



# סוגיות מס בהערכות שווי בין לאומיות - הזווית הישראלית

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# Tax Valuations in Context of Restructuring

## Recent Developments

- BEPS Action 8-10 (finalized Oct. 2015), 2017 OECD TP Guidelines (Chapter IX)
  - Aligning transfer pricing with value creation
  - Hard To Value Intangibles – potential 5 year look-back
  
- US Tax Reform – TJIA (Dec. 2017)
  - Aggregation of potential future streams – direct response to “*Qualitas*” and “*Amazon*” court decisions
  
- Gteko Ltd. v. Kfar Saba Tax Assessor, T.A. (June 2017)
  - Local precedent
  - Taxpayer must account for the full value of 3<sup>rd</sup> party transaction
  
- ITA Circular (Sep. 2018)
  - ITA’s interpretation of Chapter IX of the OECD Guidelines
  - Criteria for deemed transfer
  - Formalization of ITA positions on valuation approach

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## Market Participant vs. Realistic Alternative

- Aggregate approach – Acquisition Price Method
  - Subjective buyer/seller value part of the equation
  - Full enterprise value is the starting point – intangibles a “plug number”
  
- PPA not a determinant
  - Goodwill not recognized
  - Multiple entities in acquisition?
  
- Re-characterization or “deemed” transfer – Functions/Assets/Risks “FAR”
  - Focus on allocation of risk/return – legal and accounting structure only a starting point
  - Intercompany license
    - Do projected returns approximate overall value?
    - Licensed for expected useful life – potential deemed transfer
  
- Transaction specific elements – economies of scale, location benefits, synergies, premiums, etc.

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## Tax/ITA Considerations

- Required Section 85a documentation – per the OECD Chapter V criteria
  - Delineation of related party transaction – potentially different than the legal definition
  - FAR – breakdown of value contribution, management of risk (business risk, R&D risk, manufacturing risk, etc.) characterization of transaction,
  - Selection of TP method – is there an acquisition price, recent material capital injection?
  
- Discount rate for specific cash flows vs IRR,
  - OECD discusses designating WACC for distinct cash flows
  - Risk of large client or upside of guaranteed return?
  
- Transferred ESOP a liability?
  
- What's “in the box”?
  - Gteko decision has bearing on control premiums?



# Thank you!

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Transfer Pricing Services

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