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Transfer Pricing, Tax Treaties and
International Agreements Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation
and Development
Paris, France

Via email: taxpublicconsultation@oecd.org

RE: OECD Intra-Group Services Consultation

Dear Sir or Madam:

The OECD published a public consultation document on 1 June 2026 entitled *Revisions to Chapter VII of the OECD Transfer Pricing Guidelines* (the "Consultation Document"). The Consultation Document addresses "special considerations for intra-group services" considering the "growing significance of services in cross-border economic activity." The Consultation Document's primary objective is to ensure alignment between the guidance on intragroup services and the foundational principles in Chapters I-III of the OECD Transfer Pricing Guidelines (the "Guidelines").

The OECD invited comments from interested stakeholders by 22 July 2026. On behalf of Tax Executives Institute, Inc. ("TEI"), I am pleased to respond to the OECD's request for comments.

About TEI[1]

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 55 chapters in North and South America, EMEA, and Asia. As the preeminent association of in-house tax professionals, worldwide, TEI has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our more than 6,000 individual members represent over 2,800 of the leading companies in the world.

[1] TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from United States Federal Income Tax under section 501(c)(6) of the United States Internal Revenue Code of 1986 (as amended).

TEI Comments

Introduction

TEI supports the consultation's stated objective. One of Working Party No. 6's principal aims is to enhance clarity through additional practical illustrations, while at the same time leaving unchanged the general principles underlying the transfer pricing analysis of intra-group services.

Chapter VII of the Guidelines is notable for its relative simplicity. It identifies, in essence, two principal questions: first, whether intra-group services have in fact been rendered and, second, what should be the arm's length charge for such services. Paragraph 7.2 of the current text recognizes it is not in a multinational enterprise ("MNE") group's interest to incur unnecessary costs and it is in the MNE's interest to provide intra-group services efficiently. Additionally, current paragraph 7.6 formulates the benefits test in straightforward terms by asking whether the activity provides the relevant group member with economic or commercial value to enhance or maintain its business position and whether an independent enterprise in comparable circumstances would have been willing to pay for the activity or perform it in-house.

The Consultation Document states the revisions are not intended to change the general principles underlying the transfer pricing analysis of intra-group services. Yet the proposed changes to Chapter VII would significantly expand the transfer pricing analysis of intra-group services in several respects. These include a new introductory section on accurate delineation, an expanded treatment of the benefit test, and a new documentation section that increases the evidentiary threshold required to demonstrate an intra-group service has been rendered or the related charge is arm's length. We discuss these issues in more detail below.

Starting Point: MNE's are Free to Organize their Operations as they See Fit

Current paragraph 7.2 expressly recognizes that MNE's do not incur unnecessary costs and seek to provide intra-group services efficiently. That recognition is important because it sets the appropriate context for the analysis that follows and should be retained in the updated guidelines.

The Consultation Document would add similar wording, for example, in revised paragraph 7.3: "[i]n this regard, MNE groups are free to organise their operations as they see fit with the goals of maximising their profitability and enhancing their competitiveness in the market. In doing so, MNE groups aim at arranging services efficiently without incurring unnecessary costs." Similarly, paragraph 7.4 of the Consultation Document provides, correctly, that tax administrations should not dictate how an MNE sources services and MNEs are free to organize their operations as they see fit.

However, the Consultation Document, in Section B."Accurate delineation of intra-group services," turns in the opposite direction by providing in paragraph 7.6 that labels, service fee descriptions, written contracts, and the fact of payment do not by themselves establish that services have been rendered, while also noting that the absence of payment or contractual arrangements does not necessarily mean that no service has been provided. Similar wording can be found in paragraph 7.13.: "The accurate delineation of intra-group services includes the assessment of whether the service has been performed."

When reading paragraphs 7.3 and 7.4, it is reasonable to expect ordinary indicators of a service relationship – such as a written agreement, a service description, evidence of performance and payment – to constitute strong evidence that a service has been rendered. The accurate delineation should not start with this analysis and thus sentence of paragraph 7.13 quoted above should be removed.

Significant Expansion of the Accurate Delineation Test

The approach outlined in the Consultation Document expands the transfer pricing analysis' scope without clearly defining its limits. Pursuant to Paragraph 7.9 "it is necessary to understand any interdependencies among activities the performed by the service provider and service recipient" in relation to other controlled transactions and activities undertaken the MNE group. Paragraph 7.10 adds that a functional analysis of each of the parties to the intra-group service transaction should consider the "structure and organisation of the MNE group." Transfer pricing analyses are generally undertaken with respect to identified transactions. The references to any interdependencies, other controlled transactions, and activities performed by other entities broadly extend the analysis beyond the service transaction itself.

The language introduces uncertainty regarding both the scope of the inquiry and the documentation necessary to support it. The Consultation Document does not explain the extent to which such wider analysis is required. Does it depend on the type of services, for example. Nor does the Document explain when a taxpayer has gathered sufficient information to satisfy the accurate delineation requirement.

In addition, the benefit of adding this wording is unclear. The references in paragraph 7.9 to interconnected activities and in paragraph 7.22 to delineation suggest transactions should be viewed in an integrated manner. While such an approach may enhance the accuracy of the transfer pricing analysis, it also appears to reduce taxpayers' flexibility to separately structure and evaluate controlled transactions. As a result, the revisions concerning intra-group services have implications beyond Chapter VII and will affect the transfer pricing characterization of other controlled transactions.

TEI recommends removing paragraph 7.9 in its entirety.

Application of the Benefit Test

The Consultation Document injects ambiguity and obscurity where previously there was none. The "benefit test" is part of the intra-group services accurate delineation of the transaction analysis. As paragraph 7.13 explains, the benefit test "requires the determination of whether the activity of one group member provides another group member with economic or commercial value to enhance or maintain its business position." However, the revisions to the benefit test's application in section B.2 of the Consultation Document go far beyond the statements in paragraphs 7.2-7.4 generally providing that there are beneficial reasons an MNE group would secure services internally.

The current Guidelines state that intra-group service:

> activity provides a respective group member with economic or commercial value to enhance or maintain its business position. This can be determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in-house for itself.[2]

This language is plain, simple, and understandable. In contrast, paragraph 7.15 of the Consultation Document states that the following considerations, among others, are relevant in determining whether an activity meets the benefit test:

> c) The benefit should be identified and reasonably expected at the time of the transaction, and it should be sufficiently direct to be comparable to that for which an independent entity in comparable circumstances would be willing to pay.
>
> d) The benefit should be both factually possible and reasonably expected from the outset, although this does not mean that it is necessarily guaranteed when the activity is performed. Thus, a service is considered to be provided if, at the time the activity is performed, the recipient reasonably expects deriving a benefit, even if it is not eventually realized as expected.[3]

This language is no longer plain, simple, and understandable. Uncertainty arises because the Consultation Document does not explain how these concepts should be applied in practice. For example, how should we determine "sufficiently direct" in c)? What does this mean? The next consideration d) is even more vague with the two tests: "factually possible" and "reasonably expected." Moreover, the test is cumulative. Does this mean that a service could reasonably be expected but not factually possible? Or vice versa?

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[2] OECD (2022), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*, OECD Publishing, Paris at p.314. *Available at* https://doi.org/10.1787/0e655865-en.

[3] Consultation Document, paragraph 7.15.

Further, if d) is an expanded explanation of c), is the certainty objective not better served by deleting c) altogether and keeping d)? As drafted, these concepts will create interpretative difficulties without providing additional certainty. Therefore, TEI recommends keeping the current definition as is.

Hindsight Introduction?

The look back approach introduced by the Consultation Document will create a significant source of controversy and potentially increase the risk of double taxation. Once a taxpayer has reviewed the new considerations in the Consultation Document discussed above, the taxpayer must conduct a retrospective review under paragraph 7.16:

> Where the activities do not deliver the benefit as expected, an evaluation of multiple year data may be valuable in understanding whether the benefit was, in fact, reasonably expected at the time the activity was performed. Taxpayers should be prepared to provide reliable contemporaneous information to support that the benefit test has been fulfilled even if the benefit has not been realized as expected.

In sum: a taxpayer would first be required to identify and document the expected benefit at the time the service is received, then evaluate the benefit actually realized, and subsequently analyze whether the realized outcome confirms the original expectation was reasonable.

This paragraph risks holding intra-group services to a more onerous evidentiary standard than comparable third-party services, where the absence of a successful commercial outcome does not ordinarily negate the existence of the service or require the service provider to re-prove the original business rationale years later. It may also encourage *ex post* reviews based on actual outcomes rather than an examination of the information reasonably available at the time the MNE obtained the service.

Questions also arise regarding what will be the consequences of this analysis. Denial of deduction in the year of review of the benefit? In the interest of certainty, we recommend deleting this paragraph altogether or explaining the necessity of the post-service review as well as an explanation of the consequences of such analysis.

In sum, current paragraph 7.6 provides the essential inquiry is whether the activity provides economic or commercial value such that an independent enterprise would have been willing to pay for it or perform it itself. The proposed draft invites debate over whether a benefit was sufficiently direct, whether it was factually possible, whether it was reasonably expected from the outset, whether later developments cast doubt on the initial expectation, whether the relevant benefit was recipient-specific, and whether a broader examination of other group activities and transactions is needed to understand the service. Several new concepts are inherently open-ended and subjective: "any interdependencies," "sufficiently direct," "factually possible," "reasonably expected," "incidental benefit," and "ancillary activities to the corporate governance of the MNE as a whole". Thus, the possibility of divergent interpretations is very real.

TEI recommends avoiding the introduction of new concepts unless absolutely necessary to clarify an existing issue. Any new concepts should be clearly explained, with examples, to avoid differing interpretations. Overall, TEI questions the need to change the current definition and recommends the OECD keep the current language.

Documentation

The Consultation Draft's section on documentation raises a similar concern. Proposed paragraph 7.71 states that the recommendations do not establish a mandatory minimum checklist of required information or a documentation standard, and the level and detail of documentation should be proportionate to the materiality and nature of the services. We welcome that statement. However, the following paragraphs identify a wide range of contemporaneous materials that "can be useful and relevant," including, communications between provider and service recipient, minutes of meetings, deliverables or outputs, etc. The document does not offer practical examples nor explain what level of documentation is considered proportionate.

Proposed paragraph 7.73 then extends the list of materials to detailed information on allocation processes, selected allocation keys, discrepancies between total allocated costs and total costs incurred, procedures and criteria used to identify costs, cost-base construction, identification of direct and indirect costs and operating expenses, and relevant source documentation such as invoices, timesheets, and receipts. In formal terms these examples may not constitute a mandatory checklist. In practical terms, however, experience strongly suggests that documentation examples described as "optional" in OECD text often during audits become *de facto* documentation expectations. Accordingly, the draft's documentation section may materially increase compliance burdens even if that is not its stated intent and contradicts the current text of paragraph 7.2. To avoid the applicability of paragraph 7.73 to all services, TEI recommends explaining under what circumstances or for what specific type of service the extended documentation requirements apply.

Moreover, to avoid the perhaps unintended consequence of creating a *de facto* standard while giving equal weight to the proportionality principle, we suggest the following addition to paragraph 7.71:

> The examples of documentation listed below are illustrative. The absence of any particular category of evidence should not, in itself, justify the conclusion that a service has not been rendered or that the benefit test has not been met. Tax administrations should consider the totality of the

> evidence provided and Documentation requirements should remain proportionate to the materiality, nature and routine character of the services.

The Consultation Document's examples encompass communication between group entities, emails, meeting minutes, internal approval documents, project materials, deliverables, cost allocation calculations, invoices, timesheets, and other source documentation. Although each item may be relevant in certain, specific, circumstances, collectively they substantially increase compliance burdens and create expectations that many taxpayers cannot reasonably satisfy on a consistent basis.

This concern is amplified by ordinary document-retention practices. Many organizations operate under policies requiring deletion of emails and other communications after relatively short periods. As a result, taxpayers may not be able to produce every category of document referenced in the Consultation Document even where services were clearly rendered and appropriately charged.

Accordingly, TEI recommends the OECD explicitly clarify these documentation requirements only apply in exceptional circumstances.

<u>Indirect Charge Approaches – Allocation Keys and Sound Accounting Principles</u>

TEI recommends the OECD explicitly acknowledge that there is no universally correct allocation key and taxpayers should be permitted to select allocation methodologies that best reflect the commercial realities of their businesses, including consideration of operational key performance indicators, management reporting practices, and administrative feasibility.

Further, once a taxpayer has selected and consistently applied a reasonable allocation key supported by a coherent business rationale, the burden should shift to the tax administration to demonstrate why the selected methodology materially distorts the allocation of expected benefits. Such clarification would significantly enhance tax certainty and reduce unnecessary controversy. TEI strongly recommends the OECD make this clarification.

<u>Selection of the Most Appropriate Transfer Pricing Method</u>

Most intra-group service arrangements involve routine support activities that do not rely upon unique and valuable intangibles and do not involve the assumption of economically significant risks. In such circumstances, cost-based methods frequently constitute the most reliable and administrable pricing mechanism. Recognition of this reality reflects the nature of most intra-group service arrangements encountered by taxpayers and tax administrations.

TEI therefore recommends preserving language acknowledging that cost-based methods will often be appropriate for routine intra-group services. Such clarification would promote consistency with existing guidance while avoiding any implication that commonly accepted approaches have become less reliable under the revised Chapter VII.

Application of the CUP Method – Practical Considerations

From a theoretical perspective, the comparable uncontrolled price ("CUP") method may be the most appropriate transfer pricing method. In practice, however, taxpayers and tax administrations frequently encounter situations in which sufficiently reliable CUP's do not exist for routine intra-group services with MNE's for the reasons laid out in paragraph 7.2. In those circumstances, cost-based methods often represent the most reliable alternative.

TEI therefore recommends that the OECD explicitly acknowledge the practical limitations associated with CUP analyses and confirm that cost-based methods may frequently provide more reliable results where comparability defects cannot be addressed through reasonable adjustments.

Cost-Based Methods and Cost Base Construction

The Consultation Draft's discussion of direct costs, indirect costs, and operating expenses would benefit from additional clarification regarding the treatment of unusual or non-recurring expenditures, including severance costs, restructuring expenses, and other exceptional items. These issues frequently arise in practice and often become a source of controversy during audits. Greater precision on these matters would provide more meaningful guidance than broad conceptual statements concerning cost categorization.

TEI therefore recommends further clarification of the intended interaction between these new provisions and the existing cost-based guidance currently contained in Chapter VII.

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TEI appreciates the opportunity to provide feedback on the Consultation Document. Please do not hesitate to contact Ralf Thelosen at rthelosen@citco.com or Benjamin R. Shreck of TEI's legal staff at bshreck@tei.org or +1 202 464 8353 with any questions about TEI's comments.

Respectfully submitted,

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