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Maastricht International Transfer Pricing Summit

BDK Tax associate Miloš Krstić participated in the [Maastricht International Transfer Pricing Summit](#) held in Brussels, Belgium on 10 October 2013 in organization of the Centre for Taxation of the Maastricht University. The Summit gathered transfer pricing professionals, tax advisors, government officials, academics and representatives of the OECD and the EU Commission. The focus of the Summit was on recent developments in the area of Transfer Pricing (TP), specifically changes in [Section E on Safe Harbors](#) in Chapter IV of the OECD TP Guidelines, Revised Discussion Draft of proposed revisions to Chapter VI of the TP Guidelines concerning [Transfer Pricing treatment of Intangibles \(RDD\)](#) and the [BEPS Action plan](#) of the OECD.

Central discussions were around treatment of intangibles for TP purposes. As explained by **Stefaan De Baets**, TP Advisor at the OECD, the new RDD definition of intangibles¹ for TP purposes will include not only usual intangible assets from the legal and accounting perspective, but also the comparability factors (e.g. synergies, location savings, workforce, goodwill etc.). Furthermore, according to the RDD, legal ownership will only be a starting point for the so called “Six Step Framework Analysis”. As a result of the analysis,² the legal owner may ultimately turn out not be entitled to any profit from a controlled transaction concerning intangibles. Besides Intangibles, OECD is also focusing on TP aspects of cross border financial transactions, TP documentation, and low value added intra-group services.

Prof. Dr. Andreas Oestreicher from the University of Göttingen, Faculty of Economic Sciences, Germany and the Director of the Faculty’s Tax Division, submitted that RDD should establish a precise definition of goodwill or ongoing concern value for TP purposes, which definition should take into account the fact that goodwill is not an intangible, but rather reflects the difference between the market value of (a part of a) business and its constituting assets. Furthermore, he pointed out that the draft should clarify how to account for group synergies and other special characteristics that deserve particular attention in a comparability analysis.

Steeff Huibregtse, the founder, global partner and CEO of Transfer Pricing Associates, expressed concern that the RDD proposal of a new fluid ownership definition (entitlement) with respect to intangible assets (patents, copyrights, know-how etc.) has too many variables which allow for multiple interpretations leading to double or no taxation.

¹ “something which is not a physical asset or a financial asset, capable of being owned or controlled for use in commercial activities, whose use or transfer would be compensated had it occurred in a transaction between independent parties in comparable circumstances” – Revised Discussion Draft, paragraph 40.

² Besides legal ownership, six step framework analysis includes: 2. Identification of parties performing functions, using assets, and assuming risks related to development, enhancement, maintenance and protection of intangibles; 3. Confirmation of consistency between agreements and conduct; 4. Identification of relevant controlled transactions; 5. Determination of the arm’s length price for relevant transactions identified and 6. In exceptional cases recharacterize transactions as necessary to reflect arm’s length conditions. – Revised Discussion Draft, paragraph 30 to 55.

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