Transfer Pricing, Tax Treaties and International Agreements Division
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Business at OECD **(BIAC) Comments to the OECD Public Consultation on Taxation: Revisions to Chapter VII of the OECD Transfer Pricing Guidelines**

Dear Colleagues,

Business at OECD (BIAC) is pleased to provide comments on the public consultation document issued by the OECD Centre for Tax Policy and Administration on 1st June 2026 on the proposed **Revisions to Chapter VII of the OECD Transfer Pricing Guidelines, Special considerations for intra-group services** ("the Guidelines"). We further welcome the opportunity to continue the dialogue with the OECD in this important area.

Established in 1962, *Business at OECD* (BIAC) is the officially recognized institutional business stakeholder at the OECD. It stands for policies that enable businesses of all sizes and sectors to contribute to economic growth, sustainable development, and societal prosperity. Through *Business at OECD,* national business and employers' federations representing over 11 million companies provide perspectives to cutting-edge OECD policy debates that shape market-based economies and impact global governance. *Business at OECD's* expertise is enriched by the contributions of a wide range of international sector organizations.

The following are our members' priority recommendations for the final guidance:

Key Messages

1. Reinforce that cost-based methods remain appropriate for most intra-group services

While method selection should remain fact-specific and consistent with transfer pricing principles, the guidance should make clear that cost-plus methods and cost-based profit level indicators will often remain the most appropriate and reliable approaches for a large proportion of intra-group service arrangements. Alternative methods, including profit split approaches, should be reserved for situations involving unique and valuable contributions, highly integrated activities, or the assumption of economically significant risks, with the understanding that method selection will continue to depend on the relevant drivers, degree of integration, risks assumed, and availability of reliable comparables.

2. Benefit Test Must Not Become an Automatic Disallowance Tool

Business welcomes the additional guidance on the benefit test but remains concerned that subjective interpretations may continue to generate disputes and excessive evidentiary requests. The final guidance should reinforce an ex ante perspective, limit the use of hindsight, and confirm that reasonable, proportionate, and category-based approaches may be appropriate for demonstrating benefits in many service arrangements.

3. Provide practical certainty for shareholder and senior management activities

The Guidance should introduce practical simplification measures for allocating senior management costs and provide clearer boundaries for shareholder activities. It should clarify that operational oversight, standard-setting, and other group-wide support functions may constitute chargeable services and should not be treated as shareholder activities solely because they are performed at the parent or headquarters level.

4. Recognize indirect cost allocations as a practical and reliable approach

The Guidance should recognize that indirect allocation methods are a commercial necessity for many centralized service models and provide greater certainty through a presumption of reliability for reasonable, consistently applied allocation keys. Consider practical simplification measures, including safe harbours for routine service pools, multi-year validity of established allocation methodologies, and continued reliance on approaches accepted through APAs and MAPs.

5. Ensure Documentation Requirements Remain Proportionate and Practical

The Guidance should explicitly state that the documentation examples in paragraphs 7.72 and 7.73 are illustrative, not a minimum compliance standard. For routine and centralized services, sample-based evidence, system-generated records, and category-level documentation should generally be sufficient, while highly granular evidence should be reserved for higher-risk cases.

6. Provide practical guidance on pass-through costs, low value-adding services, and withholding taxes

The Guidance should improve administrability by providing clearer rules for pass-through costs and preserving the simplified nature of the low value-adding services regime. In particular, the OECD should confirm that the 5% mark-up is not a pricing floor, reconsider provisions that rely on evidence that is often unavailable in practice and address the continuing risk of double taxation arising from withholding taxes imposed on intra-group service charges.

7. Enhance the examples to provide practical, solution-oriented guidance

The examples should illustrate how transfer pricing principles can be applied in practice rather than being interpreted as automatic indicators for particular methods or outcomes. Additional examples and greater discussion of alternative pricing approaches would improve certainty, particularly in areas involving integrated service models, contract R&D arrangements, intangibles, and highly specialized services.

Please see below our detailed comments on the consultation document.

A. Introduction

Generally, members appreciate the consultation has been framed constructively to "enhance clarity and provide practical illustrations" and is "not intended to change the general principles underlying the transfer pricing analysis of intra-group services." However, there are several areas where modification or additional clarification is necessary so as to not significantly alter the underlying transfer pricing framework as it exists today.

Much of the proposed language can be read as a shift away from a cost-based net profit indicator which as a practical matter is the most appropriate for the vast majority of transactions. To better clarify, we recommend language be added to clarify that cost-based net profit indicators are the most appropriate for the largest set of intragroup services, but other methods may be more appropriate when parties make unique and valuable contributions or share economically significant risks.

Members also appreciate the draft's recognition of materiality and compliance burden with many members emphasizing the principle of proportionality to ensure that documentation expectations remain aligned with the nature, materiality and risk profile of the relevant services. Overall feedback notes that documentation requirements should be limited to information reasonably necessary to demonstrate compliance with the arm's length principle, thereby avoiding disproportionate information requests. It would also be helpful if the guidance included practical examples illustrating how materiality should be evaluated in the context of intra-group services.

We further note that Par. 7.3 could more clearly acknowledge that, in practice, certain intra-group service transactions may not need to be separately charged where doing so would not affect the tested party's arm's length outcome, including its profitability or the net profit indicator used under an applicable transfer pricing method. We recommend adding language that "*a service charge need not be allocated to an entity where it is not relevant to the post-transfer pricing profitability of that entity and does not affect the net profit indicator(s) applied in respect of ancillary transactions for which the entity serves as the tested party.*"

B. Accurate delineation of intra-group services (7.5 – 7.12)

We welcome the Guidance's efforts to provide greater clarity on the accurate delineation of intra-group services. Members have noted several aspects of the draft that could benefit from further clarification to improve tax certainty and avoid unnecessary compliance burdens.

1. We recommend clarifying the implications of the revised guidance for existing intercompany arrangements, agreements and documentation. It would be helpful to confirm that taxpayers are not expected to restructure existing arrangements where, following accurate delineation, those arrangements remain consistent with the arm's length principle.

2. The discussion of written agreements in paragraph 7.6 appears more restrictive than existing OECD guidance. While Chapter I recognizes written agreements as the starting point for accurately delineating a transaction, paragraph 7.6 could be interpreted as diminishing their evidentiary value. We recommend clarifying that

written agreements remain an important element of the transfer pricing analysis, while recognising that additional evidence may be required to demonstrate that services have in fact been rendered.

3. Paragraph 7.7 states that there should not be a presumption that a service transaction exhibits economically relevant characteristics that enable it to be reliably priced using a one-sided method. While this may be conceptually correct, it should also be recognized that, in practice, most intra-group service transactions are priced using one-sided methods. We therefore recommend clarifying that this statement is not intended to call into question the routine application of one-sided methods where they represent the most reliable method under the facts and circumstances.

4. We recommend refining the discussion in paragraph 7.10 to place greater emphasis on the functional analysis, including the roles performed, risks assumed and resources employed by the relevant parties, within the context of the group's business model.

5. We recommend expanding paragraph 7.12 to address circumstances in which the service provider contributes or makes available intellectual property, know-how or other unique assets in rendering intra-group services. Additional guidance would be helpful in distinguishing these situations from cases where the service recipient merely provides access to its own intellectual property or know-how for the purpose of receiving services, as commonly occurs in third-party arrangements.

6. We also recommend further tailoring Example 18 to the issues addressed in paragraph 7.12 and clarifying that the relevant intangibles may be either owned or licensed by the relevant group entity.

7. We welcome the distinction in paragraph 7.10 between shareholder activities and management functions performed by a parent company, together with the clarification in paragraph 7.27 that CEO-related costs are not necessarily shareholder costs. These clarifications should help reduce disputes in situations where tax administrations have historically treated all parent-company charges as non-chargeable shareholder activities.

B.1 Determining whether intra-group services have been rendered (7.13 – 7.22)

B.1.1 Definition of Benefit Test

1. Positive Developments

We strongly support the expanded guidance on the Benefit Test in Sections B.1 and B.2 and Examples 1 and 2 of the Annex:

- Recognition of Expected vs. Immediate Benefits & Multi-Year Assessment: We welcome the recognition that benefits may be expected over time rather than immediate. Accepting a multi-year assessment reflects commercial reality, particularly in technology and innovation-driven sectors where activities like R&D support, platform development, and market-entry initiatives are undertaken with a reasonable expectation of future value.

- Confirmation on Lack of Market Comparables: We welcome the explicit confirmation that the lack of third-party market comparables does not invalidate the existence of a chargeable service.

- Focus on Ex Ante Expectations: We support the clear confirmation that the benefit test evaluates whether the recipient could reasonably expect economic or commercial value at the time the service was performed, rather than whether those anticipated benefits ultimately materialize.

- Protection for Loss-Making Recipients: Reaffirming that loss-making entities can still receive valuable services provides a critical and necessary safeguard against audit practices that rely excessively on hindsight.

2. Key Concerns

Members observed that the benefit test remains inherently subjective in practice, which could lead to persistent compliance challenges:

- Shift from delineation to disallowance: Members have observed an increased misuse of the benefit test as an automatic disallowance mechanism to deny deductions, rather than applying it as a functional delineation tool to understand intra-group service delivery.

- Risk to Mutual Agreement Procedure (MAP) Access: The current language in §7.13 risks being interpreted to deny the existence of a service transaction when the benefit test is contested. This creates legal uncertainty and potentially limits taxpayer access to MAP under tax treaties.

- Excessive evidentiary expectations and hindsight: Taxpayers are often asked years after the fact to produce extensive documentation proving expected benefits. Furthermore, there is concern that par. 7.16 could be misapplied by tax authorities to reassess benefits using hindsight when expected results fail to materialize.

- Subjectivity of core concepts and disallowance despite proof: Concepts such as "reasonably expected benefit", "sufficiently direct benefit", and "economic or commercial value" remain prone to conflicting interpretations. Disputes frequently arise where taxpayers demonstrate services were needed and performed, yet authorities still challenge the benefit.

2. Recommendations

We offer the following recommendations for consideration:

- Clarify Application of the Multi-Year Assessment Concept. Where anticipated benefits do not ultimately materialize, the Guidelines should provide additional guidance on evaluating the reasonableness of expectations *at the time services were rendered*, explicitly prohibiting the use of hindsight by tax authorities.

- Provide Guidance on Acceptable Contemporaneous Documentation. Include illustrative examples of practical evidence that demonstrate a reasonable expectation of benefit such as business plans, budgets, project documentation, internal memoranda, or management presentations. The Guidance should emphasize that documentation requirements must remain practical and proportionate.

- Incorporate materiality-based approaches and administrative safe harbour, to prevent the expanded focus on demonstrating benefits from creating an unmanageable compliance burden.

- Clarify that where the benefit test has been satisfied and a service was rendered, subsequent disagreements regarding arm's-length pricing or allocation keys should be resolved via pricing adjustments rather than denying the existence of the underlying service transaction.

- Expressly Cover Both "Actual" and "Expected" Benefits in the main text. While Footnote 2 confirms that "benefit" encompasses both actual and expected benefits, Paragraph 7.15(a) relies exclusively on examples of expected benefits. To eliminate ambiguity for ongoing services where benefits are actively being realized, this dual scope should be explicitly stated in the main text.

- Clarify Paragraph 7.22 to avoid granular entity-by-entity determination. The statement that the benefit test applies *"at the level of each entity"* risks being interpreted as requiring an exhaustive, granular assessment of every single group member. The text should clarify that the goal is simply to identify benefiting entities and allocate costs appropriately. In particular, it should explicitly acknowledge that businesses may group entities with similar functions, circumstances, or expected benefits when applying the benefit test, provided that the resulting allocation remains reliable and consistent. This would better reflect commercial practice while preserving the integrity of the benefit assessment.

- Allow benefit analyses by service category and recipient group. For services delivered across multiple affiliates, the guidance should expressly confirm that performing benefit evaluations by service category and recipient group is acceptable where consistent with the nature of the service and the allocation methodology.

B.2 Application of the benefit test (7.23 – 7.37)

We appreciate the clarification in 7.23 that the mere fact that an activity isn't categorized as a shareholder, duplicative, or incidental activity "does not imply that such activity profits a benefit. This strengthens the overall operation of the benefits test, with a focus on discerning whether there is an actual benefit conferred.

B.2.1 Shareholder Activities (7.24 – 7.31)

1. Positive Developments

We welcome the Guidance refining the scope of shareholder activities in Chapter VII. Specifically, we appreciate:

- The explicit affirmation in par. 7.27 that senior management and executive personnel activities are not, by default, shareholder activities;
- The narrow definition in par. 7.26, restricting shareholder activities solely to those benefiting the parent in its ownership capacity; and
- The principle in par. 7.30 that dual benefits do not disqualify an activity from satisfying the benefit test for operating subsidiaries.

These updates provide essential clarity and represent a major step toward aligning transfer pricing rules with modern, integrated corporate structures."

2. Key Concerns

In practice, member experience highlights that businesses have faced implementation challenges in transfer pricing audits on this topic, which can lead to uncertainty and increased compliance efforts. The practical distinction between non-chargeable shareholder activities and chargeable stewardship or centrally coordinated services remains a frequent area of discussion and varying interpretation among tax administrations.

Many members noted that headquarters and regional holding company functions rarely perform purely administrative or purely shareholder tasks. Most central activities possess mixed characteristics that combine:

1. Global coordination and strategic direction;
2. Functional supervision and operational oversight; and
3. Technical, operational, or methodological support to subsidiaries.

Tax administrations sometimes apply a wide interpretation to shareholder activities, occasionally defaulting to treating centrally coordinated or group-mandated functions as non-chargeable shareholder costs. As a result, business members observe recurring discussions when evaluating functions that exhibit this mixed nature.

Members also note the heavy administrative burden in identifying senior management time. Allocating the activities of senior management (e.g., CEO and Executive Leadership Team) between shareholder activities and intra-group services using traditional, objective allocation keys (e.g., time sheets) is highly impractical. Strategic leadership, representational roles, and decision-making inherently benefit operating affiliates and the parent entity at the same time. Forcing detailed tracking creates disproportionate compliance costs and leads to unresolvable factual disputes with tax authorities.

Moreover, under current audit practices, it has been observed that tax authorities often disqualify a service charge if the parent company retains an ongoing interest in the outcome or derives an indirect benefit. For example, in M&A, divestitures, or corporate reporting, tax administrations frequently argue that because the parent company has a shareholder interest in the transaction, no chargeable service can exist for the subsidiary, even when the subsidiary receives direct commercial support and value.

3. Recommendations

We offer the following recommendations for consideration:

- **Consider introducing practical simplification measures for senior management activities.** Given the inherent difficulty of precisely segregating shareholder and chargeable service activities, the Guidelines could acknowledge that taxpayers may use reasonable and consistently applied allocation methodologies supported by the facts and circumstances. To improve administrative efficiency and reduce disputes over executive time tracking, the OECD could provide illustrative examples or simplification approaches, including indicative allocation ratios. However, any such ratio should not be interpreted as the default or benchmark, and taxpayers should remain free to adopt different allocation methodologies or ratios where supported by the facts and circumstances.

- **Interaction with the arm's-length remuneration of routine entities.** The Guidance should further provide additional clarification on the allocation of senior management costs to entities performing routine functions and assuming limited risks. In determining an arm's-length allocation, consideration should be given to whether an independent entity performing comparable functions and assuming comparable risks would be willing to bear the relevant costs and continue to earn an arm's-length level of remuneration. Where the allocation of senior management costs materially reduces the recipient's remuneration below the level that would be expected for an independent enterprise in comparable circumstances, the Guidance should clarify how taxpayers should evaluate whether some or all of the relevant activities principally relate to the management of economically significant risks, strategic decision-making, or other value-creating activities undertaken for the benefit of entities that assume and control those risks.

- **Start-up and development phase entities.** The Guidance should also address situations in which a start-up, market-entry, or development-phase entity demonstrably benefits from senior management services but may not yet be capable of bearing a full allocation of the related costs while earning an arm's-length level of profitability consistent with its functional profile. Additional guidance would improve certainty regarding the application of the arm's-length principle in such cases, including the factors relevant to determining whether the timing, level, or allocation of senior management charges should be adjusted to reflect the commercial circumstances that independent parties would reasonably be expected to accept.

- The Guidelines should provide **clear methodologies for mixed activities** to isolate chargeable from non-chargeable components. Potential approaches include:

    - Functional analysis and direct identification: Isolating specific deliverables or dedicated roles where feasible.

- Cost centre segmentation: Establishing distinct cost centres for central governance versus operational support.
- Reasonable allocation keys: Utilizing headcount, transaction volumes, or other pragmatic keys to split residual mixed pools without requiring itemized time-tracking.

- The Guidance should consider incorporating **additional examples** across specific **high-dispute areas**:

  i. With respect to M&A and reporting activities and considering paragraph 7.26(c), we recommend clarifying that a parent's ongoing interest in an acquisition outcome should not, by itself, preclude recognition of a service where the subsidiary reasonably expects to benefit from and derives value from the support provided.

  ii. Provide concrete examples of senior management activities that fall *outside* the shareholder activity definition (e.g., driving regional operational turnarounds, implementing cross-border supply chain optimizations, or directing subsidiary-level strategic initiatives).

  iii. Include examples illustrating non-shareholder, chargeable activities conducted by Regional Headquarters, such as centralized risk management frameworks, regional compliance oversight, emergency operational support, and central methodological assistance.

  iv. Confirm that centralized mandates (e.g., global IT security standards or group-wide training) are not automatically shareholder activities simply because they are mandated from the top down.

  v. Consider refining terminology used in the guidance by distinguishing between pure shareholder activities that do not satisfy the benefit test and shareholder-related activities, such as stewardship and certain coordination or decision-making activities, that may satisfy the benefit test and therefore constitute intra-group services. This would better reflect the spectrum of activities commonly observed in multinational groups and improve consistency in application.

B.2.2 Duplication (7.32 – 7.34)

While the Guidance revisits the concept of duplication, it continues to provide limited practical clarity on what constitutes actual, non-chargeable duplication. Given the absence of a clear definition or concrete examples, the concept remains highly subjective and susceptible to inconsistent interpretation in audits.

As a starting point, genuinely duplicative costs should be extremely rare within multinational enterprise (MNE) groups. Businesses are continually driven to improve operational efficiency and financial performance and therefore seek to avoid unnecessary duplication of activities and costs. Accordingly, it should be explicitly clarified that no presumption of duplication should arise merely because two or more group entities charge for services relating to the same functional area, for example where an entity receives charges from both a global headquarters and a regional head office. As recognized in paragraph 7.33, intra-group services are often different from, additional to, or complementary to activities performed in-house or by another group entity.

While the draft examples helpfully illustrate circumstances in which activities are not duplicative, the Guidelines would benefit from further guidance on what constitutes actual, non-chargeable duplication. In particular, additional examples demonstrating situations where duplication exists and circumstances in which it does not would help promote greater consistency and reduce controversy in practice.

Tax authorities frequently view the presence of local personnel in a particular function, such as IT, legal, or HR, as evidence that centrally provided services are duplicative. In practice, however, central and local teams commonly perform different but complementary roles. Central teams may develop global frameworks, provide specialized expertise, or manage risks on a group-wide basis, while local teams focus on implementation, adaptation to local requirements, and day-to-day execution. Duplication should therefore not be inferred solely because activities fall within the same functional area. Where the nature, scope, or execution of the activities differs, or where there are sound commercial reasons for maintaining both central and local capabilities, including risk management, governance, or regulatory compliance, the activities should not be regarded as duplicative.

B.2.3 Incidental benefits (7.35 – 7.36)

We welcome the clarification related to passive association benefits. We note that the current examples of incidental benefits focus on shareholder activity scenarios, we recommend adding examples outside that context to avoid implying that incidental benefits are limited to shareholder activities.

B.3. Provision of services in connection with other transactions (7.39–7.41)

We welcome the new guidance on services provided in connection with transfers of goods or intangibles, particularly the clarification of the interaction between service transactions and the aggregation and segregation principles in Chapter III.

Given the increasing integration of technology, know-how and service delivery models, we encourage the OECD to provide additional examples illustrating situations in which the provision of services and the transfer, use or contribution of intangibles cannot be practically separated. While Example 16 is a useful addition, any additional examples should help clarify these boundaries and should not be interpreted as expanding the circumstances in which the existence or use of know-how, technology, or other intangibles would, by itself, alter the transfer pricing analysis or method selection

This distinction is particularly relevant in energy, technology, engineering and digital operating models, where a central entity may be designated as the owner or manager of technology, capabilities or intellectual property, while the underlying development activities have been funded, commercially supported or de-risked by an identifiable group of recipient entities. In such cases, the guidance should recognize that the existence of a central technology company, or the subsequent development of valuable intellectual property, should not in itself result in the recharacterization of cost-funded or service-based arrangements as transfers of intangibles. Such conclusions should instead be based on a comprehensive analysis of the relevant DEMPE functions, funding arrangements, control over risk, and the parties' respective rights and expected benefits.

We also recommend clarifying that unique and valuable contributions are not limited to legally protected or registered intellectual property, nor to industries traditionally viewed as IP-intensive. In practice, significant value may arise from industry-specific know-how, technical expertise, proprietary processes, operating frameworks, best-practice methodologies, specialized commercial capabilities and other non-routine contributions.

Additional examples from sectors not typically associated with formal intellectual property would be particularly helpful in illustrating circumstances in which such unique and valuable contributions may warrant the application of transfer pricing methods other than cost-based remuneration.

Box 1. Responses to Questions to Public Commentators – Shareholder Activity

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

While par. 7.10 is broadly understood conceptually, its practical application remains highly contentious. In practice, tax administrations too often apply "shareholder activity" as a default label based on job titles or entity levels, rather than conducting a proper functional analysis. Activities performed by a parent company, board member, or senior executive should not automatically be classified as non-chargeable. The determinative test remains whether the activity is performed solely by virtue of ownership interest and benefits only the shareholder entity; or confers direct or indirect commercial value on operating affiliates.

This distinction is particularly challenging in **globally integrated and decentralized** MNE groups, where senior personnel frequently **perform both governance and operational functions**. Strategic leadership, group coordination, oversight, standard setting, compliance support, functional supervision, and similar activities may appear to reflect shareholder oversight at first glance. However, these activities often provide subsidiaries with tangible benefits through the provision of methodologies, frameworks, expertise, operational guidance, and management support that enhance business performance and operational control. These operational services directly benefit local operating entities and should not be denied chargeability simply because they are delivered at the parent or group level.

We would welcome further clarification or a definition of the term "governance" from a transfer pricing perspective in the context of intragroup services, as this is a broad concept that may be interpreted differently depending on the discipline. Clear guidance would be very helpful which considers the different business functions and lists concrete examples what is non-chargeable, partially chargeable or completely chargeable.

Members further observed that activities undertaken solely in the capacity of shareholder typically **represent only a limited subset of costs** incurred at the parent-company level. We recommend the adoption of workable approaches, such as practical allocation methodologies or administrative simplification measures for senior management activities, to mitigate audit disputes and the risk of double taxation.

It may be helpful to clarify that par. 7.10 refers to "*shareholder activities not meeting the benefit test*" for activities currently covered by paragraph 7.10 rather than "*shareholder activities*" only as stewardship activities are also activities performed by shareholders (or on behalf of shareholders) but providing benefits to the service recipients.

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.

Examples of activities that may commonly constitute shareholder activities include:

- Personal executive security expenses
- Legal or regulatory activities to protect the service provider's capital investment or that are specifically applicable to the service provider should be included within the meaning of "shareholder" activities (as defined in paragraph 7.9 of the OECD 2022 TPG but are not directly reflected in 7.10).
- Portfolio funding decisions (also known as capital-led decision making), i.e. deciding on which projects in the portfolio should receive funding and which projects should not.
- Certain early-stage market development activities before a decision is made to enter a market such as assessing new market opportunities, preparing internal materials, identifying applicable rules and regulations and conducting initial stakeholder engagement.

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.

Item (e) on ancillary activities must be narrowly drafted to avoid becoming an expansive catch-all for general HQ oversight and global compliance. By definition, "ancillary" refers strictly to activities that are secondary, subordinate, and directly dependent upon a primary function. To prevent varying interpretations during local audits, the OECD should provide explicit, restrictive definitions for both "corporate governance" and "ancillary" within this context.

Under an appropriately narrow interpretation, ancillary activities should cover only those activities performed solely by virtue of ownership or overall corporate governance of the parent entity that convey no direct economic or commercial value to operating affiliates. This scope should be strictly limited to parent-level ownership and legal formalities, such as maintaining the statutory framework of the holding structure, preparing governance materials for shareholder or board oversight in that specific capacity, managing group-level equity decisions, and executing statutory owner communications or internal controls designed strictly to protect the shareholder's investment.

Crucially, the guidance must explicitly clarify that ancillary activities does not extend to group-wide operational oversight, global strategy implementation, corporate compliance monitoring, or central management support. Where HQ or central teams provide operational frameworks, risk management tools, technical guidance, or standardization initiatives that benefit operating subsidiaries, those functions must remain chargeable services.

C. Determining the arm's length charge and other conditions of intra-group services

1. Direct vs. Indirect Charging Mechanics (Pars. 7.44 & 7.49)

We appreciate the Guidance acknowledgement that direct charging is suitable only where information can be obtained without disproportionate compliance costs. However, the draft maintains an implicit bias toward direct charging that does not reflect commercial reality. Describing the allocation of pooled costs as merely "difficult" rather than operationally impracticable creates an unrealistic benchmark that local tax authorities frequently interpret as a mandatory preference for direct charging.

- Recommendation: Par. 7.49 presents a negative framing of indirect charges without offering a practical alternative, despite preceding paragraphs recognizing them as the only viable solution for pooled services. We suggest removing or substantially reframing par. 7.49 to align with commercial reality.

2. Allocation Keys & Burden of Proof (Par. 7.51)

Indirect allocations are a commercial necessity for centralized intra-group services. Once an activity is delineated as a bona fide intra-group service (and not a shareholder or non-chargeable activity), the audit evaluation should focus on the underlying logic of the allocation key rather than transaction-level evidence.

- Recommendation: We recommend expanding Par. 7.51 ("choosing an allocation key is a matter of judgment") to specify that a reasonable, consistently applied allocation key provides a sufficient standard of proof for arm's length compliance. The guidance should establish an explicit presumption that a business's indirect charges are appropriate, placing the burden on tax authorities to demonstrate why an allocation key is unreasonable.

- The guidance should further clarify that the reasonableness of an allocation key should be assessed based on the information reasonably available when the methodology was established and applied. Tax administrations should avoid relying unduly on hindsight when evaluating whether a taxpayer's allocation key was reasonable.

3. Reconciling the Benefit Test with Indirect Allocations

While the draft permits indirect allocations, it fails to reconcile how the benefit test applies in this context. Requiring entity-specific proof of benefit contradicts the rationale of indirect charging.

- Recommendation: The guidance should explicitly clarify that for indirect allocations, the benefit test is deemed satisfied where the underlying activity carries an anticipated economic benefit for the participating pool of entities, and the allocation key acts as a reasonable proxy for that relative benefit without requiring entity-specific activity or time tracking.

4. Practicality of the Arm's Length Standard (Par. 7.46)

Par. 7.46 requires allocation methods to mirror what "comparable independent enterprises would have been prepared to accept." In practice, third parties do not have visibility into internal cost-allocation keys or multi-recipient cost pools, making this an unworkable evidentiary standard during audits.

- Recommendation: To ensure the guidance is practical and implementable, we recommend amending this statement to read: *"The allocation method chosen must lead to a result that is reasonable, given the type and nature of the services provided and the expected benefits."*

5. Proportionate Documentation Standards (Par. 7.50)

We recommend that the Guidance clarify the nature and extent of documentation expected to support the reconciliation between incurred and allocated costs under par. 7.50.

- Recommendation: The guidance should confirm that taxpayers may satisfy this requirement through reliable summary evidence—such as cost allocation schedules and management certifications—without requiring access to transaction-level accounting records or general ledger extracts in all cases. This clarification would promote a proportionate approach to documentation and reduce cross-border disputes.

Box 2. Responses to Questions to Public Commentators - Allocation Keys in the Context of Low Value-Adding Services

1. Would it be useful to provide further guidance on the application of allocation keys for certain intra-group services?

Business broadly welcomes further guidance on the application of allocation keys for intra-group services. Additional clarification could improve consistency, transparency, and tax certainty, particularly for indirect-charge arrangements and pooled service models. However, respondents strongly emphasized that any new guidance should remain principles-based and avoid overly prescriptive requirements that fail to reflect diverse commercial operations.

a. Support for administrative Safe Harbours and presumptions of reliability

Allocation keys remain among the most frequently audited and contested aspects of indirect charging arrangements. To provide meaningful tax certainty, revised guidance should incorporate pragmatic safe harbours:

- Safe Harbour for Routine Service Pools: Introduce an administrative safe harbour for routine, pooled intra-group services (e.g., HR, legal, finance, administrative support). Building on the model of the low value-adding intra-group services framework, this would extend tax certainty to a broader set of low-risk pooled activities.

- Presumption of Reliability: Consider accepting a core set of standard, widely used allocation keys—such as headcount, revenue, asset base, Capex/Opex, or transaction volume—as *presumptively reliable* for common service categories.

- Rolling Multi-Year Validity: Confirm that a reasonable, consistently applied allocation methodology does not need to be re-justified or re-engineered annually absent a material change in the business model or operating structure.

- Respect for Established APAs/MAPs: Methodologies accepted by tax administrations through Bilateral/Multilateral APAs or Mutual Agreement Procedures (MAPs) should carry a strong presumption of ongoing validity without annual re-demonstration.

b. Maintaining a Principles-Based and Flexible Approach

Members consistently stressed the importance of preserving flexibility in the Guidelines. While the proposed requirements that allocation keys should be measurable, verifiable, and consistently applied are generally supported, businesses caution against an approach that would require excessive standardisation or impose rigid allocation methodologies.

Several respondents noted that:

- Different business models and service arrangements require different approaches.
- More than one allocation key may be appropriate where a service pool contains materially different categories of activities.
- Multinational enterprises frequently apply multiple allocation keys in parallel to accurately reflect differing cost drivers and benefit streams.
- The goal should be a reasonable approximation of benefit or usage rather than mathematical precision.

Accordingly, the guidance should recognize that the exercise of business judgment plays an important role in selecting appropriate allocation keys.

c. Proportionate Documentation and Administrative Burden

While members support robust documentation and transparency, there was significant concern regarding the administrative burden associated with highly detailed evidentiary requirements.

In particular, businesses noted that requirements such as individual evidence of services rendered, employee-by-employee tracking, detailed timesheets; or service-by-service allocation analyses. These would impose substantial compliance costs without materially improving the reliability of outcomes.

We therefore recommend that documentation requirements remain proportionate to the risk profile of the arrangement. Simplified evidentiary standards should be accepted for recurring and standardized services. Moreover, the guidance should avoid mandating service-by-service allocation keys where the expected compliance burden exceeds the incremental benefit from additional precision.

d. Interaction with Profit Split Methodologies

Some members noted that further guidance would be useful in distinguishing between situations involving cost allocation and those requiring a profit split analysis.

Specifically:

- For indirect-charge arrangements, allocation keys should reasonably approximate expected benefits received or service usage.
- For profit split methodologies, allocation factors should instead reflect the relative contributions to value creation.

2. What are the allocation keys appropriately applied in practice to specific intra group services?

In practice, the selection of an allocation key is determined by the nature of the service, data availability and reliability, administrative feasibility, and the need for multi-jurisdictional consistency.

Rather than requiring mathematical perfection or an exhaustive, rigid hierarchy, the Guidelines should emphasize that **an allocation key is acceptable where it maintains a rational connection to the expected benefit received by service recipients**.

a. Common Allocation Keys

The table below outlines allocation keys commonly and successfully applied across major functional service pools:

Service Category	**Commonly Applied Allocation Keys**	**Rationale & Commercial Context**
Information Technology	• Users, workstations, devices • Software licenses, system access • Processing volume, system usage • Metered cloud consumption %	Reflects actual deployment, user capacity, or direct system usage. Percentage of consumption provides a direct link where metered data is available.
Human Resources & People Services	• Headcount / Full-Time Equivalents (FTEs) • Employee populations served • Total payroll / Personnel expenses	Correlates directly with the volume of workforce administration, payroll processing, and talent management activities.
Finance, Accounting & Tax	• Entities supported • Revenue / Turnover • Asset base • Percentage of operating expenses against revenue	Reflects transactional volume (for operational accounting) or economic scale (for general ledger, consolidation, and Local GAAP reporting).
Procurement & Supply Chain	• Purchasing volume / Spend levels • Supplier counts • Number of purchase orders / Documents handled • SKU numbers	Direct workload drivers that capture the operational intensity of vendor management and purchasing support.
Manufacturing	• Cost of goods sold • Cost of manufactured/processed goods	

Legal, Compliance & Corporate Insurance	• Entity count / Risk-based metrics • Matter-specific drivers • Revenue / Asset base • Insurance premium amount (for corporate insurance) • Percentage of operating expenses against revenue	General risk exposure and entity complexity drive legal/compliance support. Insurance premiums directly reflect the underlying coverage and risk profile of each entity.
Facilities, Fleet & Building Management	• Number of people/users per location • Square footage / Facility count • Vehicle count (for fleet management)	Reflects facility footprint and physical asset administration independent of revenue or asset metrics.
Operations & Maintenance (Energy / Industry)	• MWh of production (for energy generation) • Staff dedication • Systems implemented	Directly ties service intensity to physical output or direct project development effort (e.g., renewable energy facility O&M).
Professional services/ Management consulting firm	• Compensation-based contribution factor can be appropriate for a profit split • Services can also be made on a routine or support basis, in which case refer to prior allocation keys depending on the underlying type of services (i.e., HR, Finance, Legal, etc.)	Where the key value drivers are partners and consultants, their compensation may capture seniority, performance, market value, client contribution, management contribution, knowledge contribution and other value-driving activities more reliably than headcount or local third-party revenues
Business management services and commercial services (e.g., marketing, sales, etc.):	• Revenue (turnover)	

a. Use of Composite and Multiple Allocation Keys

Several members have noted that a single allocation key will not always adequately reflect the benefits received by different entities. It is recommended that guidance explicitly recognize that:

- Multiple allocation keys may be applied within a single service arrangement;
- Composite allocation keys combining two or more metrics may be appropriate; and
- Different service categories within a common service pool may require different allocation approaches.

Examples include combining:
- Asset values and headcount;
- Revenue and transaction volumes; or
- Device counts and weighted hardware values.

Businesses emphasized that such approaches often provide a more accurate approximation of benefits than reliance on a single allocation metric.

b. Principles for Evaluating Allocation Keys

Members generally agreed that allocation keys should be assessed against a set of core principles. Specifically, allocation keys should:

- Reasonably reflect expected benefits received or service usage;
- Maintain a demonstrable connection to the underlying cost drivers;
- Be measurable, verifiable and administrable in practice.
- Be applied consistently across recipients receiving similar services;
- Avoid material distortions, double counting and under-allocation;
- Balance accuracy with proportionality and compliance efficiency.

Several respondents stressed that taxpayers should not be expected to identify a theoretically perfect measure of benefit. Rather, the focus should be on whether the selected allocation methodology is reasonable, supportable, practical, and consistently applied.

Moreover, while these principles and examples are helpful and relevant, we note that they are not limited in practice to low value-adding services. Similar considerations typically arise more broadly in the context of intra-group services remunerated under cost-based methods. Accordingly, it would be beneficial to extend or cross-reference such references and examples to section "C.1.2 Indirect-charge approaches".

C.2 Guidance on the application of the transfer pricing methods to transactions involving intra-group services (7.52 – 7.70)

C.2.1. Selection of the most appropriate transfer pricing method

1. Positive Developments

Members broadly welcome the draft's reaffirmation that no transfer pricing method should be automatically preferred for intra-group services and support the efforts to align the guidance more closely with the general principles in Chapters I-III. The additional guidance on cost-base determination, pass-through costs, and method selection is viewed as helpful in improving clarity and consistency.

The clarifications regarding the construction of the cost base under cost-based methods are also particularly welcomed. Members appreciate the recognition that certain service arrangements involving unique and valuable contributions, significant integration, or economically significant risk assumptions may require methods other than traditional cost-based approaches.

In addition, the detailed guidance on pass-through costs and the accompanying examples are generally viewed as useful in addressing recurring practical issues.

2. Key Concerns / Recommendations

a. Potential for an unintended expansion of profit split

The principal concern is that, although the draft seeks to reinforce method neutrality, certain aspects of the guidance could be interpreted as encouraging broader use of the transactional profit split method for intra-group services.

Members strongly support the principle that no transfer pricing method should automatically be preferred. However, they note that cost-plus and cost-based TNMM remain, in practice, the most frequently applied and often the most appropriate methods for routine intra-group services. There is concern that the draft may inadvertently create an expectation that profit split should increasingly be considered whenever services are centralized, technology-enabled, strategically important, provided by senior management, or involve some form of intangible. As earlier noted, consider adding language to par. 7.52 to the effect that cost-based methods remain the most appropriate methodology for many types of intragroup services but may not be the most appropriate when parties make unique and valuable contributions or share economically significant risks.

Businesses emphasize that profit split analyses are highly complex, involve numerous subjective assumptions, and are particularly susceptible to disputes. Consequently, any perceived expansion of profit split could increase controversy, compliance costs, requests for APAs and MAPs, and the risk of double taxation.

- <u>Recommendation</u>: Consider reintroducing language, consistent with the current OECD Transfer Pricing Guidelines, acknowledging that CUP, cost-plus, and cost-based TNMM will often be the most appropriate approaches for many intra-group service arrangements.

b. Need for greater certainty around when profit split is appropriate

Stakeholders generally agree that profit split may be appropriate where both parties make unique and valuable contributions, where operations are highly integrated, or where parties share economically significant risks.
However, there is concern that the indicators in paragraph 7.67 could be applied too broadly in practice. The draft does not sufficiently guard against the possibility that tax authorities may view centralized operations, senior management activities, strategic importance, technology enablement, or the mere presence of intangibles as indicators that profit split should be considered.

Businesses therefore believe the guidance should more clearly emphasize that profit split remains an exceptional method for service transactions and should only be applied when the underlying facts demonstrate that one-sided methods cannot reliably determine an arm's length outcome.

<u>Recommendations</u>:

- The guidance should clarify that factors such as centralized operations, technology-enabled services, senior management involvement, strategic importance, or the use of intangibles should not, in isolation, be viewed as indicators that the transactional profit split method is the most appropriate method. Consistent with the OECD Transfer Pricing Guidelines, TPSM should generally be considered only where parties make unique and valuable contributions, perform highly integrated activities, or assume closely related economically significant risks and reliable one-sided methods cannot be applied.

c. Broad interpretation of intangibles

While businesses support the recognition that genuinely unique and valuable intangibles may affect method selection, they are concerned that the draft does not adequately distinguish between:

- unique and valuable intangibles that materially drive value creation; and
- ordinary know-how, operating procedures, technology tools, systems, or other intangibles commonly used by independent service providers.

The existence of intangibles alone should not automatically result in the rejection of cost-plus or TNMM. In many service arrangements, any value attributable to the service provider's know-how or technology may already be appropriately reflected in a cost-based remuneration. Similarly, the absence of perfect comparables should not preclude the use of comparables, particularly under TNMM, which is generally more tolerant of differences when supported by appropriate adjustments.

<u>Recommendation</u>: We recommend that the Guidance clarify the role of intangibles by stating explicitly that the mere existence or use of intangibles does not automatically disqualify cost-plus or TNMM. It would also be helpful to confirm that profit split based on intangible-related considerations should generally be limited to circumstances involving genuinely unique and valuable intangibles that are not adequately reflected in available comparables.

C.2.2. Application of the CUP Method

In practice, intra-group services are often provided as bundled service offerings rather than as discrete services. For example, management and IT services frequently comprise multiple interrelated activities delivered together as a single package. In such cases, the CUP method may be difficult to apply reliably on a service-by-service basis, as comparable third-party arrangements rarely provide an equivalent bundle under sufficiently comparable terms. We therefore recommend that the guidance recognize the practical limitations of the CUP method for bundled services and clarify that, where reliable CUPs are unavailable, a cost-based method may often provide a more reliable and administrable approach.

C.2.3. Application of cost-plus method and transactional net margin method

C.2.3.3 Pass-through Costs

Members generally welcome the expanded discussion of pass-through costs and agency functions and Example 20 is viewed as a useful illustration of this distinction, representing a significant improvement over the existing guidance.

Members have noted that, as acknowledged in the draft, determining whether independent comparable companies apply a mark-up to pass-through costs is extremely difficult to determine in practice. This challenge is particularly acute where the TNMM is applied; public information does not reveal whether third-party costs are marked up; industry practice is unclear or inconsistent; or service providers perform both agency and value-adding functions within the same arrangement. Likewise, the proposed reference to industry practices is unlikely to provide a practical solution in many situations due to the limited availability of reliable public data.

Given the practical difficulty of obtaining reliable evidence regarding whether independent parties apply mark-ups to specific third-party costs, members recommend removing or reconsidering paragraph 7.64. By contrast, the clarification contained in paragraph 7.65 regarding the application of a mark-up to agency-related costs is welcomed and should be retained.

1. Additional examples

We request additional guidance for situations where a central entity performs both intermediary and value-adding functions within the same service offering or cost category. While paragraph 7.65 and Example 20 address this issue conceptually, stakeholders believe further practical examples would help illustrate:

- how costs should be segmented;
- which costs should remain pass-through;
- which costs form part of the marked-up cost base; and
- how to apply the analysis where activities are closely intertwined.

Additional examples would also be helpful to illustrate:

- arrangements where a service provider performs both agency and value-adding functions;
- treatment of third-party vendor costs;
- cloud service arrangements;
- procurement activities; and
- contractor and outsourced service costs.

As a result, members are concerned that the proposed approach may lead to differing interpretations and increased scrutiny of large pass-through cost pools requiring taxpayers to maintain extensive documentation to demonstrate why particular costs should not attract a mark-up, even where the intermediary's role is limited.

2. Recommendations

- Clarification that the existence of value-adding functions performed by the service provider should be the primary consideration rather than “industry norms and practices”. We also recommend removing the reference to the “ordinary or recurrent activity of the service provider” under paragraph 7.69 as it should not affect the arm’s length price.

- Clarification and examples related to the benefits provided “beyond those available from third-party service providers” further illustrating the need to remunerate those benefits and to use service providers with comparable functional profiles.

- Introduction of a safe harbour for pass-through costs. For example, where pass-through costs represent less than a specified proportion of the total recharged costs, such costs could be presumed to form part of the cost base eligible for a mark-up without requiring further analysis.

C.2.4. Application of the transactional profit split method ((7.66 – 7.70)

1. Positive Developments

Members welcome the inclusion of dedicated guidance on the application of the transactional profit split method (TPSM) to intra-group services. Paragraphs 7.66 and 7.67 are a particularly valuable addition, as they appropriately recognize that intra-group services exist on a spectrum, ranging from low value-adding services to complex, highly integrated arrangements involving unique and valuable contributions, the creation or transfer of intangibles, or the assumption and control of economically significant risks.

Members also welcome the recognition that TPSM may be relevant where parties make unique and valuable contributions, their activities are highly integrated, or they share economically significant risks. Additional guidance on non-cost-based methods is viewed positively, particularly for service arrangements where value creation may not be appropriately reflected by the service provider's cost base alone.

2. Key Concerns / Recommendations:

a. Clearer Boundaries When TPSM Is Appropriate

Members support the recognition that TPSM may be appropriate for certain service arrangements. However, the draft would benefit from clearer guidance distinguishing:

- routine or centralized service arrangements, where one-sided methods may continue to provide reliable outcomes; and
- genuinely integrated businesses involving unique and valuable contributions, highly integrated activities, or shared economically significant risks, where TPSM may be the most appropriate method.

Members support the OECD's recognition that TPSM may be appropriate where parties make unique and valuable contributions, perform highly integrated activities, or assume closely related economically significant risks. However, the final guidance should make clear that centralized operating models, specialized expertise, technology-enabled service delivery, proprietary methodologies, performance-based remuneration, or the routine use of intangibles should not, by themselves, be viewed as indicators that TPSM is the most appropriate method. The appropriate method should continue to depend on the overall facts and circumstances and whether reliable one-sided methods can be applied.

At the same time, members believe the guidance should more clearly acknowledge that TPSM should not be viewed as exceptional merely because the relevant controlled transaction is a service. Where services are performed through a highly integrated operating model and multiple entities make unique and valuable contributions, or assume closely related economically significant risks, one-sided service methods may not reliably reflect value creation and TPSM may be the most appropriate method.

The relevant consideration should be whether, based on an accurate delineation of the transaction, multiple parties jointly create value through unique and valuable contributions, highly integrated activities, or the shared assumption and control of economically significant risks such that a one-sided method cannot reliably reward those contributions.

The Guidance should also recognize that independent enterprises frequently remunerate higher-value or specialized services through a variety of pricing mechanisms, including milestone-based fees, contingent remuneration, commissions, success fees, value-based pricing arrangements, and other hybrid structures. The existence of higher-value services should therefore not create a presumption that profit split is the most appropriate method.

b. Concerns Regarding Examples 13, 15 and 18

While we appreciate the OECD's efforts to clarify the service spectrum, we are concerned that the current framing introduces ambiguity. Specifically, it risks inadvertently steering highly integrated, high-value service arrangements toward complex and subjective transactional profit split methods based on qualitative criteria. This subjective delineation is highly likely to exacerbate transfer pricing disputes.

This concern is particularly associated with the following examples:

In particular:

- **Example 13** remains ambiguous regarding intellectual property ownership. The inclusion of ex ante milestone fees or contingent performance incentives should not automatically require a profit split. Independent service providers frequently negotiate performance-based milestone arrangements without sharing in broader entrepreneurial profits.
- **Example 15 (Scenario B)** is unclear regarding Company C's economic ownership of intellectual property. A subsidiary's control over key aspects of the research process or a high degree of operational autonomy should not automatically preclude remuneration under a one-sided method.
- **Example 18** may imply that the use of proprietary know-how or "Core IP" automatically renders TNMM unreliable. Members note that independent service providers routinely employ proprietary methodologies and know-how when providing services to third parties. The use of proprietary intellectual property should not automatically preclude one-sided methods where the service provider's return can be reliably benchmarked.

Members therefore recommend clarifying that Examples 13, 15 and 18 are illustrations of potentially high-value service arrangements rather than automatic triggers for TPSM. The guidance should confirm that specialized capabilities, performance incentives, proprietary know-how, research oversight, or operational autonomy do not, in themselves, prevent the use of one-sided methods where IP ownership, risk allocation, and the overall functional profile remain consistent with such approaches.

c. Additional Guidance on Integrated Service Businesses

Several members noted that the clarification in paragraphs 7.66 and 7.67 is particularly important for integrated global management consulting and professional services businesses, where high-value intra-group services often represent the principal controlled dealings within the group.

In these businesses, value may be created through the coordinated deployment of client relationships, institutional know-how, shared methodologies, specialist expertise, global staffing capabilities, market knowledge, technical expertise, and global delivery capabilities, even where no concrete legal transfer or license of intangible property can be identified.

For this reason, members recommend that the final guidance state expressly that, where accurately delineated intra-group services form part of an integrated global service business and multiple group companies make unique and valuable contributions, or assume closely related economically significant risks, TPSM may be the most appropriate method for determining arm's-length remuneration.

Members also recommend clarifying that the application of TPSM is not limited to cases involving a legal transfer or license of separately identifiable intangible property. The absence of a formal license or legal IP transfer should not, by itself, preclude application of TPSM where the relevant profit drivers arise from highly integrated activities and shared value creation.

Further guidance would also be welcome on:

- allocation of combined profits where the service provider does not earn third-party revenue;
- residual profit split approaches;
- treatment of milestone-based fee arrangements such as those illustrated in Example 13; and
- circumstances where a defined integrated business profit pool may be appropriate.

Some members noted that, for integrated global service businesses, engagement-by-engagement pricing may create false precision and be difficult for both taxpayers and tax administrations to apply. In appropriate cases, it may be more reliable to evaluate controlled dealings at the legal entity or relevant business-line level, provided such aggregation is consistent with the accurate delineation of the transactions and underlying value creation.

Overall, the final guidance should reinforce that TPSM is neither an exceptional method nor a default method for higher-value services. Rather, it is appropriate where the accurately delineated transaction demonstrates highly integrated activities, unique and valuable contributions by multiple parties, or the sharing of economically significant risks such that one-sided methods cannot reliably determine arm's length remuneration.

Box 3 – Responses to Questions for Commentators:

Commentators are invited to provide their views on the relevant considerations regarding the treatment of stock or share-based compensations in the context of intragroup services. Specifically, we seek commentators' views on:

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?

Members reported different experiences with respect to the treatment of stock-based compensation (SBC). Some members have not encountered significant practical difficulties and currently treat SBC as an operating expense included in the service provider's cost base and recharged with an arm's-length mark-up. These members would nevertheless welcome confirmation that such treatment is acceptable for transfer pricing purposes.

On the other hand, many members reported challenges encountered in determining the appropriate treatment of stock-based compensation within intra-group service arrangements. Common issues include differences in the timing of grant, vesting, and expense recognition, variations in accounting standards and practices across jurisdictions, differing valuation approaches (e.g., grant-date fair value versus realized value), and inconsistent tax treatment by local tax authorities. These differences can result in mismatches in the cost base used for transfer pricing purposes, creating uncertainty and increasing the risk of double taxation, non-deduction, or transfer pricing disputes.

For example:

- A parent company may recognize stock-based compensation expense using a grant-date fair value approach, while the recipient jurisdiction permits a deduction only upon exercise or settlement of the award.
- Equity awards typically vest over multiple years, while intra-group service charges are calculated annually, creating timing mismatches.
- A centralized engineering or information technology team may provide services to multiple affiliates, but only certain jurisdictions permit stock-based compensation costs to be included in the chargeable cost base.
- Local accounting standards may require different measurement or recognition periods than those applied under the parent company's accounting framework, resulting in differing service cost pools across jurisdictions.
- SBC is valued using option-pricing models (e.g., Black-Scholes) that produce estimates with significant inherent uncertainty. Tax administrations may challenge these valuations, creating compliance risk.
- Allocating SBC across multiple entities or jurisdictions where employees perform services can be complex.
- Tax authorities may take inconsistent positions regarding whether stock-based compensation constitutes a compensable employee cost for transfer pricing purposes, creating a mismatch between the service provider's taxable income and the service recipient's deduction.
- Multinationals may incur stock-based compensation costs for senior executives providing strategic oversight, business transformation leadership, or centralized management services that benefit multiple affiliates, raising questions regarding the portion of such compensation that should be included in chargeable service costs.

Members noted that SBC has considerations much broader than transfer pricing, with legal, accounting and other implications. There are differences in how SBC is treated under IFRS and US GAAP. Additionally, there are significant constraints to availability of reliable comparable data in the context of SBC.

Members also noted the lack of uniformity in current market practice. Some taxpayers include SBC in the cost base of intra-group services, some exclude it where the treatment is uncertain or administratively burdensome, and others adopt group-wide policies to promote consistency across jurisdictions. The approach is often influenced by local tax requirements, financial reporting considerations, and audit experience. As a result, there is uncertainty regarding whether SBC should be included in the cost base of intra-group services and, if so, under what circumstances.

While members generally agree that greater consistency and tax certainty would be beneficial, views differ on how prescriptive the guidance should be. Some members support confirmation that SBC may be included in a service cost base where it forms part of employee remuneration and relates to personnel performing services that benefit group members. These members consider that taxpayers should be permitted to adopt a reasonable and consistently applied methodology, including reasonable valuation and allocation approaches, even where differences in local accounting standards or tax treatment prevent complete alignment across jurisdictions. They also note that practical approximations may be necessary where SBC costs must be allocated across multiple service recipients.

Other members caution against introducing a presumption that SBC should automatically form part of the cost base of intra-group services. In their view, the transfer pricing treatment should depend on the facts and circumstances, including the nature of the services performed, the commercial arrangements between group entities, comparable market behaviour, and the relationship between the SBC expense and the services provided. The existence of an accounting expense should not by itself determine transfer pricing treatment.

Some members have further noted their experience in multiple jurisdictions where local tax administrations deny deductions for SBC, even when such costs are recharged. They noted that mandating that SBC must be cross-charged into a local entity's service fee without tax deductibility leads to an economically unreasonable and highly detrimental tax result. Without a recharge arrangement in place, SBC does not represent an actual cash expense by the service-provider entity in the same manner as salaries and bonuses. In this context, they recommend that the guidance clarify that SBC should only be included in the cost base of intra-group services where it is recharged and a corresponding tax deduction is available in the recipient's jurisdiction. This ensures alignment with economic reality and prevents double taxation.

Given these practical challenges and the lack of consistent treatment across jurisdictions, many members believe additional guidance would be beneficial. In particular, members would welcome clarification regarding:

- whether, and under what circumstances, SBC should be included in the cost base of intra-group services;
- the treatment of timing differences between accounting recognition and economic incurrence;

- appropriate valuation methodologies for transfer pricing purposes;
- the interaction between transfer pricing treatment and local tax deductibility;
- the allocation of SBC costs where employees provide services benefiting multiple group entities; and
- the application of SBC principles in common intra-group service arrangements, including cost-plus arrangements, shared service centres, centralized management functions, and low value-adding services.

D. Documentation (7.71-7.73)

1. Positive Developments

Members welcome the acknowledgement that documentation requirements should be proportionate to the facts and circumstances, materiality, and nature of the services and that Section D is not intended to establish a mandatory minimum checklist of documentation requirements. We also welcome Example 21 and the recognition that sample-based evidence may be appropriate in certain cases. The example responds to longstanding concerns regarding excessive audit requests and demonstrates a more practical approach to evidencing provision of service, particularly for high-volume service arrangements such as IT support services.

2. Key Concern / Recommendations

a. Risk that Illustrative Documentation Becomes a De Facto Documentation Standard

The **overwhelming concern** from business is that the extensive lists of examples included in paragraphs 7.72 and 7.73 would, **in practice**, be interpreted by tax administrations as a de facto documentation standard or **mandatory checklist**.

Members consistently noted that tax auditors already request extensive documentation for intra-group services and that the examples contained in the draft may reinforce this trend. Many members believe that their inclusion in the guidelines would unintentionally result in tax administrations treating them as documentation that should routinely exist and be produced during audits.

This concern is particularly acute for large multinational groups with hundreds or thousands of intra-group service arrangements spanning multiple service categories, legal entities, and jurisdictions. In many cases, maintaining the level of contemporaneous evidence referenced in paragraphs 7.72 and 7.73 would require extensive and ongoing data collection processes across service providers, recipients, and jurisdictions. For large MNEs, the burden associated with maintaining such information at scale would be very substantial.

Particular concerns were raised regarding documentation expectations relating to:
- contemporaneous explanations of expected benefits;
- evidence of why services were required;
- management approvals and business justifications;
- communications between service providers and recipients;
- meeting minutes, emails, and collaboration platform messages;
- IT tickets and operational support records;
- detailed cost pool construction and reconciliation exercises; and

- invoices, receipts, and source accounting records.

Members noted that some service arrangements may involve numerous underlying activities, service interactions, or allocations. Maintaining and retrieving highly granular evidence for all such activities would be operationally impractical, especially given personnel changes, system migrations, business reorganizations, and normal document retention practices.

Several members also highlighted concerns that references to communications and emails may encourage broader requests for email chains, Teams messages, management communications, and similar records, raising issues relating to administrative burden, retrieval costs, privacy considerations, and contextual misinterpretation.

Members recommend that the final guidance:

- reinforce that paragraphs 7.72 and 7.73 are **illustrative only** and should not be interpreted as a minimum documentation standard or mandatory checklist;
- further strengthen the proportionality principle in paragraph 7.71 and make clear that documentation requirements should be commensurate with the materiality, risk profile, and nature of the services;
- clarify that taxpayers are not expected to maintain exhaustive contemporaneous evidence for all intra-group services;
- explicitly recognize that sample-based evidence, system-generated evidence, and category-level documentation may be sufficient in appropriate circumstances; and
- confirm that highly granular records, such as transaction-level accounting data, item-level receipts, emails, tickets, or interview evidence, should not be regarded as default requirements absent specific risk indicators;
- consider noting that executive interviews and discussions with relevant personnel should be accepted as a complementary source of evidence, particularly in relation to centralized service arrangements and management services. Interviews should be viewed as a means of corroborating other evidence.
- clarify that evidence should be assessed holistically based on the overall body of contemporaneous support available. Documentation should not be evaluated against a one-document-per-service, one-document-per-benefit, or one-to-one tracing to local financial statements standard. Insufficient documentation relating to a particular item should not automatically be equated with an absence of services or an absence of benefit where the overall evidence reasonably demonstrates that services were rendered and provided value to the recipient.

b. Distinguishing Between Different Documentation Objectives

Members recommend that the guidance more clearly distinguish between:

- evidence that a service was rendered;
- evidence supporting satisfaction of the benefit test; and
- evidence supporting the arm's-length nature of the charge.

While these analyses are related, they are not the same and documentation supporting one should not automatically be required to support the others.

In particular, members note that provider cost information should not always be required where the selected transfer pricing method does not rely on the provider's cost base.

Similarly, detailed cost reconciliations should not automatically be required where they are not relevant to the pricing methodology applied.

c. Challenges for Indirect Charge Arrangements and Centralized Service Models

Members highlighted particular concerns regarding documentation expectations for centralized service models and indirect charge arrangements.

The draft appropriately recognizes that indirect allocation methods may be necessary where services are provided to multiple recipients and where the benefits received can only be determined on an approximate basis. However, some members noted a practical tension between acceptance of indirect allocation methods and increasing expectations for transaction-level traceability and contemporaneous evidence.

Where costs are allocated using indirect allocation keys, the connection between individual costs and individual service recipients is inherently approximate rather than precise. Members therefore recommend that the guidance explicitly recognize that this characteristic is inherent to indirect allocation approaches and should not be penalized.

Additional challenges arise where an entity sources services from external providers or other group entities and redistributes those services across multiple recipients. In such cases, documenting the sourced services in a manner that demonstrates the benefit received by each final recipient may be particularly difficult.

d. Recommendations

Members recommend that the final guidance:
- introduce practical simplification measures or safe-harbour-type indicators for routine, recurring, centralized, or lower-risk services;
- provide guidance on the minimum level of documentation that should generally be acceptable where indirect allocation methods are used; and
- acknowledge that a reasonable level of approximation is inherent in indirect charge methods and should not, in itself, justify denial of deductions or adverse transfer pricing adjustments.

E. Low value-adding intra-group services (7.76 – 7.96)

Business welcomes the retention of the simplified low value-adding intra-group services (LVAIGS) framework, including the elective nature of the regime, the simplified benefit-test approach, and the 5% mark-up.

1. Recommendations

We recommend that the guidance:

- Clarify the scope of qualifying services, especially the distinction between qualifying IT support and maintenance services and excluded R&D activities, given the increasing integration of support, maintenance, and development functions. The guidance could also confirm that taxpayers may identify qualifying services using reasonable and consistently applied service categorizations.

- Consider expanding the list of services that may qualify as low value-adding intra-group services, provided that they do not constitute part of the group's core business. Consideration should be given to services that a company reasonably believes contribute value to its enterprise.

- Clarify the threshold for applying the simplified approach and reinforce that the 5% mark-up is not a mandatory rate, minimum return, or pricing floor, either for qualifying low value-adding services or for other intra-group services. Taxpayers should be able to apply a lower mark-up where supported by the facts and circumstances and consistent with the arm's length principle.

- Clarify that the category-based benefit-test approach described in paragraph 7.86 is intended solely as a simplification for LVAIGS and should not create an expectation that taxpayers must demonstrate benefits through evidence of individual acts, outputs, or service transactions for non-LVA services.

2. Levying of withholding tax on charges for low value-adding intra-group services

Members noted that, consistent with the OECD Transfer Pricing Guidelines, the draft guidance addresses withholding taxes only in Section E.4, paragraph 7.96, and solely in the context of low value-adding intra-group services. The recommendation is limited to encouraging tax administrations that impose withholding taxes on charges for low value-adding services to apply such taxes only to the profit element or mark-up, rather than to the full cost base of the services.

While this recommendation is welcome, stakeholders note that it has seen limited adoption in practice and does not provide a mechanism to ensure consistent implementation across jurisdictions. As a result, multinational groups continue to face double taxation where intra-group service charges are subject to withholding taxes imposed on a gross basis. More importantly, the draft guidance does not address the interaction between withholding tax regimes and the arm's length pricing of intra-group services more generally. This remains a significant practical issue for multinationals operating in jurisdictions that impose withholding taxes on technical, management, or other intra-group service payments.

The imposition of withholding taxes on intra-group services can create a tension between the application of domestic withholding tax rules and the arm's length principle. Where withholding tax applies, the net remuneration received by the service provider is reduced, potentially resulting in an outcome that would not be acceptable between independent parties operating under comparable circumstances.

This tension may arise in two principal ways.

- First, where an arm's length service fee is determined before taking withholding taxes into account, the service provider may receive a net return below the arm's length outcome as a result of the withholding tax burden. In comparable circumstances, independent enterprises would typically seek to address this through pricing adjustments or contractual arrangements allocating responsibility for the withholding tax.
- Second, where service charges are grossed up to ensure that the service provider receives an arm's length return after withholding tax, the amount borne by the

service recipient may exceed the arm's length service fee itself, potentially giving rise to challenges in the recipient jurisdiction.

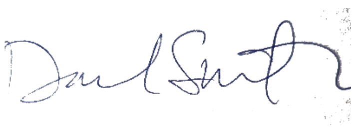
We therefore strongly encourage that the guidance address interaction between withholding taxes and the arm's length principle, particularly the treatment of gross-up mechanisms, allocation of withholding tax costs between associated enterprises, assessment of withholding tax recoverability, and the impact of withholding taxes on the profitability of the service provider.

Conclusion

Business at OECD appreciates the work to enhance clarity and provide practical guidance on the transfer pricing treatment of intra-group services while maintaining the existing principles of the OECD Transfer Pricing Guidelines. As the guidance is finalized, we encourage the OECD to reinforce practical and proportionate approaches that improve tax certainty, reduce controversy, and reflect the commercial realities of how multinational enterprises organize, manage, and deliver services across jurisdictions.

In particular, the final guidance should preserve flexibility in method selection, confirm that cost-based approaches remain appropriate for many intra-group services, ensure that the benefit test functions as a delineation tool rather than as a basis for disallowance, recognize reasonable indirect allocation methodologies, and maintain proportionate documentation expectations. *Business at OECD* looks forward to continued engagement with the OECD and Working Party No. 6 to support guidance that is clear, practical, and administrable, while enhancing tax certainty and helping to prevent double taxation.

Sincerely,



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[See below Annex I – Comments on the Examples on Intra-group services]

Annex I to Chapter VII: Comments on the Examples on Intra-group Services

Example 11
A low-cost service center cannot reliably apply the CUP method using service contracts from multiple jurisdictions without performing any adjustment to account for location specific differences. If reliable adjustments are not available, another TP method should be selected. This example could clarify that, where the CUP method cannot be reliably applied, other methods—such as the TNMM or cost-plus method—may be particularly relevant for IT and back-office support services.

Example 13
Profit split is the most appropriate method where both parties make unique and valuable contribution and share closely related significant risks, which is the case under Pharma R&D arrangement. The example should not be read as implying that all R&D or clinical trial support requires profit split method. The decisive considerations for applying the profit split method should remain whether both parties make unique and valuable contributions to the transaction and share economically significant risks.

Example 15
Example 15 currently reflects two ends of the spectrum—one with very tight direction and control, and one with a high degree of autonomy. This is not particularly helpful for many MNEs whose contract R&D arrangements fall somewhere in between. To help make the guidance more practical, consider including a middle-ground example that acknowledges contractual frameworks under which IP owners set priorities, make investment decisions and have regular project reviews while allowing technical center R&D employees to exercise technical and scientific discretion while developing new product, production, or packaging innovations. Some level of autonomy would certainty be given to third party R&D service providers used to benchmark for TNMM purposes and therefore should not result in defaulting to a profit split.

Alternative Scenario C:

1. Under a separate intercompany arrangement within the same group, Company A engages Company D, located in Country D, as an R&D service provider. The agreement defines the scope of the assigned research program, budgets and reporting obligations, and confirms that all intellectual property rights resulting from the activities remain with Company A. Company D is required to maintain and apply its scientific and overall technical expertise and apply the MNE's project management processes to carry out the R&D program defined by Company A, and report progress through gate reviews and/or milestone meetings with Company A. This enables Company A to assess whether projects meet its expectations and to decide whether to terminate them or approve for their advancement to the next gate. Company D does not bear the risk of unsuccessful research outcomes.

2. Company D connects with Company A regularly to ensure the research is in line with expectations, and decisions on commercial feasibility of the project are owned by Company A.

3. In this scenario, the agreement is not as specific as Scenario A, but the oversight and control from Company A is exercised via the regular project gate reviews with Company D and the updates in operating project management processes.

4. The accurate delineation of the transaction determines that the parties operate in accordance with the contractual arrangements, and Company D performs its functions under the direction and control of Company A. Taking into account the functions performed, assets used, and risks assumed, the arrangement would be characterized as contract research services provided by Company D to Company A. In line with the facts and circumstances, the services may be appropriately priced using the cost-plus method or the transactional net margin method using a cost-based profit level indicator. See Chapter II.

Workforce Know-How and Intangibles: The references to workforce know-how and specialized expertise could be interpreted as suggesting that routine workforce capabilities constitute intangible property (and this is not in line with Chap VI). The following comments in the draft would benefit from additional clarification:

- Scenario A: "pre-existing intangibles that Company A uses to manage the R&D projects."
- Scenario B: "the agreement grants Company C a high degree of autonomy over the execution of the research using its own specialized intangible property."

Scenario B – Paragraph 65: Identifying research areas as a potential trigger for profit split treatment is too broad a criterion. The guidance should distinguish between: (a) identifying commercial opportunities or consumer needs; and (b) determining the technical approach to address those needs/opportunities. If (a) is owned by Company A, then it should not result in profit split method.

Scenario B – Paragraph 68: The guidance should not suggest that highly integrated global R&D operations lead to a profit split. Many MNEs structure R&D across locations to access talent, use expertise efficiently, and optimize costs. This does not preclude the use of a cost plus.

Example 16

The example implies that there would be "transfers of intangibles" which may not be the case depending on facts and circumstances. To avoid this implication, the last sentence of paragraph 72 should be removed (". . . "as a practical matter, in the transfers of intangibles in the form of personalized treatment plans.").

Example 18

While we agree with the core conclusion in the example, it would be helpful if the example not only identified what pricing approach is inappropriate but also elaborate on alternative viable pricing frameworks for taxpayers facing highly analogous commercial arrangements (same observation with Examples 16 and 17). For example, consideration could be given to adding language indicating that, where a parent company both owns unique and valuable core IP and provides technical oversight services, TNMM may still represent a reliable transfer pricing method, provided that the operating affiliate receiving the services is selected as the tested party.

Under this potential approach, the local subsidiary would retain a reasonable routine profit level consistent with arm's length third-party benchmarks. All residual non-routine profits arising from the Core IP and group technical standards would be fully attributed back to Company P, the IP-holding parent.

Example 19
We appreciate the clarification that services not satisfying the definition of low value-adding services for purposes of applying Section 5 does not imply that a higher mark-up must necessarily be applied.

This example further reconfirms that a 5% mark-up does not constitute a floor for services falling outside the definition of low value-adding intra-group services. To strengthen the conclusion of this example, we recommend incorporating it directly into the main text of Chapter VII or, at a minimum, expressly cross-referenced.

Example 20
The example notes that "advertising industry studies and financial statements of purportedly comparable advertising firms" can be used to support the pass-through costs treatment. As evidence related to third-party financial statements would likely be difficult, if not impossible, for taxpayers to provide to tax authorities, we recommend removing the references to such third-party evidence. The example would also benefit from identifying the transfer pricing method that OECD considers most reliable under the facts presented.

Example 21
The example notes that IT service providers need to provide proportionate contemporaneous evidence of services provided (e.g., IT tickets, contracts, role descriptions, interviews). We recommend reinforcing the principles of proportionality and practicability to prevent disproportionate documentation requirements. Some requirements may be burdensome while offering limited additional evidentiary value.

Moreover, where taxpayers have provided a reasonable body of contemporaneous evidence supporting the provision of services, satisfaction of the benefit test, and the pricing methodology applied, tax administrations should not require increasingly granular forms of evidence absent specific indicators that the information provided is unreliable or incomplete.

Suggested additional example: global management consulting firm

To reinforce the application of the profit split to highly valuable and highly integrated services, we recommend that the OECD include a new example in Annex I about where group entities jointly conduct an integrated service business and the service activity is itself the profit-generating business, the profit split method can better reflect the arm's length outcome than applying one sided methods to each cross-border contribution. The example can address the following fact pattern:

Example [X]: Integrated global management consulting services

1. Consulting Group is a multinational professional services group that provides management consulting services through Affiliates in several jurisdictions. The Consulting group advises corporations, governments and institutions on strategic, operational and organizational matters through an integrated global operating model.
2. To support that operating model, the members of Consulting Group have entered into an intercompany agreement under which group members provide services to one another as required. These services may include originating or expanding client

relationships, identifying client opportunities, preparing proposals, designing engagement approaches, providing sector or functional expertise, providing core consulting services or specialist delivery work, training personnel, and/or developing applying methodologies and knowledge assets used in client engagements.

3. For example, a partner employed by Company A may originate or expand a relationship with a multinational client that gives rise to engagements contracted by Companies B and C; consultants employed by Companies D and E may provide specialist sector or functional expertise for proposals or delivery in other jurisdictions; and global industry or functional leaders may develop methodologies and knowledge assets that are applied in engagements performed by several group members.
4. The accurate delineation of the controlled dealings shows that the Consulting Group members make unique and valuable contributions. Furthermore, these members jointly or separately control closely related economically significant risks, including risks relating to engagement acceptance and pricing, delivery quality, staffing and utilization, client relationship development, and the development and application of methodologies and knowledge assets. The financial outcome of the relevant engagements depends on the combined effect of these contributions and risks, rather than on the activities of a single local contracting entity.
5. In line with the facts and circumstances, the profit split method would likely be the most appropriate method. The profit split should apply to the actual profits or losses from the relevant group members that participate in the core consulting business which is integrated, and not necessarily to the profits of the group as a whole.
6. A residual profit split could be considered where low value services are also being performed cross border. In this case, the low value services could be remunerated using the TNMM while the unique and highly valuable services could be remunerated by the application of the profit split to the residual.