

October 2015

OECD publishes final reports on the BEPS initiative

On 5 October 2015 the OECD has issued final reports on 15 focus areas in its two-year long project addressing base erosion and profit shifting (BEPS). These papers include and consolidate measures for a comprehensive, coherent and coordinated reform of the international tax rules, covering several key elements of international tax systems. One of the main focuses of such changes concerns transfer pricing.

The work on transfer pricing under the BEPS Action Plan has focused on three key areas that are covered in the Actions 8-10. One of the key aspects of transfer pricing related measures relates to transactions involving intangibles. In particular, the work under Action 8 looked at transfer pricing issues relating to transactions involving intangibles, since misallocation of the profits generated by valuable intangibles has significantly contributed to base erosion and profit shifting.

a comparability analysis, e.g. exclusivity, extent and duration of legal protection, geographic scope, useful life, stage of development, rights to enhancements, revisions and updates, expectation of future benefit, etc.

In this respect we are happy to inform you that the RoyaltyRange data is fully compliant with the guidance contained in the final version of the Action 8. This was achieved by a close monitoring of relevant changes to the discussion draft reports over the past two years. As a result every royalty rate report contained in our database is manually analysed by the team of our specialists according to the comparability criteria of intangibles contained in the Section D.2.1 “Comparability of Intangibles or rights in intangibles” of the final Action 8 report. In addition, as can be seen in the figure below, each of them contains a detailed functional, risk and asset analysis that among

Development Enhancement Maintenance Protection Exploitation

For intangibles, the guidance clarifies that legal ownership alone does not necessarily generate a right to all (or indeed any) of the return that is generated by the exploitation of the intangible. Companies of a group performing important functions, controlling economically significant risks and contributing assets, as determined through the accurate delineation of the actual transaction, will be entitled to an appropriate return reflecting the value of their contributions.

In other words, each member of the multinational enterprise group should receive arm’s length compensation for the functions it performs. In cases involving intangibles, this includes functions related to the development, enhancement, maintenance, protection, and exploitation of intangibles (DEMPE). BEPS reports set out a list of comparability factors that may prove important in

others provides an overview of DEMPE functions.

According to the paragraph 6.130 of the final Action 8 report, it is important to assess whether publicly available data drawn from commercial databases is sufficiently detailed to permit an evaluation of the specific features of intangibles that may be important in conducting a comparability analysis, which is why we truly believe that RoyaltyRange database becomes indispensable in the analysis of transactions involving intangibles following the latest guidance of the OECD.

To find out more about our services, please contact:

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Functional Analysis (Numbers from 1 to 4 reflect the distribution of functions, risks, costs and assets between the parties. First number represents Licensor, second - Licensee.)															
Functions						Risks				Costs & Assets					
Research and Development	Marketing	Design and Control of Research and Marketing Programmes	Defense and Protection of Intangibles	Quality Control Over Functions Performed	Unsuccessful Research and Development	Unsuccessful Marketing	Product Obsolescence; Technological Advances of Competitors (Adversely Affecting the Value of the Intangibles)	Infringement, Time Consuming and Costly Defense	Product Liability	Bear the Costs to Support the Performance of Functions	Bear the Costs When Relevant Risks Come to Fruition	Provide Compensation to Other Parties Performing the Functions	Research and Development Costs	Marketing Costs	Knowledge of Own Employees
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Extract from an actual RoyaltyRange royalty rate report.