OECD BEPS Action Plans 8-10: How to Price Intra-Group Transactions involving Intangibles?

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Opening: An E-Commerce Case

1. Consider this case. An Indian E-Commerce Company (say, India E-Com Ltd.) partly develops valuable Intangible (unique software to conduct and manage online retail business) for e-commerce, through in-house R & D. India E-Com Ltd. transfers the partly-developed software to its Ireland Subsidiary for a lump sum consideration. The intangible in the form of partly-developed software is hard-to-value. That is because of these reasons: (*i*) the software is expected to be exploited in a novel manner, and (*ii*) the future projection of earnings is highly uncertain due to absence of a track record of development or exploitation of similar intangibles[1].

Because the transferred software is hard-to-value, it gets valued at a low amount. So, the lump sum consideration for transfer is quite low - India E-Com Ltd. pays little Capital Gains on transfer of the software, though India E-Com Ltd. has claimed significant R & D deduction under sec. 35 of the I.T. Act, 1961[2].

The Ireland Subsidiary (IS) carries on further R & D to fully develop the software: IS funds the future R & D and will be the Legal Owner of the fully developed e-commerce software. Once the software is successfully developed, IS will license it out to various worldwide subsidiaries of India E-Com Group, including India E-Com Ltd.

To develop the software further, IS enters into a Contract R & D arrangement with India E-Com Ltd. Thus, India E-Com Ltd. will function - contractually, but not actually -as a Contract Research Organization (CRO), after the transfer of the partly developed software to IS. In course of conducting future R & D, India E-Com Ltd. designs the final e-commerce software, controls the R & D operations, determines the direction of the course of research, makes as well as controls the

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strategic decisions regarding further development of software, and also manages and controls the R & D budget. Thus, India E-Com Ltd. though *contractually* claims to function as a CRO, its role is not limited to that of a CRO; India E-Com Ltd. *actually* performs and controls the key R & D functions.

BEPS Issues in Transactions involving Intangibles

2. The abovementioned transfer of partly-developed e-commerce software, by India E-Com Ltd. to IS, gives rise to the following Tax-Base Erosion and Profit Shifting (BEPS) issues:

(*i*) Is the lump sum consideration for transfer fair and adequate? Is India getting a fair amount of Capital Gains tax, on transfer of the partly developed software? This issue comes up because transfers of intangibles at non-arm's length prices can occur on account of difficulties in valuing the transferred intangibles.

(*ii*) R & D expenditure on partly developed software has already been claimed by India E-Com Ltd., under section 35 of the I.T. Act, 1961. Yet the future income from royalties get shifted out of India to Ireland, a jurisdiction which taxes royalties at a low tax-rate. That too when India E-Com Ltd. will continue to carry on further R & D work on the software.

(*iii*) India E-Com Ltd. will claim deduction for royalties paid to IS, even after claiming deduction for R & D expenditure under section 35.

(*iv*) To carry on further R & D, India E-Com Ltd. *contractually* claims to function as a CRO, though India E-Com Ltd. *actually* performs and controls the key R & D functions. In fact, it is India E-Com Ltd. - *not IS* - who has the capability, expertise, manpower and infrastructure to carry on further R & D. IS only provides funds for further R & D; IS also becomes the Legal Owner of the finally developed software.

(*v*) Instead of royalty income, India E-Com Ltd. will only offer nominal service fees (for taxation in India) under the Contact R & D model, even though India E-Com Ltd. makes highly valuable contribution in developing the e-commerce software.

In its Final Report on BEPS Action Plans 8-10 (Aligning Transfer Pricing Outcomes with Value Creation), released on 5 October 2015, the OECD has come out with fresh guidance, to tackle the BEPS issues arising from intra-group transactions involving intangibles.

Let us discuss below the relevant recommendations made by the OECD to curb the Tax-Base Erosion and Profit Shifting outlined above.

Points covered by the OECD in the Guidance under BEPS Action Plans 8-10

3. To address the BEPS concerns that stem from intra-group transactions involving intangibles, the OECD has provided guidance - mainly on the points laid out below -in the Final Report on BEPS Action Plans 8-10 (Aligning Transfer Pricing Outcomes with Value Creation):

(I) Who is entitled to returns from the exploitation of intangibles? What factors determine entitlement to returns from the exploitation of intangibles?

(II) When can we say that an Entity bears Risks in relation to the Development, Maintenance, Enhancement, Protection and Exploitation of the intangibles? Entity bearing these risks will be entitled to appropriate remuneration.

(III) Who will be entitled to the profit or loss arising due to deviations of actual outcomes (*Ex-Post* actual outcomes) from the projected anticipated results (*Ex-Ante* projected results)?

(IV) What returns can we attribute to an Associated Enterprise who provides *only* funding for R & D?

(V) How to ensure that transfers of hard-to-value intangibles are priced at arm's length?

Recommendations made by the OECD to overcome Base Erosion and Profit Shifting, arising from intra-group transactions involving intangibles

4. We may now move on to the key recommendations of OECD on the abovementioned points.

4.1. ***Legal ownership of intangibles by an Associated Enterprise by itself does not entitle that Associated Enterprise to returns from the exploitation of intangibles. Associated Enterprises performing important value-creating functions related to the Development, Maintenance, Enhancement, Protection and Exploitation of the intangibles, and controlling economically significant risks, will be entitled to appropriate arm's length return reflecting the value of their contributions.***

In transfer pricing matters involving intangibles, the determination of the entity or entities within an MNC Group, which are ultimately entitled to share in the returns derived by the group from exploiting intangibles, is crucial. The Legal Owner (the registered owner of intangibles such as Patents, Trademarks, Copyrights, etc.) of an intangible may initially receive the proceeds from exploitation of the intangible, as a result of its legal or contractual right to exploit the intangible. But for transfer pricing purposes, legal ownership of intangibles, by itself, does not confer any right ultimately to retain the proceeds so received. The return ultimately retained by, or attributed to, the Legal Owner depends upon the functions it performs, the assets it uses, and the risks it assumes; and also upon the contributions made by other MNC Group entities, through their functions performed, assets used, and risks assumed, that contribute to the value of the intangible.

For example, in the case of an internally developed intangible, if the Legal Owner performs no relevant functions, uses no relevant assets, and assumes no relevant risks, but acts solely as a title holding entity, *the Legal Owner will not ultimately be entitled to any portion of the return derived by the MNC Group from the exploitation of the intangible, other than arm's length compensation, if any, for holding the title.*

To the extent one or more enterprises of the MNC Group, other than the Legal Owner, performs functions, uses assets, or assumes risks related to the Development, Enhancement, Maintenance, Protection, and Exploitation of the intangible, such Associated Enterprises must be compensated on an arm's length basis for their contributions.

Example 4.1

1. **P** is the parent company of an MNC Group, and **S** is a wholly owned subsidiary of **P**. **P** performs ongoing R&D functions to support its business operations. When its R&D is successful and results in patentable inventions, it is the practice of the P Group to assign all rights in such inventions to **S** in order to centralise the global patent administration. All patent registrations are held and maintained in the name of **S**.

2. **S** employs five lawyers to perform its patent administration work; **S** has no other employees. **S** does not conduct or control any of the R&D activities of the Group. **S** has no technical R&D personnel, nor does it incur any of the Group's R&D expense. Key decisions related to defending the patents are made by **P's** management, after taking advice from employees of **S**. It is **P's** management, not the employees of **S**, that controls all decisions regarding licensing of the group's patents.

3. **S**, acting under the direction and control of **P**, grants licences of its patents to associated and independent enterprises throughout the world in exchange for periodic royalties. (For purposes of this example, let us assume that the royalties paid to **S** by associated enterprises are all arm's length.)

4. Here, **S** - in whose name patent registrations are held - is the Legal Owner of the patents. However, its contributions to the Development, Enhancement, Maintenance, Protection, and Exploitation of the patents are limited to the activities of its five employees in registering the patents and maintaining the patent registrations. The employees of **S** do not control or participate in the licensing transactions involving the patents. **P** performs all functions, deploys all assets, and assumes all risks, related to the Development, Enhancement, Maintenance, Protection, and Exploitation of the intangibles, *except for patent administration services.*

5. The arrangement between **P** and **S** reflects in substance a patent administration service arrangement. Under these circumstances, *S is only entitled to compensation for its patent administration services. S is not entitled ultimately to retain, or be attributed, income from its licensing arrangements over and above the arm's length compensation for its patent registration functions*. **P** is entitled to the bulk of the returns derived from exploitation of the intangibles. **P's** remuneration for the patentable inventions would be equal to the licensing revenue of **S** less an appropriate return to **S** for the patent administration function **S** performs.

4.2. ***An associated enterprise assuming risk in relation to the Development, Maintenance, Enhancement, Protection and Exploitation of the intangibles must exercise control over the risks and have the financial capacity to assume the risks.***

The level and assumption of risks would influence the prices and other conditions of transactions between the Associated Enterprises. Usually, in the open market, the assumption of increased risk would also be compensated by an increase in the expected return, although the actual return may or may not increase depending on the degree to which the risks are actually realised.

4.2.1 *Assumption of Risks* - Risk assumption means taking on the upside and downside consequences of the risk, with the result that the party assuming a risk will also bear the financial and other consequences if the risk materialises. Financial capacity to assume risk can be defined as access to funding -

- to take on the risk or to lay off the risk,
- to pay for the risk mitigation functions, and
- to bear the consequences of the risk if the risk materialises.

Access to funding by the party assuming the risk takes into account the available assets and the options realistically available to access additional liquidity, if needed, to cover the costs anticipated to arise, should the risk materialise. Where a party assuming risk receives intra-group funding, to meet the funding demands in relation to the risk, the party providing the funding may assume *financial risk* but does not, merely as a consequence of providing funding, assume *the specific risk* (*e.g. risk of failure of R & D*) *that gives rise to the need for additional funding.*

4.2.2 *Control over Risk* - Control over risk involves two elements of risk management:

(*i*) the capability to make decisions to take on, lay off, or decline a risk-bearing opportunity, together with the actual performance of that decision-making function, and

(*ii*) the capability to make decisions on whether and how to respond to the risks associated with the opportunity, together with

the actual performance of that decision making function.

The capability to perform decision-making functions and the actual performance of such decision-making functions relating to a specific risk involve an understanding of the risk. Such understanding would be based on a relevant analysis of the information required for assessing the foreseeable downside and upside risk outcomes of such a decision and the consequences for the business of the enterprise. Decision-makers should possess competence and experience in the area of the particular risk for which the decision is being made; they should also possess an understanding of the impact of their decision on the business.

4.2.3 *Analytical Framework for Risk Analysis* - The revised guidance of OECD provides a six-step analytical framework to determine which associated enterprise should be allocated risk for transfer pricing purposes[3]. Tax planning strategies based on mere contractual allocations of risk, unsupported by business operations, are not sufficient to reallocate risk. To assume a risk, the associated enterprise needs to exercise meaningful control over the risk as well as possess the financial capacity to assume the risk.

Example 4.2

1. Company **A** has acquired ownership of an intangible asset and enters into licensing contracts with unrelated customers. Utilisation of the intangible - the risk that there will be insufficient demand for the intangible to cover the costs Company **A** has incurred-has been identified as an economically significant risk.
2. But, Company **A** does not exercise control over the *utilisation risk*, because it lacks any capability to decide whether and how to exploit the asset. It does not have the capability to assess and make decisions relating to the risk mitigation activities performed by other group companies.
3. Company **A** has a contract for the provision of services with another group company, Company **B**. Company **B** decides how to utilise and exploit the intangible asset; Company **B** markets the asset's capabilities to third-parties, and negotiates the licensing contracts with those third parties. It is *Company **B** who has control over the asset utilisation risk.*
4. Although it is the Legal Owner of the asset, Company **A** does not exercise control over the *investment risk* in the intangible asset, since it lacks any capability to decide on whether to invest in the particular asset, and whether and how to protect its investment, including whether to dispose of the asset.
5. Functional analysis shows that another group company, Company **C**, decides that investment in the intangible is appropriate. Company C makes such decision in light of –

   (i) anticipated commercial opportunities identified and evaluated by Company **C**, and

   (ii) its assessment of the intangible's anticipated useful life.

   Thus, *Company **C** exercises control over the investment risk*.
6. Company **A** does not have control over the economically significant risks, associated with the investment in the intangible and exploitation of the intangible.
7. Under these circumstances, it can be concluded that the functional contribution of the Legal Owner of the asset (Company **A**) is limited to providing financing for an amount equating to the cost of the intangible. Such financing enables Companies **B** and **C** to create and exploit the asset. For such financing Company **A** should be remunerated only with a return on its funding (*see* Example 4.4).

4.3. ***Entitlement of any member of the MNC Group to profit or loss relating to differences between actual and expected profits will depend on which entity or entities assume(s) the risks that caused these differences, and whether the entity or entities are performing important functions in relation to the Development, Enhancement, Maintenance, Protection or Exploitation of the intangibles, or contributing to the control over the economically significant risks.***

The actual outcomes, and the manner in which risks associated with the development or acquisition of an intangible will play out over time, are not known with certainty at the time members of the MNC Group make decisions regarding intangibles. It is quite common that the actual (or *ex-post*) income derived from exploitation of the intangible is different from the anticipated (or *ex-ante*) or expected income. This difference may result from risks materialising in a way that is different, from what was anticipated, through the occurrence of unforeseeable developments.

For example, it may happen that a competitive product is removed from the market, a natural disaster takes place in a key market, a key asset malfunctions for unforeseeable reasons, or that a breakthrough technological development by a competitor has the effect of making products based on the intangible in question obsolete or less desirable. It may also happen that the financial projections, on which calculations of *ex-ante* anticipated returns and compensation arrangements are based, did not adequately take into account the risks of different outcomes occurring, and therefore led to an over estimation or an underestimation of the anticipated profits. A question arises in such circumstances: how the profits or losses should be shared among members of an MNC Group that have contributed to the Development, Enhancement, Maintenance, Protection, and Exploitation of the intangible in question?

Resolution of this question requires a careful analysis of which entity or entities in the MNC Group in fact assume the economically significant risks (*e.g.*, risk that costly R & D will prove to be unsuccessful, risk of product obsolescence, patent infringement risk, product liability risk, *etc.*). The entitlement of any member of the MNC Group to profit or loss relating to differences between actual (*ex-post*) and anticipated (*ex-ante*) profitability will depend on which entity or entities in the MNC Group in fact assumes the related risks. It will also depend on which entity or entities are performing important functions – *e.g.*, design and control of research programmes, control over strategic decisions regarding intangible development, management and control of R & D budgets, etc. - or contributing to the control over the economically significant risks.

Here, we need to keep in mind that the party *actually* assuming the economically significant risks may or may not be the associated enterprise *contractually* assuming these risks, such as the Legal Owner of the intangible. Also, such party actually assuming the economically significant risks may or may not be the funder of the investment. A party which does not assume the risks that give rise to the deviation between the anticipated and actual outcomes, nor contributes to the control of that risk, will not be entitled to unanticipated profits (or required to bear unanticipated losses) arising from that risk. To such a party neither unanticipated profits nor unanticipated losses can be allocated.

4.4 An associated enterprise providing funding and assuming the related financial risks, but not performing any functions relating to the intangible, can generally only expect a risk-adjusted return on its funding. And if the associated enterprise providing funding does not exercise control over the financial risks associated with the funding, then it is entitled to no more than a risk-free return.

It may happen that one member of an MNC Group may fund some or all of the Development, Enhancement, Maintenance, Protection, and Exploitation of an intangible, while other member(s) may perform all of

the relevant value-adding functions. When we assess the appropriate anticipated *return to funding* in such circumstances, we should recognise this: in arm's length transactions, a party that provides funding, but does not control the risks or does not perform other functions associated with the funded activity or asset, generally does not receive anticipated returns equivalent to those received by an otherwise similarly-situated investor, who also performs and controls important functions and controls important risks associated with the funded activity.

The nature and amount of compensation attributable to an entity that bears intangible-related costs, *without more*, must be determined on the basis of all the relevant facts, and should be consistent with similar funding arrangements among independent entities where such arrangements can be identified.

Also, when identifying risks in relation to an investment with specificity, it is important to distinguish between the *financial risks* that are linked to the funding provided for the investments and the *operational risks* that are linked to the operational activities for which the funding is used - an example of *operational risk* is the development risk when the funding is used for developing a new intangible. Where a party providing funding exercises control over the *financial risk* associated with the provision of funding, without the assumption of, including the control over, any other specific *operational risk*, it can only expect a risk adjusted return on its funding. Such return can be determined, for example, based on the cost of capital or the return of a realistic alternative investment with comparable economic characteristics. In determining an appropriate return for the funding activities, it is important to consider the financing options realistically available to the party receiving the funds.

Now we come to capital rich entities ("cash boxes"). Such entities do not undertake any other relevant economic activities, apart from funding the R & D. Also, these entities are unable to exercise control over their investment and other risks. Exercising control over a specific investment or financial risk requires the capability to make the relevant decisions related to the risk bearing opportunity, in this case the provision of the funding, together with the actual performance of these decision making functions. Because the cash box entities are generally not capable of exercising control over their investment risk, these entities will not be entitled to any premium returns from the intangibles. The profits that the cash box is entitled to retain will be equivalent to no more than a risk free financial return.

Example 4.4

1. In Year 1, a MNC Group comprising of Company **A** (a country A corporation) and Company **B** (a country B corporation) decides to develop an intangible. That intangible is anticipated to be highly profitable. Such assessment is based on Company **B's** existing intangibles, its track record and its experienced R & D staff.
2. The intangible is expected to take five years to develop before possible commercial exploitation. If successfully developed, the intangible is anticipated to have value for ten years after initial exploitation.
3. Under the development agreement between Company **A** and Company **B**, Company **B** will perform and control all activities related to the Development, Enhancement, Maintenance, Protection and Exploitation of the intangible. Company **A** will provide all funding associated with the development of the intangible (the development costs are anticipated to be 100 Crores per year for five years) - Company **A** will become the Legal Owner of the intangible.
4. Once developed, the intangible is anticipated to result in profits of 500 Crores per year (years 6 to 15). Company **B** will license the intangible from Company

A (Legal Owner) and make contingent payments to Company **A** for the right to use the intangible, based on returns of purportedly comparable licensees. After the projected contingent payments, Company **B** will be left with an anticipated return of 200 Crores per year from selling products based on the intangible.

5. A functional analysis of the arrangement assesses the functions performed, assets contributed, and risks assumed by Company **A** as well as by Company **B**. The analysis concludes that *although Company A is the Legal Owner of the intangibles, its contribution to the arrangement is solely the provision of funding* for the development of an intangible. The functional analysis also shows that Company **A** contractually assumes the financial risk, has the financial capacity to assume that risk, and also exercises control over that risk.
6. Taking into account Company **A's** contributions, as well as the realistic alternatives of Company **A** and Company **B**, it is determined that Company **A's** anticipated remuneration should be a risk-adjusted return on its funding commitment. This is determined to be 112 Crores per year (for Years 6 to 15), which equates to a 12% risk-adjusted anticipated financial return.
7. Company **B**, accordingly, would be entitled to all remaining anticipated income after accounting for Company **A's** anticipated return. That works out to 388 Crores per year (500 Crores *minus* 112 Crores), rather than 200 Crores per year as claimed by the Taxpayer.

4.5. A rigorous transfer pricing analysis by Taxpayers is required to ensure that transfers of hard-to-value intangibles are priced at arm's length.

Due to information asymmetries, it proves difficult for a tax administration to evaluate the reliability of the information on which the taxpayer priced the transaction, especially in relation to intangibles with a highly uncertain value at the time of the transfer. To address these challenges the OECD has developed an approach to pricing Hard-to-Value Intangibles (HTVI).

HTVI are defined as intangibles or rights in intangibles for which, at the time of their transfers between associated enterprises, (*i*) no reliable comparables exist; and (*ii*) at the time the transaction was entered into, the projections of future cash flows, or income, expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible, are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.

The OECD has issued specific guidance to ensure that hard-to-value intangibles are remunerated appropriately by ensuring that the analysis is not weakened by information asymmetries between the tax administration and the taxpayer. The guidance is intended to ensure that tax administrations can determine in which situations the pricing arrangements with respect to a HTVI as set by the taxpayers are at arm's length and are based on an appropriate weighting of the foreseeable developments or events that are relevant for the valuation of certain HTVI, and in which situations this is not the case.

Under this approach, *ex post* evidence of actual income provides presumptive evidence as to the (*i*) existence of uncertainties at the time of the transaction, (*ii*) whether the taxpayer appropriately took into account reasonably foreseeable developments or events at the time of the transaction, and (*iii*) the reliability of the information used *ex-ante* in determining the transfer price for transfer of the intangibles or rights in intangibles. Such presumptive evidence may be subject to rebuttal if the Taxpayer can demonstrate that it does not affect the accurate determination of the arm's length price.

Example 4.5

1. An Indian Pharma Company **I Ltd.** is developing a drug to cure diabetes. Eight stages of Research and Development (R & D) have to be passed successfully to get from a pharma molecule to a marketable drug. After completing initial two stages of R & D in India, **I Ltd.** transfers the diabetes pharma molecule to **S GmbH** (Swiss subsidiary of **I Ltd.**).

2. Assume that future income would be 0 (zero) if the molecule fails in subsequent stages of R & D and 100 if the molecule succeeds. Also assume that the probability of both failure and success is equal, *i.e.*, 50:50. So the transfer price of the molecule is set by the parties at 50, after valuation and negotiation.

3. The molecule will be categorized as HTVI, because it is an early stage intangible. Note also that there will certainly be significant divergence between the *ex-ante* valuation (50) and *ex-post* earnings (either '0' on failure or '100' on success).

4. When the R & D succeeds, the *ex-post* accrual is 100 while the *ex-ante* valuation was 50. In view of this significant difference the Transferor (**I Ltd.**) has to demonstrate that all foreseeable events were duly considered while valuing the molecule at the time of its transfer.

5. And **I Ltd.** also has to prove that the difference between the *ex-ante* valuation and *ex-post* result is due to events unforeseeable at the time of transfer of molecule.

6. But here, in this example, the difference is not because of any unforeseeable event. Rather the difference is due to initial uncertainty about the success of the molecule at the time of its transfer. So **I Ltd.** will find it hard to prove that the *ex-ante* and *ex-post* difference is due to an unforeseeable event.

7. Because of the significant difference Tax Authorities may contend that the *ex-ante* valuation was not reliable – authorities may seek to re-characterize the transaction (of transfer of molecule) to make transfer pricing adjustment.

8. So, the Taxpayer (**I Ltd.**) will have to maintain reliable evidence and documentation to demonstrate fair pricing of intra-group transfer of HTVI.

Summing up

5. The new guidance issued by the OECD under BEPS Action Plans 8-10, on transfer pricing aspects of intangibles, will have a potent impact on transactions (among Associated Enterprises) that involve intangibles. MNCs will no longer be able to avoid tax by registering the intangibles in the name of a Group Entity (Legal Owner of the intangibles) resident in a low-tax jurisdiction.

That is because the Legal Owner of intangibles will, henceforth, not be entitled to all of the income - royalty, appreciation in value of the intangibles, premium profits, etc. -derived from exploitation of the intangibles. Associated Enterprises (AEs) contributing to the value of the intangibles, by performing functions, using assets, and assuming risks related to Development, Enhancement, Maintenance, Protection, and Exploitation of the intangibles, will have to be compensated on an arm's length basis for their valuable contributions. So, the proceeds received by the Legal Owner from exploitation of the intangibles will have to be shared with other Group Entities, commensurate with the contributions made by those other entities. And the Legal Owner, without any other contributions, can be allocated a remuneration only for its Intellectual Property management or administration functions.

In addition, no AE can lay claim to higher returns out of exploitation of intangibles,

merely on the ground that it has assumed higher risks, under contracts with its AEs.

The AE asserting its right to receive higher returns will now have to actually - not just contractually - assume as well as control the key R & D risks. To do that the AE will have to demonstrate (*i*) financial capacity to assume the risks, and (*ii*) also the capability to exercise control over the risks.

Further, an AE that only provides funds for R & D and does not contribute anything more to the Development, Enhancement, Maintenance, Protection, and Exploitation (DEMPE) of the intangibles, will be entitled to only a return – either risk adjusted or risk free – on the funds invested in the R & D project. Other Group Entities making valuable contributions to the DEMPE will be entitled to the returns – royalties, premium profits, etc. – derived from the intangibles.

Also, the valuation at the time of transfer, of partly developed or novel intangibles, which are hard-to-value intangibles (HTVI), cannot be deliberately kept low to avoid tax. The Tax Authorities can look at the actual (*ex-post*) results, and based on those results the Authorities will be able to re-characterise the transactions of transfers of HTVI, to make suitable transfer pricing adjustments.

Clearly, a new Transfer Pricing era has dawned; MNCs must now rise and meet the challenges of the new era.

1. *See* Para 6.190 of the Final OECD Report under BEPS Action Plans 8-10 for features of Hard-to-Value Intangibles.
2. Under section 35 of the Income-tax Act, 1961 enterprises are allowed deductions, including weighted deductions, for R & D expenditure (revenue or capital).
3. Refer Para 1.60 of the Final OECD Report under BEPS Action Plans 8-10 for six step analysis of risk in controlled transactions between Associated Enterprises.