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To

The In charge- Transfer Pricing,

Tax Treaties and International Agreements Division

OECD Centre for Tax Policy and Administration.

Sent via email: taxpublicconsultation@oecd.org

Sub: Comments on OECD Public Consultation Document- Revisions to Chapter VII of the OECD Transfer Pricing Guidelines- Special considerations for intra-group services

VSTN appreciates the opportunity to submit comments in response to the OECD's Draft Public Consultation Document on Revisions to Chapter VII of the OECD Transfer Pricing Guidelines- Special considerations for intra-group services.

We welcome the OECD's continued efforts to enhance the guidance on intra-group services and to promote greater consistency with the foundational principles set out in Chapters I to III of the OECD Transfer Pricing Guidelines. The proposed revisions represent a meaningful step towards strengthening the framework for delineating intra-group services, providing additional guidance on determining arm's length remuneration, and offering greater clarity on the selection and application of the most appropriate transfer pricing method. The inclusion of new illustrative examples is particularly valuable, as it will assist taxpayers and tax administrations in applying these principles more consistently in practice.

Given the increasing importance of services in cross-border business operations and global value chains, comprehensive and practical guidance on the transfer pricing treatment of intra-group services remains highly relevant. Accordingly, it is imperative that the final guidance reflects both the economic and commercial substance of such arrangements and the practical realities of their implementation. Guidance that is comprehensive, clear, and capable of consistent application will be instrumental in enhancing tax certainty, facilitating dispute prevention, and ensuring that transfer pricing outcomes appropriately align with value creation.

Our comments are organized into two sections: (i) specific comments on the questions raised, and (ii) general comments on other aspects of the draft.

COMMENTS ON OECD DRAFT GUIDELINES

SPECIFIC COMMENTS

BOX 1 – Feedback

1. *The understanding and practical application of existing guidance in paragraph 7.10 of the OECD 2022 Transfer Pricing Guidelines.*

Accurate Delineation of Intra Group Service Transactions- FAR Analysis

While para 7.7 to 7.12 of the consultation draft links Guidance in Chapter I – on accurate delineation of transactions, the Guidance under Shareholding activities can explicitly include how the functional analysis can capture the relevant risks, and how the respective entity said to have control over those risks will have to bear the costs that are incurred for undertaking activities to mitigate those risks.

In the context of intragroup services, more specifically shareholding activities, Guidance can consider including mapping the risks between group entity (service recipient) and another group entity (service provider / parent entity / ultimate parent entity). Further the Guidance can clarify / provide that the respective entity bearing the said risk & having control over the risks will have to finally bear the costs relating to activities that mitigate those risk – whether by entity itself or another group entity. That is where the risks relating to regulatory compliance is borne by the service provider (parent entity or ultimate parent entity or regional HQ), in such a case any costs incurred with regard to activities that mitigate such risk – for example filing related costs, manpower costs / consultant cost involved with regard to such filings, etc. will have to be borne by the service provider.

Inclusion of the aforesaid mapping of these risks will materially aid streamlining intragroup transactions, more particularly shareholding activities, within the six-step framework prescribed under Chapter I of the Guidance, providing much needed clarity on this subjective issue of shareholding activities.

BOX 1 – Feedback

2. Whether, based on your experience, there are other activities that would commonly meet the definition in paragraph 7.9 of the OECD 2022 Transfer Pricing Guidelines that are not reflected in paragraph 7.10 of the OECD 2022 Transfer Pricing Guidelines.

Shareholder Activity Vs Stewardship Activity / Intra Group Services

The draft Guidelines aim to provide greater clarity on what constitutes shareholder activities vis- a- vis intra group services by applying the benefit test. In current business models, MNE groups increasingly rely on centralized governance, risk, compliance, and tax control frameworks supported by digital platforms.

A classic example would be the Group's Parent Company decision to establish TP governance framework by implementing the Operational Transfer Pricing (**OTP**) Tool which will help to monitor whether the Group transactions follow the agreed pricing policy. The decision to implement the tool may be regarded as activity ancillary to corporate governance if the sole purpose of implementing the tool is to facilitate the Group to ensure compliance with the TP Policy. However, if the OTP tool directly benefits the group entities in monitoring transfer pricing outcomes, computing the Transfer Price, posting journal entries etc, then the same may not be regarded as shareholder activity but as Intra Group services.

Another aspect that needs to be evaluated would be on the concept of Regional Headquarters. Certain countries like Kingdom of Saudi Arabia, lay down regulations for regional headquarters and which are often subject to 0% tax on income. The local regulations also lay down activities that need to be carried out by such RHQs to be eligible for exemption. Accordingly, RHQs typically carries on activity which may include Shareholder activity, Stewardship activity- management oversight & control and intra group services. While certain functions may be easily categorised into the above three categories, in most instances there may be genuine difficulties in bifurcating these into the above categories. For e.g., a CEO of RHQ may be engaged in providing shareholder services as well as management services that may benefit the entities in that region. Hence the taxpayers may be required to delineate the services to determine whether an activity constitutes shareholder activity or stewardship activity / service activity.

While shareholder activity is not chargeable, stewardship activities and services are chargeable if they confer direct benefit for other group entities.

In Para 7.25 the draft mentions that the shareholders' activities need to be distinguished from the stewardship activities which are generally services in nature. However, it is suggested that the draft can clearly state the differences with examples and comment on the level of testing required to substantiate the arm's length nature of stewardship activities.

In many instances where Indian subsidiaries are charged by overseas parent for such activities, the tax authorities would want to equate stewardship activities with the shareholding activities and rule out the payment of such charges by Indian entities. Therefore, it is important that the draft address such issues by clear guidance on stewardship activities and its arm's length price determination.

Further the guidance may also need to consider the local country regulations impacting the recognition of certain services as shareholder activities vis-à-vis intra group services/ stewardship activities. For example, in China the TP regulations consider management charges as shareholder activities on the pretext that even though such activities confer benefits to group entities, the benefits realised by the Parent entity are much higher and therefore cannot be claimed as deduction.

Therefor guidance on what activities generally constitute Shareholder activity/ Stewardship activity/ Service activity may be very valuable. Based on our experience we have categorised as below:

Activity	Nature of activity
Regional CEO oversight of subsidiaries	Stewardship. If absence of local CEOs then it can move towards an intra group service
Monitoring subsidiary financial performance	Stewardship
Regional governance and compliance oversight	Stewardship
Appointment and evaluation of subsidiary directors	Stewardship
Regional HR shared service centre	Intra-group service
Payroll processing/accounting support	Intra-group service
Regional IT help desk	Intra-group service
ERP system management	Intra-group service
Treasury operations and cash pooling	Intra-group service
Procurement negotiations for affiliates	Intra-group service
Regional tax compliance support	Intra-group service
Legal contract review for subsidiaries	Intra-group service

Activity	Nature of activity
Group-wide cyber security monitoring	Intra-group service
Development of group strategy	Stewardship
ESG reporting for parent company annual report	Shareholder
ESG implementation support at subsidiary level	Intra-group service

Interest-Free Financing and Shareholder Support

Additional guidance would be welcome on whether, and in what circumstances, interest-free financing may be regarded as being in the nature of shareholder support, particularly in the case of wholly owned subsidiaries. Clarification of the factors that distinguish a shareholder activity from an intra-group service or financing transaction that requires compensation would promote greater consistency in application and reduce disputes. This is very relevant for Groups in the middle east where they fund their subsidiaries without any interest charge.

Recommendation

We recommend that the final guidance include additional examples on:

- the distinction between shareholder, stewardship and service activities;
- mixed-function activities undertaken by regional or head office personnel;
- the treatment of digital governance and compliance platforms;
- practical approaches for cost allocation where activities contain both shareholder and service elements; and
- the application of these principles to Regional Headquarters structures.

Such guidance would enhance consistency in application by both taxpayers and tax administrations and help reduce disputes concerning the characterization and charging of head office and RHQ costs.

BOX 1 – Feedback

3. The activities that, based on your experience, could be captured by item (e) which refers to "ancillary activities to the corporate governance of the MNE as a whole".

Activities not ancillary to Corporate Governance

Apart from activities that can be considered as ancillary activities, certain activities may be specifically excluded such as ESG compliances. For example, the parent of the Group can spearhead ESG related compliances for the Group, but where the group entity has specific compliance to be fulfilled, for which the parent entity provides support, it might not be deemed to be shareholding activities.

Specific clarification can be provided on how efforts by the Parent / Ultimate parent, having a positive impact on the group entity's governance indicators, and indirectly having a monetary impact.

BOX 2 – Feedback
1. *Would it be useful to provide further guidance on the application of allocation keys for certain intra-group services?* 2. *What are the allocation keys appropriately applied in practice to specific intra-group services?*

1. **Further guidance on the application of allocation keys for certain intra-group services**

   Para 7.46 of the consultation draft states that there should not be additional administrative burden cast upon the taxpayer in connection with recording and analysis of the services. Also, the concluding lines of paragraph state that there should be consistency in the allocation method with what has been conducted between independent entities.

   In this context, Guidance can also include that where services of material quantum are being rendered, independent entities would invest required efforts in ensuring that costs are accurately ascertained, as the service provider would want to ensure that indirect costs are also factored in the pricing. This is to ensure that the service provider does not excessively charge as it might appear overpriced and become uncompetitive nor it be underpriced since it would be unprofitable in the long run.

   Where Guidance explicitly compares these intragroup services with independent services, these necessary additional efforts can provide significant respite during the course of audits by the tax authorities, which is in taxpayers best long-term interests.

   Therefore, where Guidance includes the importance of necessary accounting systems in the MNE group, this would ensure both accurate accounting / recording of revenue as well as profitability while simultaneously ensuring that necessary inputs for robust documentation is maintained.

   Guidance can consider including lists of various group of expenses incurred by the service provider and the allocation of these expenses. Further the Guidance can also provide certain allocation keys, mapped / aligned as per the generally accepted global costing standards for each of the group of expenses.

   The Guidance can enunciate principles for allocation, and then provide the examples. These examples can be listed in the descending order of preference – best case, followed by next best approximation. The Guidance can consider providing a principle based approach rather than a rule based / formulaic approach.

This can include Guidance on situations where the employees exclusively provide services to an associated enterprise vis-à-vis for group entities per se. Though the most appropriate allocation key would depend on the respective facts and circumstance, this approach could provide taxpayers a base scenario, over and above which they can customize while implementing.

In Para 7.9, the requirement to evaluate the interdependencies of the activities with other activities and activities in other countries will pose a practical challenge in terms of the availability of information in either the service provider's or the service recipient's jurisdiction. Further some guidance can be provided on central C suite costs which occupy a part of the cost centres of most of the MNC's.

Para 7.10- considers the group structure (centralized vs Decentralized) as one of the parameters for identifying whether an activity is a shareholder activity or not. This may create bias in the minds of the tax authorities and therefore further clarity on the same would be helpful.

2. **Allocation keys appropriately applied in practice to specific intra-group services**

Taxpayers often face challenges in determining the most appropriate allocation methodology for indirect charges, leading to inconsistencies in practice.

Guidance can have two faced approach – allocation keys for specific intra-group services and for allocation of certain heads of expenses that are commonly incurred. Guidance can also clarify on the basis of allocation, including its principles, for various heads of expenses. For eg; Such guidance can be on:

a) The circumstances in which turnover is an appropriate allocation key for intra-group services.

b) Situations where the use of multiple allocation keys for different components of the same service is appropriate and consistent with the benefit received by recipients

Expenses Heads	Basis of Allocation/ Principle
Rent, Power	Use of Number of employees vs Hours vs employee cost *[In certain cases there might be large number of employees involved in the provision of services but the manpower costs might be relatively less compared to other segments. In which case number of employees would be a better allocation as compared to cost of employees providing the services. Mid-way between the use of number of employees and employee cost can be hours spent. This is particularly useful where the resources are fungible]*

In addition, based on our past experience we have included certain common allocation keys which are only illustrative in nature.

Services	Allocation keys
Top Management services	Time spent by region
IT services	Headcount - IT users//number of licenses/number of tickets raised
Administration	Headcount / Assets managed /office space occupied (eg. Sq.ft)
Finance / Accounting	Transaction volume / Headcount/ invoices processed
Sales and marketing	Revenue or production volume (immediate results) / Time spent (strategy and expected benefits)
Manufacturing	Product volume based
Research	Revenue or production volume (immediate results) / Time spent (strategy and expected benefits)
Treasury	Assets / capital employed
HR / payroll	Headcount
Legal and regulatory	Time spent by region / Revenue
Procurement / Supply chain	Spend volume / PO based / time spent by the personnel
customer support services	Number of customers serviced, Support tickets or service requests, transaction volume

Thus providing a mapping of recommended allocation keys for various heads of expense would enhance clarity, promote a more uniform approach, and help minimize anomalies in the adoption of allocation methodologies.

BOX 3 – Feedback

1. *Do you encounter challenges associated with the appropriate treatment of stock or share based compensation in relation to intra-group services? If so, please describe these challenges and whether they include timing, accounting treatment and valuation of stock or share based compensation?*
2. *How do you address stock-based compensation as part of your transfer pricing analysis?*
3. *Do you think additional guidance in relation to stock or share-based compensation would be beneficial for intra-group services?*

The treatment of stock-based compensation is often a subject matter of debate. The lack of specific guidance created uncertainty, particularly because different multinational groups adopted different approaches, wherein

a) MNCs include SBC as part of cost base and charge mark-up.

b) In case of uncharged or notional SBC, MNCs may not include these in their cost base.

c) MNCs may recharge the SBC on cost to cost basis without mark-up.

In particular, clarification would be welcome regarding:

a) When stock-based compensation should generally be regarded as employee compensation and included in the cost base of intra-group services;
b) Circumstances in which exclusion from the cost base may be appropriate; and
c) Whether the analysis differs in the context of low value-adding intra-group services.

Additional illustrative examples could further assist taxpayers and tax administrations in applying a consistent approach to stock-based compensation costs in transfer pricing analyses.

In Singapore, IRAS recently issued 9^{th} Edition of the Transfer Pricing Guidelines which aligned the treatment of with the OECD's guidance in '*The Taxation of Employee Stock Options*'. Based on this IRAS has identified three distinct scenarios in relation to Share Based Compensation (SBC) and has provided explicit technical clarification on whether such costs should be added to the cost base to derive the service income under each such scenario.

The table below presents a comparative summary of the SBC treatment across these scenarios as below:-

Scenario	Description	Treatment
Scenario 1 - Incurred Share-Based Compensation	Related party (Company B) charges Company A $10,000 and Company A records it in its books.	No change. Include $10,000 in cost base and service income. Cost Base - $210,000 ($200,000 + $10,000) Service Income - $210,000 + X% mark-up on $210,000
Scenario 2 - Uncharged Share-Based Compensation	Related party (Company B) should have charged Company A $10,000 but does not, and Company A does not record it in its books.	Include $10,000 in cost base, but exclude it from service income. Cost Base - $210,000 ($200,000 + $10,000) Service Income - $200,000 + X% mark-up on $210,000
Scenario 3 - Notional Share-Based Compensation	Related party (Company B) does not charge Company A, but Company A records a notional expense under accounting standards.	Include $10,000 in cost base, but exclude it from service income. Cost Base - $210,000 ($200,000 + $10,000) Service Income - $200,000 + X% mark-up on $210,000

From an Indian perspective, the treatment of SBC costs has largely evolved through judicial precedents rather than any specific guidance. Time and again Indian courts have upheld that SBC costs are neither charged to nor borne by the Indian entity and hence no adjustments may be warranted for not including such notional costs in cost base of the Indian tested party. However, the Indian Revenue's position in certain APAs, has generally been to include SBC costs in the tested party's cost base.

U.S. enforces inclusion of SBC in service cost bases, under its own Internal Revenue Code and Treasury Regulations, relying on federal litigation to enforce compliance.

Considering the need to provide greater certainty and consistency in the transfer pricing treatment of SBC, with the objective of reducing disputes and enhancing tax certainty - particularly in light of the growing prominence of SBC due to:

- Greater use of global equity incentive plans across multinational groups,
- Expansion of regional service hubs and shared service centers,
- Increased focus by tax authorities on cost plus remuneration models

Accordingly, it is recommended that the additional guidance in relation to stock or share-based compensation would be a welcome step as it would impose certainty with respect to treatment of costs and thereby reduce tax controversies.

GENERIC COMMENTS

A. BENEFIT ANALYSIS

"7.13. The accurate delineation of intra-group services includes the assessment of whether the service has been performed. This assessment is known as the "benefit test" and requires the determination of whether the activity of one group member provides another group member with economic or commercial value to enhance or maintain its business position. This is determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by another independent enterprise or would have performed the activity in-house for itself……"

Comparing the rendition test with benefit test may give arise to a different set of consequences uncalled for. Services though rendered but since not satisfying the benefit test cannot be said that service is not rendered as this may also have impact from corporate tax perspective on the allowability of the expenses. So rendition and benefit test should not be equated.

"Para 7.16. Where the activities do not deliver the benefit as expected, an evaluation of multiple year data may be valuable in understanding whether the benefit was, in fact, reasonably expected at the time the activity was performed. In addition, such information may be valuable in determining whether the ongoing activity consistently fails to deliver a benefit as expected, and if so, to assess whether independent parties would be willing to continue to pay for such activities. Taxpayers should be prepared to provide reliable contemporaneous information to support that the benefit test has been fulfilled even if the benefit has not been realized as expected"

The guidelines provide that expectation of future benefit from intra group services as critical criteria for evaluating whether such services constitute intra group services in instances where the activities do not confer immediate benefits . The guidelines thrust the onus on the taxpayer to provide reliable contemporaneous information to support that the benefit test has been fulfilled even if the benefit has not been realized as expected.

In instances where the services does not create any value or benefit to the recipient then Tax authorities may challenge the business decisions stating that the services did not result in any quantifiable benefit to the service recipient.

A classic example would be where a market analysis is conducted by the Parent company for the group entities but the entities do not enter the market given less demand/ very high competition in that market. In this case though the services were rendered by the parent company, the activities did not result in any quantifiable benefit but it helped the group entities in taking informed decisions of whether to enter the market or not. However, Tax Authorities may challenge the said charge as it did not result in any quantifiable benefit.

In Para 7.4, the draft guidance provides that *"Tax administrations should not dictate how an MNE should source services. The role of tax administrations, rather, is to determine the tax consequences of the transaction, including its evaluation under the arm's length principle recognises that tax administrations should not dictate how an MNE should source services….*". Accordingly, it would be appropriate if the guidelines explicitly clarifies that the Taxpayer's decision to procure services to enhance or maintain commercial expediency is a business decision and that the same cannot be questioned by the tax authorities. The transfer pricing analysis should therefore focus on whether the services were actually rendered, whether the recipient obtained or reasonably expected to obtain economic or commercial value from the services, and whether the charge is consistent with the arm's length principle.

Taxpayers should have certainty regarding the evidence necessary to demonstrate that, at the time the services were rendered, there was a reasonable expectation of economic or commercial benefit, even where such benefits ultimately do not materialize. Therefore, where actual service rendition and a reasonable expectation of benefit are established, tax authorities should focus on the appropriateness of the charge and supporting evidence and not challenge the taxpayer's commercial judgment solely because the anticipated benefits were not ultimately realized.
Further when assessing whether an expenditure should be recognized based on an expected benefit, the analysis should extend beyond purely

monetary or economic returns and also consider broader commercial outcomes, including improvements in quality, efficiency, operational effectiveness, and strategic value. (Para 7.15/7.16)

A key point for discussion is the appropriate period over which such benefits should be evaluated. Where benefits are expected to accrue over multiple years, determining the relevant time horizon, whether three years or five years becomes critical. Therefore guidance may be provided on the ideal time frame that should be considered.

From a documentation perspective, taxpayers may be required to demonstrate and track the realization of benefits in subsequent years in relation to payments made in prior years. This creates an additional compliance burden, particularly where each annual payment is expected to generate benefits over an extended period. In such cases, isolating and attributing benefits to specific payments can be challenging, especially when benefits arising from multiple payments overlap across different years. As a result, establishing a clear linkage between individual payments and the corresponding benefits realized may become increasingly complex.

Accordingly, it would help if the draft regulations provide clearer guidance on the nature and extent of documentation required to substantiate an expected benefit. Further it is recommended that guidance provides a template for documenting the benefit analysis so that the expectation from the Taxpayers and Tax Authorities perspective is well defined thereby reducing possible controversies.

B. DOCUMENTATION (para 7.71-7.73)

The draft guidelines supplement the documentation requirements set out in Chapter V of the TPG for intra-group services and specifically require the inclusion of:

a. Benefit Test analysis- including expected benefits and reasons for benefits not materialising as expected
b. Decision communications (emails, minutes, approvals) relating to scope, provision and uptake of services
c. Copies of Technical documents / Service agreements
d. Deliverables (reports, memos, tickets)
e. Accurate breakdown of Activities connected to intra group services
f. Cost allocation method (allocation keys used, computation, variances, criteria for identification of costs to be allocated)

g. -Explanation and calculation of how Cost base was determined (incl. details of direct costs, indirect costs, Operating expenses and supporting documents)
h. Details of Pass-through costs vs marked-up costs
i. External invoices (esp. pass-through)

Documentation for Inbound Intra Group charges

The onus for maintenance of documentation substantiating the benefit received and arm's length pricing of intra group transactions rests with the taxpayers. While in case of outbound services, the data relating to cost incurred and allocation keys used may be maintained by the taxpayer, this level of detail in case of inbound intra group charges maybe prove to be difficult as the visibility on the cost incurred at the group company level for provision of such intra group services and the allocation keys used by the group to allocate such costs may not be available at the local entity level and accordingly collating such data may put the taxpayer in undue hardship and in many instances these may not even be possible to collate for the local entity receiving such services.

Further the Documentation requirements should provide for a **de minimis exemption,** provided as a percentage of the turnover which will account for the size of the company, so as to reduce compliance burden on the taxpayer for insignificant intra group transactions. Such de-minimis exemption may also be based on the complexity and nature of intra group services provided / received by the taxpayer.

C. Low Value Added Intra Group Services (para 7.94)

The draft should provide more guidance to the tax administrators to adopt similar approaches across various jurisdictions in order to address the disputes arising due to non-acceptance of thresholds introduced by one jurisdiction by other jurisdiction.

For VSTN Consultancy Private Limited

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The VSTN expert team welcomes the opportunity to discuss these comments in more detail. For any questions regarding this submission or for additional information, please contact

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