Preface

Intellectual property or, more generally speaking, intangibles, have become increasingly significant for multinational enterprises (MNE) and their global businesses. The relevance of intangibles for MNEs can be confirmed with many statistics. Looking at the value of S&P 500 firms, Ocean Tomo, a merchant bank, showed that intangibles accounted for 84% of the value of S&P 500 firms in 2015 (up from just 17% in 1975). Therefore, it is no surprise that such relevance of intangibles increased the interest of tax authorities on to how treat intangibles for tax purposes, in particular when applying transfer pricing rules.

The increasing relevance of intangibles in transfer pricing can be seen in the development of OECD Transfer Pricing Guidelines (TPG). The OECD 1979 Report dedicated 25 pages to this specific topic in Chapter III titled "Transfers of technology and trademarks". At that time, this was the Report's longest chapter, and it was focusing on problems involving patents, know-how, and trademarks since these were considered "of most concern to tax authorities in connection with the taxation of MNEs". Moreover, the Report, at that time, was mostly focusing on issues related to the quantification of the arm's length compensation deriving from an intra-group use or transfer of intangibles rather than on issues related to what we call today "the accurate delineation of the actual transactions". These principles from 1979 were subsequently included in the first edition of the OECD TPG (in 1995) and in Chapters VI, named "Special Considerations for Intangible Property", and VIII on "Cost Contribution Arrangements".

These chapters did not substantially change in the 2010 revision of the Guidelines. However, the OECD WP6 continued working on these topics and, in 2011, approved a document defining the scope of a project aimed at further investigating the relevant tax issues around intangible properties. Indeed, at those times, aggressive tax planning schemes adopted by some MNEs – in which intangibles, CCAs, and CSAs were common denominators leading to substantial profit shifting around the globe – generated concerns in various OECD as well as non-OECD countries. Nowadays, we can fairly say that those schemes have been amongst the most significant elements leading to the initiation of the G20/OECD BEPS project.

Within this project, the OECD has dedicated one entire action – Action 8 on "Guidance on Transfer Pricing Aspects of Intangibles" – to deal with the intangibles-related topics. The outcome of the work on this action has been a substantial change of the guidance both in Chapters VI and VIII where the focus has been placed more on the process of accurately delineating the actual transaction undertaken. Therefore, going forward, transfer pricing analyses related to intangibles will necessarily and increasingly focus on what is generally referred to as the "substance" of intra-group arrangements related to these assets.

The challenges related to the increasing digitalization of companies' business models will bring questions that are still unanswered: Are data and network synergies intangibles? How do we accurately quantify the value derived from brands, platforms, know-how, and big-data? What is the role of users' participation? How do we deal with questions of synergies and location specific advantages in a context where the so-called "BRICS" countries have an economic background more similar to OECD countries, and the real developing countries and emerging economies still lack knowledge and tools to deal with these issues?

Beside the specific questions coming from the digitalization, all of the issues discussed above will be dealt with in the following chapters of this book, which include topics such as Defining intangibles (Chapter I), Attribution of intangible-related returns (Chapter II), Structuring intangibles (Chapter III), and Valuation of intangibles (Chapter IV).

This book is based on the outcomes of the presentations and discussions held during the WU Transfer Pricing Symposium 'Transfer Pricing and Intangibles: Current Developments, Relevant Issues and Possible Solutions', which took place in October 2018 at the WU Vienna University of Economics and Business. The Symposium was organized by the WU Transfer Pricing Center at the Institute for Austrian and International Tax Law which is conducting research projects analysing various transfer pricing topics and their global impacts, including transfer pricing treatment of intangibles. During the Symposium, four renowned international experts on transfer pricing presented their papers on various issues connected with intangibles and were accompanied by practical case studies and followed by panel discussions all being part of this book, including an introduction chapter.

This book is aimed at academics, practitioners (including the business community and advisory firms), international organizations, and government officials who are tax and transfer pricing experts as well as CEOs and CFOs who are interested in the issues related to the transfer pricing treatment of intangibles. The book provides an in-depth analysis of the above-described topics as well as suggestions for potential future solutions to any issues that are raised.

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