

Global Services A/S v. Danish Tax Agency [2025, Danish National Tax Tribunal]

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1. Facts

Group X, a multinational enterprise operating in the relevant sector, acquired the H group from independent parties. Until the reorganization, the Danish company, H5, was the European centre of the H business, owning all the group's intellectual property and acting as a full-fledged principal that contracted with customers, set prices, and bore the operational and intellectual property risks. Its subsidiaries, H8 to H12, performed local sales, marketing, and support on a cost-plus basis, and H8, resident in a third jurisdiction, additionally performed technology development and strategic management activities.

Under an asset purchase agreement, the Danish company transferred to H7 the intellectual property, comprising technology, trademarks, trade names and non-competition rights, together with the principal functions of the business: strategy, budgeting and funding, pricing, the contracts with customers, billing and collection, and the control of operational and intellectual-property risk. After the transfer, the Danish company and its subsidiaries operated as limited-risk service providers to H7, remunerated by cost plus a mark-up under a services agreement terminable by either party on short notice, within 90 days or less, serving a single customer, H7, and holding no third-party contracts.

Because no comparable uncontrolled price was available, the taxpayer applied a residual valuation, taking the value of the transferred intellectual property as the value of the whole business less the value of the functions that remained, each estimated by a discounted cash flow. Two assumptions were in issue: whether the retained functions had a value that should be deducted, and at what rate their cash flows were to be discounted. The taxpayer discounted the business at 20% and the retained functions at 8%, and because a lower rate increases present value, the 8% enlarged the deduction and reduced the residual price of the intellectual property. The remaining elements of the model were uncontested.

1.1. Arguments of the parties

The parties disagreed first about which valuation method to use, and then about how it should be applied. The taxpayer, finding no comparable uncontrolled price for the bundle of intangibles and functions, valued the transfer re-

sidually by a discounted cash flow, deducting the present value of the retained routine functions from the value of the business as a whole. The authority primarily relied on a comparable it considered available, the price at which Group X had earlier acquired the shares of the H group from independent parties, which it took as an arm's length measure of the intangibles and sought to adapt for the controlled transfer by removing the assets not re-transferred and applying a decline for the intervening period. On that basis, its primary position denied any deduction for the retained functions, treating them as carrying no value beyond their tangible assets, so that the whole of the adjusted acquisition value attached to the transferred intangibles; only in the alternative did the authority accept the taxpayer's residual model, and then subject to a single correction of the discount rate. It observed, moreover, that the adjusted acquisition figure and the taxpayer's own discounted cash flow converged at the level of the total intangible value, so that the dispute narrowed to the deduction claimed for the functions that remained and to whether those functions had any residual value at all. Beyond the valuation, the parties differed over the object of the transfer and the ownership of the return.

In the company's analysis, the bundle that Group X had acquired comprised three distinct elements: the present value of the routine profits, the intellectual property, and synergies owned by the Danish company, and the intellectual property and synergies owned by the acquirer; only the second was the subject of the intra-group transfer, the routine profit stream and the acquirer's synergies falling outside it. It valued that object by deducting the present value of the retained routine functions from the present value of the whole business, and derived from a sensitivity analysis an arm's length range, of about EUR 27.9 to 43.4 million, within which it fixed its price.

As to ownership of the return, the company contended during the audit, that the return on the intellectual property had not belonged entirely to it. The intangibles, it argued, had not been developed, improved or maintained in Denmark after the acquisition, control of the development process lay with H8 in the third jurisdiction, which had therefore performed the DEMPE functions and was more than the routine cost-plus service provider its own documentation described, so that ownership of the return, or of part of it, belonged there rather than in Denmark; H8's losses across the period were said to confirm that it had been mis-remunerated as a mere provider of research and development services.

As to the discount rate and the useful life, the company maintained that the retained functions were a low-risk business warranting an 8% rate, derived, like the entrepreneurial rate of 20%, from a benchmarking of comparable listed companies, whereas the exploitation of the transferred intangibles was a high-risk business in a competitive market. On appeal, it supported this with an independent expert report, which confirmed the arm's length range, observed that a 20%

rate applied to a routine activity implied a beta of 3.5, a systematic risk more than three times the market's, and reasoned that 8% was defensible only on a perpetual basis, a finite ten-year life instead pointing to a rate close to 3.2%.

The company's principal legal submission was evidentiary: having filed complete transfer pricing documentation, it argued that the authority bore the burden of proving the price wrong and could discharge it only by an objective assessment, not by a subjective estimate. It relied on the Supreme Court's decision in *Adecco*¹, which had held that a tax authority's disagreement with, or justified doubt about, the taxpayer's comparability analysis does not of itself entitle it to set that analysis aside and to assess the income by estimation, and on *Tetra Pak*², which requires arm's length conditions to rest on an objective comparison rather than on what either party subjectively regards as appropriate; the discounted cash flow it had used was, it added, an accepted means of estimating what an independent investor would have required for a comparable investment.

As to the valuation base, the company objected that the share acquisition price was more than a year old and so no current benchmark, and that if it were used at all it would have to be distributed across the group's assets and liabilities, the value of the subsidiaries, the tangible assets and the assembled workforce being deducted before any residual could be attributed to the intangibles. It added that, assessed as of the date of the transaction, there had been no reason to expect the service contracts to be terminated, that they were not, that the workforce had in fact remained stable, and that the eventual closure of the business, a decade later, reflected the obsolescence of the technology rather than anything that could be assumed in advance.

The tax authority proceeded from the opposite premise regarding ownership. The documentation and the parties' conduct showed that the Danish company had owned all of the group's significant intangibles before the reorganisation and that H7 owned them afterwards, the service entities owning none; and since goodwill and going-concern value cannot be separated from the business to which they attach, the object of the transfer was the whole of the intangibles, including goodwill³.

The authority treated the later attribution of the intellectual property to H8 as contradicted by the contemporaneous record. The documentation described H8 as a routine service provider earning a net cost-plus markup of 7% consistent

¹ DENMARK. Supreme Court (Højesteret). *Denmark v. Adecco A/S*, SKM2020.303.HR, 25 June 2020. Available in: <https://tpcases.com/denmark-vs-adecco-a-s-june-2020-supreme-court-case-no-bs-42036-2019-hjr/>. Accessed in: 1 August 2026.

² DENMARK. Supreme Court (Højesteret). *Denmark v. Tetra Pak*, SKM2021.251.HR, 27 Apr. 2021. Available in: <https://tpcases.com/denmark-vs-tetra-pak-processing-systems-a-s-april-2021-supreme-court-case-no-bs-19502-2020-hjr/>. Accessed in: 1 August 2026.

³ DENMARK. Skattestyrelsen. *Den juridiske vejledning*. Copenhagen: Skattestyrelsen, 2025, section C.C.6.4.1.1. Available in: <https://info.skat.dk>. Accessed in: 1 August 2026.

with the arm's length standard, and the company's own functional analysis assigned all risks, including research and management risk, to the Danish company. The agreement invoked to support the new claim required H8 to undertake technology development "as directed by" the Danish company and expired on the day of the transfer itself, the markup already compensating the development and maintenance of the intangibles; and the reclassification rested on employee interviews conducted more than six years after the event, against the documentation, the contracts, the purchase price allocation and the payments the company had itself deducted. H8, on this view, acted on behalf of the Danish company, which retained control of the risks and the financial capacity to bear them.

As to the measurement of the whole, the authority anchored its assessment on the share acquisition price as an uncontrolled comparable rather than on the taxpayer's projections. It took the price at which Group X had acquired the shares as an arm's length measure of the total value of the intangibles, adjusted for the tangible assets and the tax amortisation benefit and reduced by an estimated 13%, a figure midway between the declines of about 3.8% and 22.3% in the intangibles' value that the company's own reports recorded for the intervening period, and it observed that this total substantially coincided with the company's own discounted cash flow, so that the point of disagreement was the deduction taken for the retained functions.

Regarding that deduction, the authority's primary position was that the retained functions carried no value beyond their recorded tangible assets, the service entities owning no intangibles, their whole activity being tied to a single intercompany contract terminable at short notice, and the key personnel being no longer employed in the Danish business. In the alternative, it maintained that the routine cash flows, integrated in and dependent on the business as a whole, could not be discounted at a rate lower than the 20% applied to the business, and that the differential the company had used implied a return on the intellectual property of some 32%, about 300% above the routine return, reducing the retained functions' share of the total value from about 50.2% to about 14%. The subsequent losses of the new principal it regarded as irrelevant, control and risk having passed on the transfer.

2. The decision

The National Tax Tribunal partially upheld the correction. Because the company had filed the required documentation, the authority was required to prove, rather than merely assert, that the price was not arm's length. The Tribunal held that it had done so⁴.

⁴ DENMARK. Supreme Court (Højesteret). *Denmark v. Microsoft Danmark ApS*, SKM2019.136.HR, 31 Jan. 2019. Available in: <https://tpcases.com/denmark-vs-microsoft-denmark-january-2018-dan->

The Tribunal did not resolve where control of the intangibles lay after the transfer, which it treated as irrelevant to the Danish assessment, and it left undisturbed the characterisation of H8 as a routine service provider; the object of the transfer was the whole of the intangibles. However, it rejected the authority's primary position that the retained functions had no value beyond their tangible assets, holding that the sales, the marketing and the associated know-how had been built up over a number of years and could not simply be replaced by H7 after the transfer, so that those functions carried a value beyond the recorded tangible assets and beyond the annual routine remuneration.

On the two assumptions that fixed that value, the Tribunal accepted the company's discounted cash flow and the long, indefinite useful life its report had used, declining the authority's alternative of a ten-year life, but not the company's rate. Relying on paragraph 6.171 of the Guidelines, which requires the discount rate to reflect the specific conditions and risks of the case and the particular cash flows at issue, it held that the risk of the retained functions' cash flows was not lower than that of the business as a whole, reasoning that the risk of the sub-activities was closely linked to the overall business concept, that H7 could terminate the contracts at short notice, and that the entity did not contract with third parties; the retained functions therefore had to be discounted at the same 20% as the business⁵.

Rather than adopting the acquisition price as its measure, the Tribunal resolved the case within the residual model, accepting the discounted cash flow the authority had itself prepared on the basis of the company's March valuation report with a uniform 20% applied to both the business and the retained functions; on that basis the value of the transferred intangibles was reduced by EUR 8,087,208 against the authority's figure and the overall increase to taxable income was reduced by DKK 60,285,283.

3. Critical analysis

3.1. *An ongoing concern and its residual valuation*

The transfer involved not an isolated asset, but an ongoing concern, an economically integrated business unit whose arm's length price is measured as a whole and against the transfer of a going concern between independents, not against a sale of separate assets⁶. That characterisation carries the consequence

ish-supreme-court/. Accessed in: 1 August 2026; *Denmark v. Adecco A/S*, SKM2020.303.HR, 25 June 2020. Available in: <https://tpcases.com/denmark-vs-adecco-a-s-june-2020-supreme-court-case-no-bs-42036-2019-hjr/>. Accessed in: 1 August 2026.

⁵ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 2022. Paris: OECD Publishing, 2022, p. 298, para. 6.171. Available in: <https://doi.org/10.1787/0e655865-en>. Accessed in: 1 August 2026.

⁶ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 2022.

the dispute turned on: goodwill and going-concern value cannot be separated from the business to which they attach, so the object of the transfer was the whole of the intangibles⁷. The value of what remained, the routine functions retained by the Danish company, therefore belongs to the exercise no less than the value of what moved, since it is the term deducted to reach the price of the intangibles.

The most appropriate method appears to be the transactional profit split, which the Guidelines identify for the transfer of developed intangibles where no reliable comparable can be found and the operations are integrated⁸. Within that method, the split is performed through a residual analysis: an arm's length return is assigned by one of the ordinary methods to the routine functions and the residue to the unique and valuable contribution, here the transferred intellectual property, the discounted cash flow being the technique that quantifies the two legs⁹. A valuation of this kind turns on assumptions the Guidelines require to be justified in their own right, the discount rate, the useful life and the terminal value among them, none of which should be mechanically derived from another¹⁰. Under the DCF valuation, the value of the whole H group was not in dispute, only the deduction taken for the retained functions; and entitlement to the residual follows the control of the functions that create it, which the retained entities did not have, since they made no unique contribution and controlled no significant risk¹¹. The Tribunal accordingly resolved the case within the taxpayer's own model, correcting a single assumption, the discount rate.

3.2. *Risk, the discount rate, and duration*

The Tribunal's central holding is persuasive in both respects. The retained functions carried a going-concern value, the value that attaches to an operating assemblage of functions and customer relationships built up over years and cannot be reduced to the identifiable assets on the balance sheet, so that the authority's primary position, which allowed them no value beyond the tangible, was

Paris: OECD Publishing, 2022, p. 381-382, paras. 9.68-9.70.

⁷ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 253-254, paras. 6.27-6.29.

⁸ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 133, paras. 2.132-2.133, and p. 292-293, paras. 6.148-6.152.

⁹ COTTANI, Giammarco; LUDOVICI, Paolo; STRIATO, Marco. Transfer pricing and intangibles. In: LANG, Michael et al. (ed.). *Fundamentals of transfer pricing: general topics and specific transactions*. Alphen aan den Rijn: Kluwer Law International, 2019, p. 458.

¹⁰ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 281, para. 6.114, and p. 298-299, paras. 6.170-6.173 and 6.174-6.177; DENMARK. Skattestyrelsen. *Den juridiske vejledning*. Copenhagen: Skattestyrelsen, 2025, section C.J.5.2.3.

¹¹ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 48-66, paras. 1.60-1.106, esp. p. 64, para. 1.98.

rightly rejected¹²; their cash flows, however, bore the same risk as the business and fell to be discounted at the same rate¹³. The limited-risk characterization bears differently on the two questions raised by the case. For the annual remuneration of the ongoing services, it reduces the entity's entitlement. A company, in Monse- nego's account, is entitled to the intangible-related returns in full, to none of them, or to some, according to the functions it performs and, in the last analysis, its control over the risks connected to the intangibles; an entity that has surren- dered the market, pricing and intellectual-property risks and kept only routine functions falls in the second class, earning the stable routine return and no share in the entrepreneurial profit¹⁴. For the valuation of those same functions, howev- er, the label cannot simply be carried across: the taxpayer discounted the re- tained cash flows at 8% and capitalised them in perpetuity, but the stability that justifies a modest annual return does not govern the value of the stream, which is integrated into the business, drawn from a single customer under a contract ter- minable at short notice and resting on no third-party custom, so that its risk is not lower than the business's¹⁵. Discounted at the business's 20% rather than at 8%, the retained functions are worth materially less, the deduction shrinks, and the residual left to the intangibles grows; the expert's implied beta of 3.5, drawn from the very rate under challenge, does not provide an independent measure of risk.

The rate is one parameter, and useful life is another, and the Guidelines treat them as distinct assumptions, each established on the facts rather than in- ferred from the other.¹⁶ Here, the record pointed away from perpetuity: the re- tained business rested on a single intra-group agreement terminable at short no- tice, and the Danish Tax Agency had put the average employment in Denmark at 8.2 years and inferred from it a lifespan for the routine business of no more than ten. The Tribunal corrected the rate but left the taxpayer's perpetual terminal value untouched, though the taxpayer's own expert had conceded that 8% held only on a perpetual basis and that a ten-year life pointed to a rate near 3.2%. It is the perpetual horizon, even more than the rate, which inflates the value of a rou- tine stream, and by keeping it the decision credited the retained business with a durable value the facts denied, the entity in fact closing about ten years later;

¹² COTTANI, Giammarco; LUDOVICI, Paolo; STRIATO, Marco. Transfer pricing and intangibles. In: LANG, Michael et al. (ed.). *Fundamentals of transfer pricing: general topics and specific trans- actions*. Alphen aan den Rijn: Kluwer Law International, 2019, p. 438-440.

¹³ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 298, para. 6.171.

¹⁴ MONSENEGO, Jérôme. *Introduction to transfer pricing*. 2. ed. Alphen aan den Rijn: Kluwer Law International, 2022, p. 86-88.

¹⁵ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 134, para. 2.139, and p. 298, para. 6.171.

¹⁶ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 299, paras. 6.173, 6.174 and 6.177.

there, in duration rather than in any doctrinal innovation, lies the limit of the decision's logic. Courts elsewhere have drawn the line at a finite life,¹⁷ the United States Tax Court rejecting a perpetual valuation of pre-existing intangibles in *Veritas*¹⁸ and substituting a twenty-year life in *Amazon*¹⁹. A terminal value, moreover, is not an automatic component of a discounted cash flow²⁰. The Guidelines reserve it for cases where an intangible contributes to cash flows continuing beyond the period of reasonable projection and give no criterion for when it should be withheld, so its use in a business resting on a single contract terminable at short notice is permissive at best and here contestable.

Regarding the burden of proof, because the taxpayer had filed the required documentation the administration could not make a discretionary assessment but had to prove the price wrong, and it did so from the taxpayer's own documentation file, taking the March valuation report, adopting the total value on which that report and the earlier share price agreed, and correcting only the incoherent assumption, exposed by a differentiated discount rate resting on a benchmarking that had screened out comparables owning intangibles.²¹ Thus, the file that protected the taxpayer also proved the case against it and foreclosed the later attempt to attribute the intangibles and their return to H8, which the contemporaneous record, remunerating H8 as a routine provider, contradicted; because a net cost-plus comparison is unreliable for a party making a unique contribution, the taxpayer's own remuneration characterised H8 as making none.²² In correcting an input within an accurate discounted cash flow rather than substituting a method of its own, the decision made a price adjustment and not what Navarro terms an implicit alteration of the delineated transaction, the covert result of measuring a controlled dealing against a comparable that does not match it.²³ The authority's primary position, pricing the transfer from an external and earlier share ac-

¹⁷ COTTANI, Giammarco; LUDOVICI, Paolo; STRIATO, Marco. Transfer pricing and intangibles. In: LANG, Michael et al. (ed.). *Fundamentals of transfer pricing: general topics and specific transactions*. Alphen aan den Rijn: Kluwer Law International, 2019, p. 449 and 461.

¹⁸ UNITED STATES. Tax Court. *Veritas Software Corp. v. Commissioner*, 133 T.C. 297, 2009. Available in: <https://tpcases.com/us-vs-veritas-software-corporation-december-2009/>. Accessed in: 1 August 2026.

¹⁹ UNITED STATES. Tax Court. *Amazon.com, Inc. v. Commissioner*, 148 T.C. 108, 2017, aff'd 934 F.3d 976 (9th Cir. 2019). Available in: <https://www.leagle.com/decision/intco20170323h34>. Accessed in: 1 August 2026.

²⁰ GUDA, Ayoni. The role of the "reasonably arguable position" (RAP) doctrine in transfer pricing disputes in the post-BEPS era. 2018. 66 f. Master's Thesis (LL.M. in Tax Law) – Tilburg University, Tilburg, 2018, p. 40. Available in: <http://arno.uvt.nl/show.cgi?fid%3D146949>. Accessed in: 1 August 2026.

²¹ OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, ch. V.

²² OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing, 2022, p. 114, para. 2.65, and p. 255-270, paras. 6.32-6.72.

²³ NAVARRO, Aitor. *Transactional adjustments in transfer pricing*. Amsterdam: IBFD, 2017, p. 49-51.

quisition while denying the retained functions any value, was an adjustment of that kind; in staying within the residual model the Tribunal continued the Danish practice of *Denmark v. Engine Branch*²⁴ and *Denmark v. IP ApS*²⁵.

3.3. *The restructuring under Brazil's new transfer pricing regime*

An equivalent restructuring would be governed, in Brazil, by Article 26 of Law No. 14,596/2023, which, since 2024, has subjected business restructurings to the arm's length standard the country adopted in convergence with the OECD.²⁶ The regime is new, and regulations issued by tax authorities under Normative Instruction No. 2.161/2023²⁷ does not provide further detail on the rules applicable to such modifications to the commercial or financial relations between related parties²⁸. In addition, Brazilian case law is still incipient, so its application rests on the OECD Guidelines and on the comparative practice built upon them; the foreign decisions considered above may therefore bear directly on how the provision could be applied.

Article 26 defines a business restructuring broadly: a modification of the commercial or financial relations between related parties that transfers profit potential or produces benefits or losses for either of them, and that independent parties would have compensated. It reaches further than the OECD approach, which does not treat a mere decrease in an entity's expected future profits as compensable²⁹; and since a counterparty jurisdiction may hold to that narrower line, the divergence over what counts as a compensable restructuring can itself produce double taxation, an amount imputed in Brazil going unrelieved by any correlative adjustment abroad. Paragraph 1 anchors profit potential to the transfer of functions, assets, risks, or business opportunities, and Paragraph 2 reaches

²⁴ DENMARK. National Tax Tribunal (Landsskatteretten). *Denmark v. Engine Branch*, SKM2020.30.LSR, 24 Oct. 2019. Available in: <https://tpguidelines.com/denmark-vs-engine-branch-january-2020-tax-tribunal-case-no-skm2020-30-lsr/>. Accessed in: 1 August 2026.

²⁵ DENMARK. National Tax Tribunal (Landsskatteretten). *Denmark v. IP ApS*, SKM2023.135.LSR, 14 Nov. 2022. Available in: <https://tpguidelines.com/denmark-vs-ip-transfer-aps-march-2023-tax-tribunal-case-no-skm2023-135-lsr/>. Accessed in: 1 August 2026.

²⁶ BRASIL. Lei n. 14.596, de 14 de junho de 2023. Dispõe sobre regras de preços de transferência relativas ao Imposto sobre a Renda das Pessoas Jurídicas (IRPJ) e à Contribuição Social sobre o Lucro Líquido (CSLL). Brasília, DF: Presidência da República, 2023. Available in: https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/lei/14596.htm. Accessed in: 1 August 2026.

²⁷ BRASIL. Instrução Normativa RFB n. 2.161, de 28 de setembro de 2023. Dispõe sobre os preços de transferência a serem praticados nas transações efetuadas por pessoa jurídica domiciliada no Brasil com partes relacionadas no exterior. Brasília, DF: Receita Federal do Brasil, 2023. Available in: <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=133821>. Accessed in: 1 August 2026.

²⁸ SANTOS, Ramon Tomazela. *Manual dos preços de transferência*. 2. ed. São Paulo: Thomson Reuters Brasil, 2025, p. 390.

²⁹ SANTOS, Ramon Tomazela. *Manual dos preços de transferência*. 2. ed. São Paulo: Thomson Reuters Brasil, 2025, p. 395.

its shifting through the termination or renegotiation of relations with third parties, the pattern the Danish service contracts illustrate.

Because the standard reaches benefits or losses to either party, and not only what is transferred, it captures more of the reorganisation than the transfer of the intangibles alone would: the value of the intangibles the Danish company kept, above all its commercial functions, enters the analysis even though they were not transferred, as would the restructuring costs it bore in consequence. That breadth in the arm's length standard meets a limit in what may be taxed. Article 43 of the National Tax Code conditions the income tax on the acquisition of the economic or juridical availability of income, so a restructuring that shifted profit potential without a transfer and without a quantifiable gain could not be taxed on that potential alone, which remains unrealised; and the reservation in Article 43, Paragraph 2, which allows the law to set the conditions and the moment at which income from abroad becomes available, presupposes such availability and does not authorise the taxation of mere potential.³⁰

On the Global Services facts, that objection does not arise, since the intangibles were transferred for consideration and the pricing exercise measures that transfer. Article 26's breadth then shapes how the transferred profit potential is quantified. Because the standard reaches the benefits derived by each party, and not only what changes hands, the profit potential the Danish company retained in the commercial functions it kept can itself be valued, as though a price were assigned to the assets that remained; the quantification of what was transferred becomes a subtraction between profit potentials, that of the business as a whole less that of the retained functions. The deduction the taxpayer claimed, the discount in the transfer price, is the value of the retained side, and the transferred profit potential is what remains.³¹

How that subtraction is carried out is governed by Articles 26 and 11. Paragraph 4 requires the whole to be valued as a package rather than as a sum of separate assets, the surplus over the identifiable assets being the goodwill a residual analysis isolates,³² and Article 11 provides the profit split, whose residual form gives the routine functions a routine return and the residual to the unique and valuable contribution.³³ These rules determine the method and the aggregate value, but not the discount rate or the useful life applied to the retained functions' cash flows, which are what decided the Danish case; the dispute would therefore

³⁰ FRANCISCO, João Victor De Nadai. Novas regras de preços de transferência: reestruturação de negócios e a integralização de capital em bens e direitos a valor de custo pelas pessoas físicas. *Revista Direito Tributário Internacional Atual* v. 12. São Paulo: IBDT, 2023, p. 111-132, p. 116-121.

³¹ SANTOS, Ramon Tomazela. *Manual dos preços de transferência*. 2. ed. São Paulo: Thomson Reuters Brasil, 2025, p. 395.

³² Lei n. 14.596/2023, art. 26, § 4.

³³ Lei n. 14.596/2023, art. 11, V; Instrução Normativa RFB n. 2.161/2023, art. 44.

recur in Brazil rather than dissolve. The residual analysis fixes only the direction of the result, that the retained entities, making no unique contribution, keep the routine leg while the residual attaches to the intellectual property, leaving the value at which that routine leg is capitalised the contestable question.

4. Conclusion

Global Services A/S is best read as a decision concerning the valuation of a partially transferred business. At its core, the decision turns on where risk lies for valuation purposes: because the retained functions' cash flows are integrated into and dependent on the transferred business, terminable at short notice and drawn from a single customer, the risk that fixes their present value is the business's own, so that the limited-risk role the entity plays by contract lowers the return it is entitled to earn but not the rate at which its cash-flow stream is discounted. Its lesson is to separate what a residual model conflates: the annual return to the routine functions is not their going-concern value, and the discount rate follows the risk of the specific cash flows, so that the retained stream, integrated into and dependent on the business, is discounted at the business's rate and not at the reduced 8% the taxpayer claimed. What the decision leaves unresolved is duration, the perpetual terminal value it kept for a business terminable on short notice, a premise the Guidelines treat as autonomous from the rate.

Transposed to Brazil, the reorganisation would fall under Article 26 of Law No. 14,596/2023, whose reach is wider than the Guidelines', extending to benefits or losses for either party even without a transfer of profit potential; that breadth is bounded, however, by the realisation requirement of the National Tax Code, which leaves shifted profit potential, unaccompanied by a transfer or a realised gain, beyond the reach of the tax. Where the intangibles are transferred for consideration, as they were here, that limit does not apply, and Articles 26 and 11 supply the method, valuing the whole as a package and splitting the residual; but they settle only the method and the aggregate, and the Normative Instruction that implements the regime brings no procedural guidance capable of effectively eliminating disputes over the method; the discount rate and the useful life, the inputs that decided the case, would be contested as before, and the dispute would likely recur in Brazil rather than disappear.