

The Transfer Pricing Action Plans

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- I. BEPS Characteristics: In General
 - A. Re-Invigorated Emphasis on Source-Basis Taxation
 - B. Focus on People and Functions, As Opposed To Origin of Capital
 - C. Notable Absence (Not Surprisingly) of (a) Consensus and (b) Clear-Cut Rules

II. BEPS Transfer Pricing Innovations: In General

- A. Special Measures, Beyond the Arm's-Length Principle
- B. Limited Returns To Mere Funding or Legal Ownership
- C. Shift in Focus From Pricing to Behavior
- D. Consideration of Options Reasonably Available to the Parties
- E. Reluctance To Rely On One-Sided TPMs, Especially for Intangibles
- F. Enhanced Use of Profit Split Methods
- G. Analysis of the Multinational Group as a Whole
- H. Identification of Risks

III. Action 8 — Intangibles

- A. Emphasis on Definition, Taxonomy
- B. Location Savings, Assembled Workforce, Group Synergies
- C. Special Measures for Hard-To-Value Intangibles: Anticipated Benefits, Price Adjustment Clauses, *Ex Post* Evidence; Mechanisms That Would Be Used by Independent Parties
- D. Cost Contribution (Cost Sharing) Arrangements
- E. Valuation Techniques as Useful Tools (Such as Discounted Cash Flow Analysis)

IV. Action 9 — Risks and Capital

- A. Limited Returns for Contractually Transferred Risks, Capital
- B. Income Associated With “Value Creation”
- C. Co-ordination With Rules on Limiting Interest Deductions

V. Action 10 — Other High-Risk Transactions

- A. Transactions Rarely Occurring Between Third Parties
- B. Recharacterization or Non-Recognition of Transactions
- C. Use of Profit Splits for Global Value Chains
- D. Management Fees, Head Office Expenses: Law Value-Added Intra-Group Services
- E. Sale or Purchase of Commodities
- F. Possibility of Safe Harbor Rules in Commensurate With Income Situations

VI. Concluding Thoughts

- A. The Three Actions Tend To Merge
- B. Big Ambitions, Big Problems
- C. Abstract Formulations, Broad and Open-Ended Statements
- D. The United States Has Traveled Down Many of These Paths in Developing Its Own Rules
- E. Need To Improve Dispute-Resolution Mechanisms