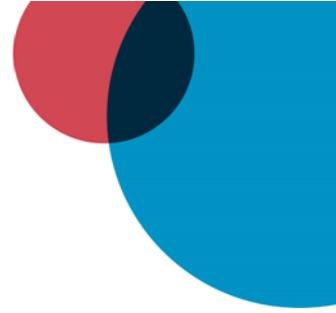




**GLOBAL TAX & TRANSFER PRICING  
GUIDE ON LICENSING OF  
INTANGIBLES**

**TP METHODS, DOCUMENTATION  
& PRACTICAL EXPERIENCE**

**— Update 2019 —**



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## INTRODUCTION

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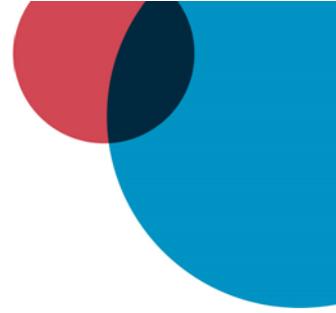
The determination of arm's length transfer prices for transactions involving intangibles is one of the major topics in international taxation and at the focus of multinational enterprises (MNEs), tax authorities and tax advisors worldwide.

As part of the BEPS project of the OECD and G20 countries, the OECD significantly revised its guidance on intangibles in its 2017 Transfer Pricing Guidelines, with the introduction of the so-called DEMPE-approach. This approach is aimed at aligning the allocation of intangible-related profits with the functions, assets and risks relating to the development, enhancement, maintenance, protection and exploitation of the intangibles. Regarding the determination of intangible-related profits, the OECD published its revised guidance on the application of the transactional profit split method in 2018, which confirms that the transactional profit split method is likely the most appropriate for a transfer of intangibles where it is not possible to identify reliable

comparable uncontrolled transactions. Further work involving intangibles has been performed on IP and patent boxes and on the taxation of the digital economy.

In addition to these initiatives on a multinational level, several countries have implemented national regulations concerning the taxation of intangibles, e.g. relating to the determination and allocation of intangible-related profits, the treatment of patent boxes and license payments, and the application of anti-avoidance rules.

This guide provides an overview of the regulations relating to the taxation of intangibles in Taxand member countries, as well as practical insights in the application of these rules based on the experiences of the Taxand member firms. The content of this guide is updated as of July 2019. **This guide contains general information only and should not be regarded as offering a professional advice or services.**



## EXECUTIVE SUMMARY

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### **Local TP documentation requirements for IP**

55% of the surveyed countries have recently issued a specific law on how to document intercompany transactions involving intangibles. However, when looking closer, the majority of the jurisdictions have simply embraced Action 13 of the BEPS action plan without going into many more details.

### **IP ownership**

Only 18% of the countries seem to have specific local rules on the ownership of intangibles.

### **What TP method**

Of the 38 survey respondents, 36 indicated the comparable uncontrolled price/transaction (CUP/CUT) method as the most common transfer pricing methodology adopted for intercompany licensing transactions. When applied, the CUP method relies on internal comparables or more often on database studies for external comparable license agreements.

### **Acceptance of database studies**

Database studies are generally

accepted in 37 of the 38 jurisdictions under survey.

### **Application of the profit split method**

42% had never used the profit split method and 37% indicated they had indeed used this methodology for determining the arm's length remuneration for transactions involving intangibles. 18% had applied the method, although deemed not commonly used in their jurisdictions.

### **Valuation methods**

58% of the survey participants have used valuation methods to determine arm's length royalty rates.

### **Rules of Thumb**

Rules of Thumb are used in 9 out of the 38 countries surveyed. The most commonly used rule of thumb is the Knoppe-rule or the 25%-/Goldscheider-rule.

### **DEMPE approach**

In most of the jurisdictions under review, the DEMPE rules regarding licensing transactions are not explicitly included in the local TP rules.

However, it is clear that more and

more local tax authorities are requiring and adopting the DEMPE approach in audit cases.

### **Source taxes**

In 33 countries (87% of the total sample), withholding tax provisions for royalty payments are in place.

### **IP and patent boxes**

From the 38 countries studied, 50% either has an IP or patent box in place or provide for another type of preferential treatment of IP-related expenses or income.

**Anti-avoidance rules** Most of the countries in the survey report that there are no specific anti-avoidance rules regarding the transfer of intangibles in place, although general anti-avoidance

rules and transfer pricing rules apply in these cases.

Some of the countries have, however, implemented rules that specifically target transactions involving intangibles.

### **Limitation of the deduction of royalty payments**

About one third of the countries in the survey has provisions on the limitation of royalty payment deductions in their local tax law.

### **Monitoring of harmful tax practices**

The tax authorities in some of the surveyed countries have already taken specific actions to monitor potential harmful tax practices relating to the transfer or licensing of intangibles.

## ARGENTINA

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### **1. Do you have specific local guidance on the documentation related to intangibles?**

Although Argentina is not a member of the OECD, the Income Tax Law ("ITL") and its regulatory decree accept the use of several of the methods described in the OECD Transfer Pricing Guidelines. The description of the methods in the regulations is similar to the one made in the OECD Transfer Pricing Guidelines. Regarding the transfer pricing documentation, taxpayers must file two annual informative tax returns, within a specified date not later than the eighth month following the end of the fiscal year. These tax returns must list all the international related-party transactions and provide specific information about each of the transactions such as prices, quantity, type of goods (tariff classification numbers in which the goods classify), services or intangibles, name and address of the related counterpart and details of the transfer pricing method that was used to justify whether the prices are at arm's length or to make adjustments. Also, the supporting documents regarding the transfer pricing method involved in the transaction under analysis must be kept, in order to demonstrate the process of determination of the prices.

### **2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

There are no tax rules on the ownership of intangibles. OECD Guidelines are followed, and the analysis is generally made in a case-by-case basis.

### **3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The Transactional Net Margin Method is the most applied method in Argentina.

### **4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes. The analysis emerges from the Worldwide Private Company Database from Thomson Reuters.

### **5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No. We consider that this method is only suitable in situations in which the activities of both related parties are very interrelated.

### **6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

In general no. However, it could be useful in certain cases.

### **7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No. A case-by-case analysis should be conducted with respect to each type of intangible involved.

### **8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

### **9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance which establishes that DEMPE rules have to be applied. However, please note that since most rules of the ITL and its regulatory decree are based on the OECD Transfer Pricing Guidelines, the work of the OECD in this field and the provisions

of the OECD Transfer Pricing Guidelines may constitute useful tools for interpreting and applying the transfer pricing rules of the ITL and its regulatory decree.

**10. Are source taxes applied on royalties in your country?**

Yes. Unless a special tax treatment is provided under a treaty to avoid double taxation, the effective income tax withholding rate that applies to royalty payments made by an Argentine taxpayer amounts to 21%, 28% or 31.5% on gross payments, depending on the circumstances of the case. Increased rates may apply upon gross up clauses.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-

avoidance provision and the provision on transfer pricing adjustments may possibly be applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Yes, Argentine taxpayers can deduct 80% of the payments made in consideration of trademarks and patents. However, under non-discrimination clauses of certain double taxation treaties such limitation could be disregarded.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

Tax authorities make regular tax audits and in general they focus on relevant markets of the economy. In general, the tax authorities revise whether the intangible is related to keep and maintain taxable income.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

For business years starting on or after 01.01.2016, a three-tiered standardized approach to transfer pricing documentation, including Master File, Local File and CbCR, is obligatory for business units of Multinational Enterprises exceeding certain turnover thresholds. The content requirements regarding the documentation related to intangibles are in line with the OECD recommendations provided in BEPS Action 13.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

According to Section 24 of the Austrian Federal Fiscal Code intangible assets are allocated based on the principle of beneficial ownership. The beneficial ownership may differ from the legal ownership, if someone other than the legal owner exercises the actual control over the assets in a way that he can generally preclude the legal owner from exerting any influence on the asset.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The external CUP method using royalty rate databases (such as RoyaltyStat and ktMine) is regularly applied in practice. In addition to this, profit-based rules of thumb (in particular Knoppe formula) are sometimes used as a sanity check.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

In general, benchmark studies are accepted by Austrian finance authorities if they satisfactorily meet the comparability

factors provided by the OECD transfer pricing guidelines.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

The profit split method is not used regularly for determining arm's length remuneration for intangibles so far. However, as a consequence of the introduction of the DEMPE analysis, we expect an increase in the application of the profit split method for transactions involving intangibles in the future. Moreover, the profit split method is sometimes used by finance authorities in tax audits instead of the CUP method.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

In case the CUP method cannot be applied for the valuation of intangibles due to a lack of sufficient comparables, the discounted cash flow method may be used for all types of intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

In practice, a sanity check based on the Knoppe-formula may be applied. According to the Knoppe-formula, the royalty rate should amount to approximately 1/3 to 1/4 of the profit generated by utilizing the IP.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Based on our experience, DEMPE rules are already applied by Austrian Tax Authorities in the course of tax audits also to already implemented structures (therefore with a "retroactive" effect).

**10. Are source taxes applied on royalties in your country?**

Royalties paid to non-residents (who do not have a permanent establishment in Austria to which the royalties are attributable) are subject to a final domestic withholding tax at a rate of 20%. Austrian taxation, however, may be restricted or eliminated under double tax treaties as well as the EU Interest & Royalties directive.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Income related preferential tax regimes currently do not exist in Austria. However, companies carrying out research and development (R&D) may claim an R&D premium (as a cash down) for certain R&D expenses. For the business year 2018, the research premium amounts to 14% of eligible R&D expenses.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding the transfer of intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments according to § 6 number 6 Austrian Income Tax Law and § 8 (1) and (2) Corporate Income Tax Law cross-border transactions (transfer of assets and provision of inter-company services) between affiliated parties are applied.

Moreover, the international participation exemption regime stipulates some anti-abuse rules with respect to the repatriation of profits from foreign subsidiaries which lead to a switch-over from the exemption method to the credit method. These anti-abuse rules apply - inter alia - to qualified international participations (> 10% participation, holding period > 1 year), if the foreign subsidiary derives its income mainly from passive sources (e.g. royalties) and is subject to an effective tax rate of 15% or lower.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

License fees paid by an Austrian entity to a (foreign) affiliated corporation are not tax deductible, if the payments:

- are not taxable at the level of the receiving corporation due to a personal or objective tax exemption; or
- are subject to a nominal tax rate of under 10% at the level of the receiving corporation; or
- are subject to an effective tax rate of under 10% at the level of the receiving corporation due to a specific tax allowance which also applies to interest or license payments; or
- result in an effective tax burden below 10% due to the grant of a tax refund to the receiving entity or the shareholders of the receiving entity.

Accordingly, the restriction on the deduction of license fees also applies if the fees are subject to a special tax relief regime abroad (e.g. by way of notional deductions, exemptions applied to part of license income, etc). Deductibility is, however, not affected if the low effective tax rate is caused by utilization of tax loss carry forwards or a group taxation regime. If the receiving corporation is not the beneficial owner, the tax regime applied to the beneficial owner is relevant.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in**

**your jurisdiction use to determine the entitlement to royalty payments abroad?**  
No specific actions.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

N/a.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

N/a.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

N/a.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing**

**transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance that the DEMPE rules have to be applied. In practice, however, the tax authorities already apply these rules.

**10. Are source taxes applied on royalties in your country?**

Yes. General rate is 30%. However, reductions / exemptions are available under the DTT and under specific conditions set under internal law.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

The patent box regime was replaced by innovation deduction = 85% x qualifying net income from IP asset x nexus fraction.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments may possibly be applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No specific limitations. However, should be at arm's length and have a business purpose.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles?**

**What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

There are no specific actions taken in order to monitor intangibles specifically.

However, payments exceeding 100,000 EUR made to tax haven jurisdictions are subject to a specific filing.

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## BOSNIA-HERZEGOVINA

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**1. Do you have specific local guidance on the documentation related to intangibles?**

Yes - in line with the OECD Guidelines.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP is the most applied method and TNMM.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, generally they are.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

No.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

No.

**10. Are source taxes applied on royalties in your country?**

Yes. General WHT rate is 10%.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

No.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Generally, all expenses should be business related to be tax deductible.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific audits are conducted.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

There is no specific local guidance on the documentation related to intangibles. However, a proper documentation formalizing the registry of intangible property in Brazilian National Institute of Industry Property is required.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

There are specific local rules regarding the rights and obligations related to intellectual/industrial properties (Law nº 9,279/96). However, there are no specific tax rules regarding a special taxation for these rights, despite the rules related to the limits of deductibility, for Corporate Income Tax ("CIT") purposes predicted by Law nº 9,430/96.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

Law nº 9,430/96 expressly excludes royalties from the transfer pricing methods. Said that, royalty expenses are only subject to the conditions for deductibility enacted by CIT applicable legislation (necessary and essential expense to the business).

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

The Normative Instruction nº 1,312/12 predicts the possibility to negotiate an alternative profit margin considering the specific business area and situation of the entity through a ruling request made for Brazilian Federal Revenue Service (RFB). Although this is enacted by the Normative Instruction, this is not a usually or common

procedure adopted by Brazilian companies and the few companies that entered with this request did not succeed on having a different margin.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Brazil does not adopt the profit split method, considering that Brazilian transfer pricing rules are not the same as the international standard adopted by OECD Guidelines.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Brazilian transfer pricing rules are said to be inspired by the arm's length principle, although these rules mostly rely on fixed markup rates, which are set forth in the legislation. It is important to bear in mind that Brazilian transfer pricing rules do not determine a specific method for transactions that involve intangibles, which means that the same methods available for import/export transactions with goods, services and rights are applied for intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

Not a specific rule for licensing of intangibles. However, Brazilian transfer pricing rules determine two safe harbors for export transactions (in general),

including the export of intangible. Some specific criteria must be observed in order to apply the safe harbor rules, such as (i) the export revenue for related companies must not exceed 20% of the total export revenue; (ii) do not apply to exports to buyers domiciled in countries of favored taxation or countries whose legislation requires confidentiality as for the company's ownership.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

In Brazil, there is no specific rule for an evaluation of eventual DEMPE rules. It means that the transfer pricing rules applicable in Brazil, regarding licensing transactions, do not have the intelligence of an analysis made under the concept of which companies are involved in the Development, Enhancement, Maintenance, Protection and Exploitation ("DEMPE") of intangibles, in order to define which companies perform functions or accept risks derived from the intangible transaction, and, as a consequence, receive remuneration for these.

**10. Are source taxes applied on royalties in your country?**

The remittance of royalties to a beneficiary abroad is taxable by WHT with the rate of 15% (entities established in tax-haven - 25%).

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

It is not applicable in Brazil. Although, it is important to bear in mind that the Brazilian tax legislation has established the "R&D tax incentive" by Law 11.196/05. in which taxpayers can benefit from an additional deduction of R&D expenses from the corporate income tax basis.

In other words, the Company which had expenses related with research and development of technology shall consider

these expenses as deductible in the Corporate Income Tax Basis (CIT) in the proportion of 60% up to 80% depending on the circumstances enacted by the legislation mentioned above.

Considering the explained, the great value of the tax deduction of this incentive is directly linked with CIT rate (34%). In this sense, the effect of the R&D tax incentive shall be calculated according with the applicable percentage mentioned above (60%, 80%) limited to 34% of the CIT rate.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

Nowadays there is no a specific rule in the Brazilian tax legislation that imposes a tax consequence if the ownership of intangible is transferred out of the country, besides an eventual challenged by tax authorities in relation to the purpose of the transaction.

Said this, in line with OECD rules and the Actions Plans in the context of BEPS, Brazilian tax authorities may challenge the transactions between a Brazilian company and the foreign party with the sole purpose of dissimulating the occurrence of a specific taxable event and transactions that seek to transfer resources out of the country without a "business purpose".

Despite the fact that there is no defined concept for business purpose, Brazilian tax authorities shall challenge the transaction if there is no other ground different of the tax efficiency.

In this sense, as Brazil is a signatory of BEPS, and had adopted certain minimum standards of the Project (as an example, CbC file report) and have requested an OECD member, there is expectation that the tax authorities focus on transactions with services and intangibles from now on.

Besides this, another point to bear in mind is that the transactions involving transference of ownership from a Brazilian company to a foreign company are quite rare nowadays, as there are not many Brazilian companies which are not member of a multinational group but which has controlled companies abroad. And, on the other hand, if the Brazilian entity belongs to a multinational group, the ownership of the intangible is, usually, at the foreign headquarter.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

According with Law nº 9,430/96, articles 353 and 355, royalty expenses are only deductible, for Corporate Income Tax ("CIT") basis, if they are considered as a necessary expense for the Brazilian entity and with the limit of 5% upon net revenue. The Finance Ministry Ordinance nº 436/1958 establishes the deduction of

royalties limited as of 1% to 5% of the net revenue of the product that is directly linked with the patent, technology or technical assistance, i.e, the sum of royalties expenses above the equation of 5% upon net revenue is considered as a non-deductible expense for CIT, taxable with the rate of 34%.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

Considering Brazilian tax legislation, as already mentioned, there are no specific rules or actions adopted by Federal Revenue Service in order to evaluate intangibles.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

There is a special section regarding the control of intangibles in the Bulgarian Guidelines for transfer pricing. The recommendations are based on art. 56 – art. 61 of Ordinance №H-9, on the 28th International Accounting Standard – Intangibles, and on chapter VI of the OECD Transfer Pricing Guidelines. There are no specific requirements set exclusively in the Bulgarian legislation.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No, the rights on intangibles (including the right of ownership) are transferred according to the Bulgarian legislation in force.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The CUT (Comparable Uncontrolled Transactions) method is the most frequently applied method for determining arm's length royalty rates. In case this method cannot be applied, unique and high value intangibles are used, and no adjustments can be made, the theory accepts the application of the Profit Split method.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

The tax authorities have to evaluate the impact of the royalty remuneration on the growth of the turnover and the development of the accounting results of the audited company. For this purpose, it is useful and accepted to provide

database studies for comparable license remunerations in the respective field.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

The theory accepts the application of the Profit Split method, but there is neither administrative practice nor any case law in this regard.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes. In some cases, it is easier to compare the rate of retrieval of the specific intangibles to the rate of retrieval of comparable intangibles of independent third parties. This approach will be applicable only if the following three conditions are fulfilled: the expected profits should be result of the same factor (the unique nature of the asset, the duration of the legal protection, the technological innovation); the operational conditions should be similar (geographic area, exclusiveness of the use, duration of the use); the operational costs to be comparable (development costs, commercial network costs).

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There are no new DEMPE Guidelines and the tax authorities are not applying these rules.

**10. Are source taxes applied on royalties in your country?**

Yes, the tax rate on the tax withheld at source on copyright and license royalties is 10%. The copyright and license royalties are non-taxable, if the transaction is performed between related parties in case the conditions set in the Corporate Income Tax Act are fulfilled.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

In case transactions (regardless of the subject of the transaction), inter alia between unrelated parties, have been concluded under terms whose fulfillment

leads to tax evasion, it should be taken into consideration the taxable amount that would be obtained upon effecting a customary transaction of the relevant type at market prices and intended to achieve the same economic result but which does not lead to tax evasion. Any contracts of loan for use or other gratuitous provision for use of tangible and intangible benefits are treated as tax evasion according to the Bulgarian legislation.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No, the only deductibility limitations are related to the general arm's length principle and the validity of the economic link to the person's business activity.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions were taken by the tax authorities so far.

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## CANADA

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

There is no preferred methodology for the transfer pricing of intangibles relative to other goods and services. The Canada Revenue Agency has stated that the primary focus of choosing a methodology is that which produces the best indication of arm's-length transactions, which will depend on the facts. As a practical matter, the CRA has expressed a preference for "traditional transactional methods" (CUP, resale price, and cost-plus) over "transactional profit methods" (profit splits and the transaction net margin method). The CRA has suggested the use of the residual profit split method for highly valuable or unique intangibles.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, subject of course to the extent to which, on the facts of the particular case, the content of the database is reasonably comparable to the case at hand.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the**

**past? How did you determine the profit split factor? What was your experience?**

Yes, based on the contributions made by the respective parties (e.g., developing the intangible, improving it, marketing it, etc.) and the extent to which their respective contributions involve readily identifiable functions.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

We do not perform valuation analysis (i.e., we are not economists or valuers).

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

Yes, and the CRA certainly uses the residual profit split method in this manner.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Yes, they do, although following the Tax Court of Canada's decision in late 2018 in the Camecoi case in which the taxpayer was successful, it is unclear the extent to which the courts will accept the application of these rules in applying the arm's-length principle found in the actual text of Canada's transfer pricing rules.

**10. Are source taxes applied on royalties in your country?**

Yes.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no anti-avoidance rules which are targeted specifically towards intangibles.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

There are no such royalty-specific rules (i.e., something comparable to the thin capitalization rules limiting interest expense deductions on cross-border related party debt). Canada's transfer pricing rules (and a more general rule

denying the deduction of expenses in excess of a "reasonable" amount) effectively limit the deduction of royalty expenses to no more than what an arm's-length person would agree to pay.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

The CRA works closely with other tax authorities to identify inappropriate planning and has allocated increased audit resources to cross-border transactions. The Department of Finance has increased the information reporting required for non-arm's-length cross-border transactions and taken steps to lengthen the permissible audit period. Entitlement to royalty income is based on establishing who has the incidents of ownership (possession, use, risk and control).

**Contact:**

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**1. Do you have specific local guidance on the documentation related to intangibles?**

State Administration of Taxation Announcement [2016] No. 42 and State Administration of Taxation Announcement [2017] No. 6 set specific requirements on reporting of transfer of intangibles between related parties. Both local file and master file of Transfer Pricing Documentation shall include the description of the transaction regarding the transfer of intangibles.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

Yes. When determining the contribution of the entity and its related parties to the value of its intangible assets and the corresponding profit distribution, a full analysis of the global operational process of the whole group; the value contribution of each party to the development, enhancement, maintenance, protection and exploitation of the intangibles; methods for realization of the value of the intangibles, as well as interaction between the intangible assets and the functions, risks and assets of other businesses within the group is required.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The Comparable Uncontrolled Price Method and the Profit Split Method are generally applied under the requirement of State Administration of Taxation Announcement [2017] No. 6. In practice, the Transactional Net Margin Method is also accepted by tax authorities.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes. Factors which are related to value contribution, such as income, costs, expenses, assets, number of employees etc. are considered when determining the profit split factor.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Usually not. But we have seen some cases that the local Chinese tax authority would require an evaluation or appraise on the intangibles that involved related party transactions to justify the royalty/license fee payment. The local practice could be different as per different local authorities.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Yes. China's new TP rules apply DEMPE rules.

**10. Are source taxes applied on royalties in your country?**

6% VAT and 10% withholding income tax.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

The licensing fees collected or paid by the entity and its related parties for transfer or acceptance of use rights of the intangibles shall match the economic benefits brought by intangibles. Otherwise, tax authorities may implement a special tax adjustment.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Where the intangibles do not yield economic benefits and do not comply with the arm's length principle, tax authorities may implement a special tax adjustment based on the full amount deducted before tax.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

China has foreign exchange control on overseas payment. Transfer of intangibles and royalty agreement as well as the actual repatriation are required to be registered with the tax authority. Meanwhile, a special tax adjustment could be conducted for harmful tax practices regarding the transfer of intangibles.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

The Decree 2120 of 2017 (compiled in the Tax Regulatory Decree) sets the information of the intangibles that must be detailed in the local file and Masterfile.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. Guidelines are generally followed. Please note that in Colombia, the OECD Guidelines are deemed as auxiliary interpretation criteria.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The CUP method.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Database studies are commonly used.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

We have not used the profit split method.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

No.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Local regulation does not contain DEMPE rules. As mentioned, in Colombia the OECD Guidelines/BEPS actions are deemed as auxiliary interpretation criteria.

**10. Are source taxes applied on royalties in your country?**

Yes. The general rate is 15%. Royalty payments in relation to the use or exploitation of software are subject to a 33% rate over the 80% of the payment (26.4% effective rate).

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Royalty payments related to intangibles developed in Colombia are not deductible, neither are royalties related to the acquisition of finished products.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the**

**entitlement to royalty payments abroad?**

The tax authorities carry out special tax audits (i.e, Digital economy tax audit campaigns).

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP is the most applied method and TNMM.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, generally they are.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

No.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

No.

**10. Are source taxes applied on royalties in your country?**

Yes. General WHT rate is 15%.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-avoidance rules on transfer pricing are applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Generally, all expenses should be business related to be tax deductible.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

There are no specific actions taken in order to monitor intangibles separately - regular TP audits are conducted.

No.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

The Cypriot Circular, published on 22 March 2017, states that a TP documentation must be performed in cases the taxpayer follows the use of the tax deduction on IP's revenue according article 9.1 of the ITL.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP is the most broadly applied method.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

We have not used the profit split method.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

We use valuation methods to estimate the arm's length remuneration for intangibles; DCF method and Royalty relief approach.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

The Twenty-Five Percent Rule is a widely used rule of thumb for licensing valuation.

Although the rule is predominantly used in valuing patents, its applicability extends to copyrights, trademarks, trade secrets in addition to know-how.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance that the DEMPE rules have to be applied.

**10. Are source taxes applied on royalties in your country?**

The withholding tax rate is 5% on firm royalties and 10% on any other royalties, unless a lower rate applies under a treaty. There is no withholding tax on royalties paid to non-residents of Cyprus for rights not used within Cyprus.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes. There is an IP Box regime which amends the regime introduced in 2012. The new regime applies to qualifying intangible assets developed after 1 July 2016, owned by a Cyprus entity, registered in its name either in Cyprus or abroad, and that satisfies several criteria. The new regulations introduce the OECD recommended "nexus approach". As per the new IP box regime, qualifying taxpayers will be eligible to claim a tax deduction equaling 80% of qualifying profits resulting from the business use of the qualifying assets.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding**

**the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding the transfer of intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments are applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No. Royalty payments are deductible for tax purposes as long as the royalty rate is at arm's length.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

Denmark's transfer pricing documentation requirements are based on OECD's Transfer Pricing Documentation Guidelines. Additionally, Denmark has issued a statutory order on documentation of the pricing of controlled transactions and Danish TP-documentation guidelines, which generally comply with the OECD Guidelines. However, additional requirements may apply in certain instances. A company is also obligated to inform the Danish tax authorities about all intra-group transactions in their tax return.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

There is no specific rule governing ownership of intangibles in the Danish tax legislation. However, in Danish tax law, legal ownership is normally decisive for transfer pricing purposes. However, the ownership may be allocated to the economic owner by the Danish tax authorities if the economic owner has the factual control over the intangible (substance over form).

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP and profit split are the most applied methods.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Database studies are widely used and accepted by the Danish tax authorities. Additionally, the tax authorities may under certain conditions require, by giving a 60-day notice, that the taxpayer produces

database benchmark studies substantiating the transfer prices.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes. The profit split factor was determined on the basis of a value chain analysis and on the basis of costs and FTEs. The profit split factor depends on the specific facts and circumstances of the intangible assets. Denmark follows the OECD Principles on selection on TP method.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

Denmark does not have any formal safe harbors.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

The new DEMPE rules have been fully implemented and are applied by the Danish tax authorities. The Danish tax authorities have not issued any specific guidelines on the DEMPE rules but refer to and generally cite the OECD guidance. The Danish tax authorities seem to be of the opinion that DEMPE functions

constitute an intangible asset in itself and that relocation of such will entail relinquishment-taxation.

**10. Are source taxes applied on royalties in your country?**

Yes. General rate is 22%. The rate may be reduced by a tax treaty or eliminated under the EU Interest and Royalties Directive. Broadly speaking, royalties subject to the Directive are those paid by a Danish company to an "associated company" (control of 25% of the voting power for a continuous 12-month period) resident in another EU Member State. Further, the recipient must be the beneficial owner of the received royalty payments. Danish withholding tax on royalties does not apply to payments for the use of rights to literary, artistic or scientific work, e.g., author's royalties, music royalties and motion picture royalties.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding**

**the transfer of intangibles?**

**Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments are applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No. Royalty payments are deductible for tax purposes as long as the royalty rate is at arm's length.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

There is focus on harmful tax practices in general. However, no specific actions have been taken with regards to intangibles.

**Contact:**

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**1. Do you have specific local guidance on the documentation related to intangibles?**

The Finnish Tax Administration ("FTA") has published guidelines dealing with transfer pricing documentation. The guidelines include also a short chapter related to intangibles and how they should be described in the master file. Additionally, FTA highlights the importance of the intangibles in value creation of an MNE and provides some high-level guidance related to licensing transactions.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP is the most applied method.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Database studies are widely used and, in general, they are also accepted by tax authorities.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

The profit split method is not widely used by taxpayers but the FTA endeavoured to apply the method in some of the tax disputes now decided in favor of the taxpayers.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Valuation methods are used in some cases and they can be applied for several types of intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

The guidelines of FTA do not contain any specific guidance regarding DEMPE. However, FTA has referred to DEMPE rules in their company specific guidance.

**10. Are source taxes applied on royalties in your country?**

Yes. General rate is 20%.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-avoidance provision and the provision on

transfer pricing adjustments may possibly be applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the**

**entitlement to royalty payments abroad?**

Transfer pricing of intangibles is one of the focus areas of FTA and FTA is active in developing and using modern tools to monitor taxpayers and identify potential risks. There is a specific form 78, i.e. explanation of transfer prices, which should be filed in connection with the tax return provided that a taxpayer is obliged to prepare transfer pricing documentation. The form was revised in 2018 and the current version of the form requires taxpayers to provide more information about changes in ownership of intangibles.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

The 2018 Finance Bill amended the provisions of Article L 13 AA of the French Tax Procedure Code to adopt the TP documentation format as recommended by the OECD. However, the French administrative guidelines state that the section related to intangible assets in the Master File must provide a more detailed description of the group strategy related to intangibles than the one required in Annex I to Chapter V of the 2017 OECD Guidelines. As such, the IP Group strategy needs not only to be generally and globally described, but a detailed overview on the companies being in charge of development, the enhancement, the exploitation of the various intangibles is expected. The Master File must also contain the exhaustive list of all the intangibles including information on their location, even if they are not used by a French entity.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The CUP/CUT method is often applied, using royalty databases. In addition, financial valuation methods are more and more accepted by the French Tax Authorities.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, they are generally accepted, but often critically reviewed by the French Tax Authorities.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes. The profit split factor was determined based on the value-added costs (e.g. marketing costs).

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes, Discounted Cash Flow method is often used for all types of intangibles (customer base, trademark, patent, domain name...).

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

The guidelines from the French Tax Authorities do not contain any specific guidance regarding DEMPE rules. However, in practice they are following the OECD Guidelines.

**10. Are source taxes applied on royalties in your country?**

If there is a double tax treaty, the relevant withholding tax rate of the tax convention applies. When there is no double tax treaty, a 33.33% withholding tax is applied.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes. Under article 39 terdecies of the French Tax Code, a reduced rate of taxation (15%) may be applied under certain circumstances. However, it is expected that the current patent box regime will be fully redesigned by the 2019 Finance Bill.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding the transfer of intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments are applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions. This being said, French taxpayers subject to transfer pricing form filling (2257 SD form) must disclose any intragroup transfer of intangible assets.

Based on our most recent experience during tax audit, the French Tax Authorities are now expecting a transfer pricing documentation providing material evidence on the effective benefit provided by the IP owner during the fiscal year to accept the deductibility of royalty payment.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

Extraordinary business transactions have to be documented within 6 months after the end of the business year in which the transaction took place. Extraordinary business transactions can include e.g. transfer of intangibles or implementation of licensing structures.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

Section 39 paragraph 2 of the General Tax Code allocates ownership of assets, including intangibles, to the economic owner. The economic owner is the person that exercises effective control over the asset in such a way that he can, as a rule, economically exclude the legal owner from affecting the asset during the normal period of its useful life.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The CUP/CUT method is often applied, using royalty databases such as ktMine and RoyaltyStat. In addition, profit-based rules of thumb are often used as a sanity check.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, they are generally accepted, but often critically reviewed by the tax authorities.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit**

**split factor? What was your experience?**

Yes. The profit split factor can be determined based on a value chain analysis and/or on the basis of quantitative criteria (e.g. costs and FTEs). The results are very sensitive to the analysis and weighting of the value chain.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes, discounted cash flow methods are often used for all types of intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

In practice, rules of thumb are often used as sanity check, for example the Knoppe-rule or the 25%-rule.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance that the DEMPE rules have to be applied. In practice, however, the tax authorities already apply these rules.

**10. Are source taxes applied on royalties in your country?**

Yes. The tax rate is 15%.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding the transfer of intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments are applied. In addition, there is specific guidance on relocation of functions which often involves the transfer of intangibles.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Yes. Under the new license barrier rule, royalty payments cannot be deducted anymore if the royalties are paid to a related party abroad which is taxed under a preferential tax regime which does not comply with the OECD's nexus approach.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

**Contact:**

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific guidance. OECD Guidelines are generally followed.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most used method is CUP (Comparable Uncontrolled Price) method using third party agreements obtained from commercial databases (e.g. Intangible Spring, RoyaltyStat). In some cases, when intangible property is of unique nature or of high value for which comparables are not available, the Profit Split Method can be applied, however the complexity of the assumptions makes the results of the analysis debatable.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes, we have used it before. The economic ownership of an intangible asset by an entity should be determined by the fact whether the entity performs the so-called 'DEMPE functions'. The identification of the appropriate profit splitting factors can be challenging. The

most common splitting factors are based on assets or capital or costs. Other profit splitting factors are based on sales or employee compensation or time spent by a certain group of employees.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes, income-based (Discounted Cash Flow) methods are often used for the valuation of intangibles. The royalty relief approach is the most commonly used method for the valuation of an intangible.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Although there is no specific treatment set forth in the applicable Greek TP regulation with respect to the profit allocation to intangibles, we expect that the tax authorities would apply these rules.

**10. Are source taxes applied on royalties in your country?**

Under the Greek domestic law, the royalties are subject to withholding tax at a rate of 20%. The said withholding tax does not apply to royalties paid between associated companies falling within the scope of the EC Interest and Royalties Directive. Further, if the recipient of the royalty income is a resident of a state with which Greece has concluded a DTC, the

withholding tax rate provided by said treaty will apply and could be decreased or even null.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

Greece has introduced the general anti-avoidance rule according to which the tax authorities may ignore any "artificial" arrangement aiming at avoiding paying taxes and leading to a tax benefit for the taxpayer. Transfer pricing rules also apply to identify the economic owner of intangibles. Further, the tax authorities scrutinize several transactions with entities established in non-cooperative countries and countries with preferential tax regimes.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Yes. Royalty payments to an entity which is established in a "non-cooperative state" or is treated under a preferential tax regime are not deductible for tax purposes unless the taxpayer proves that these costs relate to real and ordinary transactions and do not result in transfer of profits, income, or capital for tax avoidance or tax evasion.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions have been taken in order to monitor intangibles specifically. But monitoring forms part of transfer pricing scrutiny.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements, the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations may be used as a source of interpretation.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

No special rules, in practice the adaptable methods are CUP and TNMM.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, generally they are.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No, we have not used the profit split method for determining arm's length remuneration for intangibles yet.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

The Discounted Cash Flow method is commonly used to value intangibles in general.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

In practice, rules of thumb are often used as sanity check, for example the Goldscheider-rule (25%).

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance that the DEMPE rules have to be applied.

**10. Are source taxes applied on royalties in your country?**

No WHT applies if the recipient is a corporation.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes, 50% of royalty profit may be exempted in Hungary under the new "patent box regime", capped with 50% of the pre-tax accounting profit and calculated by the nexus ratio. According to the grandfathering provisions, until 30 June 2021, old IP assets may advantageously be handled under the old IP Box Regime as well: 50% exemption of royalty income, capped by 50% of the pre-tax profit, but without applying the nexus ratio. As the CIT rate is 9% in Hungary, the above exemptions may lead to an effective taxation of 4.5%.

In addition to the CIT advantages, the royalty income may also be exempt from the local business tax (LBT) in Hungary; that would normally be 2% on the adjusted net sales revenues.

In addition, the following incentives are potentially available concerning IP and R&D:

- Double or four-fold deductibility of direct R&D costs for corporate income tax purposes, under certain conditions;
- Possibility to shift unused tax credit between Hungarian related parties: Taxpayers may shift their unutilized tax base deduction possibility to a Hungarian related party company based on a declaration, subject to meeting certain criteria;
- Tax allowance for R&D by way of reduction of corporate income tax payable up to a specific portion of investment costs;
- Special schemes for reported intangible assets and other royalty generating intellectual properties to reach capital gain exemption or deferral upon future alienation.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding**

**the transfer of intangibles?**

**Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding the transfer of intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments are applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

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## IRELAND

**1. Do you have specific local guidance on the documentation related to intangibles?**

There is no specific guidance in relation to intangibles.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. Intellectual property rights in Ireland are owned in the first instance by their inventor/author/registrant (as applicable), with limited exceptions arising in particular in the case of employment relationships.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP is the preferred method, however TNMM is often used

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Not commonly applied. Ireland is still currently under the 2010 OECD Guidelines - expected to change from 1 January 2020 where DEMPE principles will become more prominent.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

We generally see the Discounted Cashflow Method applied, however it is

not always used for all types of intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Not applicable. It is likely to be in force from 2020 onwards.

**10. Are source taxes applied on royalties in your country?**

Ireland generally applies a withholding tax on patent royalties and/or annual payments; however, there are numerous domestic exemptions available.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Ireland's version of the patent box is called the Knowledge Development Box (KDB). Ireland was the first country to introduce a KDB which is in full compliance with the OECD's modified nexus approach. The aim of the relief is to effectively tax qualifying income at a rate of 6.25%. It achieves this by deducting 50% of the qualifying income from taxable profits, therefore effectively halving the 12.5% corporate tax rate.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related**

**parties, or whether the transactions have been carried out at arm's length?**

Ireland has general anti-avoidance legislation. There is nothing specific on the transfer of intangibles. General market value rules, as opposed to transfer pricing rules, apply on capital transfers of assets between connected parties.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Section 81(2)(m) TCA 1997 provides that no trading deduction should be available for "any royalty or other sum paid in respect of the user of a patent". However, while not allowed as a trading deduction, they should be available to be claimed as a charge on income on a paid basis in accordance with s243 TCA 1997.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

The Irish Finance Act 2014 introduced changes to the corporate tax residence

rules with effect from 1 January 2015, given the ever-increasing focus on the so-called 'Double Irish' structure. Because of those changes, all companies incorporated in Ireland on or after 1 January 2015 are treated as resident in Ireland for tax purposes subject to certain exceptions.

Ireland reintroduced a cap of 80% on the capital allowance relief given on capital expenditure incurred by companies on the provision of intangible assets for the purposes of a trade. The aggregate amount of capital allowances and deductions for interest in respect of expenditure on intangible assets cannot exceed 80% of relevant income for that period excluding such allowances and interest.

Ireland has strengthened its GAAR rules. It has made changes to its exit tax regime and implemented changes under ATAD.

The number of Irish Revenue audit interventions concerning substance issues has increased. Irish Revenue is monitoring the number and value of IP onshored to Ireland.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The CUP/CUT method is generally accepted using third party agreements obtained from commercial databases (e.g. RoyaltyStat). In addition, the profit split is often used as well (in particular for the calculation of the residual profit in the Patent Box regime).

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, they are generally accepted, but often critically reviewed by the tax authorities.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes. The profit split factor can be determined on the basis of a value chain analysis and on the basis of costs and FTEs. The results are very sensitive to the analysis and weighting of the value chain.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

It is possible to use valuation methods when TP methods are not reliable.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance that the DEMPE rules have to be applied. In practice, sometimes, the tax authorities already apply these rules.

**10. Are source taxes applied on royalties in your country?**

Yes. General rule: 30% withholding tax applies on 75% royalties paid to non-residents. UE transaction: interest royalty directive, no withholding if the beneficial ownership requirements met. Tax treaty rules, depending on the specific double tax treaty applicable

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes, the Italian Patent Box regime has been introduced with 2015 Budget Law. The tax relief consists of an exclusion from the taxable base of a percentage of the income sourced from the usage of intellectual property. The percentage of income excluded is set at 30% in 2015, increasing to 40% in 2016 and 50% from 2017 onwards. The regime is optional, lasts irrevocably for five years and can be renewed. The rules of the Italian patent box regime have been amended to align

them with BEPS Action 5 and OECD standards. In particular trademarks are no longer eligible for the application of the patent box regime after 31 December 2016.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding the transfer of intangibles.

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**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No, to the extent these are at arm's length.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

**1. Do you have specific local guidance on the documentation related to intangibles?**

On 28 June 2019, the Luxembourg tax authorities released a circular which presents in further detail the Luxembourg BEPS compliant IP regime.

Amongst others, taxpayers have to provide detailed information on the R&D activities performed and their outcome (creation or development of the qualifying IP asset).

Further, the circular sets out the obligations of the taxpayer in terms of supporting documentation to be provided in relation to qualifying IP assets. In addition, Luxembourg companies need to indicate in their tax returns if they are engaged in intra-group transactions (not limited to IP).

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

The economic owner is deemed to be the owner of the asset for tax purposes (effective control over the asset and exclusion of any other party from the use of the asset/"jouissance" of benefits deriving from the asset).

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP/CUT from databases are the most common (for licensing activities exceeding mere routine functions).

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No, but depending on the case, we would not per se exclude a profit split as a viable method.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

DCF methods may generally be used to value intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

In principle not.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

In general, the Luxembourg tax authorities follow the OECD Transfer Pricing Guidelines. However, we do not expect the Luxembourg tax authorities to be very difficult if a Luxembourg company owning IP is granting licenses.

**10. Are source taxes applied on royalties in your country?**

No (to the extent the royalties are at arm's length).

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes (a new BEPS-compliant IP regime has been introduced in 2018). The adjusted net eligible IP income benefits from an 80% exemption (i.e. at a rate of ca. 5.2%). The adjusted net eligible income is computed applying a "nexus ratio" depending on the qualifying expenditures incurred by the Lux taxpayer/overall expenditures (inter alia R&D expenditures). Qualifying expenses are those incurred (i) by the taxpayer in Lux, (ii) outsourced to a third party or (iii) to an affiliated party on a no mark-up basis.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-

avoidance provision and the provision on transfer pricing adjustments may possibly be applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No (to the extent the royalties are at arm's length).

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements. However, the new Chapter 8 of the 2012 Malaysian Transfer Pricing Guidelines ("Malaysian TP Guidelines") sets out, amongst others, the definition of intangibles and general considerations in relation to determining arm's length compensation for intangibles. In addition, Chapter 11 states the information that shall be contained in the local file, master file and country by country reports, which is in line with Action 13 of the BEPS action plan. In this regard, the guidance with respect to the master file states that such documentation must contain a description of the strategy for the development, ownership and exploitation of intangibles of the multinational enterprise group.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

In the Malaysian TP Guidelines, ownership of intangibles is attributed to the legal owner for transfer pricing purposes. This is further addressed in the Income Tax (Transfer Pricing Rules) 2012, which states that the owner of the intangibles is the person who develops the intangibles and bears all associated risks and costs relating to the development of the intangibles.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most common methods to determine arm's length royalty rates are the CUP method and TNMM.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, they are generally accepted, but often critically reviewed by the Inland Revenue Board of Malaysia ("IRB").

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No. The profit split method is not commonly applied in Malaysia and based on our experience with the IRB, the IRB is not familiar with the application of this method.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

No.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There are no specific DEMPE rules to-date. However, Chapter 8 of the Malaysian TP Guidelines makes reference to the fact that entities within a multinational group which are entitled to share in returns derived by the group from exploiting

intangibles are those entities making the following contributions:

- Entity(ies) controlling / performing DEMPE functions in relation to the intangibles;
- Entity(ies) controlling risks and having the financial capacity to assume risks associated with the DEMPE of the intangibles;
- Entity(ies) providing all assets, including funding necessary for DEMPE of intangibles.

As far as we are aware, the IRB has not scrutinized licensing transactions within the context of DEMPE to-date.

**10. Are source taxes applied on royalties in your country?**

Yes. The tax rate is 10%.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related**

**parties, or whether the transactions have been carried out at arm's length?**

There are general anti-avoidance and specific transfer pricing provisions under Sections 140 and 140A of the Income Tax Act, 1967 respectively. However, Malaysia does not have capital gains tax on gains arising from transfer of intangibles.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Yes. Royalty payments in excess of the arm's length standard will be denied a deduction from a Malaysian corporate tax perspective.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

The matter is currently under review but there is no published guidance at this juncture.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

As per the OECD Guidelines, but mainly CUP.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

No.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Maltese tax authorities generally follow the OECD Guidelines including the ones related to DEMPE.

**10. Are source taxes applied on royalties in your country?**

No.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No. Royalties may be considered to be either trading in nature or passive income and this will determine the possibility to apply double taxation relief including the Flat Rate Foreign Tax Credit (FRFTC) and the allocation to the appropriate tax account. A distribution of profits originating from royalty income will entitle the shareholder/s to claim tax refunds which may be 2/3rds (in the case where company has claimed the FRFTC), 5/7ths (in the case of passive royalties) or 6/7ths (in the case of trading). The combined overall Malta effective tax (COMET) will vary between 1% and a maximum of 10%.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

No.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in**  
No specific actions.

**your jurisdiction use to determine the entitlement to royalty payments abroad?**

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### **1. Do you have specific local guidance on the documentation related to intangibles?**

Article 179 of the MITL states that the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations may be used as a source of interpretation to the extent that said guidelines are consistent with the provisions of the MITL and the treaties entered into by Mexico.

Furthermore, the Tax Administration Service has issued by means of regulations the information that shall be contained in the local file, master file and country by country reports, which is in line with Action 13 of the BEPS action plan. In this regard, the guidance with respect to the local file states that such documentation must contain a description of the strategy for the development, enhancement, maintenance, protection and exploitation of intangibles of the multinational enterprise group.

Article 179 of the MITL states that the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations may be used as a source of interpretation to the extent that said guidelines are consistent with the provisions of the MITL and the treaties entered into by Mexico.

Furthermore, the Tax Administration Service has issued by means of regulations the information that shall be contained in the local file, master file and country by country reports, which is in line with Action 13 of the BEPS action plan. In this regard, the guidance with respect to the local file states that such documentation must contain a description of the strategy for the development, enhancement, maintenance, protection

and exploitation of intangibles of the multinational enterprise group.

### **2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

In Mexico, ownership of intangibles is attributed to the legal owner.

### **3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most common methods to determine arm's length royalty rates are the CUP method (for trademarks, brands, tradenames, etc.) and TNMM. The Profit Split method is also used for unique intangibles.

### **4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

### **5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

The profit split method is not normally used in Mexico. However, it has been used in a case for hard to value intangibles that have been jointly developed by two or more entities of a group. The Mexican tax authorities are keen to the use of this method in these situations.

### **6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

The Discounted Cash Flow method is commonly used to value intangibles in general. This is not one of the authorized

methods in the Mexican Income Tax Law, however, it is accepted by the Mexican tax authorities as it considers profit margins that would be used in the TNMM.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Although there is no specific treatment set forth in the applicable Mexican tax provisions with respect to the profit allocation to intangibles, tax authorities base their transfer pricing analysis on the guidance provided by the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, which is a mandatory source of interpretation to the extent that they do not contravene Mexican law.

As of 2016, when the DEMPE functions were adopted by the OECD, the Mexican tax authorities have strongly implemented the DEMPE approach.

The Tax Administration Service in Mexico has focused on the analysis of the effects of advertising and marketing activities, as well as to determine whether there is in fact value creation. How to determine such value is also a latent concern within the Mexican tax authorities.

**10. Are source taxes applied on royalties in your country?**

Yes. According to article 167 of the Mexican Income Tax Law ("MITL"), in the case of income obtained from royalties, the source of wealth shall be considered to be in Mexican territory when the goods or rights for which the royalties are paid are

used in Mexico, or when the royalties are paid by a Mexican resident or by a foreign resident with a permanent establishment in Mexico.

The rate for royalties for the temporary use or enjoyment is generally 25%. However, in the case of royalties for the temporary use or enjoyment of patents or certificates of invention or improvement, trademarks, and trade names, as well as for advertising, the applicable rate is 35%

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

Although it is not an anti-avoidance rule, the Tax Administration Service issued the non-binding criteria 4/ISR/NV that states the following with regards to royalties for intangibles originated in Mexico, paid to related parties residing abroad.

The Mexican tax authorities consider a harmful tax practice:

- I. To deduct royalties paid to foreign resident related parties for the temporary use or enjoyment of intangibles originated in Mexico, which have been previously owned by the Mexican taxpayer or any of its Mexican resident related parties and which has been transferred without receiving any consideration or at a lower price than the market price. The latter, since the need for migration of the intangible and therefore subsequent payment of the royalty is not justified.
- II. To deduct investments in intangible assets that were originated in Mexico, when these are acquired from a foreign resident related party or if this related party changes its tax residence to Mexico,

unless said related party had previously acquired those investments from an independent party and proves to have paid its acquisition cost.

III. To deduct investments in intangibles that were originated in Mexico, when they are acquired from a third party who at the same time acquired them from its related party residing abroad.

IV. To counsel, advice, provide services or participate in the implementation of any of the previously mentioned practices.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

In order for technical assistance, technology transfers or royalty payments to be deductible from the taxpayers' basis, the following must be proven to the tax authorities:

- i. that the person providing the knowledge has their own technical means to do so;
- ii. that said services must be provided directly and not through third parties, unless the payments are made to a Mexican resident and the agreement stipulates that the service will be provided by an authorized third party, and
- iii. the service must consist of services that are effectively provided.

Royalty or technical assistance payments made to a foreign entity that controls or is controlled by a Mexican entity under any of the following circumstances, shall not be deductible:

- i. The foreign entity that receives payment is considered transparent, unless the shareholders of said transparent entities are subject to tax in their jurisdictions for such payments, and that the payments are at arm's length.
- ii. The payment is considered nonexistent for tax purposes on the country or territory where the foreign entity is located.
- iii. Such foreign entity does not consider such payment as income subject to tax under the applicable tax provisions.

Furthermore, pursuant to Mexican CFC legislation income received by foreign entities for royalties paid for the use of or for a license to use a patent or industrial secret, shall not be subject to preferential tax regime treatment if, among others, the following requirements are met:

- i. Said intangibles must have been created and developed in the country in which the foreign entity that owns them is located. This requirement does not apply if said intangibles were or are acquired by said foreign entity at prices or for amounts that would have been used by independent parties in comparable transactions.
- ii. The royalties paid must not generate an authorized deduction for a Mexican resident.
- iii. The payments of royalties received by said foreign entity must be prices and amounts that would have been used by independent parties in comparable transactions.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

Mexican legislation has implemented a requirement to provide information on specific transactions that exceed certain threshold. One of these specific transactions is the transfer of intangibles. In this regard, the tax authorities require taxpayers to provide information such as:

- i. If the transaction was carried out with related parties or independent parties;
- ii. If the transaction was carried out with Mexican or foreign persons or entities;
- iii. Type of intangible asset;
- iv. Date of the transaction;
- v. Amount of the transaction.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

When a royalty is charged in most cases this means that the licensee acts as an entrepreneur. A subsequent search for a royalty rate (CUP) could be performed in ktMINE for example. If the party using an IP is not an entrepreneur, it should be possible to benchmark the routine activities. Therefore, in our view it highly depends on the functional analysis what methods should be applied.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

In the TP decree (Stcrt. 2018-26874) it is stated that the tax authorities will critically judge the use of databases for determining arm's length royalty rates. The Secretary of State clarifies that the tax authorities prefer benchmarks for less complex functions with a residual profit for the intangibles. The decree in addition states that this will only work if all other functions, risk and assets than the IP are sufficiently remunerated.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Profit split is not frequently applied in our practice. We came across benchmarks where the splitting factor was determined based on costs made relating the IP over the whole development phase of the IP.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

In our view it could be used as a sanity check in order to check whether the licensor earns its investment back over a timespan of e.g. 5-10 years.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

There is no specific rule of thumb one can rely on in approaching the tax authorities. In practice it would well be possible that royalty rates in the same industry are compared by the tax authorities. A general rule of thumb could for instance be that the royalty rate does not push the licensee in a loss-making position.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

Regarding Hard-to-value intangibles it is adopted in the TP decree that when the actuals deviate more than 20% from the forecasts, that the intangible could then potentially be qualified as hard-to-value. A contrario a deviation of less than 20% will bring the transfer of the intangible out of scope for the hard-to-value intangibles. At first one should determine whether in the case at hand the IP transferred can actually be qualified as hard-to-value. In addition, when these deviations only exist after 5 years from the year when first income from the IP was generated, this is also not a hard-to-value intangible. When intangibles are qualified as hard-to-value

this will give a tax inspector extra possibility to challenge a price for an intangible transfer based on ex post outcomes.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

In the TP decree it is stated that Development and Enhancement are generally to be given more weight contributing to the value of the IP, than Maintenance, Protection and Exploitation. This is however not substantiated.

**10. Are source taxes applied on royalties in your country?**

A conditional source tax on royalties is planned to enter into force starting 2021. This conditional source tax will apply on royalties to low tax countries and to countries that are on the EU list of non-cooperative countries.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes, qualifying IP income is taxed at around 7%. This only counts for self-developed and qualifying IP. Self-developed means developed at the taxpayer's own risk and expense. The 7% tax rate (effectively) is only to be applied on the qualifying benefits.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

The TP decree states – with respect to a business restructuring where IP is involved – that the buyer of the IP will in general only buy the IP when it represents more value from an entity perspective than it does for the seller. Otherwise, no arm's length price will be found. The additional value created cannot merely be a tax advantage. According to the TP Decree it is relevant whether the IP functions and related risks are transferred. In extreme cases the tax authorities can take the standpoint that a transaction should be ignored for tax purposes. According to the Decree this should not be the case if comparable transactions exist between unrelated parties or if unrelated parties would in theory agree upon such terms and conditions when both are commercially motivated.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No, to the extent these are at arm's length.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

The Secretary of State declared that there is a project team which aims at challenging transfers of IP to tax havens without relevant functions being carried out in those jurisdictions.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

The Philippine Transfer Pricing regulations or Revenue Regulations No.2-2013 (“RR 2-2013”) does not prescribe specific documentation requirements for intangibles. However, RR 2-2013 states that, for purposes of comparability analysis of intangible property, the following characteristics have to be examined: the form of transaction, the type of intangible, the duration and degree of protection, and the anticipated benefits from the use of the property.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

None.

**3. Which transfer pricing methods do you generally apply in order to determine arm’s length royalty rates?**

The most common method applied is the CUP method. TNMM can also be applied as an indirect check, in case CUP method is inapplicable.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm’s length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

As of now, we have not yet applied the profit split method for determining the arm's length remuneration for intangibles.

**6. Do you use valuation methods for determining arm’s length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

No.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

There are no rules of thumb for intangibles at the moment.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Currently, there are no guidelines on the application of DEMPE rules in the Philippines. The local tax authority (BIR) currently does not apply the DEMPE rules.

**10. Are source taxes applied on royalties in your country?**

Royalty payments made to a nonresident corporation are subject to a 30% withholding tax, unless the rate is reduced under a tax treaty. A 20% final withholding tax is levied on royalty payments made to a domestic or resident foreign corporation.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm’s length?**

To date, the Philippine National Internal Revenue Code (NIRC) does not contain general anti-tax avoidance rules. However, there are pending proposed amendments to Section 50 of the NIRC which will incorporate a definition of “tax avoidance” as a transaction or arrangement that is motivated by obtaining a tax benefit or advantage “with no commercial reality or economic effect.” The proposed amendments are seen by many as a formal introduction of general anti-avoidance rules into Philippine tax legislation.

**13. Are there any royalty payment deductibility limitations in your**

**jurisdiction regarding the use of intangibles?**

A Philippine corporation can claim a deduction for royalties, provided the amount is equal to what it would pay an unrelated entity, and the appropriate withholding taxes are withheld and remitted.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions are undertaken.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No. There are specific rules on local transfer pricing documentation, but they pertain to all types of transactions.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. For tax purposes the OECD guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The CUP method is generally applied based on internal or external comparables.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes. They are often carefully reviewed by the tax authorities during audit (in terms of comparability).

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes. Split factor has been set up on the basis of value chain analysis and RACI (or business processes') analysis. Generally, APA is advised for such methodology due to the fact that results are sensitive to assumptions.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes. In fact, valuation techniques were introduced as one of the TP methods into local regulations as of January 1, 2019. Typically, valuation techniques are applied for valuation of trademarks, brands, customer bases, know-how. It cannot be said that valuation techniques are always applied. There were some specific cases of application of cost-based approach for instance. It should be also noted that Polish regulations provide additional requirements towards hard to value intangibles (e.g. applicability of conditional payments or recalculation of price in case of changes).

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No specific regulations in law. For TP purposes it is not recommended as it is not in line with the OECD guidelines.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

It is required in Master File as well as in local file to determine who is responsible for DEMPE functions. It is also literally indicated that DEMPE functions and corresponding risks should be taken into account as comparability factors once preparing benchmarking analysis.

**10. Are source taxes applied on royalties in your country?**

Yes. The tax rate is 20%. However, in case of cross border transactions, provisions of specific double tax treaty or exemption from respective EU directive is

applicable (under certain conditions). It should be mentioned that since 1 January 2019, there are new rules regarding WHT, which assume that WHT shall be paid anyway and taxpayer can apply for refund (however, need to meet certain requirements).

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

From January 1, 2019, it is possible to apply a discounted tax rate (5% instead of 19%) on profits achieved from specific intellectual property rights.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are regulations for business restructurings and the transfer of intangible can meet such definition (in case of intra-group transfer). Generally, transactions must be set at arm's length. There are also exit tax regulations which may apply in given circumstances.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Since January 1, 2018, the right to deduct fees for intangibles or right to use the

intangibles is limited. It covers solely intra-group transactions. Limit is 5% of tax EBITDA above PLN 3 million. However, such limit covers guarantee fees and certain types of services as well.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

1. Anti-abusive clause (GAAR), which allows the Minister of Finance to undermine the tax benefits resulting from artificially created business structures.
2. WHT rules, please refer to question 10.
3. Limit on tax deductible costs - please refer to question 13.
4. From January 1, 2019, there is the obligation to provide information to tax authorities about the so-called tax schemes, i.e. taxation concepts used by the taxpayer, which may lead to tax benefits. It covers aggressive tax structures, but also ordinary activities leading to obtaining legal benefits.
5. Transfer pricing reporting (TP-R). Taxpayers need to disclose to the tax office TP data such as: functional profile of entity, list of transactions, TP methods applied, benchmarking study results.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most used method is the external CUP using third party agreements obtained from commercial databases (e.g. RoyaltyStat, RoyaltyRange, ktMINE).

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, generally they are if they comply with the local transfer pricing requirements.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

The profit split method is not usually used in the Portuguese TP practice. However, it has been used in a few cases for HTVI that have been jointly developed by two or more entities of a multinational group. On those cases the splitting factor was determined based on costs supported by each IP developer.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Portuguese TP legislation does not foresee any specific valuation method for

determining arm's length remuneration for intangibles. Although it foresees the possibility to select "other method" whenever traditional transaction and transactional profit methods are not applicable/reliable. Based on our practice, the Discounted Cash Flow may be used to value intangibles (e.g., trademarks, patents). Royalty Relief and sales' multiples may also be also used (more frequently as corroborative method/sanity check).

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

There is no specific guidance on the Portuguese TP legislation on that subject, and therefore the Portuguese TP practice generally follows the OECD TP Guidelines.

Even though rules of thumb cannot be used to evidence that a price or an apportionment of income is arm's length, it may still be useful as a secondary methodology to test the outcome of the primary methodology and, therefore, be used as sanity check.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Until now, there is no specific guidance in the Portuguese TP legislation regarding DEMPE rules.

**10. Are source taxes applied on royalties in your country?**

Payments performed or made available to non-resident entities regarding dividends, royalties, interest and/or services acquired

are subject to withholding tax, generally at a 25% rate. Such withholding tax may be reduced or eliminated through the application of a DTT or the Interest and Royalties Directive, depending on the compliance of specific legal formalities. The beneficiaries are required to provide evidence to the entity responsible for the withholding at source, that the legal conditions have been met as laid down in the DTT or Directive, until the deadline in which the withholding tax should be performed.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

A Patent Box regime was enacted in 2014 and provides for a 50% CIT exemption for companies exploiting or disposing of patented inventions and other innovations such as models and industrial designs protected by IP rights (income from know-how is excluded from the scope of the regime). The 50% exemption applies only to qualifying net royalty income, i.e., income derived after deduction of costs incurred in the development of the qualifying IP. Such non-exempted income is subject to the standard CIT rate plus any applicable Municipal and State Surtaxes. The Portuguese regime follows the Modified Nexus Approach recommended by OECD BEPS Action 5 and therefore the regime will apply only to the extent that the taxpayer incurred in eligible research and development ('R&D') expenses connected to that IP. The main requirements to apply the Patent Box are: (i) licensee cannot be resident of a blacklisted jurisdiction; (ii) IP must be effectively used for business activities; (iii) since licensees are related companies, the IP cannot be used to create deductible expenses for the taxpayer; and (iv) financial records which allow the identification of the expenses borne with the R&D activities which are directly attributable to the IP being exploited, as well as the income derived from those IP

assets being exploited. This 50% deduction is limited by the ratio between the eligible expenses and the total expenses incurred in developing or using the IP-protected assets. The regime also foresees a 30% mark-up/Bonus of the eligible expenses incurred with the development of the assets with IP protection, capped at the amount of the total expenses incurred with the development of those assets

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

The cost of acquisition of intangible assets related with industrial intangible property (such as patents, trademarks, licenses, production processes, models or other similar rights) as well as goodwill resulting from business combinations, is accepted as a tax expense on a straight-line method during the first 20 tax years (5% tax amortization per year). The regime does not apply to IP that is acquired from related parties.

In addition, the transactions performed between related parties must be carried out at arm's length.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Royalty payments are deductible for tax purposes as long as the royalty rate is at arm's length.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific local guidance on the documentation of intangibles available; local TP documentation requirements in line with BEPS Action 13; for transactions involving intangibles with an annual value below EUR 50,000 a simplified documentation requirement (i.e. benchmark study) applies.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No; OECD TP Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most common method applied is CUP, using available commercial databases.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, they are generally accepted, but are carefully scrutinized by the tax authorities.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Not used so far, but might be considered as a possibility, depending on the functional analysis and the available data.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance regarding the DEMPE rules; OECD TP Guidelines apply.

**10. Are source taxes applied on royalties in your country?**

Yes, the applicable rate for royalties derived by non-residents is 16%; reduced rates / exemptions may apply under the provisions of the DTT or the EC Directive subject to fulfillment of certain conditions. A higher withholding tax rate of 50% applies in case of royalties paid towards a country with which Romania does not have in place an instrument based on which the exchange of information may be carried out and the payments are made for transactions qualified as "artificial" per the Romanian tax legislation.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Not per se. The tax code provides for specific provisions as follows: (i) additional deduction, for corporate income tax purposes, of eligible R&D expenses or (ii) corporate income tax exemption, for the first 10 years, for taxpayers that carry out R&D activities in an exclusive manner, on

the condition that state-aid related regulations are complied with.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustment apply; exit tax rules may apply in given circumstances

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No. Royalty payments are deductible for tax purposes as long as the royalty rate is at arm's length and the transaction is carried out for business purposes.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

; General anti abuse clause; WHT regime for artificial transactions as described at point 10 above

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No. Russian transfer pricing legislation does not require any specific documentation related to the intangibles. The current transfer pricing rules are based on the OECD TP Guidelines, so the Guidelines may be a useful source of non-binding commentaries. Moreover, in official letters and recommendations Russian Ministry of Finance refers to the OECD TP Guidelines (including the chapters regarding the transfer of intangibles). Russian transfer pricing rules are generally applied and do not have different regulations according to the type of assets.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No specific rules are established.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

CUP is the most applied method.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Databases are usually applied by the taxpayers while using the CUP method, but currently there is no court practice determining the opinion of the tax authorities regarding the appliance of databases. There is a chance that the tax authorities could challenge the use of database studies and particular transactions and critically analyze the agreements chosen as comparable.

**5. Have you applied the profit split method for determining arm's length****remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Profit split is applied in practice. According to the legislation this method could be used only if other methods cannot be applied or the parties possess intangibles, which has an influence on the net margin. Splitting factors which can be used under legislation: amount of the expenses; market value of assets; characteristics of the personnel employed, or other factors based on the functional analysis. Court practice has not been developed on this matter, so there is no possibility to assess the position of the tax authorities yet.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

In 2015, the Ministry of Economic Development introduced special rules regarding the valuation of intangibles. These rules are applied by appraisers basically for statutory accounting purposes or for the valuation of shares in civil court cases. According to the preamble of the law these rules can be used in order to assess the amount of taxes paid. Currently there is no court practice on how these rules could be applied for tax purposes. For purposes not related to tax matters the Discount Cash Flow is the most commonly used method for the valuation of intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

DEMPE rules regarding licensing transactions are not included in the local TP rules. However, competent authorities require using the functional analysis in order to determine the comparability of transactions (for all type of assets). As a result of the functional analysis it is proposed to classify parties to the transactions with accordance to their functions and risks taken. Such classification could help to make conclusions about profit and corresponding functions and conditions. But we cannot exclude that the DEMPE rules could be applied by the tax authorities in the future.

**10. Are source taxes applied on royalties in your country?**

Yes, the general tax rate is 20%. Under the provisions of DTT concluded the tax rate could be reduced (in DTT concluded with Russia, tax rates for royalties vary from 4.5 to 18%) or royalty can be exempt from taxation in the source country at all.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules in place regarding the transfer of

intangibles; general anti-avoidance rules are applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

There are no specific rules regarding the deductibility of royalties. But in order to be deducted from the tax base the royalty fees have to comply with the general requirements for deductible expenditures. They should be economically justified, should have a business purpose (aimed at gaining profit) and should be confirmed with documents. In some court cases tax authorities have challenged the deductibility of royalties if the use of intangibles brings only losses for the company.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

Tax authorities analyze the conditions of the transactions, the profitability and economic reasons of the parties and the beneficial ownership of the parties to the transactions. Tax authorities can analyze concrete intangibles, e.g. whether or not the intangible meets the requirements for know-how. In other cases, the tax authority challenged the costs on acquisition of intangibles and potential royalty deductibility, when the ownership of this intangible (trademark) was transferred to the foreign related party abroad without compensation.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

There are no specific requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most used method to determine arm's length royalty rates is the CUP method.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, they are generally accepted.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

No.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing****transactions? Do local tax authorities already apply these rules?**

There is no specific local guidance that the DEMPE rules have to be applied. The tax authorities have not applied these rules yet.

**10. Are source taxes applied on royalties in your country?**

Yes. The general rate is 20% and for royalties paid to entities from jurisdictions with preferential tax regime the rate is 25%.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments may possibly be applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most used method is the external CUP using third party agreements obtained from commercial databases.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

They are accepted on a case-by-case basis only, internal safe harbor rules tend to prevail (see also point 8).

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No. Rather rare approach.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Discounted cash flow methods are sometimes used for all types of intangibles.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

In practice, rules of thumb are often used as a sanity check. Moreover, the tax

authorities have their own internal thresholds to determine the maximum amount of deduction (see also point 8).

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

For license fees the tax authority has an internal threshold to determine the maximum amount of deductions. Even though not enacted, the concept is the same as the legally set limitation of interest expense (25% of EBITDA) and considered in practice as an informal safe harbor rule also for license expenses.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There are no specific requirements that the DEMPE rules have to be applied. We expect they will be applied by tax authorities in the future.

**10. Are source taxes applied on royalties in your country?**

Yes. The general rate is 19% for contracting states / 35% for non-contracting countries. The rates are automatically reduced in line with the applicable double tax treaty. Moreover, the EU IRD rules may apply.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes: exemption of royalties from the provision of registered patents, utility models/designs and from software. The exemption is applicable if the intangible assets are developed internally by the taxpayer in Slovakia (not purchased) up to 50% of royalty income. Where the acquisition costs include expenses

charged by a related party, a coefficient is to be used to calculate the exempt amount. The exemption can be applied also to the royalty-related sale of products if specific criteria are met and claimed during the tax depreciation period of the relevant intangible assets capitalized.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding intangibles. The general anti-avoidance provision and the provision on transfer pricing adjustments may possibly be applied.

**13. Are there any royalty payment deductibility limitations in your**

**jurisdiction regarding the use of intangibles?**

Royalty payments are deductible for tax purposes as long as they are in line with the arm's length standard. In practice, tax authority also requires that the internal limitation on the maximum amount of deduction as a % of EBITDA is met (see also point 8).

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions so far, individual case by case approach.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

No specific transfer pricing method is prescribed for transactions involving intangibles. Accordingly, general rules about the applicable transfer pricing methods apply. When it comes to the pricing of intercompany transactions dealing with the sale or licensing of intangibles, the tax authorities in general follow the OECD Guidelines. The most used method is the external CUT (Comparable Uncontrolled Transaction) using third party agreements obtained from commercial databases (e.g. RoyaltyStat).

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, generally they are.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

No.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

There is no specific guidance with respect to valuation methods in Slovenia. The general valuation methods, such as discounted cash flow (DCF) method, capitalized cost method and market approach method can be applied to determine the value of an intangible.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

There is no specific national guidance that the DEMPE rules have to be applied. In practice, however, the tax authorities already apply these rules.

**10. Are source taxes applied on royalties in your country?**

Yes. The tax rate is 15%.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

There are no specific anti-avoidance rules regarding the transfer of intangibles. The general anti-avoidance provision and the

provision on transfer pricing adjustments are applied.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No. Royalty payments are deductible for tax purposes as long as the royalty rate is at arm's length.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific one.

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## SOUTH AFRICA

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### **1. Do you have specific local guidance on the documentation related to intangibles?**

South Africa's transfer pricing documentation requirements are in line with the three-tiered approach as suggested by the OECD. In particular, the content of the master file and local country file returns, which need to be submitted by taxpayers subject to certain thresholds, are based on the templates contained in Annexes I and II to chapter V of the OECD Transfer Pricing Guidelines. In addition, the South African Revenue Authorities (SARS) have issued a public notice specifying records, books of accounts or documents which must be kept for transfer pricing purposes, which includes certain specific documentation in respect of intangibles related transactions.

### **2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

### **3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

In most instances, the CUP, TNMM, and profit split methods are applied.

### **4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes. Due to the lack of local comparables, studies on global databases, such as RoyaltyStat, RoyaltySource or ktMine are generally accepted by SARS.

### **5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

We have applied the residual profit method in circumstances where the residual profit is attributed to intangible contributions from both licensor and licensee. The split is determined on the basis of a subjective contribution analysis where the non-routine contributions of the parties are assessed in a matrix and weighted according to their impact on the group's key value drivers.

### **6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes, we have used the royalty relief (DCF) method on occasion.

### **7. Can rules of thumb be used as a sanity check in your jurisdiction?**

In the past the 25% rule was used extensively but its use appears to be declining, in line with the OECD guidance in this regard.

### **8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

### **9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

In our experience, SARS has been applying them widely for a number of years already.

### **10. Are source taxes applied on royalties in your country?**

Withholding tax on royalties applies at 15%, subject to reduced rates applicable through the application of a DTA.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

South Africa has an exchange control regime which strictly regulates the sale, cession or transfer of intangibles by South African residents to non-residents. In particular, the current exchange control policy essentially prohibits the assignment of South African intellectual property to related parties offshore. Assignment to unrelated parties requires the approval of the South African Reserve Bank and must be on market-related arm's length terms. Licensing of South African IP to related or unrelated non-residents requires approval from an authorized bank and is subject to arm's length royalty payment.

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**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Yes. Royalty deductions are limited in the case of "tainted IP". This covers a variety of cases, including that where IP is transferred or licensed offshore and then licensed back into South Africa.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

Monitoring of royalty flows takes place under a reporting system implemented by the South African Reserve Bank. The exchange control regime is probably more significant than any tax measure in deterring base eroding royalty payments.

**1. Do you have specific local guidance on the documentation related to intangibles?**

The Spanish Corporate Income Tax Regulations establishes a set of documentation requirements to be included in the Masterfile of the group to which the taxpayer belongs.

This information mainly relates to the principles or guidelines followed by the group as regards its development and exploitation, the transfer pricing policies governing transactions related to intangibles assets and the parties involved.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No. OECD Guidelines are generally followed.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The CUP method is the most common methodology used in determining arm's length remunerations.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes, we have normally applied the profit split method by selecting the sales of the companies involved as a proxy for allocating benefits. In other occasions, we have used other techniques, such as the

results of applying the "game theory" as an allocation key.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes. It is possible to apply valuation methods such as Discounted Cash Flow. There is no limitation in the application of this method to a particular asset.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

Not in formal terms, but they are used in practice as a corroborative test.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Yes, they apply these rules, even when auditing fiscal years prior to the introduction of the DEMPE analysis in the Guidelines.

**10. Are source taxes applied on royalties in your country?**

Yes, the rate being 24% or 19% (UE / EES with effective exchange of information). Attention must also be paid to the provisions of double taxation treaty signed by Spain with other jurisdictions

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes. It is possible to reduce the positive tax base resulting from the licensing of intangibles (not brands or rights to images) involving research and development

activities up to 60%.

This reduction would also apply when a positive tax base results from the transmission of intangible assets to non-related parties.

This value would be reduced depending on the percentage of accessory R&D work subcontracted externally (independent parties) vs internally (related parties).

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

No. There is not specific anti avoidance rule for intangibles.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No. Royalty payments are deductible for tax purposes as long as the royalty rate is at arm's length.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

Transactions involving intangible assets have to be included in the transfer pricing documentation even though the remuneration agreed does not exceeds the quantitative threshold set by the Corporate Income Tax Law for related party transactions. The Tax Agency's Control Plan over the last years has also included specific references to carefully assess transactions involving royalty payments as potentially base eroding tools.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements. Sweden generally follows the OECD TP Guidelines.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

Sweden follows the OECD TP Guidelines on cross border transactions, e.g. in questions of allocation of profits, transfer pricing methods, recommendations for intangibles etc. Hence, there are no specific local rules.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The chosen method depends on the specific circumstances in each situation, but the most commonly used method is CUP. However, valuation methods, e.g. income approach to determine arm's length royalty rates are commonly applied.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Database studies can be used and may be accepted by the Swedish Tax Agency ("STA"). However, depending on the specific circumstances of the case, the STA may deem such studies not appropriate for the case at hand and therefore assess that another method should be applied.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

The profit split is generally applied as a method of last resort. However, it has been applied in some situations. When applied, the importance of the different steps in the value chain is assessed to determine the profit split factor. Due to the high level of subjectivity this approach may however be challenged by the STA.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes, if deemed appropriate.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

The DEMPE rules are already applied by the STA and DEMPE nowadays forms a starting point for, in general, all analyses of transactions involving intangibles. Furthermore, the STA generally applies the OECD TP Guidelines retroactively.

**10. Are source taxes applied on royalties in your country?**

Yes, source taxes are applied on royalties. It should, however, be highlighted that source taxes on royalties are commonly exempted from taxation in double tax treaties.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

No.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

Swedish domestic legislation has general anti-avoidance-regulation for tax situations.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

No.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

(1) The STA has not taken any specific measures to monitor transfer of intangibles. However, we have noticed an increasing amount of audits relating to transactions comprising intangibles.

(2) Analysis of economic ownership and DEMPE-analysis.

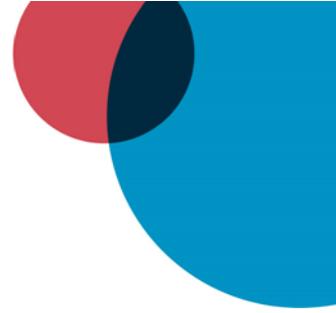
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## SWITZERLAND

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most used method is the external CUT (Comparable Uncontrolled Transaction) using third party agreements obtained from commercial databases (e.g. RoyaltyStat). In seldom cases the implied royalty rate, based on the valuation of the intangible with the MEEM or other valuation methods, is used, however the complexity of the assumptions, makes the results of the analysis more vulnerable.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, generally they are.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

i) Yes, as a consequence of the introduction of the DEMPE analysis we see an increase in the application of the profit split for transactions involving intangibles.

ii) Asset based or Cost based.

iii) It is indeed the right solution for cases in which the value chain is highly integrated and where comparable transactions in a non MNEs context are not available.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

See question 3.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

We expect they will do.

**10. Are source taxes applied on royalties in your country?**

Under Swiss domestic law, no withholding tax is imposed on royalties, management fees, rents, licenses and technical assistance fees and similar payments.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

The Corporate Tax Reform enacted as per January 2020 includes a mandatory patent box regime for all cantons, as a replacement measure after the elimination

of the special taxation regimes (e.g. auxiliary and mixed company, holding company).

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

Swiss domestic legislation does not contain specific guidance on the pricing of controlled transactions involving intangibles. In practice, Swiss tax authorities rely on the OECD Transfer Pricing Guidelines.

**13. Are there any royalty payment deductibility limitations in your**

**jurisdiction regarding the use of intangibles?**

No. Royalty payments are deductible for tax purposes as long as the royalty rate is at arm's length. The Corporate Tax Reform enacted as per January 2020 includes cantonal surplus deductions on R&D expenses.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

No specific actions.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

No specific requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

No.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The most common methods are the CUP method and the profit split method.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, if the CUP method is considered to be the most appropriate method.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes. The profit split factors vary depending on the intangible under review. The following is undertaken into consideration; the value chain analysis, functional analysis (including DEMPE), specific qualitative factors, quantitative data available in respect of associated revenues, costs and assets.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

Yes, the discounted cash flow method is often used. The use of valuation method depends if it is relevant to the intangible under review.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

No.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

Yes.

**10. Are source taxes applied on royalties in your country?**

Yes, withholding taxes on royalties is 20%. However, a reduced rate may be available under the applicable double taxation treaties.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

Yes. The Patent Box enables companies to apply a lower rate of Corporation Tax to profits earned after 1 April 2013 from its patented inventions. The relief is given by allowing a deduction to be made in calculating the trade profits for the period.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

UK resident companies are taxed on the accounting results of their intangible assets, adjusted in related party situations up to the arm's length amount or market value if greater. Very old goodwill will be taxed under capital gains principles, which

can also deem market value. Transfers between UK tax paying group companies may be tax neutral.

Diverted profits tax will also apply to intangible assets transferred out of the UK to reduce UK taxable profits.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

Generally, deductions for royalties are taken in line with the accounting costs (which may also include impairments or other movements in the value of an intangible). However, if the intangible or royalty payments form part of an arrangement designed to secure a tax deduction not otherwise due, the amount is not deductible.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices**

**regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the entitlement to royalty payments abroad?**

The UK has announced in 2017 that it intends to extend the scope of withholding tax ('WHT') on royalty payments to non-residents. Draft legislation was published in the Finance Bill 2018/19. It is intended that UK WHT will apply to certain payments, even where the payer has no taxable presence in the UK. The proposals are aimed at taxing intra-group payments for the exploitation of IP (and other rights) where:

- (i) the recipient is resident in a jurisdiction with whom the UK has no double tax taxation agreement ("DTA"), or a DTA with no non-discrimination article ('NDA'), and;
- (ii) the IP is exploited to make sales in the UK, regardless of which group entity makes the sales to the UK.

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**1. Do you have specific local guidance on the documentation related to intangibles?**

The standard documentation rules apply. The U.S. regulations require certain documents to support the conclusion that the transfer pricing strategy applied provides the most reliable measure of an arm's length result. These documents include an overview of the taxpayer's business, a description of the organizational structure, a description of the selected pricing method and why that method was selected, a description of alternative methods and why they were not used, a description of the transaction, an analysis of the comparable uncontrolled transactions, and an explanation of the economic analysis relied upon in applying the selected transfer pricing method. If a qualified cost sharing arrangement is formed as part of the IP structure, this does carry specific documentation and reporting requirements.

**2. Are there any specific local rules on the ownership of intangibles in your jurisdiction?**

Legal and economic ownership of IP rights can be separately considered. Ownership of the intangible property should be determined based on the economic substance of the underlying transaction, while also considering the legal ownership status. However, legal ownership is not always directly tied to economic ownership, which refers to the entity with the rights to earn the profits related to the exploitation of the specific IP.

**3. Which transfer pricing methods do you generally apply in order to determine arm's length royalty rates?**

The arm's length consideration for the transfer of intangible property must be commensurate with the income attributable to the intangible. The IRS regulations list four methods to price intangibles, including the Comparable Uncontrolled Transaction (CUT) method, the Comparable Profits Method (CPM), the Profit Split Method (PSM), as well as unspecified methods. The best available method for pricing intangibles must be used.

**4. Are database studies for comparable license agreements generally accepted in your jurisdiction?**

Yes, as long as the best method approach is satisfied, database studies are generally accepted.

**5. Have you applied the profit split method for determining arm's length remuneration for intangibles in the past? How did you determine the profit split factor? What was your experience?**

Yes, the profit split method has been used to determine arm's length remuneration for intangible property. The profit split factors were determined by the contributions to the development of the IP.

**6. Do you use valuation methods for determining arm's length remuneration for intangibles? If yes, do you use it for all types of intangibles?**

The IRS requires the best method rule and specifies methods in the transfer pricing regulations. These methods may include methods that are similar, but not identical to, classical valuation methods.

**7. Can rules of thumb be used as a sanity check in your jurisdiction?**

Rules of thumb and industry standards are typically not accepted under the best method rule.

**8. Do you have any safe harbor rules in your jurisdiction regarding the licensing of intangibles?**

No.

**9. What is your experience with the new DEMPE rules regarding licensing transactions? Do local tax authorities already apply these rules?**

The U.S. regulations do not specifically address DEMPE as laid out in the BEPS framework. However, a strong functional analysis will always be a central component when reviewing licensing transactions and will generally include components of DEMPE.

**10. Are source taxes applied on royalties in your country?**

Generally, U.S. source income received by a foreign person is subject to a U.S. withholding tax rate of 30%. A reduced rate or exemption may apply if an Internal Revenue Code Section provides for a lower rate, or there is an applicable tax treaty.

**11. Is there a patent box where you can benefit from? How does this patent box work in general in your country?**

The U.S. does not have a patent box but local tax laws provide for research and development credits for companies who incur these expenses in the U.S. Also, the Foreign Derived Intangible Income ("FDII") deduction provides an incentive for U.S. corporations to serve foreign markets. For purposes of the deduction, a fixed rate of return is assumed on tangible assets and the remaining income is the income deemed to be generated by intangible property. The deduction for fiscal years 2018 through 2025 is 37.5% against taxable income, which equates to a beneficial tax rate of 13.13%. After 2025 the deduction shrinks to 21.87% which is equal to a 16.41% tax rate.

**12. Are there any anti-avoidance rules in place in your jurisdiction regarding the transfer of intangibles? Do these rules apply specifically between related parties, or whether the transactions have been carried out at arm's length?**

The Tax Cuts and Jobs Act ("TCJA") created a new category of income called Global Intangible Low Taxed Income ("GILTI"). GILTI is a mechanism used to tax U.S. shareholders of controlled foreign corporations (CFCs), on their share of CFC income over and above a 10% return on the tax basis of tangible depreciable property.

**13. Are there any royalty payment deductibility limitations in your jurisdiction regarding the use of intangibles?**

In general, there is a deduction allowed for royalty payments made. However, there is no deduction allowed for any royalty paid pursuant to a hybrid transaction or by, or to, a hybrid entity. A hybrid entity is an entity that is treated as fiscally transparent (e.g. a partnership or disregarded entity) for tax purposes in one jurisdiction but not treated as fiscally transparent for tax purposes in another jurisdiction.

Royalty payments may also be subject to the Base Erosion and Anti-Abuse Tax ("BEAT") which is imposed on certain corporations that make base eroding payments, including royalties. In determining the BEAT minimum tax, base eroding payments are added back to the company's taxable income. This new modified taxable income amount is then hit with a 5% rate (10% for taxable years beginning after December 31, 2018) to determine the modified tax liability. If the resulting modified tax liability is higher than the taxpayer's actual tax liability, the difference is the BEAT and must be paid in addition to the regular amount of U.S. income tax.

**14. What actions have the tax authorities taken in your jurisdiction to monitor potential harmful tax practices regarding the transfer of intangibles? What criteria do the tax authorities in your jurisdiction use to determine the**

**entitlement to royalty payments abroad?**

The IRS has imposed certain provisions such as the aforementioned GILTI and BEAT. These provisions are intended to prevent harmful tax practices.

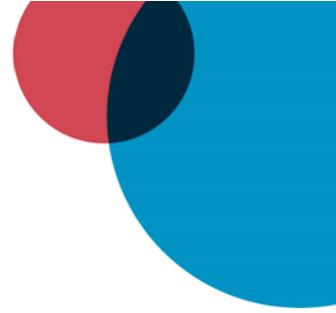
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