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Summary: „The impact of business restructuring between related parties on the corporate income tax base”

This dissertation discusses the impact of business restructuring from the transfer pricing perspective on the corporate income tax base. The author analyses transfer of multiple assets together with a function and risks (which is not a transfer of a business or a company) to another tax jurisdiction from a transfer pricing perspective. The research problem is whether and to what extent the business restructuring between related parties affects the corporate income tax base, which necessitates answering number of questions. The main question is whether and to what extent the business restructuring between related parties affects the corporate income tax base. The specific question is how to determine the arm's length remuneration for the business restructuring from a transfer pricing perspective between related parties in the case of a change of profile function within the multinational group. First, the concept and essence of the definition of *business restructuring* were characterised on the basis of the work of the Organisation for Economic Co-operation and Development (hereinafter: OECD), German tax law and national law. The next part of the dissertation deals with the remuneration between related parties as a result of business restructuring.

The answer to the main research question is that, depending on the definition of business restructuring for transfer pricing purposes (according to the OECD or the German concept of *transfer of functions*), which implies the application of appropriate tax rules in connection with the arm's length principle, it has an impact on the tax base for corporate income tax. With regard to the specific question, i.e. how to determine the arm's length remuneration for a transfer of assets, functions, and risks to another tax jurisdiction (not constituting a business or a company) required an analysis of current tax practice. The analysis concludes that arm's length remuneration is only required when property rights or intangibles are transferred during restructuring. That would also justify such compensation between unrelated parties for these intangible assets or lost property rights. A change in business arrangements that results in a reduction in the related party's profit potential or expected future profits does not require compensation. For this purpose, the author analysed the German tax law regarding the valuation of the transfer package from the buyer's and seller's perspective. Such an approach may lead to a revaluation of the profit potential (loss) of a transfer package transferred from one tax jurisdiction to another. Moreover, such an overestimation is likely to result in the German tax authorities considering the potential profits, which will only be realised in the receiving country, as taxable income in Germany. This will, of course, artificially overstate the corporate income tax base.

According to the author, taxation of a change in a business model should occur only if it is related to the value creation. The author postulates the possibility of a direct application of the OECD in the domestic tax system in order to understand the nature of economic business restructuring. In the light of business management theory, only certain types of activities in a group of related enterprises are allocated to investment centres or profit centres. Not every change in the business model will be associated with the creation of *goodwill*. Wherever *goodwill* appears as an outcome of business restructuring, it is possible to use an aggregated valuation. The role of the legislator should be to define the *de minimis* threshold and to indicate 'low risk' business restructuring and 'high risk' business restructurings, which can be an element of the aggregate valuation. Lawyers, economists, and financial experts should engage in a joint dialogue to develop solutions that are compatible from a financial, economic, and legal point of view.

