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Organisation for Economic Co-operation and Development (OECD)
Tax Treaties, Transfer Pricing and Financial Transactions Division
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Dear Sir/Madam

SAICA COMMENTS ON OECD PUBLIC CONSULTATION DOCUMENT: REVISIONS TO CHAPTER VII OF THE OECD TRANSFER PRICING GUIDELINES — SPECIAL CONSIDERATIONS FOR INTRA-GROUP SERVICES

The Transfer Pricing Subcommittee of the South African Institute of Chartered Accountants (SAICA), in collaboration with the Banking Association of South Africa (BASA), welcomes the OECD's continued work to modernise Chapter VII and to align the guidance on intra-group services more closely with Chapters I, II and III of the OECD Transfer Pricing Guidelines.

The draft Public Consultation Document provides useful clarification on the benefit test, accurate delineation, shareholder activities, duplicative services, pass-through costs, documentation, and the distinction between benefit analysis and pricing.

In our comments below, we first address the specific topics on which the OECD invited comments, namely shareholder activities, allocation keys, and stock or share-based compensation.

We then provide broader comments on the discussion draft, including whether the objectives of clarity, alignment with Chapters I–III, and practical examples have been met.

We thank the OECD for the opportunity to provide comments on this important consultation and look forward to continued engagement on these matters.

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1. From the perspective of an MNE, we recommend that the revised guidance should more directly address the practical environment in which intra-group services are charged and paid in developing and exchange-controlled jurisdictions.

2. In many jurisdictions, intra-group service charges are affected not only by transfer pricing rules, but also by withholding tax, exchange control, foreign currency availability, tax clearance procedures, VAT or reverse-charge VAT, and local banking documentation requirements.

3. In Africa specifically, entities operating in highly regulated industries may be subject to prudential and/or sector-specific requirements that affect the scope, pricing, physical payment and continued provision of intra-group services. Some examples of such regulations include:

   - Capital adequacy and solvency requirements;
   - Related-party exposure limits;
   - Outsourcing approvals;
   - Operational resilience requirements;
   - Recovery and resolution planning;
   - Data protection and localisation requirements;
   - Restrictions on the functions that may be outsourced;
   - Requirements to retain sufficient local capability and decision-making; and
   - Regulatory approval or scrutiny of significant related-party service charges.

4. These requirements are particularly relevant in industries such as banking, insurance, telecommunications, healthcare and other regulated infrastructure sectors. Accordingly, Regulatory restrictions frequently affect:

   a. Use of know-how
   b. Licensing
   c. Technology deployment
   d. Data usage
   e. Regulated decision-making

5. These non-transfer pricing constraints can materially affect the economic outcome of otherwise arm’s length intra-group service arrangements.

   a. In the banking context, for example, regulatory requirements may prevent a local entity from relying exclusively on a group-developed model even if the model is provided as part of a service. That can affect both characterisation and pricing.

   b. In a manufacturing or distribution business, a low value-adding service charged at cost plus 5% may be commercially neutral from a transfer pricing perspective but may become economically distorted if withholding tax is imposed on the gross service charge, if the recipient is required to gross up the payment, or if payment is delayed (or at times rejected) due to central bank or authorised dealer procedures.

6. We acknowledge that the Chapters I, III and VI consider these aspects but in essence, the draft guidance places substantial weight on capability transfer and expected benefit, both of which can be fundamentally altered by regulatory restrictions.

7. These non-transfer pricing constraints can materially affect the economic outcome of otherwise arm's length intra-group service arrangements.

8. Submission: We recommend that the final guidance include a short section recognising these practical constraints and encouraging tax administrations to apply proportionate, coordinated and commercially realistic approaches when auditing intra-group services.

9. The final guidance would benefit from clarification regarding the interaction between intra-group services and regulatory constraints. In many jurisdictions, particularly regulated industries and emerging markets, legal and regulatory requirements may affect the extent to which services can be provided, relied upon, or exploited by the recipient. Such constraints may also influence whether a service confers a benefit, whether a transfer of capability has occurred, and the pricing that independent parties would agree under comparable circumstances.

10. Consideration could be given to cross-referencing relevant guidance in Chapters I, III and VI regarding economic circumstances, government intervention, comparability and the exploitation of intangibles.

11. The OECD guidance should also acknowledge that the transfer pricing characterisation of a cost may differ from its treatment under domestic regulatory frameworks.

1. RESPONSE TO OECD QUESTIONS ON SHAREHOLDER ACTIVITIES

1.1. Practical application of existing guidance on shareholder activities

1.1.1. In practice, the distinction between shareholder activities and chargeable stewardship or management support activities remains one of the most difficult areas in transfer pricing audits. We support the clarification in paragraph 7.25 that shareholder activities should be distinguished from the broader category of stewardship activities and the further clarification in paragraph 7.27 that activities performed by parent company personnel, including senior management, are not automatically shareholder activities.

1.1.2. The revised guidance correctly distinguishes shareholder activities from broader stewardship activities. However, the guidance should further emphasise that not all activities performed by a parent company, regional holding company, board member, executive committee, or senior management team are shareholder activities. This would be consistent with paragraph 7.27, which correctly recognises that the identity or seniority of the personnel performing the activity is not determinative of whether an intra-group service exists.

1.1.3. The key question should remain whether the activity provides a sufficiently direct economic or commercial benefit to the recipient entity.

1.1.4. This distinction is particularly important in jurisdictions , where operating entities often rely on regional or group-level support to manage fragmented regulatory environments, supply chain disruption, foreign exchange shortages, customs matters, tax audits, treasury constraints, ESG reporting, cyber risk, procurement initiatives, and compliance controls.

1.1.5. In our experience, tax authorities may sometimes treat regional head office charges as shareholder costs merely because the activity is performed by senior personnel or because the activity has a governance dimension. This can lead to inappropriate full disallowance of service charges.

1.1.6. Submission: The final guidance should state more clearly that a governance overlay does not, by itself, make an activity a shareholder activity where the activity also supports the commercial or operational position of the recipient.

1.1.7. For example, tax compliance for the parent company should be shareholder in nature, but tax audit defence, VAT support, customs advice, WHT support, transfer pricing implementation, or local tax governance support for an operating entity / subsidiary may provide a direct local benefit and should not be treated as shareholder activity.

1.2. Activities captured by "ancillary activities to the corporate governance of the MNE as a whole"

1.2.1. The phrase "*ancillary activities to the corporate governance of the MNE as a whole*" [in paragraph 7.26(e)] could be interpreted too broadly.

1.2.2. Submission: We recommend that the final guidance define this category more narrowly.

1.2.3. Activities that may fall within this phrase include:

- preparation of parent board packs dealing with shareholder oversight;
- parent company board administration;
- parent-level corporate secretarial work;
- governance policies required solely for parent company compliance;
- group-level governance frameworks prepared for investor, listing or parent board purposes;
- parent-level audit requirements to ensure that any changes to the company secretarial records of the group are updated

- parent-level risk committee reporting where the activity does not support local operating decisions.

1.2.4. However, many activities with a governance element also provide direct local benefit and should not automatically be treated as shareholder activity.

1.2.5. Examples include:

- anti-bribery and corruption controls required to protect local licences and operations;
- sanctions screening relevant to local sales and procurement;
- data privacy and cyber-security controls;
- tax governance frameworks required to manage local audit risk;
- internal audit remediation support;
- health, safety and environmental compliance;
- exchange control and treasury compliance support;
- procurement governance that generates local cost savings;
- working capital and cash management support.

1.2.6. Submission: The final guidance should clarify that corporate governance activities should be classified based on the directness and nature of the benefit, not merely based on whether the activity is described as "governance", "control", "oversight" or "risk management".

2. RESPONSE TO OECD QUESTIONS ON ALLOCATION KEYS

2.1. Allocation keys should not be presented as unique to low value-adding services

2.1.1. We welcome the OECD's invitation for comments on whether further guidance on allocation keys would be useful.

2.1.2. In our view, further guidance would be useful, but the guidance should avoid creating an artificial distinction between allocation keys used for low value-adding services and those used for other intra-group services. The principles described in paragraphs 7.47 to 7.51 are of broader relevance than low value-adding services and are equally applicable to many non-LVAS intra-group service arrangements.

2.1.3. In practice, the allocation keys used for low value-adding services and non-low value-adding services are often substantially the same. The key question is not whether the service is low value-adding or non-low value-adding, but whether the selected allocation key is a reasonable proxy for the expected benefit or consumption of the relevant service.

2.1.4. For example, headcount may be appropriate for HR support, number of users may be appropriate for IT support, and production or transaction-based measures may be appropriate for operational or finance support. These allocation principles are not unique to low value-adding services. Accordingly, if the OECD guidance presents these allocation keys only in the context of low value-adding services, it may create unnecessary confusion and could imply that similar allocation keys are not appropriate for other service categories.

2.1.5. <u>Submission</u>: We therefore recommend that the OECD clarify that the examples of allocation keys are illustrative and may be relevant both for low value-adding services and for other intra-group services, depending on the nature of the service and the expected benefit to the recipient.

2.2. **Practical application of allocation keys**

2.2.1. In practice, the allocation of HR and IT costs is often the most straightforward. HR costs can generally be allocated by reference to headcount, payroll cost or number of employees supported. IT costs can generally be allocated by reference to users, devices, licences, tickets or applications used.

2.2.2. For other service categories, direct usage data may not always be available.

2.2.3. In the absence of a direct allocation key, MNE groups commonly use sales, turnover, units produced, units sold or a combination of these measures as a practical proxy for expected benefit. This is especially common where regional management, finance, procurement, operational or commercial support is provided to multiple operating entities.

2.2.4. However, the use of sales or turnover as an allocation key can create practical challenges in certain jurisdictions (such as Nigeria).

2.2.5. In some exchange-controlled countries, exchange control regulations or authorised dealer practices may not permit, or may heavily scrutinise, outbound service payments calculated by reference to turnover, sales, income or similar measures.

2.2.6. In those cases, an allocation key that may be acceptable from a transfer pricing perspective may be difficult to implement from an exchange control or payment remittance perspective.

2.3. **Suggested OECD clarification**

2.3.1. <u>Submission</u>: We recommend that the OECD include commentary on how taxpayers and tax administrations should approach allocation keys where the most commercially practical allocation key, such as turnover, is restricted or not accepted under exchange control rules.

2.3.2. In such cases, the guidance should confirm that it may be appropriate to use a composite or blended allocation key based on a combination of objectively measurable factors. For example, instead of using turnover alone, a taxpayer may use a weighted allocation key based on headcount and units/SKUs manufactured, or headcount and units/SKUs sold, depending on the nature of the service. We believe this approach aligns with paragraph 7.48, which recognises the need for practical and administrable allocation mechanisms while maintaining a reasonable relationship to expected benefit.

2.3.3. For example:

Where a turnover-based allocation key would otherwise be a reasonable proxy for expected benefit, but local exchange control or remittance rules restrict or do not permit service charges calculated by reference to turnover, sales, income or purchases, taxpayers may use an alternative allocation key or a composite allocation key. Such a composite key may include a weighted combination of objective operational indicators, such as headcount, number of users, units produced, units sold, production volumes or transaction volumes, provided the selected key is reasonable, consistently applied and not designed to distort the arm's length outcome.

2.3.4. This clarification would be particularly useful, where the transfer pricing analysis and exchange control approval process may not always apply the same practical standards. It would also reduce disputes where tax authorities expect a benefit-based allocation key, but exchange control authorities or banks are unwilling to approve outbound service payments based on turnover or sales.

2.4. **Shared platform and capacity costs**

2.4.1. The allocation of shared technology and infrastructure costs may require measures that distinguish between:

- Actual current usage.
- Capacity reserved for a recipient.
- Normal or expected usage.
- Capacity maintained for future growth.
- Strategic capacity held for the group as a whole.
- Functionality made available but not regularly used.
- Provider-specific or shareholder-related requirements.

2.4.2. An allocation based only on current usage may not reflect the commercial relationship where the provider is contractually required to maintain capacity, availability, resilience or specialist support for the recipient.

2.4.3. Conversely, allocating all available capacity to current users may overstate the benefits they receive where part of the infrastructure was developed for future entities, wider group requirements or the provider's own strategic purposes.

2.4.4. Independent technology and infrastructure arrangements may use:

- Minimum commitments.
- Reserved-capacity charges.
- Subscription tiers.
- Number of users.
- Modules made available.
- Transaction or processing volumes.
- Storage or computing usage.
- Availability commitments.
- A combination of fixed and variable charges.

2.4.5. Submission: We recommend that the final guidance recognise that allocation of shared technology and infrastructure costs should not be limited to current consumption.

2.4.6. Depending on the facts, normal capacity, committed capacity, expected multi-year usage, minimum commitments and availability obligations may provide more reliable measures of benefit.

2.4.7. The guidance should also recognise that costs associated with future beneficiaries, provider inefficiency or strategic group capacity should not automatically be allocated to current recipients.

3. RESPONSE TO OECD QUESTIONS ON STOCK OR SHARE-BASED COMPENSATION

3.1. General comments

3.1.1. We welcome the OECD's invitation for comments on the treatment of stock or share-based compensation in the context of intra-group services.

3.1.2. This is an area where additional guidance would be useful, as there is often uncertainty in practice on whether such costs should be included in the cost base for intra-group service charges.

3.1.3. From the perspective of an MNE , stock or share-based compensation creates both transfer pricing and practical remittance challenges. These costs may be recognised as an accounting expense, but they may not involve a direct cash outflow by the service provider. This can make them difficult to explain to tax authorities, exchange control authorities and authorised dealers when supporting outbound service payments.

3.2. Whether stock or share-based compensation should be included in the service cost base

3.2.1. In our view, stock or share-based compensation should not automatically be included in, or excluded from, the cost base for intra-group services. The treatment should depend on the facts and circumstances.

3.2.2. The relevant question should be whether the cost is sufficiently connected to the employees or personnel who are performing chargeable services for the recipient entities. Where stock or share-based compensation relates to employees who provide Supply chain, HR, IT, finance, procurement, tax, legal, treasury, operational or other support services to group entities, it may be appropriate to include the relevant portion of the cost in the service cost base.

3.2.3. However, where the stock or share-based compensation relates to shareholder activities, parent company investor obligations, group ownership interests, capital market performance, or incentives linked primarily to parent company shareholder value, such costs should not be included in the cost base of chargeable intra-group services.

3.2.4. <u>Submission:</u> Accordingly, the OECD should clarify that the treatment of stock or share-based compensation should follow the nature of the underlying activity and the role of the relevant employees.

3.3. **Need to distinguish accounting cost from remittable cost**

3.3.1. A key practical issue in many jurisdictions is that an accounting cost may not always be accepted as a remittable cost for exchange control or foreign currency payment purposes.

3.3.2. In some cases, stock or share-based compensation may be recorded as an expense in the service provider's accounts, but the local recipient entity may face practical difficulties in remitting payment for that cost because:

- there may be no third-party invoice;
- there may be no cash outflow by the service provider;
- the amount may be volatile and dependent on fair value assumptions;
- the cost may be linked to parent company equity rather than local services;
- exchange control authorities may require evidence that the payment relates to services actually rendered;
- authorised dealers may be reluctant to approve payment of non-cash equity compensation as part of a management or service fee.

3.3.3. <u>Submission:</u> The OECD guidance should therefore recognise that inclusion of stock or share-based compensation in a transfer pricing cost base does not necessarily resolve whether such amount is acceptable for local remittance, exchange control or foreign currency approval purposes.

3.3.4. The guidance could also clarify that inclusion of share-based compensation in a cost base does not automatically imply that such costs should attract a mark-up.

3.3.5. Consistent with existing OECD principles regarding pass-through and value-adding costs, the treatment of share-based compensation should be determined having regard to the functions performed, risks assumed and the contribution of the relevant personnel to the services rendered.

3.4. **Suggested approach for OECD guidance**

3.4.1. Submission: We recommend that the OECD provide guidance along the following lines:

3.4.2. *Stock or share-based compensation may be included in the cost base for intra-group services where the expense is borne by the service provider, is connected to employees performing chargeable services, and would reasonably be treated as part of the cost of providing those services in comparable circumstances. However, such costs should be excluded where they relate to shareholder activities, parent company ownership interests, investor relations, capital market performance, or other activities undertaken solely in the capacity of shareholder. Taxpayers should apply a consistent and transparent approach and should ensure that stock or share-based compensation is not double counted.*

3.4.3. This would provide helpful flexibility without creating a presumption that all stock or share-based compensation must be included in the service cost base.

3.5. **Documentation expectations**

3.5.1. Where stock or share-based compensation is included in the cost base, the taxpayer should be expected to document:

- the employees or employee groups whose stock or share-based compensation is included;
- the nature of the services performed by those employees;
- the basis on which the cost has been measured;
- whether the cost is based on accounting expense, grant date value, vesting period expense or another reasonable measure;
- whether the amount is included in direct costs or indirect costs;
- whether the amount is subject to a mark-up;
- how the cost has been allocated among recipient entities;
- how double counting has been avoided.

3.5.2. However, the documentation requirement should remain proportionate.

3.5.3.	Submission: For low value-adding or routine services, it should generally be sufficient to explain the methodology and provide support at an employee category or cost-centre level, rather than requiring award-by-award analysis for each employee.

4. OTHER COMMENTS FOR OECD CONSIDERATION

4.1. In addition to the specific comments provided above on shareholder activities, allocation keys and stock or share-based compensation, we respectfully submit the following broader comments for the OECD's consideration.

4.2. These comments are made from the perspective of an MNE group operating across markets, where intra-group service arrangements are often affected not only by transfer pricing rules, but also by withholding tax, exchange control, VAT, foreign currency availability, remittance approvals and local documentation practices.

4.3. **Centralised digital services**

4.3.1.	Submission: We recommend that the OECD include additional guidance and practical examples addressing AI-enabled and digitally delivered intra-group services. Such clarification would become increasingly important as MNE groups continue to centralise shared services through global technology and AI-driven operating models.
4.3.2.	The guidance should clarify that the existence of automation, digital delivery mechanisms or AI-supported functionality does not, by itself, prevent an activity from constituting an intra-group service where the activity provides economic or commercial value to recipient entities. Similarly, the use of proprietary digital tools, algorithms, data sets or platforms in performing services should not automatically result in the arrangement being characterised as a transfer or licence of intangible property. The appropriate characterisation should depend on the accurate delineation of the particular transaction and the functions performed, assets used and risks assumed by the relevant parties.

4.4. **Interaction between transfer pricing and withholding tax — Section E.4/paragraph 7.96**

4.4.1. We welcome the OECD's recognition in Section E.4, paragraph 7.96, that withholding taxes on low value-adding intra-group services can prevent the service provider from recovering the totality of the costs incurred in rendering the services.

4.4.2. However, the current wording in paragraph 7.96 is, in our view, too insubstantial.

4.4.3. The paragraph states that where a profit element or mark-up is included in the service charge, tax administrations levying withholding tax are "*encouraged*" to apply withholding tax only to the profit element or mark-up.

4.4.4. In practice, merely "*encouraging*" tax administrations to apply withholding tax only to the mark-up is unlikely to resolve the issue, particularly in jurisdictions where withholding tax is commonly imposed on the gross outbound service fee. The practical result is that the withholding tax may exceed the mark-up earned by the service provider. For example, where a low value-adding service is charged at cost plus 5%, a gross-basis withholding tax may be greater than the entire profit element. This undermines the policy objective of the simplified approach and may result in economic double taxation or a requirement for the recipient to bear a gross-up.

4.4.5. Submission: We therefore recommend that paragraph 7.96 be strengthened.

4.4.6. The final guidance should state more clearly that, for low value-adding services, withholding tax should, where possible under domestic law or treaty practice, be applied only to the profit element or mark-up and not to the underlying cost reimbursement.

4.4.7. We further recommend that the OECD include commentary on withholding tax gross-up clauses.

4.4.8. Where the recipient is required to gross up the payment because local law imposes withholding tax on the gross service fee, the gross-up should not, by itself, cause the underlying service charge to be treated as non-arm's length. The gross-up should instead be recognised as a separate tax cost or contractual risk allocation, provided that the underlying pre-tax service charge is arm's length.

4.4.9. Suggested wording for paragraph 7.96:

4.4.10. *The levying of withholding taxes on low value-adding intra-group services can prevent the service provider from recovering the totality of the costs incurred for rendering the services. In order to preserve the intended effect of the simplified approach, where a profit element or mark-up is included in the charge for low value-adding services, tax administrations should, where possible under domestic law or applicable treaty provisions, apply withholding tax only to the amount of that profit element or mark-up and not to the underlying cost reimbursement. Where domestic law requires withholding tax to be levied on the gross service fee, a contractual gross-up should not, by itself, cause the underlying service charge to be regarded as non-arm's length, provided the pre-tax service charge is arm's length.*

4.5. **Clarification required on the "*willing to pay or perform in-house*" test — Section B.1.1 / paragraph 7.13**

4.5.1. Paragraph 7.13 provides that the benefit test is determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed by another independent enterprise or would have performed the activity in-house for itself.

4.5.2. It further states that if the activity is not one for which an independent enterprise would have been willing to pay or perform for itself, then it should not be considered that an intra-group service transaction has occurred.

4.5.3. We understand the purpose of this language. However, we are deeply concerned that it may be misunderstood or applied too narrowly in practice, particularly in developing-country audits.

4.5.4. Revenue authorities may interpret the wording as requiring evidence that the local recipient entity would, on a standalone basis, have separately purchased the same service from a third party or developed the same capability in-house. That would be too restrictive.

4.5.5. In many MNE groups, certain services are centrally mandated and centrally performed because they are more efficiently, consistently and effectively managed at group level. A local operating company may not independently decide to buy the service from a third party and may not have the scale, expertise, resources or risk visibility to build the capability in-house.

4.5.6. The local operating company may not have the scale, resources or regulatory capability to develop an equivalent platform independently. It may nevertheless receive clear economic or commercial value through access to the centrally managed functionality. However, that does not mean the service provides no economic or commercial benefit to the local entity.

4.5.7. A practical example is group-wide cybersecurity and IT security monitoring. A local operating company may say that, on a standalone basis, it would not independently procure a dedicated third-party cutting-edge cybersecurity monitoring service and would not build such a highly sophisticated cybersecurity and IT security monitoring function internally.

4.5.8. Nevertheless, the group may operate a central state-of-the-art cybersecurity function that monitors threats, manages access controls, prevents ransomware attacks, maintains disaster recovery protocols, patches vulnerabilities, responds to incidents and ensures compliance with group IT security standards. These activities can protect the local entity's systems, data, operations, customers, suppliers, financial records and business continuity. They may therefore provide clear economic or commercial value to the local entity, even if the local entity would not have independently procured or performed the same activity on a standalone basis.

4.5.9. The same issue may arise in relation to other centrally provided services, such as sanctions screening, anti-bribery controls, ESG reporting systems, data privacy controls, internal audit remediation, disaster recovery, treasury risk management, insurance coordination and regulatory compliance support. These activities may be implemented centrally because of group-wide risk management requirements, but they can still provide direct or indirect benefit to local operating entities.

4.5.10. The fact that a local operating entity would not independently develop or acquire the same technology does not mean that it receives no benefit from the service. The relevant question is whether access to the functionality, output, resilience or capability of the platform enhances or maintains the recipient's commercial position.

4.5.11. Submission: We therefore recommend that paragraph 7.13 be clarified to avoid any unintended narrow interpretation.

4.5.12. The test should not be whether the specific local entity would necessarily have purchased the identical service from a third party or performed the identical activity in-house. Rather, the question should be whether, having regard to the facts and circumstances, the activity provides economic or commercial value that enhances or maintains the recipient's business position, including by reducing risk, preserving operational continuity, protecting assets, supporting compliance or avoiding losses.

4.5.13. Suggested example for inclusion in Annex I:

4.5.14. *Company A, the parent company of an MNE group, operates a central cybersecurity function that monitors cyber threats across the group, manages access controls, coordinates patch management, maintains disaster recovery protocols and responds to security incidents. Company B, a local operating subsidiary, does not have the scale or technical capability to perform these functions in-house and may not, on a standalone basis, have procured an equivalent dedicated cybersecurity monitoring service from a third party. However, Company B uses the group's IT systems, processes customer and supplier data, relies on the continuity of its IT environment and is exposed to operational and financial loss in the event of a cyber incident. In these circumstances, Company B receives economic or commercial value from the central cybersecurity function. The activity should not be treated as non-beneficial merely because Company B would not have independently purchased or performed the identical service on a standalone basis.*

4.6. Distinction between the benefit test and pricing — paragraphs 7.13 to 7.16 and Section C

4.6.1. Paragraph 7.13 defines the benefit test by reference to whether the activity provides economic or commercial value to enhance or maintain the recipient's business position.

4.6.2. Paragraphs 7.15 and 7.16 recognise that the benefit may be expected rather than guaranteed, and that a service may still be provided even if the expected benefit is not ultimately realised.

4.6.3. Submission: We strongly support paragraphs 7.19 and 7.20 and recommend that the principle be reinforced through additional examples.

4.6.4. We further recommend that the OECD more clearly distinguish between a failure of the benefit test and a disagreement over pricing. In practice, tax administrations may sometimes deny the full deduction for an intra-group service charge where they disagree with the mark-up, cost base, allocation key or level of supporting documentation. This creates an inappropriate "**all-or-nothing**" outcome.

4.6.5. Where a genuine service has been provided and the recipient had a reasonable expectation of economic or commercial benefit, the appropriate response should generally be a pricing adjustment rather than full disallowance. Full disallowance should be reserved for cases where no activity was performed, the activity is a shareholder activity, or the benefit test is not met.

4.6.6. We recommend that the final guidance distinguish between:

- the existence of a benefit to the recipient;
- the costs incurred by the service provider; and
- the arm's-length charge that an independent recipient would be willing to pay.

4.6.7. The fact that a recipient benefits from a service should not automatically imply that all costs incurred by the provider are allocable to, or recoverable from, the recipient.

4.6.8. In practice, provider costs may include items such as unused capacity, future-growth investments, legacy systems, unsuccessful projects, provider-specific requirements, or functionality not used by all recipients. Independent parties would generally evaluate whether such costs are appropriately borne by the recipient having regard to the expected benefits received, the services actually used, and the options realistically available.

4.6.9. Submission: We therefore recommend clarifying that provider costs may inform the arm's-length charge but do not, by themselves, determine the amount that an independent recipient would be willing to pay. The recipient's expected benefits, available alternatives and market evidence should also be considered.

4.6.10. Consideration could also be given to an example involving a shared platform that contains excess capacity or functionality not used by all recipients, illustrating that the existence of a benefit does not necessarily require recipients to bear all platform costs

4.6.11. Suggested addition:

4.6.12. *Where the benefit test is satisfied but the tax administration disagrees with the amount charged, the mark-up, the cost base or the allocation key, the appropriate response should generally be to determine an arm's length amount rather than to deny the entire charge. Full disallowance should be limited to cases where the facts support a conclusion that no service was rendered, the activity was a shareholder activity, or the recipient did not receive and could not reasonably have expected to receive economic or commercial value.*

4.7. **VAT and indirect tax interaction — Section E.4 and paragraph 7.96**

4.7.1. Although Chapter VII is focused on transfer pricing, the practical cost of intra-group services in some jurisdictions is often affected by VAT, reverse-charge VAT, import VAT on services, non-creditable VAT and withholding tax.

4.7.2. Submission: Paragraph 7.96 recognises the issue of withholding tax, but the broader interaction between transfer pricing, withholding tax and indirect taxes should also be acknowledged. A service charge that is arm's length for transfer pricing purposes can become commercially burdensome where the recipient bears withholding tax, reverse-charge VAT and foreign currency conversion costs.

4.7.3. Suggested addition:

4.7.4. *While VAT, reverse-charge VAT and other indirect taxes are matters of domestic law, tax administrations should be mindful that multiple layers of tax on routine intra-group service charges may produce disproportionate outcomes, particularly where the underlying service charge is low-margin or pass-through in nature.*

4.8. **Documentation of continuous, preventative, automated and availability-based services**

4.8.1. We recommend that the final guidance provide additional clarification regarding the documentation of continuous, preventative, automated and availability-based services.

4.8.2. Many centralised services do not generate a discrete deliverable for every activity performed. Examples include technology infrastructure, cybersecurity monitoring, disaster recovery, business continuity, application maintenance, regulatory reporting infrastructure, and risk or compliance monitoring.

4.8.3. The value of these services often lies in maintaining capability, monitoring risks, preventing incidents, or ensuring that support is available when required. Accordingly, the absence of a system failure, cyber incident or compliance breach should not be interpreted as evidence that no service was provided. In many cases, it may indicate that the service operated effectively.

4.8.4. For these types of services, it may be impractical and disproportionate to require evidence of every individual automated process, monitoring activity or preventative intervention. Documentation expectations should therefore be proportionate to the nature, materiality and transfer pricing risk of the service.

4.8.5. Submission: The guidance could clarify that reliable evidence may include:

4.8.6. Service agreements and service catalogues;

4.8.7. System access and usage records;

4.8.8. Availability, uptime or performance reports;

4.8.9. Monitoring and incident-management records;

4.8.10. Governance and approval documentation;

4.8.11. Cost allocation records; and

4.8.12. Representative operational evidence.

4.8.13. Taxpayers should not be expected to create extensive additional documentation solely for transfer pricing purposes where reliable operational records already exist.

4.8.14. Suggested Example

4.8.15. Company A provides Company B with continuous cybersecurity monitoring and disaster recovery capability.

4.8.16. No material cyber incident or system failure occurs during the year.

4.8.17. The absence of an incident does not indicate that no service was provided. The service may be evidenced through service-level reports, access logs, monitoring records, testing results and governance documentation. Company A should not be required to demonstrate every individual automated monitoring activity performed during the year.

4.9. **Low value-adding services: 5% should not become a minimum benchmark — paragraphs 7.76, 7.79 and Section E.2**

4.9.1. Paragraph 7.76 defines low value-adding intra-group services for purposes of the simplified approach. The simplified approach is elective. The fact that a service satisfies the low value adding services definition should not permit a tax administration to impose the simplified approach or treat 5% as either a minimum or maximum arm's length return.

4.9.2. Where a taxpayer does not elect to apply the simplified approach, the arm's length price should be determined under the general OECD principles. Depending on the facts and circumstances, the arm's length remuneration for such services may be above, equal to, or below 5%.

4.9.3. Paragraph 7.79 helpfully states that the fact that an activity does not qualify for the simplified approach should not be interpreted to mean that the activity generates high returns.

4.9.4. We recommend that this point be further strengthened.

4.9.5. In practice, tax administrations may sometimes treat the 5% mark-up used in the simplified approach as a default floor for all service arrangements. This would be inappropriate.

4.9.6. The final guidance should confirm that:

- 5% is not a minimum or maximum mark-up;

- pass-through costs may be recharged without mark-up;
- cost-only recharges may be arm's length in appropriate circumstances;
- exclusion from the simplified approach does not automatically mean that a service is high value or should earn a materially higher return.

4.9.7. Suggested addition:

4.9.8. The mark-up used under the simplified approach should not be interpreted as a minimum benchmark for all intra-group services. Depending on the accurate delineation of the transaction, some recharges may appropriately be made at cost, particularly where the relevant costs are pass-through costs or where the service provider acts only as an administrative intermediary.

4.9.9. The inclusion of an example on Mixed service pool charged at a single 5% mark-up is also recommended:

4.9.10. *An example where a regional service centre provides both routine low value-adding services and more specialised services, but applies a single 5% mark-up to the full cost pool. The example should clarify that the 5% mark-up is not a default benchmark for all services provided by a centralised service centre. Services that meet the low value-adding criteria may be priced under the simplified approach, while services that do not meet those criteria should be priced separately under the general arm's length principle. At the same time, the fact that a service is excluded from the simplified approach should not automatically imply that it requires a high return.*

4.10. Avoiding double taxation and inconsistent outcomes — Section E and paragraph 7.96

4.10.1. Intra-group services are particularly susceptible to double taxation because the same charge may be:

- taxed in the service provider jurisdiction;
- denied as a deduction in the recipient jurisdiction;
- subject to withholding tax in the source jurisdiction;
- subject to VAT or reverse-charge VAT;
- delayed or restricted under exchange control rules.

4.10.2. This risk is particularly acute where one jurisdiction accepts the simplified approach for low value-adding services, but the counterparty jurisdiction does not, or where the source jurisdiction imposes withholding tax on the gross service fee despite the low-margin nature of the charge.

4.10.3. Submission: We recommend that the OECD encourage tax administrations to apply the guidance in a manner that reduces double taxation and supports consistency between provider and recipient jurisdictions.

4.10.4. Notably, where one jurisdiction accepts and implements the simplified approach and another jurisdiction does not, the level of documentation available to support the position for the entity in the jurisdiction which does not adopt the simplified approach may not be available.

4.10.5. This could be due to (i) the group simply does not maintain the documentation at entity level in the said jurisdiction because the group as a whole adopts the simplified approach, or (ii) the one entity in the jurisdiction which adopts the simplified approach is not able to provide the other entity with the required support for the same reason.

4.10.6. Typically, audits into services transactions occur several years after the year in which the transaction occurs, further compounding the problem.

4.10.7. Submission: The OECD should clarify the position where there is a disparity in accepting the simplified approach as to the minimal level of supporting documentation that should be retained by the entity and required by the revenue authorities which do not adopt the simplified approach.

4.10.8. A further concern relating to the disparity between jurisdictions in adopting the simplified approach is the resolution of double taxation. We recommend that the final guidance acknowledge that inconsistent delineation and characterisation of intra-group arrangements may give rise to double taxation beyond situations involving the simplified approach.

4.10.9. In particular, arrangements involving centralised technology platforms, digital services, data analytics or other intangible-enabled services may be characterised differently by different jurisdictions. For example, one jurisdiction may treat the arrangement as a service, while another may regard it as a licence, royalty or transfer of intangible-related rights.

4.10.10. Submission: To reduce the risk of double taxation, the guidance should encourage tax administrations to seek consistent delineation of the transaction before determining the arm's-length outcome. Consideration should be given to the functions performed, rights granted, expected benefits received and the economically relevant circumstances of both the provider and recipient.

4.10.11. Even where the relevant double tax convention between the jurisdictions is based on the OECD Model Tax Convention, disparity in accepting the supporting guidelines will lead to incidence of double taxation which may be unresolvable.

4.10.12. Whilst use of the Mutual Agreement Procedure is the recognised way to resolve the double taxation, where one jurisdiction is accepting the simplified approach and the other jurisdiction is not, such a process will inevitably fail. This is compounded by the fact that most jurisdictions which do not accept the simplified approach, also have no binding arbitration clauses in the conventions ensuring resolution is achieved.

4.10.13. Submission: The OECD should therefore encourage countries which do not adopt the simplified approach to ensure that incidences of double taxation are resolved effectively through the double taxation conventions and request reporting on the success or otherwise of Mutual Agreement Procedures specifically relating to the disparity of the acceptance of the simplified approach to monitor this.

4.11. **Optional example**

4.11.1. A centralised technology platform is made available to group entities in multiple jurisdictions. One tax administration characterises the arrangement as a service, while another treats it as a royalty-bearing licence of technology. The differing characterisations result in overlapping transfer pricing adjustments and potential double taxation. Consistent delineation of the transaction should be established before determining the appropriate arm's-length compensation.

4.12. **Need for clearer guidance on materiality thresholds — Section E.2.6**

4.12.1. Section E.2.6 recognises that tax administrations may apply an appropriate threshold when considering the simplified approach for low value-adding intra-group services.

4.12.2. While we understand the rationale for allowing tax administrations to consider materiality and risk, the current wording is open-ended and may lead to inconsistent application across jurisdictions.

4.12.3. There may be a likely scenario where the same regional service charge may be accepted as low-risk in one jurisdiction but rejected or subject to full documentation in another because different local thresholds are applied. This could undermine the objective of the simplified approach, which is to reduce disputes and compliance burden for routine services.

4.12.4. Submission: We recommend that the OECD provide clearer guidance to tax administrations on how thresholds should be designed and applied. Such thresholds should be transparent, proportionate and administratively practical. They should specify whether the threshold applies per transaction, per service category, per recipient entity or annually, and whether pass-through costs are included or excluded.

4.12.5. The guidance should also clarify that exceeding a threshold should not automatically result in denial of the simplified approach or disallowance of the service charge. Instead, it may justify additional documentation or review. The taxpayer should still be able to demonstrate that the services are routine, supportive in nature and otherwise meet the criteria for low value-adding services.

4.12.6. **Application of the transactional profit split method on intra-group services**

4.12.7. We support the clarification that neither a one-sided method nor the service provider should automatically be selected as the tested party when evaluating intra-group services. We also agree that the transactional profit split method may be appropriate where the conditions in Chapter II are satisfied.

4.12.8. However, the final guidance should clarify that the materiality of a service, its importance to the recipient, the use of proprietary technology, or operational integration within a group should not, individually or collectively, create a presumption that a transactional profit split is the most appropriate method.

4.12.9. The selection of a profit split should remain subject to the principles set out in Chapter II, including an assessment of whether:

4.12.9.1. More than one party makes unique and valuable contributions;

4.12.9.2. The activities are so highly integrated that they cannot be reliably evaluated separately; and

4.12.9.3. The parties share or separately assume closely related economically significant risks.

4.12.10. The existence of important local functions should not, without further analysis, be treated as evidence of unique and valuable contributions to a centralized service capability or technology platform. This may be particularly relevant in regulated industries, where local entities perform governance, compliance and customer-facing activities that are important to their business but do not necessarily contribute to the development, ownership or control of the underlying service capability.

4.12.11. Accordingly, a one-sided method should remain appropriate where the economically significant non-routine contribution is concentrated in one party and the contribution of the other party can be reliably evaluated.

4.12.12. Suggested Example

4.12.13. Company A develops, owns and controls a centralized technology platform used by multiple group entities. The local entities hold regulatory licences, manage customer relationships and assume local market risks but do not contribute to the platform's development, ownership or control, nor do they share the economically significant risks associated with the platform.

4.12.14. In these circumstances, the importance of the local functions and the operational integration of the group should not, by themselves, require application of a transactional profit split to the service transaction.

END.