

## DEMPE Functions in Practice: The International Approach and Lessons Learned over the Last Years

Karol Dziwiński\*

The article discusses practical experiences with the application of the DEMPE concept over the years since its official introduction in the 2017 OECD Transfer Pricing Guidelines. Starting with placing the concept in the transfer pricing realm, the article then moves on to deal with the most common issues in its practical application, which include also an analysis of the application of the concept in Cost Contribution Arrangements. Finally, the article discusses the real-life application of the DEMPE concept in the countries such as Austria, Belgium, China, Germany, and India.

Keywords: DEMPE, intangibles, transfer pricing, international tax law, licensing, CCA

JEL Classification: K34

\* PhD, WU Vienna University of Economics and Business (Wirtschaftsuniversität Wien) • ✉ karol.adam.dziwinski@wu.ac.at • ORCID: 0000-0003-2911-8232

### Introduction

The concept of DEMPE functions (development, enhancement, maintenance, protection, and exploitation) in relation to the intangibles was undoubtedly one of the most discussed changes introduced by the 2017 OECD TP Guidelines. In the meantime, when the concept was on its way into the daily practice of taxpayers and tax authorities, certain countries decided to implement it directly into their local guidance and even law. The first five years of the official existence of this concept constitute a good opportunity to take a look at how it has been functioning and whether specific issues signaled by various stakeholders upon its introduction turned out to be an actual problem.

In this context, this paper will discuss certain specific issues relating to the practical application of the DEMPE concept and then move on to present how the concept has been implemented and how it is used by various jurisdictions around the world.

### Actual position of the DEMPE concept in the transfer pricing realm

The approach presented in the 2017 OECD TP Guidelines towards the arm's length principle constituted a significant shift versus the status quo which was accepted until the beginning of the BEPS project. The OECD itself admitted that

the arm's length principle was putting too much importance on the contractual terms agreed on by related parties, in particular when it comes to the allocation of functions, assets, and risks. This, in turn, could have potentially led to manipulations and situations in which the actual conduct of the parties did not reflect the contractual terms (OECD, 2015, p. 9). As a response to these issues, the OECD decided to follow a more substantial approach, which resulted in the introduction of a rather vague concept of value creation and a noticeable switch from legal ownership to an idea of ownership which would best be described as 'functional' (avoiding, however, putting any labels on the type of ownership).

In the above context, the concept of DEMPE functions triggered questions regarding its actual character and relation with the arm's length principle. Some of the authors suggested that the concept might indirectly introduce a formulary apportionment and thus try to replace the arm's length principle or that, considering the fact that it focuses on the analysis of the contributions to the value of an intangible, which might lead to an automatic application of the profit split method (Screpante, 2019; Wilkie, 2019). Other criticisms which pertained to the compatibility of the concept with the arm's length principle focused mainly on the often missing comparability of transactions between related parties involving intangibles with those concluded by unrelated enterprises. This relates e.g. to sharing profit between various entities (which would usually not be the case between unrelated entities), often missing sharp delineation of attributed roles in contracts (including control over functions and risks) between unrelated parties as well as the entitlement of all entities performing DEMPE functions to incidental or unanticipated returns from the intangibles (Schoueri, 2015).

As such, the DEMPE concept focuses on the substance of transactions which include intangibles. Nevertheless, its introduction did not contribute to mass business restructurings relying on a re-

location of important business functions (Screpante, 2019). Adapting a new business model to fit a specific outcome of a DEMPE analysis in principle might not correspond with the concept of commercial rationality promoted by the OECD, which is particularly important in view of the guidance provided by the OECD in this regard (2017 OECD TP Guidelines, para. 9.36). Clearly, adopting such a structure would not be really in line with the arm's length principle, considering that non-related entities would rather not participate in any structures which would not be in line with their commercial interests. Undoubtedly, in this context, the DEMPE analysis should be a proof of substance in a transaction involving intangibles which would also be present in the transaction between unrelated entities. This directly confirms that the discussed concept does not rival with the arm's length principle, but is rather another layer of proof that a transaction between related parties abides by the well-known principle. The above is also confirmed by the historical analysis of the development of the OECD TP Guidelines (including the relevant BEPS updates) as well as their interplay with Article 9 of the OECD Model Convention (Dziwiński, 2022).

Considering the above, in practice the DEMPE concept is mainly used as an extension of the functional analysis focusing specifically on the functions, risks, and assets relevant in transactions involving intangibles. In business reality such an analysis should confirm that the group entities performing respective functions are duly remunerated, and if not – that certain changes should be introduced. From a practical point of view, implementing any new structure focusing on intangibles within a multinational group should in advance consider the consequences of the DEMPE analysis. It is important to note that the tax authorities in certain countries have already started using (and even requesting) the DEMPE analysis, for example during tax audits (Colling Russo & Karnath, 2019).

## Common issues in the practical application of the DEMPE concept

Ever since its introduction, the DEMPE concept has been widely discussed by all stakeholders in the area of transfer pricing also due to the missing guidance regarding many of its aspects. The OECD introduced a seemingly important new concept, however, it skipped any specific details regarding its interpretation and application in practice. Thus, the most common issues being dealt with when performing a DEMPE analysis are:

- definition and delineation of each of the DEMPE functions;
- choice of an appropriate model of application of the concept;
- various local interpretations of the concept.<sup>1</sup>

Regarding the first point mentioned above, possibly the most important step is to understand which activities and circumstances are relevant for the correct transfer pricing analysis of a case. Factors such as the size of the enterprise, type of intangible involved and the analysed activity or transaction usually influence how the respective DEMPE functions are interpreted, but also whether they are present at all in the case at hand. Such functional differences between various intangibles were recognised both by the OECD (2017 OECD TP Guidelines, para. 6.56) as well as in the literature (Subramanian, 2017). As mentioned, depending on the facts and circumstances of the case, not all of the DEMPE functions might even be present – for example due to little difference between the enhancement and maintenance functions in many situations – or some of the activities might be difficult to classify or could be classified under multiple categories (Stocker & Schmid, 2018).

In the above context it is also important to notice that due to the characteristics of the respective DEMPE functions, also specific issues to be con-

---

<sup>1</sup> See further in this paper for more details on the interpretation and application of the DEMPE concept by various jurisdictions.

sidered will be different, which might be summarised as follows (Dziwiński, 2022):

- the development function can be differentiated between creation, acquisition, and licensing – potential tax and transfer pricing issues will thus depend on the form of development;
- enhancement works can lead to various results (even to a creation of a new intangible), therefore, an appropriate recognition of the roles of all entities is necessary (e.g. low-risk entities making valuable contributions);
- the maintenance function is in many aspects very similar to enhancement and hence it is essential to keep account of the functions performed and maintain a clear division as to why some activities are considered to fall within this category, while the others are classified as enhancement; in the case of both of these functions it is also important to recognise and appropriately remunerate potential spill-overs of benefits (i.e. when the enhancement or maintenance work of one entity benefits other related entities);
- the protection of intangibles can be carried out in a number of ways (for example using legal solutions or purely internal protection strategies) – this will have to be appropriately reflected in the tax and transfer policy of the concerned multinational enterprise;
- exploitation is most likely the most problematic function from the tax and transfer pricing perspective, raising multiple concerns regarding issues such as intra-MNE exploitation of the intangibles, CFC rules and potential abuse (round-tripping).

As far as the application of the DEMPE concept in practice is concerned, a clear trend among the taxpayers is to use one of the two models which rely on a qualitative or quantitative approach (Dziwiński, 2022). The first one could be perceived as a very detailed functional analysis performed specifically for the analysed transaction involving an intangible. In principle, this model should sim-

ply describe relations of the group entities to that specific intangible which includes relevant functions, assets, and risks and on this basis arrive at a conclusion which group entities should participate in the attribution of the intangible related profits. The second model relies on the quantification of the contributions to the value on an intangible. Thus, it is usually based on the analysis of value drivers and processes relating to the intangible, which are then attributed specific weights. This leads to a numerical result which, in case of the use of the profit split method as the most appropriate method for the analysed transaction, could constitute grounds for the actual attribution of profit.

In the context of the above considerations, it is also important to note that the DEMPE concept will deliver as reliable and objective results as objective those responsible for performing this analysis are. This is to say that the DEMPE concept as such is inherently flawed, as it is rather impossible to achieve an objective result of the analysis, which in a significant part relies on intricacies of the intra-group relations between associated parties. Thus, also very advanced quantifications of the DEMPE functions indicating the respective contributions down to decimals should be taken with a pinch of salt. Having said that, it seems that a quantitative analysis supported by other tools, e.g. RACI analysis (Lagarden & Peng, 2019) or the Stage-Gate Model (Kost & Weidlich, 2020) will produce a more detailed and clear-cut results than a simple qualitative analysis.

### **Application of the DEMPE concept in the Cost Contribution Arrangements**

Cost Contribution Arrangements, in short CCAs, are contractual agreements concluded between business parties in order to share specific contributions as well as the risks which are connected with the development of certain assets or the provision of specific services. They prove to be very popular among multinational groups also in the

cases of a common development of intangibles, for example brands. Considering that often such a development requires a multi-sided cooperation of entities from various states (for example in order to assess the reception of specific brands or marketing campaigns in various markets), CCAs are an effective tool when an intangible is supposed to be exploited by various entities.

In the above context, a question might arise in practice as to the application of the DEMPE analysis in relation to the intangibles being created as part of a CCA and the functions that the participants to a CCA perform. In this context, the following questions could be of relevance:

- What activities of a CCA can directly be classified as the DEMPE of intangibles?
- Which participants perform functions related to the DEMPE of intangibles?
- Are the above-mentioned participants appropriately remunerated for these functions?

These questions are anyway dealt with when agreeing on the terms of a CCA, where the division of functions along with the appropriate allocation of costs and risks is decided in advance. The DEMPE analysis as such can be seen as an additional confirmation that the conditions of a CCA remain in line with the arm's length principle. Should the opposite be true of the analysed CCA, the DEMPE analysis might undoubtedly have an influence on the remuneration within a CCA as well as it could, in possibly more extreme cases, make it necessary to reallocate the rights to the results of works of a CCA.

The example below presents a potential application of the DEMPE analysis in the case of a brand CCA in a multinational group:

A Polish parent entity PL enters into a CCA with its subsidiaries located in various European countries. The main goal of the CCA is the establishment of a brand and the provision of related marketing activities. PL makes strategic decisions related to the brand and to the marketing strategies, and coordinates re-

lated functions. The role of the other participants in the CCA is rather minor and mainly limited to providing feedback on the planned marketing activities from their local perspective. As part of the CCA, the brand was created and all relevant functions are performed in order to maintain the high level of recognition of the company around Europe. These functions are usually outsourced by PL to third-party marketing agencies, some of them are carried out by PL itself. The costs related to the performed functions are shared using a turnover-based allocation key with a 10% mark-up added by PL on the internal costs (such as salaries of its employees), while the other costs (e.g. the remunerations of the third-party marketing agencies) are recharged without any mark-up. This also includes the respective registration costs, although PL is the legal owner of the respective brand in all of the states concerned. Specifically tailored local marketing activities are not part of the CCA, however, the costs incurred and functions performed by the local entities are minor and a majority of the marketing activities is based anyway on the results of the activities of the CCA.

In the above scenario, clearly PL performs all the important functions in relation to the brand being the object of the discussed CCA. Even though certain functions are outsourced to third-party marketing agencies, PL has control over the works of these agencies and assumes all relevant risks and has enough financial capacity to do so. A question should be asked about which DEMPE functions are performed in this CCA and whether the local subsidiaries can be deemed as performing any of them. Considering the fact that the CCA provides an ongoing support in the use of the brand and was initially created to build this brand, it is safe to state that most likely all of the DEMPE functions will be performed. In this context, the role of the local entities seems limited as they perform limited risk functions, which do not significantly contribute to the value of the brand (such as be-

ing a proxy for the local legal registration of the brand belonging to PL). Nevertheless, the role of the subsidiaries should be monitored. It is imaginable that their local exploitation of intangibles in the local marketing strategies might contribute to the value of the discussed intangible. It is also to be considered whether through these activities the discussed brand is not enhanced in any way. Should the DEMPE analysis indicate a more pronounced role of the local subsidiaries, it also ought to be reconsidered in what way these activities should be remunerated. One possibility could be a reduction of the mark-up charged by PL. This, however, should be done in proportion to the increase in value of the analysed brand, which would most likely require an appropriate benchmarking analysis.

## Implementation and application of the DEMPE concept in various jurisdictions

Over the years since its first introduction, the DEMPE has found its way to the legislation of various countries or has been used in practice by the tax authorities and courts. In this part of the paper, the local iterations of the DEMPE concept in countries such as Austria, Belgium, China, Germany, and India will be discussed.

### Austria

In 2021 Austria updated its domestic transfer pricing guidelines and decided to include the provisions relating to the DEMPE concept directly in this local guidance. Interestingly, the traces of a real-life application of the DEMPE concept were found already at the end of 2020 in a court case on the application of licensing structure and the deductibility of the cross-border intra-group license payments by an Austrian furniture retail company (Verwaltungsgerichtshof (AT), 2020).

The analysis performed by the Austrian Supreme Administrative Court in this case closely

mirrored what would be a relevant analysis for the purposes of the DEMPE concept. However, the DEMPE concept as such was not explicitly mentioned (as this would constitute its retroactive application in this particular case), but the Court relied on the well-known concepts of legal and economic ownership, which have been applied in the Austrian practice for a very long time. In general, the legal owner is generally considered to be the owner of the intangible asset. If the actual behaviour deviates from the contractual arrangements, or if there are no written contracts, then the economic ownership is decisive. The economic owner of an intangible, as well as all other group companies involved in the creation of value (in line with the DEMPE concept), is entitled to an arm's length share of the income generated from the intangible assets. If analysed in view of the rules of the DEMPE concept, the conclusion of the case would be anyway similar to the application of the concept of economic ownership, even despite slight changes between both concepts.

The above also explains why the concept as such was explicitly dealt with in the 2021 Austrian Transfer Pricing Guidelines issued on 7 October 2021 (Bundesministerium Finanzen (AT), 2021). In line with this local implementation, the concept is decisive for determining which group companies are entitled to remuneration from the exploitation of an intangible asset. The Guidelines underline yet again that the ownership for transfer pricing purposes alone is not sufficient for the allocation of income in connection with intangible assets.

In many aspects, the Austrian Guidelines simply follow the OECD's approach. Thus, for example, the owner of the intangible asset may outsource individual DEMPE functions to other group companies, because such outsourcing also occurs between unrelated third parties – however, exercising control of the outsourcing is crucial for securing rights to returns from the exploitation of an intangible and might be crucial when it comes to determining the economic owner of the intangibles. In this context it is important to stress that the Austrian approach relies heavily on the concept of the economic ownership (widely discussed

in the aforementioned court case), while the OECD does not really mention it in its Guidelines. The arm's length remuneration for DEMPE functions performed or controlled by group companies will depend on the amount of actual contributions made by these entities. Finally, just as envisaged by the OECD, mere financing of the development of an intangible will only entitle to a risk-adjusted remuneration.

## Belgium

Similarly to Austria, also Belgium implemented the DEMPE concept into its local guidance, which was published already at the beginning of 2020 (Circulaire 2020/C/35, 2020). The Belgian guidance accepts the rules envisaged by the OECD TP Guidelines without significant changes. Thus, the six-step analysis for the transactions involving intangibles was adopted also here and the starting point in any analysis of such transactions is the legal ownership of intangibles, with the next step being the consideration of the functions, risks, and assets related to the DEMPE of intangibles. The Belgian guidance, similarly to the OECD's, underlines the role functions, risks, and assets related to the DEMPE of intangibles with the assumption of risk being of crucial importance in the attribution of the intangible-related profits.

Interestingly, the application of the DEMPE concept in practice was already discussed in the Belgian jurisprudence in the decision issued by the Court of Appeal of Ghent in June 2021 (Markley & Devroye, 2021). The main issue in relation to the application of the DEMPE concept here was its potential retroactive application. Before the case at hand was decided by the Court, it was first subject to an assessment by the local tax authority which applied the principles of the DEMPE concept to all of the years under assessment – also to those before 2017, which was the year of the official publication of the updated OECD TP Guidelines which officially introduced the concept for the first time. As a reaction to this, the Court indicated that it was customary in Belgium to apply the OECD TP Guidelines as a source of interpretation in trans-



fer pricing cases, even though they did not have any binding power in the country. In this context, and relying on the principle of legal certainty, the Court indicated that due to the novelty level of the concept, it could not be applied to cases which occurred before the official publication of the 2017 OECD TP Guidelines. Additionally, a reference was made to the above-described guidance and the explicit indication included therein that the concept can only be applied to transactions concluded on or after 1 January 2018.

## China

China possibly deserves the most attention when it comes to the adoption of the DEMPE concept as it decided not only to implement the concept directly into its local regulations, but also to modify it in order to better reflect the characteristics of the local market. The country was also pretty fast in doing so, as this important step was part of a thorough overhaul of the domestic transfer pricing rules between 2015 and 2017. Public Notice No. 6 was published in November 2017 and, while dealing also with other aspects of tax proceedings and of the Mutual Agreement Procedure, it relied on the DEMPE concept for the purpose of analysing the contributions made by an enterprise and its related parties to the value of intangibles and the corresponding allocation of returns (SAT, 2017). The Chinese tax administration tweaked the DEMPE concept by adding a further function, i.e. promotion which reflects the specificity of the Chinese market.<sup>2</sup> Besides the sociological aspects of why the promotion function is so important in China, the Chinese tax authorities have underlined for a number of years that the associated enterprises located in China also contribute to the value creation of marketing intangibles and thus should be attributed a part of the intangible-related profits (Yuan & Zhao, 2017).

---

<sup>2</sup> The customers in China display specific tastes and preference for well-known and highly-regarded foreign brands. The promotion, thus, is used as a tool to position the products and potentially sell them at a higher price point than of the equivalent Chinese products.

The relevant provisions of the Chinese law refer explicitly to the concept of legal ownership, indicating that such a legal owner of the intangibles should not be allocated with income derived from the intangibles if it does not make any contribution to their value. Enterprises which only provide funding during the development and exploitation of intangibles, but do not undertake relevant functions and assume relevant risks, should only be entitled to a reasonable return on the funding cost. Thus, it can be noted that the Chinese provisions reflect the approach presented by the OECD over the last years. This is also understandable considering that China has often struggled with its image as a developing country and a source of cheap labour force, which often resulted in Chinese entities performing a majority of important, value-driving functions with the legal owner of an intangible being located abroad. This, in turn, led to remunerating the Chinese entity only for the actual works performed, while all the profits connected with the increased value of the intangibles went to the legal owner located in another jurisdiction. Apart from the above scenario, the implementation of the DEMPE concept also helps the Chinese tax authorities identify situations in which licensees of specific intangibles perform valuable functions, but are not properly remunerated for that and, in addition, are obliged to pay a license fee for the use of these intangibles (Dziwiński, 2022).

The discussed changes in the local law gave the Chinese tax authorities specific tools to attribute certain intangible-related profits to the entities located in China or to question a full deduction of the license rate paid by the Chinese entity to the legal owner of an intangible located abroad. In relation to the earlier discussion in this article on the interplay of the DEMPE concept with the arm's length principle, it has to be noted that the Chinese tax authorities did not back off from its application<sup>3</sup> and the DEMPE concept adds just another

---

<sup>3</sup> See Articles 18, 19, 25, 27 or 33 of the SAT Public Notice for examples of the application of the arm's length principle.

layer of intra-group relations in the context of the business exploitation of intangibles.

## Germany

Germany is one of the few European countries to have made the DEMPE concept part of its legal system with the implementation of the International Tax Act in 2021 (Bundesministerium der Finanzen (DE), 2021, June 8) with a further guidance provided also in 2021 (Bundesministerium der Finanzen (DE), 2021, July 14), modified in June 2023.

According to the relevant provisions of the International Tax Act, the transfer or assignment for use of an intangible asset shall be remunerated in cases of business transactions between associated enterprises. The identification of the owner or holder of an intangible asset, including rights derived from such an asset, is the starting point for determining which entity involved in the transaction is entitled to the income resulting from any kind of exploitation of such intangible asset. To the extent that a related party of the owner or holder of the intangible asset performs functions in connection with the development or creation, enhancement, maintenance, protection, or any kind of exploitation of the intangible asset uses assets for this purpose and assumes risks, these functions shall be appropriately remunerated by the owner or holder of the related party. The financing of the development or creation, preservation or protection of an intangible asset shall be appropriately remunerated and shall not give rise to a right to a return on the intangible asset financed.

The German approach towards the application of the DEMPE concept seems very similar to the one presented by the OECD. What stands out when analysing the wording of the relevant German provisions is the differentiation between development and creation of intangibles. This should ensure that all processes in which the outcome is a new intangible should be within the scope of the discussed provisions – be it research and development works or intensive marketing activities. All in all, however, Germany does not attribute the

DEMPE concept any significant role going beyond the additional type of analysis applicable specifically to intangibles. Importantly, the DEMPE analysis does not overrule the arm's length principle in any way and the German provisions underline that no particular transfer pricing method is applicable in this context. Thus, the German approach confirms that the introduction of the discussed concept does not bring upon revolutionary changes, but rather adds an additional layer for the analysis of transactions involving intangibles.

## India

India is an example of a jurisdiction which did not implement the DEMPE concept directly to its law, but where the concept was used by a court in a transfer pricing case. Nevertheless, it is worth noting for the reason that the case law can play an important role in India as a secondary source of law and constitute a precedence. The decision, issued by the Income Tax Appellate Tribunal ('Tribunal') in the L'Oréal India Pvt. Ltd. case, provides an interesting insight into the possible local approach towards the application of the DEMPE concept (Income Tax, 2019).

The case was premised mainly on the fact that according to the Indian tax authorities, a local entity of L'Oréal performed significant functions through which it created important marketing intangibles. The company also incurred significant expenses which contributed to the value of the brand legally owned by the mother company, L'Oréal France. Additionally, the Indian entity was not appropriately remunerated for the above-mentioned functions, but had to pay the agreed license fee (Dhadphale, 2019). In this context, the main claim of the Indian tax authorities was that the activities of the Indian created a separate, market-specific intangible and these activities should have been appropriately remunerated, which did not happen in the case at hand.

The Tribunal performed its own analysis of the case and decided in favour of L'Oréal. Interestingly, one of the main outcomes of the analysis was the determination that no contract existed



between L'Oréal France and L'Oréal India for the performance of marketing activities by the latter – either in a written form or which could be interpreted from the acts of both companies. This, in turn, meant that L'Oréal India performed these functions autonomously without an explicit wish expressed by L'Oréal France. Thus, the Tribunal decided that the expenses incurred by L'Oréal India could not be attributed to the performance of any DEMPE-related functions. In this context, it has to be underlined that the Tribunal focused its reasoning on the analysis of the existing contract and comparing its scope with the domestic legal provisions in light of the DEMPE concept. Nevertheless, the Tribunal did not go as far as to actually define what specific DEMPE functions mean<sup>4</sup> or how to define whether the performance of certain functions entitle to the participation in the intangible-related profits.

The Indian example of the application of the DEMPE concept gives some valuable lessons both for entities pursuing business opportunities there, as well as in general. Firstly, as already discussed, the concept was applied without being directly introduced into the local legal system. This is clearly due to the character of the court decisions in India, however, it should not be surprising also in jurisdictions which accept the OECD TP Guidelines as a source of interpretation of TP concepts. Secondly, the influence of local interpretation of the concept is of crucial meaning. In this context it is important to point to the Chinese approach, which extended the concept by the additional promotion function. It can be argued that if the discussed case was decided in China, the decision

---

<sup>4</sup> However, the text of the decision includes examples of activities which could be considered as falling within the scope of DEMPE functions, e.g. market development, value addition, creation of marketing intangibles.

could have been different and taken in favour of the local subsidiary. Finally, the recurring aspect of the retroactive application of the new concepts introduced by the TP Guidelines is of significant importance here. The L'Oréal case referred to the assessment years 2013–2014, so well before the DEMPE concept saw the light of the day. Therefore, it seems the Indian tax authorities and judiciary treat the concept as a mere clarification of the rules which existed in the OECD TP Guidelines already before the publication of the 2017 edition and apply the concept also for the purposes of the cases pertaining to earlier time periods.

## Conclusion

The DEMPE concept remains a relevant and important element of the transfer pricing analysis of transactions involving intangibles. Over the years since its introduction, it has become more familiar, however, it seems its role is less important than initially assumed by many. Despite this, more and more jurisdictions have officially implemented this concept, either as part of its local law or guidance, making it a useful tool in the hands of taxpayers, but above all – tax authorities which can officially demand an appropriate DEMPE analysis from the taxpayers.

Importantly, the DEMPE concept remained unchanged in the latest edition of the OECD TP Guidelines issued in 2022. This means that for the time being, the OECD is committed to the concept as a tool for the analysis of the intra-group transactions involving intangibles. However, as the concept stands now, it can only be treated as an addition to the already existing functional analysis, but with a detailed focus on intangibles.

## References

- Colling Russo, C. & Karnath, S. (2019). Intercompany Licensing of Intangibles – A Comparative Global Outlook. *International Transfer Pricing Journal*, 6, 384.
- Dhadphale, A. (2019). *Concept of DEMPE and its Debut in Indian TP Litigation*. Taxsutra. Retrieved from: <https://www.taxsutra.com/tp/experts-corner/concept-dempe-and-its-debut-indian-tp-litigation>
- Dziwiński, K. (2022). *The DEMPE Concept and Intangibles. Definition, Practical Approach and Analysis in the Context of Licence Model*, Alphen aan den Rijn. The Netherlands: Kluwer Law International B.V., Chapter 3, 82–85, 161–165, 181–191.
- Kost, O. & Weidlich, F. (2020). Möglichkeiten zur Operationalisierung einer DEMPE-Analyse. *TPI Transfer Pricing International*, 5, 235–338.
- Lagarden, M. & Peng, C. (X.) (2019). DEMPE Functions and the RACI Concept – More Clarity or Confusion Ahead? *International Transfer Pricing Journal*, 26(1).
- Markley, B. & Devroye, R. (2021). “Back to the future?” – *Belgian Court rules that DEMPE concept cannot be applied retroactively*. Wolter Kluwer International Tax Blog. Retrieved from: <https://kluwertaxblog.com/2021/09/13/back-to-the-future-belgian-court-rules-that-dempe-concept-cannot-be-applied-retroactively/>
- Schoueri, L.E. (2015). Arm’s Length: Beyond the Guidelines of the OECD. *Bulletin for International Taxation*, 69(12), 714–716.
- Screpante, M.S. (2019). *Formulaic (or Formulary?) Apportionment Wearing Value Creation Clothes: Is the Wolf Dressed in Sheep’s Clothing?* Kluwer International Tax Blog. Retrieved from: <https://kluwertaxblog.com/2019/09/10/formulaic-or-formulary-apportionment-wearing-value-creation-clothes-is-the-wolf-dressed-in-sheeps-clothing/>.
- Screpante, M.S. (2019). Rethinking the Arm’s Length Principle and Its Impact on the IP Licence Model after OECD/G20 BEPS Actions 8-10: Nothing Changed but the Change? *World Tax Journal*, 11(3).
- Stocker, R. & Schmid, P. (2018). Markenrechte: Entschädigung des rechtlichen Eigentümers vs Ausübung von DEMPE-Funktionen. *TPI Transfer Pricing International*, 4, 218.
- Subramanian, P. (2017). *Ten Questions on the OECD’s DEMPE Concept and Its Role in Valuing Intangibles*. Bloomberg Tax Management Transfer Pricing Report, 26.
- Wilkie, S. (2019). The Way We Were? The Way We Must Be? The ‘Arm’s Length Principle’ Sees Itself (for What It Is) in the ‘Digital Mirror’. *Intertax*, 47(12), 1098.
- Yuan S. & Zhao A. (2017). Bulletin 6: China Completes the Revamping of Its Transfer Pricing Regime, *International Transfer Pricing Journal*, 24(4), 294.
- tion=e100000s1&dokumentId=ace379c9-6082-4d25-b31a-456515264bee
- Bundesministerium der Finanzen (DE) of 8 June 2021. *Gesetz zur Modernisierung der Entlastung von Abzugsteuern und der Bescheinigung der Kapitalertragsteuer (Abzugsteuerentlastungsmodernisierungsgesetz – AbzStEntModG)*. Retrieved from: [https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze\\_Gesetzesvorhaben/Abteilungen/Abteilung\\_IV/19\\_Legislaturperiode/Gesetze\\_Verordnungen/2021-06-08-AbzStEntModG/o-Gesetz.html](https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_IV/19_Legislaturperiode/Gesetze_Verordnungen/2021-06-08-AbzStEntModG/o-Gesetz.html)
- Bundesministerium der Finanzen (DE) of 14 July 2021. *Verwaltungsgrundsätze Verrechnungspreise*. Retrieved from: [https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF\\_Schreiben/Internationales\\_Steuerrecht/Allgemeine\\_Informationen/2021-07-14-verwaltungsgrundsaeetze-verrechnungspreise.pdf?\\_\\_blob=publicationFile&v=6](https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerrecht/Allgemeine_Informationen/2021-07-14-verwaltungsgrundsaeetze-verrechnungspreise.pdf?__blob=publicationFile&v=6)
- Circulaire 2020/C/35 concernant les directives en matière de prix de transfert à l’intention des entreprises multinationales et des administrations fiscales. SPS Finances (25 February 2020). Retrieved from: <https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/25aa2105-24d3-4b13-89dd-2f9ba7db7e63>
- Income Tax Appellate Tribunal of 23 August 2019, *M/S L’Oréal India Pvt. Ltd. Vs. Deputy Commissioner of Income Tax*, Circle 7(1)(2), TS-829-ITAT-2019(Mum)-TP, ITA No. 7194/Mum/2017.
- OECD (2015). *Executive summary, Aligning Transfer Pricing Outcomes with Value Creation. Actions 8-10: 2015 Final Reports*, OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD.
- SAT Public Notice (2017) No. 6 of 22 November 2017. *Public Notice of the State Administration of Taxation on Issuing the “Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure”*. Retrieved from: <http://www.chinatax.gov.cn/download/pdf/20171122.pdf>
- SPS Finances, 25.02.2020. *Circulaire 2020/C/35 concernant les directives en matière de prix de transfert à l’intention des entreprises multinationales et des administrations fiscales*. SPS Finances. Retrieved from: <https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/25aa2105-24d3-4b13-89dd-2f9ba7db7e63>
- Verwaltungsgerichtshof (AT)/Austrian Supreme Administrative Tribunal of 27 February 2020, Ra 2019/15/0162. Retrieved from: [https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=98a9e257-9c50-4ec3-8a96-11f3003a5523&Position=1&Abfrage=Vwgh&Entscheidungsart=Erkenntnis&Sammlungsnummer=&Index=&AenderungenSeit=Undefined&SucheNachRechtssatz=False&SucheNachText=True&GZ=&VonDatum=&BisDatum=&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=EinemMonat&ResultPageSize=50&Suchworte=&Dokumentnummer=JWT\\_2019150162\\_20201127L00](https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=98a9e257-9c50-4ec3-8a96-11f3003a5523&Position=1&Abfrage=Vwgh&Entscheidungsart=Erkenntnis&Sammlungsnummer=&Index=&AenderungenSeit=Undefined&SucheNachRechtssatz=False&SucheNachText=True&GZ=&VonDatum=&BisDatum=&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=EinemMonat&ResultPageSize=50&Suchworte=&Dokumentnummer=JWT_2019150162_20201127L00)
- Bundesministerium Finanzen (AT), VPR 2021. *Verrechnungspreisrichtlinien 2021*. GZ 2021-0.586.616. Retrieved from: <https://findok.bmf.gv.at/findok?execu>

## Legal Acts and Guidance and Court Decisions

Bundesministerium Finanzen (AT), VPR 2021. *Verrechnungspreisrichtlinien 2021*. GZ 2021-0.586.616. Retrieved from: <https://findok.bmf.gv.at/findok?execu>

Received: 26 December 2022  
Revised: 22 January 2023  
Accepted: 15 February 2023  
Published: 31 July 2023



Centre for Analyses and Studies of Taxation  
Centrum Analiz i Studiów Podatkowych

· PUBLISHER ·

CENTRE FOR ANALYSES AND STUDIES OF TAXATION SGH · Al. Niepodległości 162 · Warsaw 02-554 · Poland  
DOMINIK J. GAJEWSKI (General Editor) · GRZEGORZ GOŁĘBIEWSKI · ADAM OLCZYK (Managing Editor)

· CONTACT ·

analysesandstudies@sgh.waw.pl · analysesandstudies.sgh.waw.pl · casp.sgh.waw.pl