

## **Abstract**

### **Valuing the Invisible: Challenges and Solutions in Applying the OECD DEMPE Framework to Intangible Assets.**

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This thesis examines the application of the OECD's DEMPE framework (Development, Enhancement, Maintenance, Protection, and Exploitation) in transfer pricing disputes involving intangible assets. Although the OECD's BEPS Actions 8–10 and the 2017/2022 Transfer Pricing Guidelines aim to ensure that profits follow value creation, their consistent application remains uncertain.

Using a qualitative case study approach, judicial decisions from the United States and Europe are analyzed through a structured DEMPE template covering transaction outlines, disputed valuations, and court reasoning. The results show broad convergence on the principle of substance over form, with courts reallocating profits from passive IP holding entities to those performing and controlling DEMPE functions. However, significant divergence persists in the treatment of marketing intangibles, as courts reject taxpayer claims using varying domestic doctrines rather than unified OECD reasoning.

The study concludes that DEMPE has strengthened the alignment of profits with value creation but remains constrained by evidence-based burdens, jurisdictional differences, and unresolved issues concerning digital intangibles. The findings provide practical guidance for multinational enterprises, inform policy refinement, and contribute to ongoing academic discussions on the future of transfer pricing governance.

**Keyword:** DEMPE Framework, Intangible Assets, Transfer Pricing, OECD BEPS Actions 8–10, Marketing Intangibles.

## Abstrak

### **Menilai yang Tak Terlihat: Tantangan dan Solusi dalam Penerapan Kerangka DEMPE OECD untuk Aset Tak Berwujud**

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Tesis ini menganalisis penerapan kerangka DEMPE (Development, Enhancement, Maintenance, Protection, and Exploitation) dalam sengketa transfer pricing atas aset tak berwujud. Meskipun BEPS Actions 8–10 dan OECD Transfer Pricing Guidelines 2017/2022 dirancang untuk memastikan bahwa laba mengikuti penciptaan nilai, penerapannya masih menunjukkan ketidakseragaman antar yurisdiksi.

Melalui pendekatan studi kasus kualitatif, penelitian ini menelaah putusan pengadilan di Amerika Serikat dan Eropa menggunakan template DEMPE terstruktur. Hasilnya menunjukkan kecenderungan pengadilan untuk menekankan substance over form dan mengalihkan laba dari entitas pemegang IP yang pasif kepada entitas yang benar-benar melakukan dan mengendalikan fungsi DEMPE. Namun, perlakuan terhadap marketing intangibles tetap bervariasi, dengan pengadilan sering mengandalkan doktrin domestik alih-alih reasoning OECD.

Penelitian ini menyimpulkan bahwa kerangka DEMPE memperkuat hubungan antara laba dan penciptaan nilai, tetapi masih dibatasi oleh tantangan pembuktian, perbedaan regulasi nasional, dan isu yang belum terselesaikan terkait aset digital. Temuan ini memberikan panduan praktis bagi MNEs serta kontribusi bagi diskusi akademik mengenai perkembangan tata kelola transfer pricing.

**Kata kunci:** Kerangka DEMPE, Aset Tak Berwujud, *Transfer Pricing*, *BEPS 8–10 OECD*, *Marketing Intangibles*.