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Transfer Pricing

Abstract

Nowadays, in the fast-paced world Multinational Enterprises have the significant role in international trade. On the one hand cross-border transactions among the entities of Multinational Enterprises increase worldwide trade traffic, on the other hand intra-firm transactions initiate utilization of these transactions for tax avoidance purposes. Multinationals establish their subsidiaries in offshore zones, which helps them to allocate profits to overseas with the help of transferring goods, services, and intangibles. The rules for adjusting this kind of issues, like arm's length standard and arm's length methods, especially profit split method as the most appropriate method, cost-sharing agreements, and advance pricing arrangements will be discussed in this article.

Annotasiya

Müasir dövrdə Transmilli Korporasiyaların beynəlxalq ticarətdə rolunun artması tendensiyası sürətlə inkişaf edir. Bu cür korporasiyalar öz daxillərindəki müəssisələr arasında bağlanan trans-sərhəd müqavilələrindən vergidənyayınmanın bir növü kimi istifadə edirlər. Öz filiallarını offşor zonalarda yerləşdirərək, əmtəə, xidmət və əqli mülkiyyət obyektlərini bu ölkələrə "transfer" etmək vasitəsilə gəlirlərini vergidən yayındırırlar. Məqalədə bu halların aradan qaldırılması üçün tətbiq olunan "qol uzunluğu" standartı, "qol uzunluğu" metodları, qiymət-bölüşdürmə müqavilələri, qiymətlərin əvvəlcədən müəyyən edilməsi barədə razılıqlar öz əksini tapmışdır. "Mənfəətin bölüşdürülməsi" metodu bu problemlərin aradan qaldırılmasının ən məqsədəmüvafiq üsulu kimi təhlil edilmişdir.

Introduction

As the international trade and business grow faster every day, integrated corporations, in our case Multinational Enterprises (hereinafter MNEs), become main actors in this field. The purpose of integration is to gather profit that flows out of MNEs group. Transfer pricing is a key for MNEs to prevent allocation of profits to other entities than theirs. As the rule of business, every corporation wants to gain more money than they would. That is why some of them use transfer pricing as a means of tax avoidance because the significant part of the profit goes to state as a tax. If MNEs use transfer pricing as a cross-border transaction, this gives them an opportunity to allocate profit among jurisdictions, which results in reducing the overall tax burden of MNEs group or avoiding tax at all. Even now, some newspapers use the phrase "transfer pricing" as tax avoidance means for MNEs. They report that income of MNEs group flows to the tax heavens like the Cayman Islands, Luxembourg, Switzerland, and Ireland. This income can even become so-called "nowhere income" or how Europeans call it "white

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income" because it taxed nowhere.[1] To prevent tax avoidance of MNEs by using transfer pricing tax authorities apply rules that regulate these issues. In this article some of these rules, like, arm's length standard, arm's length methods, formulary apportionment and rules applied to the transfer of intangibles will be discussed. The profit split method will be prescribed as the most appropriate method and why it should be considered like that.

I. Transfer Pricing

Transfer pricing, reduced to its essence, is a means of allocating costs between units of a large organization or multinational company for goods or services supplied.[2] Taking into account above said definition, it can be said that transfer pricing is not only subject of international taxation but also has roots in corporate law and business. From the business perspective, transfer prices are employed to increase the efficiency of intra-firm supplies between separate business units. In corporate law, controlling pricing in related-party transactions prevents "tunneling" to the detriment of creditors or minority of shareholders. As we talk about international taxation, in this field transfer pricing serves the role of allocating profits to the different units of a multinational enterprise and of allocating taxing rights to the involved jurisdiction.[3] Taking into consideration importance and magnitude of these transactions, authorities divided related-party transactions (controlled) from independent party transactions (uncontrolled), because controlled transactions are one of the ways of shifting profit from one jurisdiction to another. As controlled transactions occur between associated enterprises, it is important for tax authorities to ensure, whether the transaction is in "arm's length" or not. OECD mentions the necessity of adjusting intra-group transactions with giving definition to the term "associated enterprises" in its Model Tax Convention.[4] However, MNEs use transfer pricing for increasing their profits via avoiding tax, according to some authors using transfer pricing to decrease worldwide taxation is no longer viable.[5] However, the reports of MNEs groups show other results. Assume MNE shifts its profit from 35% tax rate country (for instance USA) to non-tax rate country (the Cayman Islands).

[1] Lee Sheppard, Transfer Pricing as Tax Avoidance, www.forbes.com/2010/06/24/tax-finance-multinational-economics-opinions-columnists-lee-sheppard.html [last visited: Nov 20, 2015]

[2] Subhajit Basu, Global Perspectives on E-Commerce, p. 53 (2007) *See more* UN Practical Manual on Transfer Pricing for Developing Countries [hereinafter UN Practical Manual]. Para. 1.1.6. "Transfer pricing" is the general term for the pricing of cross-border, intra-firm transactions between related parties.

[3] Wolfgang Schön, Transfer Pricing – Business Incentives, International Taxation and Corporate Law, *in* Fundamentals of International Transfer Pricing in Law and Economics, 1 MPI Studies in Tax Law and Public Finance 47, p. 47. (Wolfgang Schön & Kai. A. Konrad eds., 2012)

[4] OECD Model Tax Convention, Art. 9.

[5] Robert Feinschreiber, Transfer Pricing Methods: An Application Guide, p. 3 (2004)

This kind of profit shifting means plus 35% more profit and it gives incentive to multinationals to employ intra-group transactions as tax avoidance means. For preventing the use of transfer pricing for this purposes, tax authorities adopted some methods, which help to adjust this issues. In the next chapters, I mentioned some of them.

II. Arm's Length Standard

As laid down above arm's length standard is one of the most-used ways of regulation of transfer pricing issues. In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer. A controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances (arm's length result).[6] The benchmark of arm's length standard is a comparability, to find comparable market prices for related-party transactions. It means arm's length standard, at its core, is generally based on a comparison of the conditions in a controlled transaction with the conditions in transactions between independent enterprises.[7] Hence, it is crucial to comprehend which attributes will be taken into account for comparison. Attributes or "comparability factors" that may be important when determining comparability include the characteristics of the property or services transferred, the functions performed by the parties (taking into account assets used and risks assumed), the contractual terms, the economic circumstances of the parties, and the business strategies pursued by the parties.[8] Application of arm's length standard constitutes transfer pricing methods which are the ways of the comparison of transactions.

III. Transfer Pricing Methods

There are two groups of transfer pricing methods, which named as "traditional transaction methods" and "transactional profit methods" including comparable uncontrolled price (CUP), cost plus, resale price methods and transactional net margin or comparable profits, profit split methods, respectively.

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[6] CFR-1.482(b)(1).

[7] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2010) [hereinafter OECD-TPG], para. 1.35.

[8] *Id*. para. 1.36

A. Traditional Transaction Methods

Traditional transaction methods are regarded classic[9] and the most direct means of establishing arm's length conditions[10]. However, in some cases transactional profit methods are more useful than the traditional transaction methods.

1. CUP method

The comparable uncontrolled price (CUP) method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the amount charged in a comparable uncontrolled transaction.[11] For instance, manufacturer A transfers goods to the subsidiary B which is situated in different jurisdiction and A sells the same kind of goods to the unrelated party C or independent party D sells the same or similar goods under the same or similar conditions to the unaffiliated party E. In this regard, prices established between A and C (internal comparable) or D and E (external comparable) would be the arm's length prices for controlled transaction (which is held between A and B). However, the problem of application of CUP method is finding exact or even similar prices for controlled transactions. As noted above "comparability factors" should be considered when using uncontrolled prices for controlled transactions. In the most cases, CUP method is inapplicable, due to different conditions that appear in compared transactions: rarity and uniqueness of the products transferred[12] or in the situations when there is no internal comparable because selling products to the independent parties (in the example of A and C) is controversial with the purpose of vertical integration[13]. Despite all these facts, CUP method is accepted as the best method when it is possible to apply.

2. Resale Price method

The resale price method determines an arm's-length price for an enterprise's controlled purchases of property by subtracting from the uncontrolled resale price an appropriate gross margin (the "resale price margin").[14] Assume K is a seller which purchased some tangibles from affiliated party L and resold these products to independent party N. After subtracting appropriate gross margin[15] and other costs associated with the purchase of the product (e.g. customs duties)[16] from "the resale price" (the price which is charged between K and N) this price

[9] There are three classic methods that are used in transfer pricing cases, developed by the United States in the 1960s. *See* Reuven S. Avi Yonah, International Tax as International Law: An Analysis of International Tax Regime, p. 104. (2007)
[10] OECD-TPG, para. 2.3.
[11] CFR-1.482-3(b)(1).
[12] Peter Harris and David Oliver, International Commercial Tax, p. 236-237 (2010).
[13] Avi Yonah, p. 104-105.
[14] Feinschreiber, p. 215. (by William W. Chip)
[15] Harris and Oliver, p. 237.
[16] OECD-TPG, para. 2.21.

becomes arm's length price for the transaction between related parties L and K. Resale price method is useful in the absence of uncontrolled prices in the open market which makes CUP method inapplicable. Resale Price Method is applied on a transactional basis, consequently, product distinctions less influence this method.[17] However, it is difficult to utilize this method if there is significant time between the purchase of the goods from the related party and resell to an independent party and if the reseller includes valuable contribution to the product.[18]

3. Cost-plus method

However, RPM and Cost-plus method are similar to each other; the main difference is in the starting points. *The cost-plus method measures an arm's length price by adding the appropriate gross profit to the controlled taxpayer's costs of producing the property involved in the controlled transaction.*[19] For example, manufacturer A sells tangible to the related party B which does not resell it to the unrelated party as in the resale price method. Nevertheless, it is needed to be found comparable prices for the purposes of establishing arm's length price for this transaction. Thus, it is necessary to find companies similar to A taking into account comparability attributes. "Then companies similar to A are found to determine what this kind of companies typically expect as a profit margin compared to their costs. The cost of the product then is multiplied with gross profit margin which is defined before."[20] Cost-plus method is ordinarily used for the manufacture, assembly, or other production of goods that are sold to related parties[21] and is the most appropriate where the sold products are semi-finished[22]. Although, aforementioned cost plus and resale price methods are similar, the starting point of cost-plus is a manufacturer and of resale price method is a reseller to the unaffiliated party. Thus, in the cost plus method manufacturer always makes a profit, i.e. for tax purposes, the entrepreneurial risk is allocated to the purchaser of the goods, while, in resale price method it is reverse.[23]

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[17] UN Practical Manual, para. 6.2.9.2.

[18] Harris and Oliver, p. 237.

[19] CFR-1.482-3(d)(2)(i)

[20] Avi Yonah, p. 105. *See also* Michael Kobetsky, International Taxation of Permanent Establishments: Principles and Policy, p. 335 (2011) "The gross profit margins for controlled and uncontrolled transactions have to be measured consistently to ensure that the uncontrolled comparator being used is a reliable indicator of arm's length prices."

[21] CFR-1482(d)(1)

[22] "The OECD suggests that CPM is most appropriate where semi-finished products are sold between related parties, where associated parties have joint facility agreements, long-term buy-and-supply arrangements are in place, or where the controlled transaction is the provision of services." *See* Kobetsky, p. 335

[23] *Supra note* 18

B. Transactional Profit Methods

These methods are based on analysis of net return. It means transactional profit methods are more reliable in the cases when there is less or no comparable data available.

1. Comparable profit or Transactional net margin method

In Section 482, this method is considered as comparable profit method (CPM) while OECD implemented this transfer pricing method as transactional net margin method (TNMM) which has some differences between CPM that will be discussed below. *The comparable profits method evaluates whether the amount charged in a controlled transaction is arm's length based on objective measures of profitability (operating profit indicators)*[24] *derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances.*[25] As profit based method, the benchmark for CPM is operating profit[26] derived from uncontrolled transactions. Application of this method is based on creating arm's length range with the help of profitability data of the independent enterprises which happen to be in the same field with the "tested party".[27] "The tested party is the participant in the controlled transaction whose operating profit attributable to the controlled transactions can be verified."[28] Arm's length range must be determined in every arm's length method. In this case, interquartile range is employed for determining true arm's length operating profit which means the range from the 25th to the 75 percentile of the results derived from the uncontrolled transaction.[29] If operating profit derived from controlled transactions falls either side of the range, tax authorities adjust it to the midpoint. For applying CPM, the U.S. Department of Commerce creates the Standard Industrial Classification, which classifies all businesses into categories. Then, they establish the interquartile range for related party transactions which is determined for

[24] "Profit-level indicators are ratios that measure relationships between profits with costs or resources" *See* Feinschreiber, p. 86 *See also* Elizabeth King, Transfer Pricing and Corporate Taxation, p. 13 "However, The Temporary Regulations emphasize accounting consistency for sample selection purposes under the CPM as applied to services, rather than resources employed and risks assumed."

[25] Cfr-1482-5(a)

[26] *See* Feinschreiber, p. 85 "Operating profit is gross profit less operating expenses. Operating profit includes all income derived from the business segment being evaluated but does not include interest, dividends, profits derived from unrelated activities, extraordinary gains and losses that do not relate to the continuing operations of the tested party."

[27] *See also* Harris and Oliver, p. 238 "These methods involve the comparison of an enterprise's profitability with that of a similar business enterprise. It evaluates whether the amount charged in a controlled transaction is arm's length based on objective measures of profitability derived from business activities under similar circumstances."

[28] Feinschreiber, p. 85.

[29] *Id*., p. 86

every category.[30] As laid down before, profit-level indicators are the essential components of CPM.[31] Section 482 endorses rate of return on capital employed[32], ratio of operating profit to sales[33], ratio of gross profit to operating expenses[34] and other indicators[35] as profit-level indicators.

OECD changed the name of the method from comparable profit to transactional net margin method[36], essentially, they are similar to each other. The major difference between CPM and TNMM is that OECD prefers "dynamic" means to determine arm's length result, rather than using statistical tools such as interquartile range.[37] This means TNMM should be applied transaction by transaction and should not be limited by the conventional range.[38]

2. Profit split method

The second method of transactional profit methods is a profit split. The main idea in the profit split[39] method is allocating profits or losses among related parties according to their contributions to the functions performed.[40]

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[30] Avi Yonah, p. 115

[31] *See* Feinschreiber, p. 85 "One or more profit-level indicators (e.g., net profit as a percentage of sales) are chosen from the third-party transactions to compare to the financial data of the tested party's most narrowly identifiable business activity."

[32] CFR-1482-5(b)(4)(i)

[33] CFR-1482-5(b)(4)(ii)(A)

[34] CFR-1482-5(b) (4)(ii)(B)

[35] *See* CFR-1482-5(b)(4)(iii) "Other profit level indicators may be used if they provide reliable measures of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length. However, profit level indicators based solely on internal data may not be used, because they are not objective measures of profitability derived from operations of uncontrolled taxpayers engaged in similar business activities under similar circumstances."

[36] *See* Feinschreiber, p. 227 "In TNMM, the profits earned by a taxpayer in a control transaction are compared with the same measure of profitability from arm's length uncontrolled transactions." *See also* UN Practical Manual, para. 6.3.2.2.

[37] *See* King, p. 13 "The Guidelines do *not* favor the use of statistical tools, such as the interquartile range, to select a particular value within the arm's length range. Rather, the Guidelines focus on comprehensive comparability analysis. In all case, "comparability factors" should be considered in selecting sample companies."

[38] TNMM is applied transaction by transaction and not globally, which is not a very important distinction: it is very hard to do transfer pricing transaction by transaction because of the sheer number of transactions. *See* Avi Yonah, p. 116. *See also* The Guidelines start from the presumption that transactions are ideally analyzed individually and that each level of aggregation must be justified.

[39] *See* Heinz-Klaus Kroppen, Roman Dawid and Richard Schmidtke, Profit Split, the Future of Transfer Pricing? Arm's Length Principle and Formulary Apportionment Revisited from a Theoretical and a Practical Perspective, *in* Fundamentals of International Transfer Pricing in Law and Economics 267, p. 269. (Wolfgang Schön & Kai. A. Konrad eds., 2012) "The profit split method is a two or multiple-sided method…, it does not only determine the arm's length price…, but also determines a profit allocation for both participants/the overall group."

[40] […] risks assumed and resources employed. Harris and Oliver, p. 238

U.S. transfer pricing regulations provide two types of profit split method. Usage of these methods depends on the possibility of finding external market comparables. The one, which relies on comparable data more than the other, is a comparable profit split method. In this method, the allocation of the operating profits which arise from uncontrolled transactions is used to determine the proportions of the operating profits that each controlled taxpayer gains from similar transactions.[41] Nevertheless, it is hard to find comparables in such situations. Therefore, MNEs use residual profit split method. The residual profit split method is applied in some steps. In he initial step the functions performed and resources employed by parties are determined. After this taxpayer values these amounts by reference to third-party criteria so as to quantify the respective contributions. As the controlled taxpayers earn markups for their contributions, they are compared to the uncontrolled markups with the help of CPM. In the second step, residual profit[42] is to be allocated in accordance with the proportion that affiliated parties have in their hands.[43] Contrary to the OECD, U.S. regulations says that residual is always the result of intangibles, patents, copyrights, know-how, and the like.[44] In the most cases, especially, in the cases of transferring intangible property it is impossible to determine comparable data for business activities, which are held among associated parties, hence the need of adjusting such sort of issues made the tax authorities adopt this method. The aforementioned methods are the internationally accepted transfer pricing methods based on arm's length standard. Nevertheless, there are some different ways of adjusting transfer pricing issues besides arm's length methods. Formulary apportionment approach, advanced price arrangements, cost sharing agreements considered as means of adjusting transfer of goods, intangibles and services among associated entities.

IV. Formulary Apportionment

Formulary apportionment method is an alternative to arm's length standard. These two methods distinguish from each other at the starting point. Arm's length approach entails "separate entity approach" that means under this method the members of Multinational group is accepted as

[41] Feinschreiber, p. 192 *See also* King, p. 31 "The comparable profit split method entails constructing a "hypothetical" multinational firm from two unrelated firms considered comparable to two individual members of a controlled group. Comparability, in this context, requires that each of the two unrelated companies artificially joined together engages in similar activities…"

[42] *See* Feinschreiber, p. 193 "A residual profit remains after allocation under the first step where valuable items of intangible property are owned by the controlled group, but similar items are not owned by the uncontrolled taxpayers from whom the market returns were derived."

[43] *Ibid*.

[44] Avi Yonah, p. 117

independent entities.[45] By the contrast, formulary apportionment method treats the whole Multinational group as if they are one corporation. The first step is to treat the whole group as unitary. Then tax authorities calculate the net income of the group. After these calculations, they multiply predetermined formula to the net income to find which percent of the profits of MNEs group occurs in the particular place. Formulae could be established differently. For example in California, in the birthplace of this method, tax authorities use the percentage of assets, payroll, and sales which occur in this state to create formula. As international consensus supports arm's length standard, application of formulary apportionment is limited.[46]

V. Advanced Pricing Arrangements (Agreements)

An advance pricing arrangement ("APA") is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions[47] as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.[48] This means companies negotiate with tax authorities to determine their transfer prices in advance. The purpose of these arrangements is to facilitate documentation and determination of transfer prices for intra-company transactions. APAs could be unilateral, bilateral, and multilateral which consider that APAs can be signed among MNEs and two or more tax authorities. The multilateral APAs are essential for global trading. Notwithstanding, it seems as the easiest way of establishing transfer prices, only about 150 MNEs involved in such arrangements.[49]

VI. Transfer of Intangibles

The main tax avoidance incentive in transfer pricing arises from the transfer of intangibles to affiliated entities. The lack of comparables in the external market, difficulty of determining assets used in the development and the specific ways of transferring (licensing, cost sharing, ownership transferring) of these products makes the tax authority control upon this kind of intra-company transactions less effective. MNEs use this opportunity to allocate profit gained from the transfer of intangibles among jurisdictions.

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[45] OECD-TPG, para. 1.6

[46] Avi Yonah, pp. 111-114 *See also* Kroppen, Darwin and Schimdtke, p. 273 "In Germany only the trade tax (the so-called Gewerbesteuer) follows the formulary apportionment approach, whereas the apportionment depends on the payroll of each plant."

[47] *See* Elizabeth King, Transfer Pricing and Valuation in Corporate Taxation: Federal Legislation vs. Administrative Practice, p. 65 "Critical assumptions" constitute an important part of this agreement. In essence, these assumptions lay out certain initial conditions that must remain in effect for the life of the agreement (generally three years)."

[48] OECD-TPG, para. 4.123.

[49] Avi Yonah, p. 118.

Generally, transfer of intangibles among affiliated entities happens with the help of licensing and cost-sharing agreements.

A. Licensing

Licensing is the second most direct way of transferring intangibles[50] from high-rate tax jurisdictions to low-rate jurisdictions. According to the license contract, affiliated licensee pays royalties to the licensor corresponding to the percentage which derives from the sale or sublicense of particular intangible. In vast majority cases, licensees paid token royalties. Consequently, "super royalty" or "commensurate-with-income" rule was adopted by tax authorities to adjust such sort of tax avoidance. This rule mentions that royalties must be appropriate with the income attributable to intangible.[51] "Periodic adjustments" would be applied every year to ensure that royalties are appropriate with the rules embodied in Sections 482. Nonetheless, there are some conditions that entail exceptions to the periodic adjustments provisions.[52]

B. Cost Sharing Agreements

Under cost sharing agreements (CSA), associated parties agree to allocate profits derived from developing intangible appropriate to their contributions. With the help of these agreements parties determine the profits to be allocated among jurisdictions in advance. CSAs mainly occur in research and development, the mining industry and group management services.[53] The parent company signs CSA with its subsidiary to shift intangible under development to the low-tax rate jurisdiction to maintain profit derived from intangible in tax heaven in this jurisdiction, thereby decreasing the overall tax of affiliated group. Actually, intangible should be under development because if the intangible is shifted in the complete form "commensurate with income" rule would be applied. However, another way of shifting profit is moving intangible to tax heavens in early stages of development to set low royalty.[54]

VII. Profit Split as the Most Appropriate Method in Many Cases

As mentioned above today "traditional transaction methods" are not applicable in most cases. Even in the comparable profit method it needs

[50] Transfer of ownership is the first most direct way of transferring intangibles. In the transfer of ownership, intangibles are sold to affiliated parties.

[51] Avi Yonah, p. 110

[52] *See* CFR-1.482-4(f)(2)(ii) Section 482 provides five exceptions: Transactions involving the same intangible, transactions involving a comparable intangible, methods other than comparable uncontrolled transactions, extraordinary events, the five-year period.

[53] Harris and Oliver, p. 240

[54] Avi Yonah, p. 111

finding comparable profits derived from uncontrolled transactions. Taking into account uniqueness of intangibles, it is clear that comparables for this kind of transactions rarely exist. Therefore, profit split occurs as the most applicable method. Firstly, it is a two-sided method which means it has two stage of application. Despite the first stage, in the second stage the comparables are not needed, thus it makes the allocation of profits less depended on comparables. Secondly, if there are not comparables at all, profit split uses "internal data" of the controlled transaction, thereby allocating the profit among affiliated parties, mostly, in the cases of transferring intangibles.[55] Though, profit split method is similar to formulary apportionment, formulary apportionment employs predetermined formula, while, "profit split is applied case-by-case adjusting every transaction differently."[56]

Conclusion

An increasing number of MNEs leads to rise of the number of cross-border transactions, thereby, increasing the amount of goods, services and intangibles transferred among affiliated parties. Nevertheless, it creates incentive of tax avoidance by using transactions among associated parties. MNEs benefit from the tax rates of different jurisdictions, locating subsidiaries in low or non-tax countries. Arm's length regulations deal with this kind of tax avoidance using transfer pricing methods. However, there are five methods, only profit split method can be applied in every case, taking consideration unique intangibles as well. Saying in a figurative way, profit split, in this case, appears as a "jack of all trades". In the other words, profit split method makes grounds for establishing arm's length results for transferring intangibles which is one of the main ways of shifting profit from one jurisdiction to another. Thus, profit split is the most appropriate method for preventing tax avoidance.

[55] OECD-TPG, para. 2.141

[56] Jinyan Li, Soft Law, Hard Realities and Pragmatic Suggestions: Critiquing the OECD Transfer Pricing Guidelines, *in* W. Schön and K.A. Konrad (eds.), Fundamentals of International Transfer Pricing in Law and Economics 71, p.75. (Wolfgang Schön & Kai. A. Konrad eds., 2012)