

## Transfer Pricing Alert

# The Organisation for Economic Co-operation and Development releases guidance on intangibles

The Organisation for Economic Co-operation and Development (OECD)'s revised guidance in Chapter VI of the Transfer Pricing Guidelines defines intangibles as assets other than physical or financial assets that are capable of being owned or controlled by a single enterprise. Under this definition, location-specific characteristics and workforce in place are not considered intangibles, because they are not capable of being owned or controlled; rather, they should be considered comparability factors to be taken into account in a transfer pricing analysis. The revisions to Chapter I issued September 16 as part of the release of Base Erosion and Profit Shifting (BEPS) deliverables provide important guidance on location-specific characteristics, workforce-in-place, and synergy benefits as comparability factors.

### Location Savings

The new guidelines indicate that if reliable local market comparables are available and can be used to determine arm's length prices, specific comparability adjustments for location savings should not be required. However, when reliable local market comparable companies are not present, the guidance suggests that comparability adjustments for location savings should be driven by a full analysis of the underlying facts and circumstances, including the functions performed, risks assumed, and assets deployed by the relevant associated enterprises. Mere differences in salary costs should not be the sole basis for determining the existence or allocation of location savings.

### Impact of government licenses on location-specific advantages

A government-issued license is an intangible. If the license restricts the number of entrants into the market, it may affect how location-specific characteristics are shared. In such a case, it is necessary to determine each affiliated party's contribution to obtaining the license to determine the allocation of the profit attributable to the license intangible.

### Group Synergies

The new guidance provides additional clarification regarding the concept of group synergies and provides important examples that apply the principles in the context of intragroup loans and centralized purchasing groups.

The revised guidelines state that benefits arising from deliberate concerted group actions should be shared in proportion to the members' contribution to the benefit.

### Assembled Workforce

The additions to Chapter I provide guidance on the potential impact of an assembled workforce in a transfer pricing analysis. The guidance indicates that a uniquely qualified or experienced workforce may be a comparability factor that may impact transfer prices.

Importantly, the guidance does not suggest that an assembled workforce is an intangible, presumably because it cannot be owned or controlled by a single enterprise.

### Effective dates

The OECD has not recommended a specific effective date for the changes to Chapter I. The effective date of the changes will depend on the domestic law of the adopting states.

### Conclusion

The additional guidance added to Chapter I regarding location-specific advantages, group synergies, and workforce-in-place provides important new guidance for tax administrators and companies. Companies that have taken positions on these issues should consider this new guidance when analyzing their transfer pricing positions.

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# Deloitte Transfer Pricing Contacts in Romania



**Dan Badin**  
Tax & Legal Partner-in-Charge  
Phone: + 40 21 207 53 92  
E-mail: [dbadin@deloittece.com](mailto:dbadin@deloittece.com)



**Ciprian Gavrilu**  
Director  
Phone: + 40 21 2075 348  
E-mail: [cgavrilu@deloittece.com](mailto:cgavrilu@deloittece.com)

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