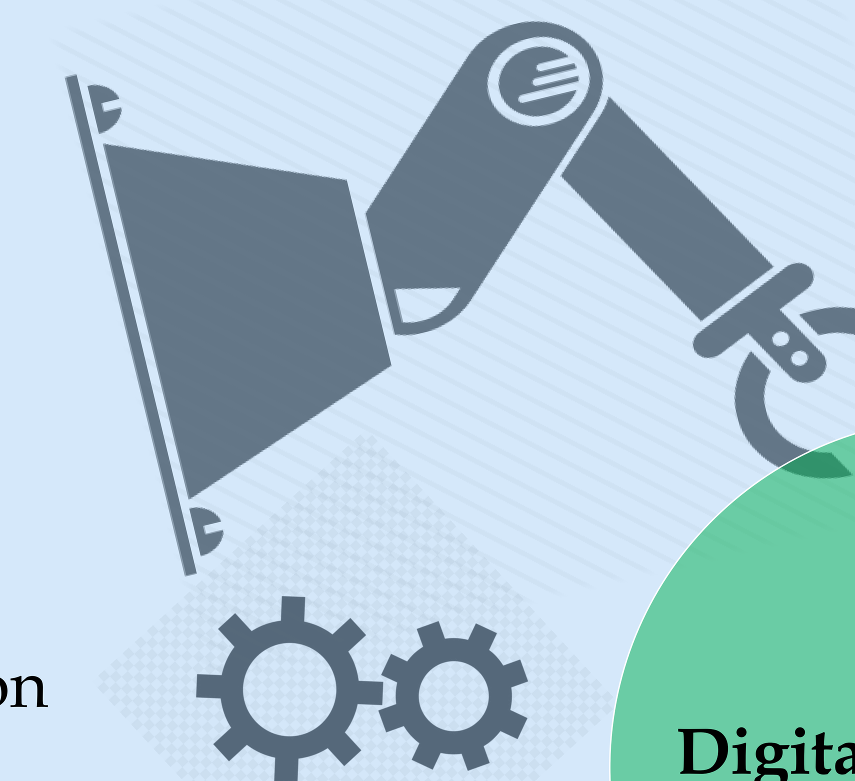
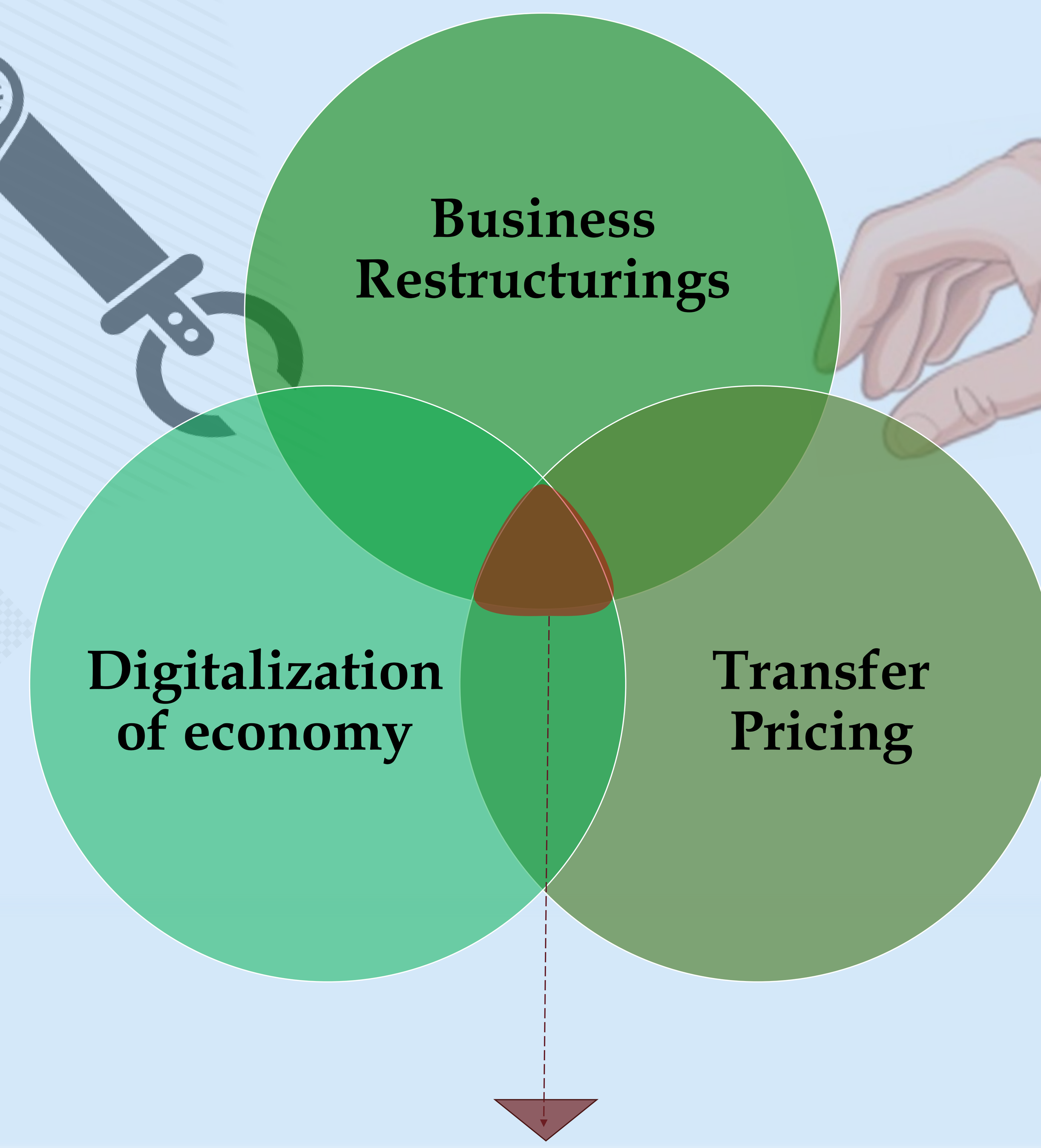
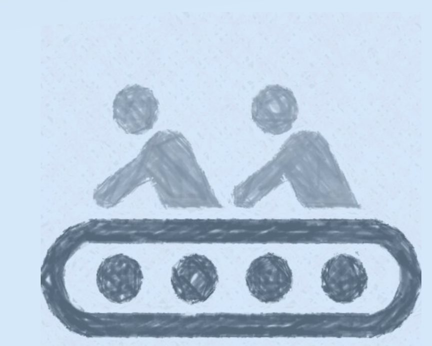
Topic: Transfer Pricing Implications of Business Restructurings arising from Digitalization of Business Models

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?

Preliminary findings

- 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)*

Research Gaps

- "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