VAASAN AMMATTIKORKEAKOULU
UNIVERSITY OF APPLIED SCIENCES

Shalva Chorgoliani

Application of the OECD Transfer Pricing Methods in the Financial Services Sector

International Business
2022

VAASAN AMMATTIKORKEAKOULU
UNIVERSITY OF APPLIED SCIENCES
International Business

ABSTRACT

Author	Shalva Chorgoliani
Title	Application of the OECD Transfer Pricing Methods in the Financial Services Sector
Year	2022
Language	English
Pages	51
Name of Supervisor	Kodjovi Lotchi

In the modern world, multinational enterprises have a huge impact on today's economy. These companies operate in counties all around the world. However, because these countries have different tax regulations these MNEs use different practices to avoid paying taxes. One of the methods used for tax avoidance is transfer pricing. In order to prevent that the OECD issued the transfer pricing guidelines that establish the main principle and methods of transfer pricing. However, these guidelines are a generic document that fails to address the specific considerations of the financial services sector.

In this paper, the analysis of the relevant literature regarding transfer pricing, especially in the financial services industry, was conducted to identify the specifics of the sector and how they can be addressed and dealt with when applying transfer pricing. It was established that the institutions such as banks or insurance companies operate through permanent establishments which require special consideration and application of the Authorised OECD Approach. Apart from that, regular methods of transfer pricing can be applied when dealing with specific intra-group transactions in the financial industry.

Keywords Transfer pricing, Financial sector, OECD Guidelines

CONTENTS

1 INTRODUCTION 5
1.1 Background 5
1.2 Research gap 6
1.3 Research objectives 6
1.4 Thesis structure 7
2 LITERATURE REVIEW 8
2.1 Review of related research 8
2.2 Overview of Transfer Pricing methods 17
2.2.1 What is Transfer Pricing 17
2.2.2 Arm's length principle 18
2.2.3 Comparability Analysis 19
2.2.4 Best method rule 21
2.2.5 Transfer Pricing Methods 22
2.2.6 Transfer Pricing of Intangibles 35
3 RESEARCH METHODS AND DATA ANALYSIS 40
3.1 Methodology 40
3.2 Data Collection 40
3.3 Data Analysis 40
3.3.1 Specifics of the financial services sector 40
3.3.2 Specifics of the banking sector 42
3.3.3 Specifics of the Insurance sector 44
3.3.4 Intangibles in the Financial Sector 47
3.3.5 Summary of specifics of the financial sector 48
3.3.6 How to deal with Permanent Establishment (PE) 49
3.3.7 Transfer pricing for banks 50
3.3.8 Transfer pricing in the insurance sector 52
3.3.9 Transfer pricing of Technologies 53
4 DISCUSSION AND CONCLUSION 56
4.1 Discussion of Objectives 56
4.2 Limitations 56
4.3 Conclusion 56
5 REFERENCES 58

LIST OF FIGURES AND TABLES

Figure 1 CUP Method 23

Figure 2. Gross Profit Margin 25

Figure 3. Resell Price Method 25

Figure 4. Cost-Plus Method 29

Figure 5. TNMM 32

Figure 6. Functional ownership of an intangible asset 37

Figure 7. Correspondent Banking 44

Figure 8. Breakdown of the assets in the Financial Services sector 47

Table 1. OECD Characterisation of Valuation Methods 38

1 INTRODUCTION

1.1 Background

During recent decades there has been a rise in globalization and, as a result, international trade. International trade, nowadays, is dominated by multinational enterprises (MNEs) – the companies that operate in more than one country. They account for up to a third of global GDP and two-thirds of international trade (OECD, 2018). When it comes to the EU, single market, economic integration, and single currency allow MNEs to easily operate here. According to WTO, approximately 50% of world trade happens between affiliates of multinational companies (World Trade Organisation, 2002).

However, different countries, even within the EU, have different rates of corporate income taxes. In the EU there are countries like Germany or France where corporate taxes can be up to 30%, and there are countries like Hungary with 9% corporate tax, or Malta where even lower tax rates can be achieved. Globally, there are jurisdictions that have a 0% corporate tax rate e.g., UAE or Bermuda (Trading Economics, 2022)

Because of this difference, MNEs have the incentive to move their profits to jurisdictions with the lower tax rate in order to minimize their worldwide tax and maximize profits. One of the tools to do that is Transfer Pricing (TP). The definition of transfer pricing given by Robert Feinschreiber is 'the pricing of inter-company transactions that take place between affiliated businesses.' (Feinschreiber, 2004). On the contrary, countries with high taxes want companies to pay more taxes in their jurisdictions. Tax authorities are setting up transfer pricing regulations and enforcement to make sure that non-independent associates within MNEs set such prices on cross-border transactions that reflect an independent market price. However, determining that price is not always straightforward and easy which rises problems for companies that apply transfer pricing.

The financial sector, specifically, plays a crucial role in the global economy. For some countries e.g., Malta, the financial sector accounts for up to 12% of its GDP

(DFAT, 2019). The financial sector includes banking and capital markets, investment firms, real estate firms, insurance firms, tax and accounting professionals and other companies that provide financial services to people or corporations (Investopedia, 2021). This sector has a lot of MNEs that operate all around the world. In their operations, they have to constantly apply transfer pricing when dealing with tangible and intangible assets as well as services.

Thus, the relevance of the topic is determined by the rise of MNEs in the Financial Services sector and the importance and complexity of transfer pricing that they need to apply.

1.2 Research gap

The research gap that has been identified is the lack of literature that generally address the topic of transfer pricing in the financial sector. There is no recent literature that would combine the description of transfer pricing methods, the specifics of the financial sector and how these methods can be used considering the specifics identified.

1.3 Research objectives

The objective of this research is to study the specifics of transfer pricing of different types of assets, including tangible and intangible assets as well as transfer pricing of services, in the Financial Services sector. To see if general transfer pricing methods established by OECD or the United Nations are applicable in this sector and to identify methods that might be the most suitable for each type of asset transferred in the industry.

The questions to be answered in this thesis are:

- What specific issues have to be addressed when dealing with the transfer pricing of different assets in the financial sector?
- Which methods of transfer pricing established by OECD are applicable for transfer pricing in the financial sector?

1.4 Thesis structure

The structure of the thesis will be the following. First, an overview of current general transfer pricing rules and methods outlined by the OECD and the UN. I will describe the general concept of transfer pricing and give a brief explanation of methods used for the transfer pricing of services, as well as tangible and intangible assets.

Next, I will do an overview of the current global financial sector. I will outline the importance of transfer pricing for this industry and will determine the specifics of that sector and the main issues and considerations that have to be addressed when dealing with transfer pricing.

Afterwards, I will cover the guidelines and regulations for transfer pricing issues in the financial industry. I will take a look at how the guidelines address the specifics and issues that will be identified in the previous part of the work and which of the transfer pricing methods discussed before would be the most appropriate to use in each case.

In the end, I will draw a conclusion about which transfer pricing techniques are most applicable in the financial sector and if there are any differences from the general transfer pricing rules.

2 LITERATURE REVIEW

2.1 Review of related research

The practice of transfer pricing has a long history. Many jurisdictions had Transfer pricing adjustments in their tax systems since the 1930s. The United States has been leading the transfer pricing regulations. In 1968, the IRS issued regulations that provided procedural rules for applying the arm's-length standard, which was already internationally accepted as a norm, and specific pricing methods for testing the arm's-length character of transfer pricing results. These methods were the comparable uncontrolled price (CUP) method, the resale price method, and the cost plus method. The "White Paper" of 1988 issued by the U.S. Treasury Department established detailed, comprehensive transfer pricing guidelines which further became regulation in 1994.

The Organisation for Economic Co-operation and Development (OECD) issued its principal report Transfer Pricing and Multinational Enterprises in 1979 which in 1995 was replaced by the OECD Transfer Pricing Guidelines. After the issue of these guidelines, they were amended several times and the last edition was issued in January 2022. These guidelines are voluntary for the members of the OECD, however, most of the countries have adopted them with little to no changes.

The OECD guidelines establish the main principle of transfer pricing – the arm's length principle (ALP). Moreover, they establish the standards of comparability analysis and the best method rule.

The OECD Guidelines suggest five transfer pricing methods. There are three "traditional" methods – the Comparable Uncontrolled Price method (CUP), the Resale Price method (RPM), and the Cost Plus method (CPM). Moreover, there are two "transactional" methods – the Transactional Net Margin Method (TNMM) and Transactional Profit Split Method (PSM). The guides emphasise that traditional transfer pricing methods are more recommended to use.

The guidelines describe in detail all these methods. First, they give a general description of all methods dividing them into “traditional” and “transactional”. In the description, the guidelines state the main strengths and weaknesses of each method. In addition, they give examples of applications of these methods. Descriptions given in the guidelines allow us to gain a good understanding of each transfer pricing method and the cases when they can be applied.

After giving explanations of transfer pricing methods, the guidelines get onto explaining the comparability analysis. They give a 9-step process guide of how to conduct the comparability analysis as well as establish five factors that affect the price. These factors are also described in detail and the specifics of what exactly to pay attention to in each factor are given.

The guidelines also describe the specifics of transfer pricing for intangible assets and transfer pricing of intra-group services.

For the intangible asset, the guidelines give a definition of what is considered to be an intangible asset. Moreover, they cover the topic of ownership of intangibles. In 2015 the OECD released Aligning Transfer Pricing Outcomes with Value Creation in which they introduced the concept of DEMPE which stands for Development, Enhancement, Maintenance, Protection and Exploitation. The OECD divides legal and economic ownership of an intangible. To determine whether the entity has economic ownership of an intangible asset it should perform these DEMPE functions. Moreover, the factors to consider when determining who is performing what function are also discussed, being control, funding and risk. In addition, the OECD Guidelines give guidance for determining arm’s length conditions in cases involving intangibles.

As for the intra-group services, the OECD Guidelines give an introduction, discuss the main issues and give examples of applying transfer pricing methods to intra-group services. Moreover, they also discuss the issue of low value-adding intra-group services.

OECD also give special attention to the transfer pricing aspect of financial transactions. They discuss the organisation of the treasury within the MNEs. In addition,

they also consider financial guarantees on certain intra-group transactions and captive insurance.

Finally, OECD also dedicates a chapter to describe documentation issues. They state the objectives of transfer pricing documentation requirements as well as describe the compliance issues. And, in conclusion, they give guidance on the implementation of documentation in transfer pricing practice.

As OECD releases new editions of its Guidelines, it is important to keep track of changes they have in new editions. Some Business Advisory and Auditing companies, especially the "Big 4" companies, keep track of the new issues and make comprehensive reports on the updates in the Guidelines. For example, "PWC" issued a report "Changes in the New Edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises & Tax Administrations: are you ready?" in January 2022 describing the main changes in the Guidelines. In summary, they note that the main changes in OECD Guidelines 2022 compared to the previous 2017 version are:

- comments on the application of the transactional profit split method;
- approach to the complicated assessment of intangible assets;
- new section regarding financial transactions.

Moreover, they discuss the importance of these changes to companies.

The UN Practical Manual on Transfer Pricing for Developing Countries provides guidance on the policy of undertaking a transfer pricing analysis. The guidance assists policy in dealing with complex transfer pricing issues, and it assists taxpayers in dealing with tax administrations. The first edition of the guidelines was issued in 2013, the second edition in 2017 and the third in 2021.

The Manual is focused on transfer pricing in a global environment, while it provides guidance on design principles and policy considerations. It also addresses the practical implementation of a transfer pricing regime in developing countries and

shares examples of country practices from developing countries, such as Brazil, China, India, Kenya, Mexico and South Africa.

Just as the OECD sets the arm's length principle as the main principal overarching the whole concept of transfer pricing. In the paper, the UN discusses the legal basis of the ALP and its application. Moreover, the UN also describe the comparability principle in detail, describing steps and factors of comparability analysis.

As for the methods, the UN suggest the same five methods as the OECD: Comparable Uncontrolled Price, Resale Price Method, Cost Plus Method, Transaction Net Margin Method and Profit Split Method. However, in addition, the UN discusses the "Sixth Method" or "Commodity rule". They describe it and discuss its advantages and disadvantages, noting, that it resembles the Comparable Uncontrolled Price method.

The 2021 UN Manual brings a new chapter on financial transactions and additional guidance on group synergies and centralized procurement functions. It also includes revised guidance on profit splits and on how to establish transfer pricing capabilities within tax administrations.

In conclusion, the OECD Guidelines and the UN Guidelines are the main documents that describe and give guidance on the process of transfer pricing applications. They summarise the main principles as well as give a thorough description of acceptable transfer pricing methods. The descriptions of methods include a delineation of the strengths and weaknesses of each method and practical examples that demonstrate the best cases when each method can be applied. These guidelines serve as a base for many tax jurisdictions to create their tax policies and many countries follow them almost without any amendments.

Apart from the main guidelines from the OECD, there is a lot of literature from the researchers that try to summarize and comment on the guidelines, which are written in a very "dry" way.

Robert Feinschreiber in his book "Transfer Pricing Methods: An Applications Guide" (2004) does a good job summarizing and discussing the OECD Guidelines

that were discussed earlier. In his work, he focuses more on a United States perspective of transfer pricing. He also describes the transfer pricing methods from the OECD Guidelines and suggests in which cases each of the transfer pricing methods is most applicable. Moreover, he gives examples that showcase his statements.

At the beginning of his book, he also describes the business facets of transfer pricing. In this chapter, he presents different "strategies" of transfer pricing that different types of companies can apply when dealing with that issue. He argues that depending on the type or size of the company, some do not even have to bother to pay attention to it.

In his work, he also gets into "advanced transfer pricing issues". In this part of the book, he gets into specifics of transfer pricing such as audit structure, data sources that could be used in transfer pricing, advanced pricing agreements and much more.

In conclusion, Feinschreiber gives a good overview of the OECD Guidelines. In his books, he gives more information on some specific aspects of transfer pricing. However, the book was issued in 2004 and since then there have been few adjustments in the Guidelines so a reader has to be careful and make sure that the information provided by the author is up to date.

Another book that summarises transfer pricing guidelines is "Transfer Pricing in One Lesson: A Practical Guide to Apply the Arm's Length Principle in Intercompany Transactions" by Oliver Treidler (2020). The author describes the book as a 'pragmatic survival kit for handling day-to-day challenges facing a transfer pricing professional'.

At the beginning of the book, Treidler gives "one key lesson" of transfer pricing which is "To successfully deal with transfer pricing issues, you will have to understand the arm's length principle and learn how to apply it to your specific situation". Further, the author creates a fictional Multinational Enterprise that will be used as an example for the transfer pricing methods application cases.

After the author proceeds with discussing each transfer pricing method suggested by the OECD Guidelines. He uses the made-up company to illustrate the situation he describes and how TP methods can be applied. Treidler also gets into more complex and specific aspects of transfer pricing such as transfer pricing of management services and financial transactions.

In conclusion, the main message of this book is that transfer pricing is an art and not an exact science - "the art of transfer pricing consists in never losing sight of the reality of a specific business when applying the arm's length principle." The author suggests that to successfully apply transfer pricing the TP professional has to understand the firm's business model and align it with the firm's transfer pricing structure.

Transfer pricing can be applied not only to tangible assets but to intangible assets and services too. The application of transfer pricing methods to intangibles and services requires special considerations. That is why the guidelines have separate chapters to address the issues of transfer pricing of intangible assets and services. Moreover, researchers also try to address these issues in different works summarizing and explaining the guidelines.

Bjorn Heidecke et al. in their book "Intangibles in the world of transfer pricing: Identifying – Valuing – Implementing" (2021) address the issue of the specifics of transfer pricing of intangibles. In the first part of the book, they get into the "world" of intangibles. They define what intangibles are, their importance and how they are used. In the second part of their book they focus on methods of defining an arm's length price for intangible assets. In this part, they describe what a "pool concept" is and advocate for Transactional Profit Split Method as the best method to use when doing transfer pricing for intangible assets. The third part of the book focuses on the problems of the valuation of intangibles. The authors describe several methods that can be used to value an intangible: the market approach, relief from royalty, MEEM, incremental cash flow method, and the cost approach. In the final part of the book they focus on the country's perspective of intangibles from a transfer pricing perspective, giving an overview of legislation of many different countries and regions.

In conclusion, the book gives an excellent overview that addresses the main issues of transfer pricing of intangibles. It also gives a good guide on how to apply transfer pricing in the real world.

The issues of transfer pricing of services have also been addressed in some researchers' works. Constantinos Challounis in his paper "Transfer pricing for services and the policy of fixed length principle." The paper deals with the methods used by companies for intra-group transactions in services. The paper compares the results of transfer pricing services with the transfer pricing of goods to conclude the similarities.

Apart from that, the authors mentioned above also address issues of transfer pricing of services in separate chapters of their books.

Transfer pricing also includes other aspects that need separate attention. For example, transfer pricing is often used as a method to commit tax fraud. This issue is addressed in the work of Barker, Asare and Brickman "Transfer pricing as a vehicle in corporate tax avoidance" (2017). They describe that by using transfer pricing, corporations are able to transfer revenues to foreign affiliates with lower corporate tax rates. They describe and give examples to explain how companies exploit flexibility in the tax code to employ transfer pricing and related tax reduction and avoidance methods.

It has been already mentioned that the arm's length principle and comparability principle are core ideas that the transfer pricing is based on. Thus, these principals also need special consideration.

As for the arm's length principle Richard Collier and Joseph Andrus in their article "Transfer Pricing and the arm's length principle after BEPS" (2019) cover the importance of this principle in modern transfer pricing and battling tax avoidance.

They provide a comprehensive analysis of the principle. In the first chapters, they give a historical overview of the foundation, adoption, and evolution of the ALP

and clearly show how the ALP and TP rules evolved in response to changing economic circumstances. Next, they examine issues encountered in applying the arm's length principle, such as a lack of transactional and database-related comparables, the difficulties with valuing intellectual property using traditional transactional approaches, the treatment of the appropriate returns to financial capital, and risk-taking.

The comparability principle and analysis are well described by Agung Laksana Putra and Halim Widi Saptono in the article "Comparability analysis in transfer pricing: Problem and Guideline in Selecting the most appropriate method" (2021).

The authors claim that in determining the appropriate transfer pricing method, one of the things that must be done first is to identify the availability of comparability in the form of price or profit data. The authors summarise comparability analysis rules described by the OECD. They describe and give comments on the 9-step analysis suggested by the OECD as well as talk about comparability factors. Moreover, the authors analyse the importance of comparability analysis when applying each transfer pricing method. As a result of the analysis, they provide the tables for each transfer pricing method which state what level of comparability is required for each comparability factor.

In conclusion, the main principles of transfer pricing are well described and discussed in the literature. There are comprehensive studies that give overviews of the principle and state their importance of them.

Even though general rules and principles of transfer pricing are the same, some industries require special consideration. Depending on common practices in the industries and special needs, different transfer pricing methods might be more or less applicable in the industry.

The specifics of transfer pricing in manufacturing are covered in the book of Ignat and Ionescu-Feleagă "Transfer Pricing in Manufacturing: An analysis of the OECD Guidelines" (2022). In their book after giving the overview of transfer pricing guidelines, the authors cover how to perform a transfer pricing analysis in the case of manufacturing entities. They consider different types of manufacturing entities:

toll manufacturing, contract manufacturing, and fully-fledged manufacturing entities. In the end, they draw a conclusion on differences among the analysis. They focus on differences regarding the functional analysis, differences regarding the criteria applied in the search strategy, and differences regarding the comparability range. While transfer pricing in the IT sector is also covered by researchers such as Marina Gantile (2020) and Chugan and Agrawal (2018).

Initially, the taxation authorities were focused on transfer pricing by manufacturing industries. However, with MNEs rising in other sectors of the economy, other industries have also got the attention of taxation authorities. The Guidelines provide a rather detailed description of how the arm's length approach should be applied and on the methods that can be used. However, it is a generic document and does not comment on issues that are specific to the financial sector.

For the financial sector, the main document that covers the issue of transfer pricing is the "Report on the attribution of profits to Permanent Establishments" issued by the OECD in 2010. The report is divided into four parts. The first part gives general consideration for permanent establishments (PE). It establishes the Authorised OECD Approach (AOA). Part two discussed special considerations for applying the AOA to permanent establishments of banks. It describes the process of the functional and factual analysis and gives guidelines on how to apply AOA when dealing with PEs in the banking sector. Parts three and four discuss special considerations for applying AOA to permanent establishments of enterprises carrying on global trading of financial instruments and insurances respectively.

Other researchers who cover the topic of transfer pricing in different financial institutions are Istrate Costin (2016), Kumar Chugan (2008) and Ledure & Chatar (2009). In their articles, these authors discussed the issue of transfer pricing in banks or insurance companies. However, they fail to give instructions on which transfer pricing methods are applicable when dealing with these types of institutions.

2.2 Overview of Transfer Pricing methods

2.2.1 What is Transfer Pricing

According to OECD (OECD, 2001), a transfer price is a price which is used to value transactions between affiliated enterprises integrated under the same management at artificially high or low levels in order to affect an unspecified income payment or capital transfer between those enterprises.

The general aim of transfer pricing is to be able to distribute the economic resources within the organisation to maximise the profit of the owners while respecting and ensuring the autonomy of divisions. To maximise profits, companies want to reduce overall tax liability by shifting profits to jurisdictions with lower corporate taxes (Turner Geoff, 2013). Other internal or external objectives of transfer pricing might be facilitating performance evaluation between managers in foreign subsidiaries, avoidance of any conflict with host countries' governments; management of cash flows; and increasing competitiveness in the global markets (Putra & Saptono, 2021).

However, inappropriate use of transfer pricing will result in criminal tax avoidance. The scheme for tax avoidance using transfer pricing is simple. Companies can shift profits to lower-tax jurisdictions by selling goods to related parties located in low-tax jurisdictions at cheaper prices which results in low revenues for the company in high-tax jurisdictions and high profits for subsidiaries in low-tax jurisdictions. On the opposite, a company in high-tax jurisdiction could purchase goods from a related party in low-tax jurisdiction at a higher price and show high expenses and low profits on its income statement, resulting in low taxes (Barker et al., 2017).

To avoid that the general Arm's length principle has been established. In geranial, when applying transfer pricing taxpayers should follow three main standards: arm's length standard, comparability analysis, and the best method rule.

Further, these three standards will be described.

2.2.2 Arm’s length principle

The overlapping concept on which all transfer pricing methods are based is the arm's length principle. Arm's length transactions are made between the independent parties both of which act in their best interest. Thus, the price established in an arm's length transaction is close to the fair market value.

The arm's length principle determines that the related parties within the MNEs must be treated as operating as separate entities rather than inseparable parts of a single business.

This established standard should be followed when determining transfer prices. According to OECD (OECD, 2022) 'where conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly".

This means that the transfer price between two related parties should closely match the market price. Otherwise, if the price is established below or above the arm's length price, the authorities will include the difference in the profit of the enterprise and tax it. This may lead to double taxation when the same income is taxed twice in different countries. Such double taxation may happen when a taxation authority imposes an adjustment of the transfer pricing on behalf of a group’s subsidiary, while the taxation authorities of the related counterpart to the consequent transaction in another country do not accept a corresponding adjustment of this transfer price (Ledure & Chatar, 2009).

However, if the established transfer price turns out not to be at arm's length, that does not necessarily mean that the fraudulent activity has been intended. When independent enterprises engage in any business activity, they are influenced by natural market forces which result in arm's length agreements. On the contrary,

market forces do not affect related parties in the same way as they affect independent parties. That is the reason deviations from arm's length price can arise. Moreover, related parties may face some circumstances that may force them to engage in transactions that independent parties would not undertake.

The main argument for the establishment of the arm's length principle is that it stimulates international trade and investments. This principle creates equality between associated and independent entities regarding taxation, avoiding the creation of tax advantages for either type of entity. Moreover, the arm's length principle has proved itself to be effective and easy to apply in the vast majority of cases (OECD, 2022). The arm's length principle is a sound theory, which sometimes may be complicated to apply, but it produces the appropriate levels of income between members of MNE groups acceptable to tax administration.

There are some alternatives to the arm's length principle, for example, Global formulary apportionment, which I will not describe here. It was noted by the OECD that no legitimate or realistic alternative to the arm's length principle has emerged. The move from the established principle would threaten the international consensus causing the risk of double taxation (OECD, 2022).

2.2.3 Comparability Analysis

In transfer pricing theory there are controlled and uncontrolled transactions. Controlled transactions are transactions between two enterprises that are associated with respect to each other. While uncontrolled transactions are transactions between enterprises that are independent with respect to each other (OECD, 2022).

Since the arm’s length principle requires that controlled transactions should be equivalent to uncontrolled transactions in similar circumstances, transfer pricing analysis is conducted. This analysis focuses on the comparability between two transactions in order to determine the arm’s length price.

According to OECD (OECD, 2022) comparability analysis is a comparison of controlled transactions with uncontrolled transactions. Controlled and uncontrolled transactions are comparable if none of the differences between transactions could materially affect the factor being examined in the methodology, or if reasonably

accurate adjustments can be made to eliminate the material effects of any such differences.'

OECD offers a 9-step process of applying comparability analysis, noting that this process is only a recommendation and is not mandatory. The steps include analysis of the taxpayer's circumstances, determination of available sources of information on external comparables, selection of the most appropriate transfer pricing method, and identification of key characteristics to be met by any uncontrolled transaction.

Searching for comparable is an important part of comparability analysis. Factors that affect the price and determine if the transaction is comparable are the following: 1) functional analysis, 2) contractual term, 3) risk, 4) economic condition, and 5) characteristics of property or service (Putra & Saptono, 2021).

1. Contractual terms – usually transactions and agreements between companies have formal contracts with certain terms. These contracts state the intention of the parties, division of responsibilities, responsibilities, price arrangements, etc. If during the control transaction such a contract has been made it can be used as an initial step in identifying the comparable transaction. The details of the contract that might be relevant are the volume of sales, terms of warranties, the duration for relevant licences, payment terms, etc. However, the written contract alone might not be enough to perform a transfer pricing analysis.
2. Functional analysis reflects the functions each party performs, the responsibilities it undertakes, the assets it employs, and the risks it assumes. To identify economically relevant characteristics attention needs to be paid to consideration of the capabilities of the parties and if similar capabilities are reflected in a comparable transaction. For the assets employed analysis should take into consideration the type of asset being used and the nature of the assets including age, market value, location, etc.

3. When assessing the risk, the main principle is that the party that bears more risk is entitled to more rewards. The risks include market risks, R&D risks, financial risks and other business risks that may arise.
4. Industry analysts must identify relevant market conditions in which comparable transaction takes place. Factors that might be taken into consideration include:

- Geographical location
- Market size
- Competition
- Government regulations
- Economic cycles
- Etc.

5. Specific characteristics of a product or service are important to consider when assessing the comparability of the transaction.

Transfer pricing is not an exact science. In some cases, finding a comparable transaction could be very complicated, but in other cases, it could be easy to identify several different comparable transactions. When more than one comparable transaction is available transfer pricing theory suggests an arm's length range. The arm's length range is 'a range of values from which an arm's length price may be selected, arrived at by applying an appropriate transfer pricing method' (TPGuidelines, 2022).

In their research Putra and Saptono (2021) conclude that comparability analysis is a crucial initial step to carry out transfer pricing analysis. However, different transfer pricing methods require a different level of comparability and level of difficulty of application. For example, the Comparable Uncontrolled Price (CUP) method requires a high level of comparability and is hard to implement, while the Profit Split method and The Transactional Net Margin Method (TNMM) require a low level of comparability and are not difficult to apply.

2.2.4 Best method rule

In this paper, I will further describe transfer pricing methods that exist. However, it is first important to describe the principle of the best method rule.

The best method rule requires a company to use the transfer pricing method that results in the most reliable measure of arm's length price and that is the most appropriate for its scope of business (Challoumis, 2019). The factors that determine the reliability are comparability, which was discussed earlier, completeness of data and reliability of assumptions made (Feinschreiber, 2004).

2.2.5 Transfer Pricing Methods

Transfer pricing methods are different ways for companies to establish arm's length prices in controlled transactions. The OECD Guidelines suggest five different methods and UN guidelines suggest the six's transfer pricing methods.

Further, I will briefly describe all these methods and in which cases each of them is the most applicable.

Comparable Uncontrolled Price (CUP) method

In the cases when it is possible to find a comparable uncontrolled transaction that matches all the requirements, the most preferred by the OECD method of transfer pricing is the Comparable Uncontrolled Price (CUP) method. The CUP method is one of the traditional methods of transfer pricing that are generally preferred by the OECD. CUP is 'a transfer pricing method that compares the price for property or service transferred in a controlled transaction to the price charged for property or service transferred in a comparable uncontrolled transaction in comparable circumstances' (OECD, 2022). This method is preferred since it is the most direct and reliable. At least one out of two conditions must be met so that an uncontrolled transaction is comparable to a controlled transaction:

1. The price could not be materially affected by differences in compared transactions or enterprises undertaking them;
2. It is possible to make reasonable adjustments to eliminate material differences.

This means that if there are no material differences between controlled and uncontrolled transactions, CUP is the best method. If there are minor differences,

reasonable adjustments should be made, and CUP should be applied. In other cases, when there are significant differences in conditions or material product differences the CUP method cannot be used.

The type of goods to which the CUP method applies the best are raw materials, crops, animal products, fungible chemicals and goods (Feinschreiber, 2004). In general, for commodities for which quoted, prices are available, the CUP method for determining arm's length price is the most applicable. The quoted price is the price of the commodity obtained in the commodity exchange market or that is provided by reliable reporting and statistical agencies or by governments. When applying transfer pricing to such commodity references can be made to the quoted price.

Figure 1 illustrates how the CUP method is applied.

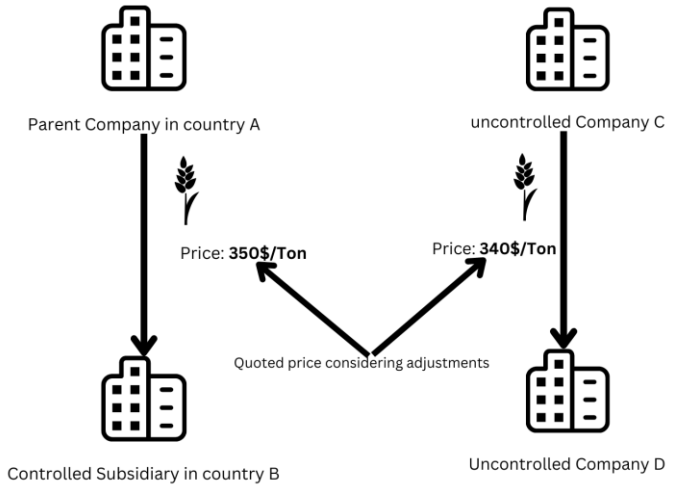

Figure 1 CUP Method

When it comes to using the CUP method for intangible property it might be difficult. The arm's-length transfer for the intangible must be "commensurate with the income attributable to the intangible" (OECD, 2022). For many intangibles, e.g., trademarks, the CUP method is inapplicable because such intangible properties often have unique characteristics and the impact of the trademark on the business is hard to estimate (Boulogne, 2008a). The profit potential of the intangibles is an important factor when applying the CUP method. However, calculating this profit

potential, which has to be compared to uncontrolled transactions, might be complicated. The case when the CUP method could be applied is when "The same owner has transferred or licensed comparable intangible property under comparable circumstances to independent enterprises" (OECD, 2022).

As for the intra-group services transfer pricing the CUP method can also be applied in some cases. The cases when this method is the most applicable are when the associated enterprise provides the same service in comparable circumstances to an independent party or when there is a comparable service provided between independent enterprises in the recipient's market (OECD, 2022).

In general, even though the OECD stated that the CUP method is the most straightforward and reliable, in reality, that is not the case. The Comparable Uncontrolled price is the most difficult method to apply, as the appropriate scope for the application of a Comparable Uncontrolled Price is the most narrowly defined of all methods (Treidler, 2020). When applying this method even minor differences in a comparable transaction can lead to material differences and making adjustments is hard. This method is best applicable in cases when dealing with commodities with the available quoted price.

Resale Price Method (RPM)

Another traditional transfer pricing method recommended by the OECD is the Resale Price Method.

To come to an arm's length resale price, first, the distributor company has to take the price it uses to resell the goods purchased from suppliers to independent customers. Then an appropriate gross profit margin has to be subtracted from this price to determine the transfer price that the distributor would pay to its related supplier. This gross profit margin amount has to cover distributors reselling expenses and allow it to make an appropriate profit considering the assets used and risks assumed.

There are multiple ways to determine the resale price margin. Often, the appropriate gross margin would be a range and not a single result (Valentiam Group, 2021). The first way is to use "internal comparable" which is the margin rate the distributor (reseller) earns when selling items in comparable uncontrolled transactions. Another way is for companies to determine profit margin by obtaining an external comparable – the resale price margin earned by an independent enterprise in comparable uncontrolled transactions. To calculate the gross profit margin a simple formula from Figure 2 can be used.

$$\text{Gross Profit Margin} = \frac{\text{Revenue - Cost of Goods Sold}}{\text{Revenue}} \times 100$$

Investopedia

Figure 2. Gross Profit Margin (Andrew Bloomenthal, 2021)

The Resell Price method is illustrated in Figure 3.

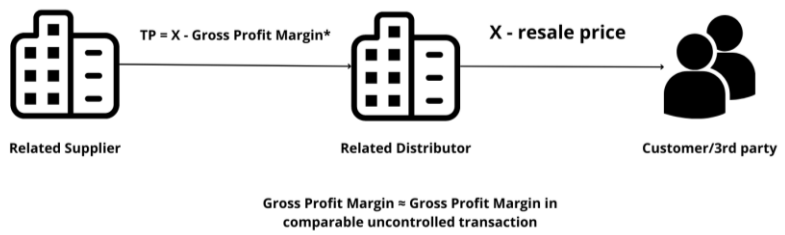

Figure 3. Resell Price Method

When looking for a comparable transaction same rules of comparability described previously apply. Same conditions of having no material differences for comparable products or having the option to adjust the differences also apply. However, the OECD notes that in the Resale Price Method fewer adjustments are usually needed since minor product differences would not affect the general profit margin. When doing a comparability analysis particular attention should be paid to

functional comparability as well as contractual terms and risks are borne. Other comparability factors might not be such important (Feinschreiber, 2004).

As for the transfer pricing of the intangible assets and intra-group services, the Resale Price method cannot be applied. RPM is only used for tangible property transactions (Valentiam Group, 2021).

Unlike the Comparable Uncontrolled Price method which can only be used for commodities with the quoted prices, the Resale Price Method can be applied to much broader types of tangible products. An appropriate price margin is easiest to determine when the reseller does not make any changes to the product before reselling it. On the contrary, if the product goes through the further value-adding chain before being resold, determining the arm's length price would be complicated (OECD, 2022).

Cost Plus Method (CPM)

The last traditional transaction method of transfer pricing is the Cost-Plus Method. This method is also described and recommended by both the OECD and the United Nations.

As described by the UN(United Nations, 2021) 'The Cost-Plus Method begins with the costs incurred by the supplier of property or services in a controlled sale of property or services to a related purchaser. An appropriate cost-plus markup is then added to this cost, to calculate an appropriate gross profit in light of the functions performed, risks assumed, assets used and market conditions.'

The company that produces the transferred product has to calculate the costs it takes to produce it and then, since independent enterprise would normally seek to charge for a product or service in such a way as to generate profit (Kiès & Kunen, 2022), adds the gross profit margin to these costs to achieve an arm's length transfer price. The formula for calculating the gross profit margin was given in Figure 2. The whole formula to calculate the Cost-Plus price is as follows:

Transfer Price = Cost of Goods Sold x (1 + the gross profit margin).

Similar to Resale Price Method, to calculate the arm's length gross profit margin range the company can use either the internal comparable (transactional comparison) - the gross profit mark-up earned by the related party manufacturer when selling goods to an independent enterprise in a comparable uncontrolled transaction, or external comparable (functional comparison) - the gross profit mark-ups earned by independent companies performing functions and incurring risks comparable to the functions performed and risks incurred by the related party manufacturer (United Nations, 2021).

Figure 4 illustrates the application of the Cost-Plus Method.

As for comparability, again, general comparability rules apply. The uncontrolled transaction is considered to be comparable only if it has no differences that can materially affect the gross profit markup or if these differences can be reasonably and accurately adjusted.

Similar to RPM the exact similarity of products is not as important as in the CUP method. All the basic facets of comparability apply but the most important are factors of functions performed as well as risks borne and assets used (Feinschreiber, 2004).

The difficulty when applying the C+ method is in calculating the costs. For example, as was mentioned, it is important to pay attention to assets used in a comparable transaction. If one company leases their assets and the other company owns them, there might be a difference in a size of a markup. Careful consideration should be given to what costs should be excluded from the cost base as well as accounting consistency should be ensured (United Nations, 2021). Generally, both direct and indirect costs are included, but careful consideration should be given to what costs should be excluded from the cost base (Kiès & Kunen, 2022).

The Cost-Plus method works best when transferring tangible property manufactured by the related party that performs limited manufacturing functions. It is supposed to have low risks because the level of the costs will then better reflect the value being added and hence the market price (United Nations, 2021).

This method is not suitable to use for unique intangibles produced by the fully-fledged manufacturer. The main reason is that it would be difficult to locate independent manufacturers with comparable intangibles and, consequently, hard to establish an appropriate markup.

However, the Cost-Plus method can be used when dealing with transfer pricing of intra-group services. The method of application is the same as when dealing with tangible property – the service provider should calculate costs and then add an appropriate markup. Again, it is better if the service provider assumes low risks.

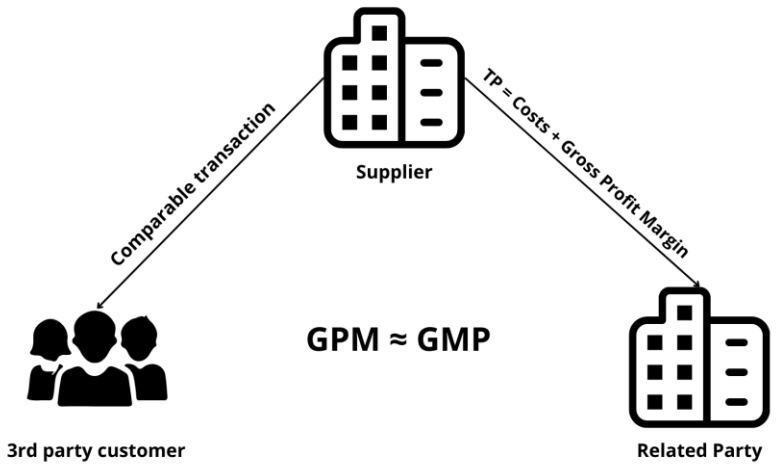

Figure 4. Cost-Plus Method

There are also so-called Low Value-adding services. These are the services that are supportive in nature, i.e., are not part of the core business, do not require the use of unique intangibles and do not involve the assumption of substantial risk. Examples of such services are accounting and audit services, HR services, legal services and etc., while services such as Research & Development, Manufacturing, distribution and etc. would not qualify (Kiès & Kunen, 2022) For such services, a simplified approach can be implemented. The OECD Guidelines (OECD, 2022) prescribe the application of a standard 5% markup on all costs, while the EU (EU JTPF, 2011) suggests that typically agreed markups usually fall within a range of 3-10%.

In conclusion, the Cost-Plus method has a relatively wide range of cases when it can be applied. The main strength of this method is that it is based on internal costs that are easily available to all companies.

Transactional net margin method

Previously I have described three traditional transaction methods: the Comparable Uncontrolled Price method, the Resale Price Method and the Cost-Plus method. These methods are considered to be more direct and are generally preferred and recommended by the guidelines and tax authorities. However, in some cases, particularly when each party makes unique and valuable contributions to the controlled transaction, the “transactional” transfer pricing method might be

more applicable. The first transactional transfer pricing method that I will describe is Transactional Net Margin Method (TNMM).

Genially, the difference between traditional and transactional methods is that transactional methods examine the profits that arise from particular controlled transactions. The analysis is not particularly based on a comparable uncontrolled transaction but focuses on net returns e.g., EBIT, realized by different companies engaged in a particular line of business (United Nations, 2021). The profit that arises from a controlled transaction can indicate whether the transaction was made according to the arm's length principle.

The TNMM operates in a manner similar to the cost-plus and resale price methods (OECD, 2022). The main principle of TNMM does not differ from the traditional methods, but TNMM is easier to apply (Treidler, 2020).

'The TNMM examines the net profit margin relative to an appropriate base (e.g., costs, sales, assets) that a taxpayer realizes from a controlled transaction. The TNMM compares the net profit margin (relative to an appropriate base) that the tested party earns in the controlled transactions to the same net profit margins earned by the tested party in comparable uncontrolled transactions or alternatively by independent comparable companies' (United Nations, 2021).

Attention should be made that while the Resale Price method and the Cost-Plus method use gross profit margin, the TNMM uses net profit margin. The profit-level indicator (PLI) is established. It is defined as net profits relative to an appropriate base that a taxpayer realises from a controlled transaction. These net profit indicators are less affected by transactional differences than a price in, for example, the CUP method (OECD, 2022). Also, it is important to note that when applying TNMM the authorities will look at one of the related parties involved in a transaction. This is the "tested" party and usually, it is the company that performs simpler functions. Also, the least complex party is the one that does not employ any intangible assets, the appropriate return to which cannot be determined directly.

Just like in the RPM and the CPM company may use internal comparables as well as external comparables to determine the arm's length net profit obtained from the transaction. However, it is also possible to use the TNMM as a whole to compare the net income obtained from affiliates with comparable companies (Putra & Saptono, 2021). Since this method of transfer pricing is indirect, meaning that it is not directly linked with the transaction, it is also possible to use the benchmark set of comparable companies to determine the arm's length net profit margin. As was said, it is easier to apply the TNMM method since the data to obtain the external comparable and the needed financial data is easily available. There are even public databases that can be used for that purpose (Treidler, 2020).

The TNMM method works best when dealing with an entity in a complex value chain that performs simple and routine functions. One should not mindlessly apply this method in all cases but pay particular attention to functions performed and risks assumed analysis.

The Transactional Net Margin Method can be used for both tangible and intangible properties as well as for intra-group services transfer pricing. For tangible property, since the TNMM measures the total return on business activities, the comparability of products manufactured and sold is not as important as functions performed or risks assumed (Fabian Alfonso et al., 2020). For this reason, if a comparable firm performs the same functions and assumes similar risks, it might not even be from the same industry (Jay Pil Choi et al., 2020).

Figure 5 illustrates the Transactional Net Margin Method.

Even though the Comparable Uncontrolled Price method is recommended by the OECD method to use for intangible property, as was said in the previous chapters, it is often nearly impossible to find a comparable uncontrolled transaction that would satisfy all factors. For intangible property, TNMM is the most used method of transfer pricing (IRS, 2017). However, the TNMM will not be reliable if both parties involved in the transaction make a unique contribution to an asset transferred (OECD, 2022).

The TNMM might be used in a transaction that involves non-unique intangibles (OECD, 2022). An example of a non-unique intangible could be a non-unique business process or non-unique market knowledge. When applying the TNNM the tested party will be the party that does not own the valuable intangible. It can be a licence, the functions of which are limited. The net margin of the licensee will be tested against the net margin of, say, a routine distributor. In this case, the licensing fee will be set at a price, which allows the tested party to achieve only an arm's length profit; the excess profit will go to the licensor. The method is easy to apply as it avoids the need for directly valuing the intangible (Boulogne, 2008)

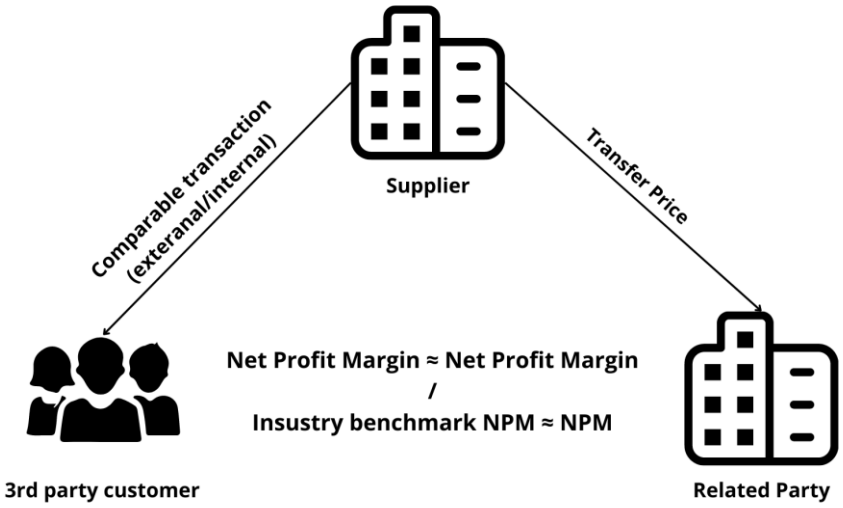

Figure 5. TNMM

Moreover, Transactional Net Margin Method can also be applied to transfer pricing of intra-group services. If a service performed is simple and routine TNMM method is the easiest to apply.

In conclusion, the Transactional Net Margin Method is the most widely used because of its simplicity of application. It can be used for a wide variety of assets and services transferred; however, it is most reliable when one of the entities involved makes simple and non-unique contributions. In a case when both parties make a unique and complex contribution to a transaction, it is better to use the Transactional Profit Split Method that will be described in the next chapter.

Transactional Profit Split Method (PSM)

The last method described and accepted by the OECD Guidelines is the Transactional Profit Split Method (PSM). This method is referred to as a last resort when other methods are inapplicable and some regard it as a "method for brave" (Treidler, 2020). The reason for that is that the PSM could be useful but complex in its application.

The UN Guidelines (2021) state that 'The profit split method starts by identifying the relevant profits, or indeed losses in relation to the controlled transactions. It then seeks to split those profits or losses between the associated enterprises involved on an economically valid basis in order to achieve an arm's length outcome for each party. Typically, the split should reflect the relative value of each enterprise's contribution, including its functions performed, risks assumed, and assets used or contributed'.

From this description, we can note that unlike other transfer pricing methods the PSM does not need a comparable uncontrolled transaction to be applied. That is why in cases when all controlled entities involved make a unique and valuable contribution and the comparable is unavailable, this transfer pricing method is used. The PSM allows to take into account specific and unique facts and circumstances of associated enterprises that may not be present in independent enterprises (OECD, 2022). However, the best method rule should not be forgotten and in cases when information on reliable comparable is available other transfer pricing methods, e.g. TNMM or the CUP, should be used. The OECD states that a lack of comparable uncontrolled transactions which could be used to benchmark an arm's length return should not per se lead to a conclusion that the Transactional Profit Split is the most appropriate method. It says that 'an appropriate method using uncontrolled transactions that are sufficiently comparable, but not identical to the controlled transaction is likely to be more reliable than inappropriate use of the transactional profit split method' (OECD, 2022).

The contribution is unique and valuable if:

1. It is not comparable to contributions made by uncontrolled parties in comparable circumstances;
2. they represent a key source of actual or potential economic benefits in the business operations.

There are different approaches to how PSM can be applied: contribution analysis, residual analysis and comparable profit split.

When using a contribution analysis, the profits are allocated between the associated enterprises engaged in the controlled transactions in a way that aims to reflect a reasonable approximation of the divisions that would have been agreed by independent enterprises in similar circumstances. If it is possible to obtain any relevant and reliable external data from the comparable uncontrolled transaction it should be used to support the allocation. Otherwise, the arm's length principle can be applied by using internal data to determine the relative value of the contributions of each party to the controlled transaction (United Nations, 2021).

The residual approach uses requires several steps:

1. Allocation of an arm's length profit to each enterprise to compensate it for its routine or benchmarkable contributions, by using e.g., TNMM. Other unique contributions are not taken into account.
2. Allocation of residual profit (i.e. remaining relevant profits after Step 1) on an economically valid basis, meaning that it should aim to achieve a reasonable approximation of the divisions that would have been agreed upon by independent enterprises in similar circumstances.

This method is used more often as it allows breaking complex transactions into smaller simpler steps (United Nations, 2021).

This transfer pricing method is also the most appropriate when dealing with unique intangibles. For developed intangibles where it is not possible to identify reliable uncontrolled transactions, PSM might be very handy.

In conclusion, the Transactional Profit Split Method is the method that should be applied when dealing with a unique transaction and the comparable transaction cannot be identified. The problem with this method is that it is complex in its application: it might be difficult to measure the profit to be split, it highly relies on internal MNE data, and determining an appropriate way of splitting profit might also be challenging.

2.2.6 Transfer Pricing of Intangibles

What are intangibles

Intangibles are the type of asset that requires special consideration. The role of intangible assets in today's economy is important and constantly rising. For a lot of MNEs, intangible property is a key value driver. That is why companies invest in intangible assets more than in tangible ones (Bakker & Kale, 2022). Tax authorities pay special attention to these assets because unlike fixed assets, intangibles are very easy to move to other low-tax jurisdictions.

Intangibles are defined as 'Something, not being a physical asset or a financial asset, and which is capable of being owned or controlled for use in commercial activities, whose use or transfer would be compensated had it occur in the transaction between independent parties in comparable circumstances' (United Nations, 2021). It is important that the definition specifies that an intangible asset does not have to be legally owned but the fact that an entity can control it is enough.

Examples of intangibles are patents, trademarks, know-how, goodwill, going concern value and etc.

DEMPE Functions

As was mentioned just legal ownership of an intangible does not give a right to retain earnings by MNEs from exploiting this asset (OECD, 2022). OECD introduced the functional ownership of intangible assets. To determine the functional ownership OECD proposed the DEMPE approach. DEMPE stands for Development, Enhancement, Maintenance, Protection and Exploitation.

There are three criteria for the identification of the functional owner of an intangible asset: Performance and control of functions, Use of assets, and assumption of risks. These relevant criteria are summarised in Figure 6 below. On the scheme, we can see important aspects for each criterion.

Activities within an MNE relating to DEMPE functions of an intangible asset need to be analysed in detail. Attention should be paid to the role of each of these functions in the context of the whole group's value chain and the functional contribution of all companies in a group. Figure 6 also describes functions that are considered to be more important, especially when dealing with self-developed or acquired intangible assets.

Types of assets used in the development, enhancement, maintenance, protection, and exploitation of an intangible asset are also important. According to the OECD Guidelines company that only provides funding does not perform any of the DEMPE functions and, as such, is only entitled to the return based, for example, on the cost of capital. On the contrary, assets that do perform the DEMPE functions are any intangibles used in research, development or marketing, e.g., the know-how, or other physical assets.

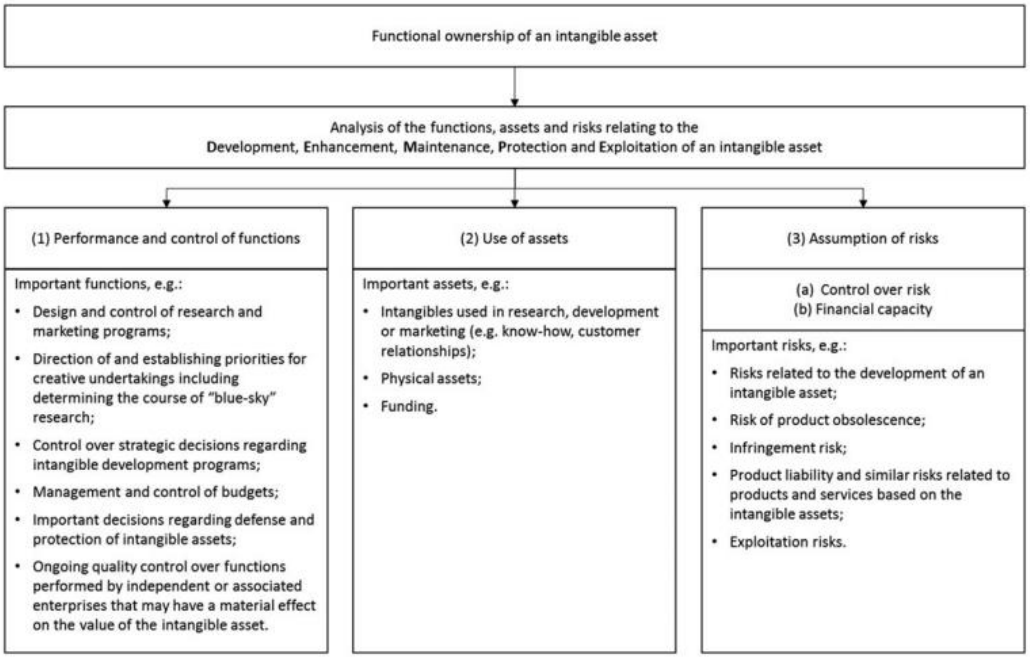

Figure 6. Functional ownership of an intangible asset (Heidecke Bjorn et al., 2021).

Assumption of risks is the third important criterion. The allocation of risk in an MNE depends on two factors (OECD, 2022):

- Control over the risk - the capability to make decisions to take on, lay off, or decline a risk-bearing opportunity;
- financial capacity to assume the risk - access to funding to take on or lay off the risk, to pay for risk mitigation functions and to bear the financial consequences of a risk if one materializes.

Risks that might be of particular importance are also listed in Figure 6 and include e.g., risks related to the development of an intangible asset or exploitation risks such as uncertainties in returns that will be generated.

Valuation of intangibles

When it comes to the valuation of intangible assets OECD keeps an arm's length principle as the main standard of valuation. Previously, I have already described which transfer pricing methods can be applied for determining an arm's length price for intangibles. However, because of the complicated nature of some intangibles, it is not always possible to use standard transfer pricing methods suggested by the OECD to determine the appropriate arm's length value of an asset.

Another standard that can be used is the “fair market value”. However, it is important to keep in mind that even though these standards are similar, they differ. The main difference is that they are applied for different purposes: the fair market value is mainly used for financial reporting while arm’s length price is used for determining the taxable income. Because of the difference, a gap might occur which has to be “closed”.

Table 1. OECD Characterisation of Valuation Methods. Based on “Intangibles in the world of Transfer pricing” (Heidecke Bjorn et al., 2021) and the report of the European Commission (2016).

Approach/method	Possible characterisation from OECD Perspective	Method description	Reasoning
Market	CUP	References the pricing in a certain market. Based on a comparison of the subject asset for valuation with another asset that is comparable	Similar the CUP method, this approach identifys observable transactions on the market.
Relif from royalty	CUP	Based on the principle that the fair value of the intangible asset is equal to the capitalized amount of the royalties that would be payable if the intangible asset was not owned but had to be licensed at arm’s length from a third party.	The deemed royalty is based on the royalty rates observed in the market based on the search under the CUP method
Premium profits	CUP	Based on the value of the brand and the difference between the estimated cash flows that would be earned by a business using the brand with those that would be earned by a business that does not use the brand.	The premium profits stem from comparison of prices for products containing the intangible to prices for generic product
Incremental cash flow method	Mix of TNMM and residual profit split method	Based on the idea of comparing two businesses which differ only in the ownership of a specific asset. The effects from ownership of the asset can be determined by comparing the respective business values (incremental cash flow method)	The full forecast of operating profits or cash flows is then typically adjusted for a routine profit from regular business activity.
Escess earnings method	Mix of TNMM and residual profit split method	The excess earnings method artificially divides a company's earnings into two separate earnings streams: one for tangible assets and one for intangible assets.	Similar to the method above, but instead of deducting a routine profit for other activities, with this method a return on contributory assets is deducted. The returns on these identifiable assets may be subject to a benchmarking study
Replacement cost	Cost Plus	Determines the fair value of an intangible asset by calculating the cost of replacing it with a similar or identical asset.	Similar to the cost-plus methodology which accounts for the underlying costs

OECD urges to impose “caution” when using standards other than arm’s length. “… Valuations of intangibles contained in purchase price allocations performed for accounting purposes are not determinative for transfer pricing purposes and should be utilized in a transfer pricing analysis with caution and careful consideration of the underlying assumptions” (OECD, 2022).

There are different approaches to determining fair market value. Also, there are different methods that are based on these approaches. Three approaches are:

- Market approach - based on the price from current transactions or offers for sale, available on an active market.
- Income approach – an approach that is based on the future cash flows an asset can be expected to generate for its beneficial owner over its remaining useful life with the risks taken into account. Application methods of this approach can be e.g., direct cash flow method, incremental cash flow method, or relief from royalty method.
- Cost approach - Approach that is based on replacement costs as an indicator of value, assuming that an investor would pay no more for a business or asset than the amount for which the business or asset could be replaced.

It is important to establish a link between different valuation methods and an OECD methodology. Table 1 matches the methods and approaches against transfer pricing methods suggested by the OECD.

3 RESEARCH METHODS AND DATA ANALYSIS

3.1 Methodology

The principal research methodology to be used in this paper is qualitative research which aims at getting an in-depth understanding of the research topic. The theoretical basis of the research was international guidelines from the OECD and UN as well as works of professionals in the field of economics, finance, and taxation.

3.2 Data Collection

To collect the information for this work were used online libraries, such as libraries provided by VAMK UAS and Hochschule Heilbronn, and other web search engines like Mendeley or Google Scholar. The key words that I used during my search were "transfer pricing", "transfer pricing in the financial industry", "transfer pricing in banking", "transfer pricing in the insurance sector.

Moreover, consultations with professionals working in the financial services industry were held to identify unique problems of the sector and specific methods of transfer pricing that are being used.

To make sure that the information in the articles used is reliable, the search engines give information on the amount of time the article has been referenced - the higher the number, the more likely that the article is reliable. Moreover, the literature was analysed, and it was made sure that the authors of the articles used the principle of arm's length in their research, otherwise, the article would not be relevant to this work. The years of literature that I used were 2008-2022. However, special attention was paid to more recent research conducted after 2018.

3.3 Data Analysis

3.3.1 Specifics of the financial services sector

The financial sector is the segment of the economy that is composed of businesses that provide financial services to people and corporations. This sector consists of

the following subsectors: banking and capital markets, insurance, investments management, real estate (Heidecke Bjorn et al., 2021) and other business that provide financial services like auditing or business consulting.

The foundation of the financial sector is the banking industry. There are different types of banks: commercial banks, investment banks, retail banks and others. The importance of banks for the global economy is huge since the main economic function of banks is to distribute funds from savers to borrowers in an efficient way (Dr Werner & Partner, 2022). They also facilitate the global economy and international business by providing methods to make cross-border payments. Many big banks are multinational. Examples of such banks are JPMorgan Chase & Co and Industrial and Commercial Bank of China Ltd. that have operate and have branches all over the world.

The insurance subsector consists of companies that offer insurance services. There is a wide range of insurance types that can be offered by these companies: life and health insurance, property insurance, lawsuit insurance and many others. In this sector, there are also multinational companies that operate all over the globe e.g., Berkshire Hathaway International or Munich Reinsurance Company.

The real estate industry is also considered to be part of the financial sector as it involves buying, selling and managing property. Moreover, the companies that operate in this subsector offer services such as mortgage financing or property insurance. Among the biggest international real estate agencies, there are Real Estate Maximum, Century 21 and IQI Global.

Investment services give individuals access to financial markets like stocks and bonds through different types of brokers. Moreover, hedge funds, mutual funds and investment partnerships manage investments and collect fees for them. Private equity funds are also part of this subsector.

Other financial services include different tax, accounting and auditing services, as well as financial and business advisory. In this industry there are a lot of international companies, the biggest one being the well-known “Big Four” – Deloitte, EY, KPMG and PWC.

The importance of this sector for the global economy is hard to overestimate as it drives countries' national economies. If the financial sector of the economy is strong, the population of the country is usually prosperous, but if it fails the economy of the whole country can be dragged down.

3.3.2 Specifics of the banking sector

Globalisation affects all sectors of the economy, and the financial sector is not an exception. Financial globalisation is also expanding to different countries all around the world and financial institutions such as banks are taking the opportunity to also expand to new markets (Moshirian, 2008). Thus, the issue of transfer pricing is also becoming more and more relevant.

The biggest difference between the financial sector, especially the banking sector, and many other industries is that while MNEs in other industries use separate legal entities, companies in the financial sector operate through branches. A branch that is subject to income tax in the country it is active in is called a permanent establishment (PE) (Ledure & Chatar, 2009).

The definition of PE is important. OECD Model Tax Convention (2017) Article 5 defines a permanent establishment as "a fixed place of business through which the business of an enterprise is wholly or partly carried on". It is noted that the term especially includes a place of management, a branch, an office etc.

There are two general tests that a tax treaty uses to define a PE (Hofmeyr Cliffe, 2019):

- whether the corporation has a fixed place of business within the target country;
- whether the corporation operates in the target country through a dependent agent, other than a general agent of dependent status acting in the ordinary business as such, that habitually exercises the authority to conclude contracts on behalf of the corporation in the target country.

There are a lot of different ways how banks make money. The traditional way for banks to make money is to attract deposits in exchange for interest payments and transaction services and then earn profit by lending this money to other customers at higher exchange rates. Apart from that, there are credit card banks or mortgage banks that make most of the profit by collecting fees for their services (Deyoung & Rice, 2004).

Lately, with the rise of technologies and the development of "Fintech" the industry of financial services has gone through a lot of changes. The difference between Fintech and "traditional" financial services is that fintech models significantly use technologies and automated data analyses which until now have been mostly performed by people (Mirchandani et al., 2020).

Banks and other financial services companies offer a wide range of services. Companies can use different technologies to automate at least some parts of these services. However, financial services firms often do not have the facilities and willingness to deploy and develop their own technologies that cover the full scale of services that they provide. Instead, they might be looking for the acquisition of start-up technology companies that develop technologies in one particular area. These start-up companies are usually agile and can cover the specific needs of the firms (Suchdeve Anodri et al., 2021).

It is important to know that in most cases computer software is classified as an intangible asset. Later in this paper, I will also discuss the importance of intangible assets for the financial sector.

For the banking sector, intra-group financial transactions are also common. Such transactions include loans, guarantees, collateral, intercompany cash pooling arrangements and different types of hedging instruments. These transactions might be done for increasing control and risk management, or to fund other subsidiaries within the group e.g., incorporation of the new branch.

Often, overseas branches of banks can also provide other services to their parent companies. For example, some branches can market some services for the benefit

of their parent company abroad. Moreover, there are corresponding banking services when one financial institution carries on activities through permanent establishments in different countries. Correspondent banking includes different services, such as international funds transfers, cash management services, loans and letters of credit or foreign exchange services (BIS, 2016)

Figure 7. Correspondent Banking (AUSTRAC, 2022)

3.3.3 Specifics of the Insurance sector

The model of how insurance companies make money is relatively simple. Companies charge their customers money (premiums) based on the calculation of risk and provide them with insurance coverage. Then they make sure that the premiums that their company receives are more than the claims their client makes. Big insurance companies provide a wide variety of insurance policies. It is possible to insure anything starting with your new laptop and even your life. Moreover, insurance companies can make additional profit by investing in the premiums the clients pay and getting returns.

Like banks, insurance companies also operate not through subsidiaries but through permanent establishments. How does transfer pricing deals with permanent establishments will be discussed further in this paper.

The insurance sector has started to get more attention from taxation authorities. In the insurance sector, there are companies that are owned by other financial groups headquartered abroad. The insurance companies may engage in operations with each other by ceding reinsurance or coinsurance which can influence the profits of each company and thus involve transfer pricing.

According to Dickinson (Dickinson, 2016), there are three types of international transactions in the insurance sector. First are the transactions arising from the provision of insurance on a trade basis. This type of transactions includes providing insurance services to clients located abroad. Apart from that, the transactions between captive insurance companies and their parent companies or subsidiaries located in other countries are also part of the insurance trade. The second type is transactions arising from the provision of insurance services through overseas establishments. As was mentioned, often companies are required to form a branch or a subsidiary in a country where they want to operate. There are different types of the intra-group transaction occurring between the parent company and a branch. They include the provision of administrative and managerial services, reinsurance transfers and capital transactions such as the transfer of financial assets from a parent company to its affiliate to ensure strong solvency margins. And there are also transactions unrelated to the provision of insurance services which will not be covered in this paper because of their unimportance for the topic.

For many international insurance companies reinsurance (or insurance for insurers or stop-loss insurance) is the most important aspect of intra-group transactions. Investopedia (Caroline Banton, 2022) defines reinsurance as "the practice whereby insurers transfer portions of their risk portfolios to other parties by some form of agreement to reduce the likelihood of paying a large obligation resulting from an insurance claim." Involved parties are called the ceding party – the company that diversifies its portfolio, and the reinsurer - the party that accepts a portion of the potential obligation. There are different types of reinsurance: proportional, non-proportional or facultative. The biggest difference is that while proportional reinsurance is based on the sum insured, non-proportional reinsurance uses the size of the claim to calculate the cover (Istrate Costin A., 2016).

Another way for insurance companies to reduce their risk is to opt for co-insurance when risk is shared with one or more parties (Istrate Costin A., 2016). The parties could be either the insurer and the insured, or two or more insurers. For transfer pricing purposes the co-insurance between different insurers is important because the co-insurer might be not only an independent company but a related branch or subsidiary as well.

In cases when the co-insurance is with another insurer, the risk is shared based on the percentages between the insurance companies, e.g. 80% and 20%, meaning that one company is responsible for 80% of the risk and another company for the remaining 20%. It is usual that one of the companies – the lead insurer, is responsible for different aspects of the policy document, including the claims and the premiums (CCR Re, 2021).

Special attention must be paid to captive insurance companies, that are set up by MNEs in countries outside of the home country where the parent company is located, and are also a significant part of the insurance sector that give rise to international transactions by serving the worldwide insurance needs of the group (Dickinson, 2016).

A captive insurance company is an insurance company which is owned by its insureds. A so-called "pure" captive insurance company has only one owner and it ensures only that owner and its affiliates (Mcculloch, 1996) At its core, a captive insurance company acts like any other insurance company – receives premiums from an insured and settles claims in accordance with policy terms and conditions. It is usual that the captive insurance will obtain reinsurance to limit its exposure to catastrophes.

Usually, companies use captive insurance when they cannot find other suitable insurance companies that could cover specific business risks, or to create tax savings by paying premiums to captive insurance companies and deducting it in their home country (Kagan Julia, 2022).

Apart from the above, insurance companies can also use alternative risk transfer techniques (ATR). These "non-traditional" techniques are similar to accessing insurance or reinsurance (Istrate Costin A., 2016).

Just like the banking sector, the insurance sector has also been changing with the rise of technology. Technologies play an important role throughout the whole value chain of the insurance sector. The most usual cases of use of technologies are (Brown Jeremy et al., 2019):

- Mobile applications which can be used to purchase insurance, communicate with the customer service centre or make claims;
- Data analytics for insurance brokers;
- Smart contracts issued by insurance carriers on an algorithmic basis;
- Machine learning to drive automated claims handling and processing systems.

3.3.4 Intangibles in the Financial Sector

In the financial sector, different types of intangible assets play a very important role. What the intangible assets are was discussed in the previous chapter. Figure 8 below shows the share of intangible assets in the industry.

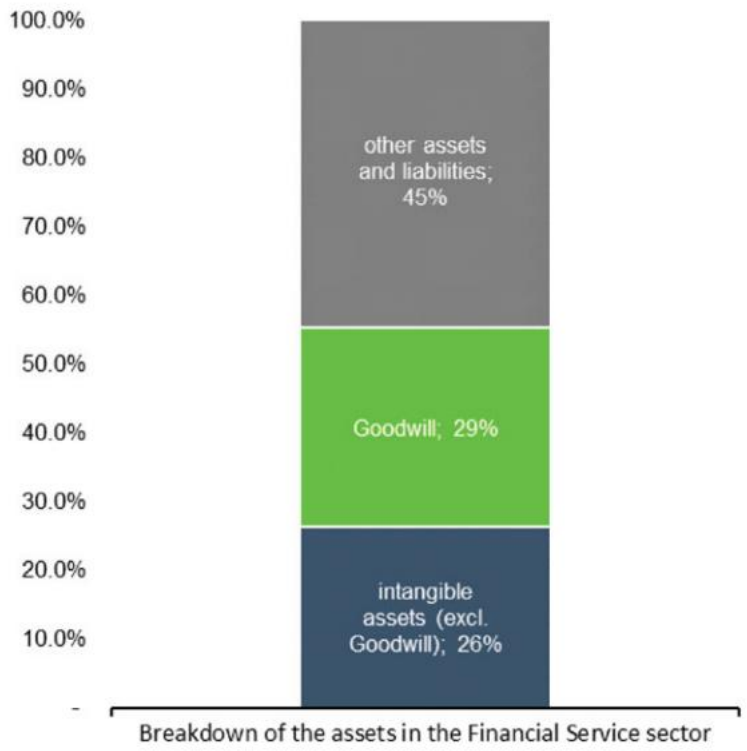

Figure 8. Breakdown of the assets in the Financial Services sector (Heidecke Bjorn et al., 2021).

The most important intangible asset that amounts to 20% of the enterprise value is customer relationships. For companies in the financial industry, success depends on the ability to expand and maintain their customer base. According to Heidecke (2021), customer relationships in this industry last, on average, 10 years, meaning

that for this industry long-term customer relationships are more important intangible assets than marketing-related assets, such as brands.

Previously the importance of technology (fintech) for the financial sector has been discussed. Technologies are also considered to be intangible assets. Because of the rise of technology, the process of switching between financial services providers has become easier for customers. Many financial services companies provide technologies that enable self-service – today it is possible to open a bank account, transfer money or buy insurance using a phone app or a company website. That is why the development of fintech is crucial for companies in this sector to maintain their customer base.

Other technologies that are necessary to develop and use in the modern financial industry are big data and machine learning. These technologies are used for forecasting, which helps companies to make more accurate risk assessments and efficiently manage their product and service portfolio.

3.3.5 Summary of specifics of the financial sector

The financial industry is very important for the modern economy. Institutions operating in this sector enable international trade, international investments and easy movement of capital.

There are different sectors in the financial industry with the banking sector being the core of it. When it comes to the issues of transfer pricing special attention should be paid to the banking and insurance sectors. Other companies in this sector can also provide other financial services but banking and insurance institutions have their specific that require special considerations.

Firstly, it is important to note that, unlike other industries, companies in this sector operate through branches or permanent establishments, and not through subsidiaries. Practically, there is no big difference between these types of entities, but legally there is so this issue has to be addressed.

Secondly, for the banking sector, it is important to consider the issues of intra-group financing and transfer pricing of corresponding banking services. For the insurance sector, the specific considerations include such services like reinsurance, co-insurance and the issue of captive insurance companies.

Moreover, we discussed the importance of different intangible assets in the industry and the type of intangibles used. To sum up, different technologies that are called "fintech" are one of the most important intangible assets used in the industry. Apart from fintech, the biggest value-adding asset in the industry is customer relationships which enables maintaining and expanding the customer base.

In the next chapter, I will describe how to correctly apply transfer pricing to deal with the issues mentioned above.

3.3.6 How to deal with Permanent Establishment (PE)

As was said before, many companies in the financial industry operate through Permanent establishment and not subsidiaries. Legally, the difference is not in fact legally or economically separate from the rest of the enterprise of which it is a part (OECD, 2010).

The main document that gives guidelines on how to deal with permanent establishments is the "Report on the attribution of profits to permanent establishment" issued by the OECD in 2010. In its base is the principle stated in the OECD Model Tax convention on income and capital (2017) in Article 7: "[…]the profits that are attributable in each Contracting State to the permanent establishment […] are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise." Simply, it means that profits attributable to a PE are those that the PE would have derived if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions (Hentschel, 2020).

To make sure that the arm's length principle stated in Article 9 can also be applied to PEs, the Report of attribution profits to PE introduced the "Authorised OECD Approach" (AOA) and the two-step approach of AOA.

The first step is to assume or hypothesise that the PE is a separate and independent enterprise by identifying economically significant activities and responsibilities undertaken by the PE. As for the financial sector, the AOA uses the "key entrepreneurial risk-taking functions" (KERT) for the analysis in the first step. KERT functions are functions "which require active decision-making with regard to the acceptance and/or management (subsequent to the transfer) of individual risks and portfolios of risks" (OECD, 2010). When the KERT functions of activity have been identified, the revenue-generating assets and the risks assumed should be allocated to the KERT locations. There are functions that might and might not be considered KERT functions. For example, KERT functions would be: trading, sales of highly specialised structured products (Ledure & Chatar, 2009) or other types of functions like risk management or marketing, depending on the type of business (Brown Jeremy et al., 2019).

Step two is to price the recognised dealings between the PE and other parts of the enterprise on an arm's length basis. Just as for the regular transfer pricing analysis this includes:

- Identifying comparable uncontrolled transactions;
- And the selection and application of the most appropriate transfer pricing method.

3.3.7 Transfer pricing for banks

For banks just as for other businesses operating through PEs, the key aim is to attribute profits to a PE in accordance with Article 7 of the OECD Model Tax Convention. To do that the AOA two-step approach should be applied.

In step one, the functional and factual analysis should be performed to delineate the PE as a hypothesised separate and independent enterprise. In this step KERT

functions should be determined and the extent to which the PE undertakes those functions.

As for the attribution of assets and risks, they should be attributed according to KERT functions which generally relate to the creation of financial assets, such as loans, and the management of the risks associated with those assets. In step one, it is also important to:

- identify significant people functions relevant to the attribution of economic ownership of other assets and to the assumption of other risks, and the attribution of economic ownership of those assets and risks to the PE;
- The attribution of capital based on the assets and risks attributed to the PE.

Step two involves the pricing of transactions on an arm's length basis and the selection of the best method to do so. To determine whether the profit attributed to that dealing by the bank is at arm's length the guidance in the Guidelines on comparability is applied by analogy in the bank PE context.

Business transactions between an enterprise and its PE are called "dealings".AOA provides that all the methods described in the OECD Guidelines can be applied in the PE context to determine the profit to be attributed in respect of the dealing by reference to comparable uncontrolled transactions (OECD, 2010).

When trying to identify the comparable in the banking sector the important characteristics include the principal involved, the term of the financial asset, the applicable interest (discount) rate, the currency in which the financial asset is denominated, the impact of regulation etc.

Treasury operations are a big part of banking. Because there is a wide range of treasury operations, it is likely that different methods will need to be applied. For basic operations, the CUP method might be suitable. In very complex operations PSM might be the best method.

To determine the interest of the internal dealing different methods could be applied. In general, interest rates in loan contracts must be based on the rates that

would be charged in similar circumstances in loan arrangements between independent, unrelated parties (VERO, 2022). If it is possible the CUP method should be used - comparing intra-group loans with similar loan arrangements between independent parties.

If the comparable uncontrolled transaction cannot be identified OECD suggests the Cost of Funds method. The cost of funds will reflect the borrowing costs incurred by the lender in raising the funds to lend. Then expenses, a risk premium and a profit margin would be added.

3.3.8 Transfer pricing in the insurance sector

Just like for the banking sector AOA's two-step approach should be used when dealing with PEs in the insurance sector.

In step one the branch (or the PE) needs to be assumed to be a separate legal entity. This, again, should be based on the KERT functions performed. In the case of insurance companies, underwriting – the process of determining the risk to issue insurance, is the most important KERT function. So, the profits should be allocated accordingly to the PEs where KERT functions are performed.

As for the internal dealings, in the previous chapter, we identified the specifics of reinsurance and co-insurance. To determine that the transaction is arm's length different TP methods can be applied. Inter-company transactions should be charged exactly on the same basis as external reinsurance.

As usual, the CUP method is the recommended one. However, if the comparable uncontrolled transaction is unavailable TNMM is the second most recommended (Cazacu, 2014). TNMM in a reinsurance context requires an actuarial analysis - statistical models to manage financial uncertainty by making educated predictions about future events, which is used to design optimal insurance policies. TNMM assumes that a cedant will not enter a contract unless it can earn its target net rate of return. If the actual commission is greater than or equal to the theoretical commission then we consider the pricing to be an "arm's length" transaction.

The same goes for captive insurance. To achieve an arm's length price of premiums the CUP or TNMM methods are recommended by the OECD.

The comparable uncontrolled price might be available from internal or external comparables. However, it is noted that there might be difficulties because of the possible differences e.g., in the function performed by the captive and uncontrolled commercial insurance company.

Alternatively, the actuarial analysis may be an appropriate method to determine the premium. In setting prices for an insurance premium, an insurer will seek to cover its expected losses on claims, its costs associated with writing and administering policies and dealing with claims, plus a profit to provide a return on capital.

3.3.9 Transfer pricing of Technologies

As was described in the previous chapter, modern technologies are rapidly changing the business of financial services. So-called fintech is the state of the art of the industry. However, when it comes to transfer pricing the question arises: "Should there be a transfer pricing charge for the use of technologies or software developed elsewhere in the group?

To answer this question, we need to go back to the previous chapter and look at the definition of an intangible asset: "Something, not being a physical asset or a financial asset, and which is capable of being owned or controlled for use in commercial activities, whose use or transfer would be compensated had it occur in the transaction between independent parties in comparable circumstances" (OECD, 2022).

The part that we should pay attention to is "whose use would be compensated had it occur in the transaction between independent parties in comparable circumstances". In the case when a company has a "copyright" for software or technology, which prevents others from using it, then there should be a license fee. However, the amount of the fee, or whether there should be a fee at all, is determined by the economic benefit of using this intangible.

Technology intangibles can be divided into two categories: technologies that are like “infrastructure” and technologies that are the centre of the business. “Infrastructure technologies are the ones that only support the existing operations, e.g., back-office systems. The second category is when the technology directly contributes to value-adding (Suchdeve Anodri et al., 2021).

In some cases, it is easy to see the value added from the intangible e.g., it directly leads to increased sales, improved prices or reduced costs, but in other cases, this could be more complicated and requires quantitative methods to do so (Brown Jeremy et al., 2019).

It is also important not to forget about the DEMPE functions. The entity that performs the development, enhancement, maintenance, protection and exploitation functions is also entitled to a profit, not only the legal owner.

If it is decided that there should be a fee for using the technology question arises of how to determine the arm’s length fee. In previous chapters, I have described methods that can be used to determine the value of an intangible.

In the case when the affiliate took part in the development of an intangible, a Cost Contribution Arrangement (CCA) might be applied. According to the OECD (2022), CCA is “[…] a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create benefits for the individual businesses of each of the participants.” Contribution to the development of intangible assets gives weight to the concept of shared economic ownership, arguably reducing the need for royalties or license fees between group entities (Brown Jeremy et al., 2019).

In the case of a non-core contribution, the Cost-Plus Method might be appropriate where the fee is based on the cost-plus basis with a modest markup. Previously I discussed the low value-adding services and that the markup, in that case, is recommended to be up to 10%.

Another method that was discussed is Comparable uncontrolled price. If the company that owns the intangible licenses the software to a third party, this can be used as a comparable. In other cases, the technology used might not have comparable and other methods of transfer pricing should be used.

And finally, the Profit Split method might be used when technology is creating a clear value and is deserving of remuneration beyond a routine cost-plus return. This method gives the possibility of delineating contributions across the control of the intangible assets, the usage of the assets, and services performed in developing the assets (Brown Jeremy et al., 2019).

4 DISCUSSION AND CONCLUSION

4.1 Discussion of Objectives

Two main objectives of this work were: to identify specifics of Financial services industry when dealing with transfer pricing and to see which transfer pricing methods best fit to deal with these specific issues.

Both of these research objectives were met. During the work I have identified the specific issues of transfer pricing for the banking and for the insurance sectors, which are the main sectors in the industry. It was also stated which transfer pricing methods are the most applicable to deal with these specific issues.

4.2 Limitations

The limitation that was faced during the work is the lack of literature that answers the question whether or not each specific transfer pricing method is applicable when dealing with issues of transfer pricing in the financial industry. In my work it was described which transfer pricing methods fit the best to each specific issues, however, other transfer pricing methods might still be applicable in a case-to-case situations.

Moreover, in the work the issue of transfer pricing in the sector of companies carrying on global trading of financial instruments has not been addressed. These companies do not deal with transfer pricing as much as banks or insurance companies, and for that reason no special attention was paid to them in this work.

4.3 Conclusion

During the research it was identified that the main difference between the international companies operating in this industry and other companies is that they mainly operate not through subsidiaries but through branches, or as they are called permanent establishments. The main difference with the PEs is that they are not separate legal entities.

To address this issue, a special report was issued by the OECD in which the Authorised OECD approach has been suggested which guides its users to treat PEs like separate legal entities, thus other principles and methods established by the OECD Transfer Pricing Guidelines could be applied.

After applying the Authorised OECD Approach specific inter-company dealing could be analysed with the usual transfer pricing methods described in the Guidelines.

For the banking sector the usual intra-group dealings are intra-group financing and intra group loans. For the insurance sector, apart from intra group financing other intra-group dealing are reinsurance and captive insurances. Apart from that, the issue of fintech is rising in the industry. Companies have to deal with the need to develop and transfer such intangibles as technologies and software.

All five transfer pricing methods could be used in the financial services industry, depending on the type of transaction. OECD still recommends to use the Comparable Uncontrolled Price as the main method, however, it is often not possible. Practice shows, that more common methods that are used in the industry are Transactional Net Margin Method or the Profit Split method as they can be applied in the wider range of situations.

5 REFERENCES

Andrew Bloomenthal. (2021, March 19). *Gross Profit Margin (GP): Formula for How to Calculate and What GP Tells You*. https://www.investopedia.com/terms/g/gross_profit_margin.asp

AUSTRAC. (2022, June 30). *Correspondent banking relationships | AUSTRAC*. Australian Government. https://www.austrac.gov.au/correspondent-banking-relationships

Bakker, A., & Kale, S. (2022, February 15). *IBFD Webinar: Current Issues in Transfer Pricing*.

Barker, J., Asare, K., & Brickman, S. (2017). Transfer pricing as a vehicle in corporate tax avoidance. *Journal of Applied Business Research*, *33*(1). https://doi.org/10.19030/jabr.v33i1.9863

BIS. (2016). *Committee on Payments and Market Infrastructures Correspondent banking*. www.bis.org

Boulogne, F. (2008a). Transfer Pricing of Intangibles: A Comparison between the Netherlands and the United States. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.1635296

Boulogne, F. (2008b). Transfer Pricing of Intangibles: A Comparison between the Netherlands and the United States. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.1635296

Brown Jeremy, Dalah Andrew, Dawson William, & Heussner Ralf. (2019). *Financial Services Transfer Pricing Sector trends & global developments*.

Caroline Banton. (2022, April 3). *Reinsurance Definition, Types, and How It Works*. Investopedia. https://www.investopedia.com/terms/r/reinsurance.asp

Cazacu, A.-L. (2014). *TRANSFER PRICES AND MARKET VALUE OF REINSURANCE TRANSACTIONS*.

CCR Re. (2021, January 19). *What is co-insurance?* CCR Re. https://blog.ccr-re.com/en/what-is-co-insurance

Challoumis, C. (2019). *Economics and Business TRANSFER PRICING METHODS FOR SERVICES AND THE POLICY OF FIXED LENGTH PRINCIPLE*. *33*, 222–232. https://doi.org/10.2478/eb-2019-0016

Collier, R., Andrus, J., & Seeger, W. J. (2019). Richard Collier and Joseph Andrus: transfer pricing and the arm's length principle after BEPS. *Business Economics*, *54*, 182–184. https://doi.org/10.1057/s11369-019-00119-6

Deyoung, R., & Rice, T. (2004). *How do banks make money? A variety of business strategies Introduction and summary*.

DFAT. (2019). *Malta, Valetta*. https://www.dfat.gov.au/sites/default/files/malta-market-insight.pdf

Dickinson, G. M. (2016). *International Insurance Transactions and the Balance of Payments*.

Dr. Werner & Partner. (2022). *The Economic Function of Banks*. https://www.drwerner.com/en/the-economic-function-of-banks/

EU JTPF. (2011). *Guidelines on Low Value Adding Intra-Group Services*.

European Commission. (2016). *Study on the application of economic valuation techniques for determining transfer prices of cross border transactions between members of multinational enterprise groups in the EU - Publications Office of the EU*. https://op.europa.eu/en/publication-detail/-/publication/e7dbd290-c682-11e6-a6db-01aa75ed71a1

Fabian Alfonso, Jaimne Marie Sepilveda, & Salim Vagh. (2020, September 4). *INSIGHT: Implementing the Transaction Net Margin Method for Transfer Pricing in Brazil*. Bloomberg Tax. https://news.bloombergtax.com/transfer-pricing/insight-implementing-the-transaction-net-margin-method-for-transfer-pricing-in-brazil

Feinschreiber, R. (2004). *Transfer Pricing Methods: An Applications Guide*. John Wiley & Sons, Inc.

Heidecke Bjorn, Hubscher Marc C., Schmidtke Richard, & Schmitt Martin. (2021). Intangibles in the World of Transfer Pricing. In *Intangibles in the World of Transfer Pricing*. Springer International Publishing. https://doi.org/10.1007/978-3-319-73332-6

Hentschel, S. (2020). *The Taxation of Perma-nent Establishments*. http://www.springer.com/series/12217

Hofmeyr Cliffe. (2019, February 21). *Review of the definition of permanent establishment*. https://www.cliffedekkerhofmeyr.com/en/news/publications/2019/Tax/budget-speech-alert-2019-review-of-the-definition-of-permanent-establishment-.html

Ignat, I., & Ionescu-Feleagă, L. (2022). *Transfer Pricing in Manufacturing: An analysis of the OECD Guidelines*.

Investopedia. (2021, February 23). *Importance and Components of the Financial Services Sector*. https://www.investopedia.com/ask/answers/030315/what-financial-services-sector.asp

IRS. (2017, April 10). *Internal Revenue Bulletin: 2017-15 | Internal Revenue Service*. https://www.irs.gov/irb/2017-15_IRB

Istrate Costin A. (2016). Transfer pricing in the insurance market . *Theoretical and Applied Economics. Special Issue*, 35–46.

Jay Pil Choi, Jota Ishikawa, & Hirofumi Okoshi. (2020). *Transfer pricing of intangible assets with the arm's length principle | CEPR*. CEPR. https://cepr.org/voxeu/columns/transfer-pricing-intangible-assets-arms-length-principle

Kagan Julia. (2022, August 31). *Captive Insurance Company: Understanding What It Means*. Investopedia. https://www.investopedia.com/terms/c/captive-insurance-company.asp

Kiès, C., & Kunen, J.-W. (2022). *Loyens & Loeff Transfer Pricing Series*.

Ledure, D., & Chatar, M. (2009). Some transfer pricing aspects of cross-border banking activities. *ERA Forum*, *10*(2), 269–280. https://doi.org/10.1007/s12027-009-0118-3

Mcculloch, S. (1996). *CAPTIVE INSURANCE COMPANIES: DO THEY PROVIDE "INSURANCE" ?*

Mirchandani, A., Gupta, N., & Ndiweni, E. (2020). UNDERSTANDING THE FINTECH WAVE: A SEARCH FOR A THEORETICAL EXPLANATION. *International Journal of Economics and Financial Issues*, *10*(5), 331–343. https://doi.org/10.32479/ijefi.10296

Moshirian, F. (2008). Financial services in an increasingly integrated global financial market. *Journal of Banking and Finance*, *32*(11), 2288–2292. https://doi.org/10.1016/j.jbankfin.2008.03.003

OECD. (2001, September 25). *OECD Glossary of Statistical Terms - Transfer price Definition*. https://stats.oecd.org/glossary/detail.asp?ID=2757

OECD. (2010). *REPORT ON THE ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENTS*.

OECD. (2017a). *Model Tax Convention on Income and on Capital: Condensed Version*.

OECD. (2017b). *Model Tax Convention on Income and on Capital: Condensed Version 2017* (Model Tax Convention on Income and on Capital: Condensed Version). OECD. https://doi.org/10.1787/MTC_COND-2017-EN

OECD. (2018). *Multinational enterprises in the global economy Heavily debated but hardly measured The OECD analytical AMNE database*.

OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022* (OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations). OECD. https://doi.org/10.1787/0E655865-EN

Putra, A. L., & Saptono, H. W. (2021). Comparability Analysis in Transfer Pricing: Problem and Guideline in Selecting the Most Appropriate Method QUEST JOURNALS Comparability Analysis in Transfer Pricing: Problem and Guideline in Selecting the Most Appropriate Method. In *Quest Journals Journal of Research in Business and Management* (Vol. 9, Issue 1). www.questjournals.org

Suchdeve Anodri, Brown Jeremy, & Tanner Luke. (2021, September 21). *Fintech: Rethinking value chains | International Tax Review*. International Tax Review. https://www.internationaltaxreview.com/article/2a6a9tn6ujn0e09kr3pq8/fintech-rethinking-value-chains

TPGuidelines. (2022). *Arm's length range* . https://tpguidelines.com/tag/arms-length-range/

Trading Economics. (2022). *List of Countries by Corporate Tax Rate | Europe*. https://tradingeconomics.com/country-list/corporate-tax-rate?continent=europe

Treidler, O. (2020). *Management for Professionals Transfer Pricing in One Lesson A Practical Guide to Applying the Arm's Length Principle in Intercompany Transactions*. http://www.springer.com/series/10101

Turner Geoff. (2013). *Transfer Pricing in International Business*. Business Expert Press.

United Nations. (2021). *Practical Manual on Transfer Pricing for Developing Countries 2021*.

Valentiam Group. (2021). *The Resale Price Method In Transfer Pricing Explained*. https://www.valentiam.com/newsandinsights/resale-price-method

VERO. (2022). *Intra-group loans - vero.fi*. https://www.vero.fi/en/businesses-and-corporations/business-operations/transfer-pricing/intra-group-financing/intercompany-lending-and-borrowing/

World Trade Organisation. (2002, April 16). *COMMUNICATION FROM THE EUROPEAN COMMUNITY AND ITS MEMBER STATES*. WTO. https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=77835,49459,65446,33156,32860,45399,84274,2977,4030,28280&CurrentCatalogueIdIndex=2&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True