

Transfer Pricing Considerations On Lost Profit Potential

by Andrea Højgaard Jørgensen, Katja Dyppel Weber,
and Louise Blichfeldt Fjord

Reprinted from *Tax Notes International*, January 12, 2026, p. 249

Transfer Pricing Considerations on Lost Profit Potential

by Andrea Højgaard Jørgensen, Katja Dyppel Weber, and Louise Blichfeldt Fjord



Andrea Højgaard Jørgensen



Katja Dyppel Weber



Louise Blichfeldt Fjord

Andrea Højgaard Jørgensen is a senior associate, and Katja Dyppel Weber is a partner at CORIT Advisory in Lyngby, Denmark. Louise Blichfeldt Fjord is a partner at CORIT Advisory and an assistant professor at Copenhagen Business School.

In this article, the authors examine the ambiguity surrounding lost profit potential in transfer pricing and how taxpayers can best capitalize on the situation.

Copyright 2026 Andrea Højgaard Jørgensen, Katja Dyppel Weber, and Louise Blichfeldt Fjord.

All rights reserved.

Introduction

While the concept of profit potential in the context of intragroup business restructurings is by no means a new one within the field of transfer

pricing,¹ its ambiguity continues to challenge taxpayers and tax administrations when applied in practice. We have observed that tax authorities worldwide are becoming increasingly sophisticated, and we believe this presents an opportunity to challenge taxpayers' positions on profit potential when they engage in intragroup business restructurings.²

From a transfer pricing perspective, the concept of profit potential is especially relevant to consider regarding intragroup business restructurings, including termination or substantial renegotiation of arrangements, which imply a transfer of "something of value"³ (such as tangible assets, intangible assets, or an ongoing business between members of an MNE, since profit potential can be attached to intangibles, risks, or functions).⁴ In business restructurings, the surrendering party may experience a potential loss of future profit, or alternatively, the recipient may gain a potential future profit, compared with the situation where no business restructuring was carried out.⁵ In other words, the concept of (lost) profit potential is intended to encapsulate the

¹ OECD, "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010," para 9.65 (Aug. 16, 2010). The concept of profit potential has already been subject to analysis in the international tax literature; see, e.g., Pernille Lindholm and Christoph Richter, "Transfer Pricing Treatment of a Business Restructuring From a Danish and German Perspective," 17(5) *Int'l Transfer Pricing J.* (2010); Harmen Van Dam, Willem Jan Tom, and Freek Braken, "The Zinc Case – Burden of Proof and Business Restructurings in the Netherlands," 25(2) *Int'l Transfer Pricing J.* (2018); Andrea Musselli and Alberto Musselli, "Stripping the Functions of Affiliated Distributors," 15(6) *Int'l Transfer Pricing J.* (2008).

² This is also evident by the growing number of cases, as further explored later in this article.

³ See OECD, "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022," at para 9.6 (Jan. 20, 2022) (stating that business restructurings are typically accompanied by a reallocation of profit potential among the members of the MNE group).

⁴ *Id.* at para. 9.2.

⁵ This could be the case if risks are somehow transferred, since assumption of risks associated with a commercial opportunity affects profit potential. See *id.* at para. 9.19.