

RE-CHARACTERISATION OF CONTROLLED TRANSACTIONS WITH INTANGIBLE ASSETS

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SCOPE OF THE THESIS

This doctoral thesis aims at analysing the treatment of intangible assets within the comparability analysis in a transfer pricing analysis. The search of comparable non-controlled operations between independent parties, due to the arm's-length standard, makes necessary a preliminary clear definition of the real controlled transaction, sometimes being required a recharacterisation of it. Therefore, the current research expect to point out the connections between recharacterisation and anti-abuse rules.

BEFORE BEPS PROJECT

AFTER BEPS PROJECT

D.2 2010 Guidelines.

Recognition of the **actual transaction undertaken**.
 Prevalence of the transaction as actually has been structured by the associated enterprises

Circumstances for recharacterising

Commercially Irrational Behaviour

Substance ~~Form~~

D.2 New Guidelines.

Recognition of the **accurately delineated transaction**.
 Substance over form test *ex ante*.

Circumstance for recharacterising

Commercially Irrational behaviour and impossibility of pricing an arm's-length value by tax Administration

substance over form test

Research Question

Is the recharacterisation (non-recognition) clause an anti-abuse rule *per se*?

KEY OBJECTIVES

1. To delimit the concept of intangibles for the transfer pricing purposes.
2. To analyse the link between the recharacterisation circumstance and the business purpose doctrine.
3. To establish the legal cover for recharacterisation powers

METHODOLOGY

(From-To)

General → Particular

International → Domestic

Pre-BEPS → Post-BEPS

CONCLUSIONS

(So far)

1. The new concept of intangible includes the at arm's-length principle.
2. The substance over form test has been brought forward for the delineation of the actual transaction
3. The recharacterisation clause looks like an anti-abuse rule, but it needs the legal cover from a national rule.