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OECD consultation on Chapter VII (intra-group services): submitted comments and key considerations

We welcome the opportunity to comment on the public consultation document on revisions to Chapter VII of the OECD Transfer Pricing Guidelines (the "**Consultation Document**"), released on 1 June 2026. Intra-group services are among the most common controlled transactions that taxpayers and tax administrations deal with in practice, and they are also among the most frequent sources of controversy. We therefore appreciate the work of Working Party No. 6 in modernising this chapter and in seeking to align it more closely with the foundational principles in Chapters I to III.

In our comments we have kept in mind the objectives stated in the Consultation Document, in particular the aim of enhancing clarity and providing practical illustrations without changing the underlying principles. Throughout, we have tried to assess the proposals against two yardsticks that, in our experience, determine whether guidance works in practice: whether it is consistent with the broader OECD Transfer Pricing Guidelines (the "**OECD Guidelines**") and whether it reduces rather than increases the compliance burden and the scope for double taxation.

Our comments are divided into two parts. In the first part we set out several general comments. In the second part we address the specific questions on which the Consultation Document expressly invites input, following the order in which they appear.

The comments submitted herein are on behalf of Loyens & Loeff N.V. and should not be construed as representing the opinions of any of its clients.

1. General Comments

Our general comments are confined to the aspects of the draft that represent genuine revisions to, or additions to, the existing Chapter VII.

(i) Starting the analysis from the accurate delineation

The most significant structural change in the draft is that Section B now begins the analysis with the accurate delineation of the transaction, whereas the current chapter opens directly with the benefit test. We support this change in starting point. The new statements in paragraph 7.7, that there should be no presumption that a service can be reliably priced using a one-sided method and no presumption as to which party is the tested party, have no direct counterpart in the current text and follow naturally from the accurate delineation framework. They should reduce disputes in which a cost-plus characterisation, with the service provider as the tested party, is simply assumed.

Our one general caution concerns the stated objective that the revisions are not intended to change the underlying principles. The new material introduces concepts and formulations that are not in the current chapter, and there is a risk that the additional detail is read by some tax administrations as raising the evidentiary bar. We make specific suggestions below where further clarification would be appreciated.

(ii) The new Documentation section

The introduction of a dedicated Documentation section (Section D) is new. We welcome the fact that paragraph 7.71 states expressly that the recommendations do not establish a mandatory minimum checklist or a documentation standard, and that the level of documentation should be proportionate to the materiality and nature of the services. This is the right principle, and it is helpful that it is stated at the beginning of the section.

Our practical concern is that, notwithstanding that statement, a new and detailed list of suggested contemporaneous evidence would be treated by tax authorities as a de facto minimum. To reinforce the principle the draft already articulates, we suggest paragraph 7.71 also make clear that no single item in the lists at paragraphs 7.72 and 7.73 is required, and that the existence of a service may be demonstrated by any reliable contemporaneous evidence taken as a whole. This would help ensure that the new section operates as the proportionate, non-prescriptive guidance it is intended to be, rather than adding to the compliance burden.

(iii) Expanded benefit concept and the link to remuneration

Section B.1 reworks and expands the benefit test in ways that go beyond the current paragraph 7.6, in particular the new articulation of the "reasonably expected" benefit in paragraph 7.15, the treatment of benefits that do not materialise as expected in paragraphs 7.16 and 7.17, and the confirmation in paragraph 7.18 that loss-making years do not negate a service. We support these clarifications, which reflect commercial reality.

The practical concern they raise is evidentiary. Because the new text frames the benefit as one that must be "reasonably expected at the time of the transaction", taxpayers may be asked to reconstruct, after the event, the expectation held at the outset for routine services that were never separately documented in those terms. Given the stated objective of clarifying rather than altering the underlying principles, care should be taken to ensure that the revised wording is not read as increasing the practical burden of demonstrating that a benefit was reasonably expected at the time the service was provided.

We suggest the guidance confirm that, for recurring or low-value services, the reasonable expectation of a benefit can be inferred from the nature of the service and ordinary commercial practice, without a bespoke contemporaneous record for each service. We also welcome the new separation in paragraphs 7.19 and 7.20 between the benefit test and the arm's length charge, and suggest one addition: that the guidance state expressly that, where the benefit test is met but the charge is not arm's length, the appropriate response is an adjustment to the price rather than a full denial of the deduction. Paragraph 7.19 already treats the benefit test and the determination of the arm's length remuneration as separate analyses. Making the consequence explicit, namely that a non-arm's length charge is corrected through a pricing adjustment rather than by disregarding the service, would give that principle practical effect, and where such an adjustment is made a corresponding adjustment would be available in the counterparty jurisdiction (either unilateral or through a mutual agreement procedure).

(iv) New profit split guidance for services

The dedicated guidance on the transactional profit split method in Section C.2.4 is new; the current chapter does not address the profit split in the services context. We agree that, in principle, the profit split can be an appropriate method for the limited category of services that involve unique and valuable contributions by both parties, a high degree of integration, or the shared assumption of economically significant risks. The contrast between Examples 13 and 17 helpfully marks the boundary. By setting out when the profit split is appropriate for services, it gives taxpayers a clearer and more predictable basis on which to apply that method in the cases where the facts genuinely support it.

Our practical concern is the risk of overreach. In our experience, tax administrations are increasingly inclined to assert a profit split wherever a service touches an intangible or a profitable outcome, even where the service provider performs routine functions. We therefore suggest that Section C.2.4 state more emphatically, consistent with Example 17 and with paragraphs 2.126 and 2.127 of Chapter II, that the profit split is not the default for high-value or intangible-related services, and that where one party makes the unique and valuable contributions and the other performs routine functions a one-sided method remains the more reliable approach. A clear statement to this effect in the body of the guidance, and not only in an example, would help prevent the new section being read as an invitation to apply the profit split by default.

(v) New pass-through cost guidance

The dedicated treatment of pass-through costs in Section C.2.3.3 is also new and is, in our view, a useful addition that reflects how independent intermediaries and paying agents are in fact remunerated. We support the principle in paragraphs 7.63 to 7.65 that costs which independent parties would not mark up should be recharged without a mark-up, and that an agent's mark-up should apply to its costs to provide this service rather than to the value of what passes through it. Example 20 illustrates this well.

The practical concern is again double taxation, which the indirect-charge discussion in paragraph 7.49 itself acknowledges. Where one jurisdiction accepts a cost as a genuine pass-through and the counterparty jurisdiction insists on a mark-up, the result is economic double taxation on the same cost. We suggest the guidance encourage bilateral consistency in the characterisation of pass-through costs, and confirm that the determination of whether a cost is a pass-through should be made once, on the basis of the accurate delineation, and respected on both sides of the transaction absent evidence that it is unreasonable.

(vi) Shareholder activities performed below the parent

The substance of the shareholder-activity guidance is largely retained. We do, however, welcome the new clarification in paragraph 7.28 that shareholder activities can be performed by, and their costs allocated to, a lower-tier entity such as a regional holding company, which has no clear counterpart in the current chapter and which corresponds to how MNE groups are structured.

Our practical concern relates to mixed activities, which the expanded Section B.2.1 and the new Example 5 bring into sharper focus. The same set of activities, such as group reporting that both satisfies a consolidation obligation and produces management information used by subsidiaries, will frequently fall on both sides of the shareholder-activity line. We suggest the guidance confirm that, in such mixed cases, a reasonable apportionment of costs is acceptable and that taxpayers are not expected to apply a detailed apportionment that is disproportionate to the amounts involved. The cost-apportionment point made in the new paragraph 7.31 could usefully be generalised beyond the training example in which it appears.

(vii) The MNE group's freedom to organise the provision of services

New paragraphs 7.3 and 7.4 have no direct counterpart in the current chapter. They confirm that an MNE group is free to organise its operations, including the provision of its services, as it sees fit; that a tax administration should not dictate how a group sources those services; and that the role of the tax administration is to determine the tax consequences of the arrangement the group has in fact adopted. Paragraph 7.4 adds that requests for information should be reasonable based on materiality and the associated compliance burden. We strongly support these statements. They address a recurring category of dispute in which the sourcing decision itself, rather than its pricing, is put in issue, and they sit well with the accurate delineation framework. To give the new wording full effect, we suggest two short clarifications. First, that the reasonableness of an information request under paragraph 7.4 is judged against the materiality of the individual service rather than the aggregate of all intra-group charges. Second, that the freedom recognised in paragraph 7.3 extends to the choice between centralised and decentralised delivery models, neither of which should of itself attract a presumption as to characterisation, tested party or method.

(viii) The low value-adding mark-up is not a floor for other services

New Example 19 confirms that, where services fall outside the definition of low value-adding intra-group services in Section E, the 5% mark-up under the simplified approach does not operate as a floor, and that the arm's length mark-up for such services may be above, equal to, or below 5% depending on the functions performed, assets used and risks assumed. We welcome this clarification. During audits the 5% mark-up is not infrequently treated as a minimum for any service charge, including for services that carry a genuinely lower arm's length return, and the example is a helpful corrective. We suggest the point made in Example 19 be reflected in the body of the guidance, for instance by expanding the existing caveat in paragraph 7.92, so that it is seen as general and not seen as confined to the annexed example.

2. Specific Questions for Public Commentators

We address below the specific questions raised in the Consultation Document, in the order in which they appear: the questions on shareholder activities (Box 1, following paragraph 7.26), the questions on allocation keys (following paragraph 7.51), and the questions on stock or share-based compensation (following paragraph 7.58).

2.1 Shareholder activities (Box 1)

Question 1 – *understanding and practical application of the existing guidance in paragraph 7.10 of the 2022 Guidelines*.

In our experience the existing list of shareholder activities is generally well understood, but its practical application gives rise to recurring difficulty in three situations. The first is that the list in paragraph 7.10 is sometimes treated as exhaustive, whereas it is in our view illustrative; an activity not on the list may still be a shareholder activity, and an activity superficially resembling one on the list may, on the facts, confer a benefit on a subsidiary. The second is a mixed activity, where for example group reporting or compliance work serves both the parent's own obligations and the operational needs of subsidiaries.

The third is where activities are carried out below the level of the ultimate parent, for example by a regional headquarters.

On the last point, we welcome the clarification in paragraph 7.28 that shareholder activities can be performed by, and their costs allocated to, a lower-tier entity such as a regional headquarter company, which corresponds to how MNE groups are structured. We suggest the guidance go one step further and confirm that the analysis is the same regardless of the tier at which the activity is performed, so that a regional headquarter company is not treated more harshly than the ultimate parent.

Question 2 – *other activities that commonly meet the definition but are not reflected in the list*.
Other activities that may meet the definition may also be those that arise where a parent company incurs costs in addressing matters that primarily affect it in its capacity as a shareholder and that relate to protecting its reputation, managing investor relations, or responding to legal, regulatory, or public scrutiny resulting from the conduct of a subsidiary. While the underlying events may relate to a group member, the resulting activities and costs may in certain circumstances serve the interests of the shareholder and therefore warrant consideration as potential shareholder activities. It would be helpful to include general guidance or an example, either in the main body or in the accompanying list, to further clarify the treatment of such activities.

The current chapter was developed in a different business environment and predates a number of significant developments affecting MNEs, including the increased importance of ESG reporting, cybersecurity, data governance and increasingly complex regulatory obligations. While we do not suggest that such activities should automatically be characterised in any particular way, their growing importance reinforces the need for guidance that remains sufficiently flexible to accommodate evolving business realties.

Rather than propose further additions to the list, we would make a more fundamental point. The list in paragraph 7.10 is, and should remain, illustrative rather than exhaustive, and we have observed that in practice it is sometimes applied as if it were a closed set. Which activities are properly characterised as shareholder activities varies considerably between industries and sectors, and depends on the structure and organisation of the particular group, so that an activity that is plainly a shareholder activity in one sector may, in another, confer a real benefit on a subsidiary. For that reason we do not think a longer list of activities would be helpful, and it could create the misleading impression that the characterisation can be settled by reference to a label or a list.

We would emphasise instead, consistently with paragraph 7.23, that the categories of shareholder activity, duplication and incidental benefit are examples of situations in which the benefit test is not met, and not a substitute for that test. The point in each case is whether the activity confers a benefit within the meaning of paragraph 7.13 on a group member other than the shareholder. We would therefore support a clear statement in the guidance that the list is non-exhaustive and that its application is sector- and fact-specific, instead of lengthening the list itself.

Question 3 – *activities that could be captured by item (e), "ancillary activities to the corporate governance of the MNE as a whole"*.
We read item (e) as a residual category intended to catch governance-related activities that are not specifically listed but are of the same nature as those in items (a) to (d), that is, activities that exist because of, and benefit, the parent's ownership and oversight role. Consistent with our answer to Question 2, we would not seek to list the activities that fall within it, both because the appropriate characterisation varies by sector and because a fixed list would risk being read as exhaustive.

2.2 Allocation keys (following paragraph 7.51)

Question 1 – *would it be useful to provide further guidance on the application of allocation keys for certain intra-group services?*
We believe that further guidance would be useful, but only as a source of direction and not as a fixed framework. Guidance that helps taxpayers and tax administrations identify reasonable keys for common services would be welcome, but this guidance should not be hardened into a prescriptive list. The appropriate key depends on the facts and a taxpayer must remain free to apply a different key in case the circumstances warrant it. The principal practical difficulty with indirect-charge approaches is, in any event, not the selection of a key in the abstract but the consistency of its application and the avoidance of double taxation where different jurisdictions favour different keys.

Additional guidance would therefore be most valuable if it concentrated on the following points rather than on lengthening the catalogue of keys:

- Confirming that more than one reasonable key may exist for a given service, and that a key should not be rejected by a tax administration merely because another key is also reasonable, provided the chosen key reasonably reflects the expected benefit (consistent with paragraphs 7.48 and 7.51).
- Encouraging consistency from year to year and across recipients, while accepting that a change of key may be justified by a genuine change in circumstances, and that such a change should not in itself trigger an adjustment.
- Addressing how to deal with recipients that join or leave the group, or change materially in size, during the year, where a single year-end measure can distort the allocation.
- Confirming that the requirement in paragraph 7.50, that the total costs allocated should not differ from the total costs incurred in providing the service, is applied sensibly, so that the ordinary use of budgeted or standard costs, and immaterial timing differences between the period of the cost and the period of the charge, are not treated as breaches.
- Addressing how to deal with circumstances where allocation keys based on centrally incurred costs may not adequately reflect differences in local market conditions, purchasing power, or cost environments across jurisdictions, and where recipients may question whether the resulting charge reflects an amount that independent parties would have been willing to incur under comparable circumstances.

Question 2 – *which allocation keys are appropriately applied in practice to specific intra-group services?*
The keys we most commonly see applied in practice broadly track the examples already given in paragraph 7.59 of the OECD Guidelines, for instance headcount (or full-time-equivalent headcount) for people-related services such as HR and payroll, the number of users or devices for IT services, and the number of relevant transactions or entities supported for finance and accounting support, with turnover used where a more direct measure is not reliably available. Which key is appropriate, however, varies considerably between industries, and a key that reflects benefit well in one sector may be a poor proxy in another, so these examples should not be read as fixed correspondences between a service and a key.

A more important practical point is that, in our experience, intra-group services are frequently bundled rather than charged service by service. Where, for example, HR and IT support are provided together as a single package, the service-specific keys described above do not apply directly, and a single reasonable key for the bundle may be more appropriate. We would caution against guidance that, by associating each category of service with a particular key, implies that every service must be separately identified and separately priced. Requiring that degree of disaggregation for routine support services would impose a compliance burden out of all proportion to the amounts involved, and bundling with a single reasonable allocation key should remain available where it produces a result consistent with the expected benefits.

2.3 Stock or share-based compensation (following paragraph 7.58)

Question 1 – *do you encounter challenges associated with the appropriate treatment of stock or share-based compensation in relation to intra-group services, including timing, accounting treatment and valuation?*

Question 2 – *how do you address stock-based compensation as part of your transfer pricing analysis?*

Question 3 – *would additional guidance in relation to stock or share-based compensation be beneficial for intra-group services?*

As the three questions are closely interconnected, we address them together below.

We welcome the inclusion of discussion on stock or share-based compensation, as this is an area that frequently gives rise to uncertainty and divergent approaches in practice. The treatment of stock based compensation tends to be contentious if different jurisdictions adopt different views on timing, valuation, accounting treatment, or whether such costs should be included in the cost base at all.

We do not believe that a single outcome should be prescribed. Rather, the appropriate treatment should follow from the accurate delineation of the transaction and the facts and circumstances of the particular arrangement.

There are valid arguments both for and against including stock-based compensation in the relevant cost base. In some situations, stock-based compensation may form part of the overall remuneration of personnel performing the relevant services and may therefore be considered a cost associated with providing those services. In other situations, the connection between the compensation and the services rendered may be more remote, such that exclusion may be more appropriate.

Additional guidance would therefore be beneficial, provided that it does not establish a presumption either for inclusion or exclusion. Instead, the guidance could usefully focus on the factors that are relevant in determining whether stock-based compensation forms part of the costs associated with the accurately delineated transaction.

Such an approach would be consistent with the broader framework of the OECD Guidelines and would help promote greater consistency between jurisdictions while preserving the flexibility necessary to accommodate different factual circumstances.

We would be pleased to discuss any of the above with the Centre for Tax Policy and Administration, and we thank Working Party No. 6 for the opportunity to contribute to this work.

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