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Organisation for Economic Cooperation and Development (OECD)
OECD Centre for Tax Policy and Administration
Transfer Pricing, Tax Treaties and International Agreements Division

Sent via e-mail to: **taxpublicconsultation@oecd.org**

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SwissHoldings comments regarding public consultation on taxation:
Revisions to Chapter VII of the OECD Transfer Pricing Guidelines

Dear Madam/Sir

The business federation SwissHoldings represents the interests of 61 Swiss-based multinational enterprises from the manufacturing and service sectors (excluding the financial sector).

SwissHoldings would like to thank the OECD for the opportunity to comment on the proposed revisions to Chapter VII of the OECD Transfer Pricing Guidelines. This document is submitted in response to the OECD Public Consultation Document on the revisions to Chapter VII of the OECD Transfer Pricing Guidelines, Special Considerations for Intragroup Services (hereinafter referred to as the "Discussion Draft").

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SwissHoldings

1 Executive Summary

We welcome several important features of the Discussion Draft, in particular:

1. In the Introduction Section, a clearer acknowledgement that MNE groups are free to procure or in-source services as they see fit;
2. The alignment of Chapter VII with the analytical framework in Chapters I to III, as it brings conceptual coherence to the treatment of intragroup services;
3. The clearer two-step framework distinguishing between (i) the delineation of the service has been rendered and (ii) how that service should be priced, should reduce audit confusion and support more consistent application of the arm's length principle;
4. The preservation of the existing safe harbor markup rate for Low Value-Adding intragroup Services (LVAS), though we recommend some editorial simplification to avoid redundancies or confusions between Section D and Section E.
5. The inclusion of new examples is broadly helpful though substantial adjustments are needed.

While the Discussion Draft is described as not intended to change the general principles underlying the transfer pricing analysis of intragroup services, based on our practical experience its current content will generate new substantive requirements, additional documentation and administrative burden, or presumptions against established service charging models that are consistent with the arm's length principle.

Our key recommendations are summarized below:

1. The final guidance should preserve the existing arm's length framework and avoid creating new presumptions against established intragroup service models, particularly where services are provided by group headquarters or shared service centers.
2. The benefit test should be applied in a practical and proportionate manner and should not add more burden of proof than for intragroup supply goods: proper receipt, consumption or availability of a service should generally constitute strong evidence of benefit, subject only to evidence of duplication, non-performance or shareholder activity.
3. The concept of expected economic or commercial value should not be converted into an ex ante quantification requirement, a hindsight-based outcome test, or a requirement to prove that the service was cheaper or more successful than alternatives available to the recipient.
4. The distinction between shareholder activities and chargeable services should be based on the MNE fact pattern and operating model, not on the identity or seniority of the service provider. Centralized compliance, governance, risk management, digital transformation and post-acquisition integration activities may provide direct benefits to group entities.
5. Duplication should not be presumed where central, regional and local activities coexist, especially for regulatory requirements, dual controls, transition periods, second opinions, or intentional redundancy for risk mitigation.
6. Indirect-charge methods and allocation keys should remain acceptable where they reasonably reflect expected benefits and are administrable in the circumstances. Direct charging should not be treated as inherently superior where it would increase administrative burden without improving reliability.

7. Cost-Plus and TNMM should remain available for routine or one-sided service providers, absent unique and valuable contributions or control over economically significant risks. Centralization, senior expertise, technology enablement, or non-unique know-how should not, by itself, displace these methods.
8. The Discussion Draft should be aligned with Chapter VI of the OECD Guidelines and should expressly reject any presumption that high-value, technically complex or IP DEMPE-supporting services warrant a transactional profit split. Profit split should apply only where accurate delineation and the functional or DEMPE analysis evidence unique and valuable contributions, relevant risk control or intangible ownership, and no reliable comparables. Expertise, qualifications or autonomy may affect pricing, but should not, by themselves, justify recharacterization or profit split.
9. Documentation requirements should be proportionate and should not become a mandatory checklist of item-level or task-level evidence. For recurring services, category-based documentation, reliable cost pools, reasonable allocation keys and representative evidence should generally be sufficient.
10. The low value-adding services framework should remain a genuine simplification. Failure to qualify for the simplified approach should not imply that a service is high value, nor that a mark-up above 5% is required.
11. The final guidance should provide clearer criteria for technology-enabled, AI-enabled and platform-based services, distinguishing routine support services and output-based services from transactions involving the use, transfer or creation of intangibles.
12. The examples in the Annex should not be used as de facto checklists or safe conclusions. Any reliance on examples should identify the economically relevant facts supporting the conclusion, and certain examples should be refined to avoid overextending profit split, shareholder activity or intangible characterizations.

Our hereinafter detailed comments will focus on these concerns as well as answering the questions raised in the Discussion Draft.

2 Detailed Comments

Below are our detailed comments, following the linear review of the Discussion Draft.

2.1 Comments to Section B – Accurate delineation of intragroup services

We welcome the clarifications in para. 7.10 yet recommend that the final guidance better reflects modern MNE operating models, where both strategic and non-strategic activities are often centralized directly at the MNE's group headquarters ("Group HQ") or shared service centers. The guidance should avoid any presumption that services rendered directly or indirectly by Group HQ, or by its personnel, are shareholder activities merely because of the provider's identity.

B.1 Determining whether intragroup services have been rendered

B.1.1 Definition of the benefit test

Per para 7.13 of the Discussion Draft "the accurate delineation of intragroup services includes the assessment of whether the service has been performed. This assessment is known as the "benefit test" […]".

Based on this opening statement, the proper receipt or consumption of a service should generally be the strongest evidence that a benefit exists, as with the recognition of goods once transfer or use is evidenced.

In practice, however, the benefit test is often applied more restrictively to services than to goods, creating a dissymmetry of burden of proof, with evidence of delivery or consumption being often disregarded, even where the service is not duplicative, leading to ungrounded disputes. This concern is heightened for specialized centralized services, where recipients rely on the service provider's expertise.

The final guidance should therefore confirm that proper consumption of a service presumptively satisfies the benefit test, subject only to evidence of duplication, non-performance or shareholder activity. Bearing this situation in mind, the additional content set forth in sub-section B.1.2 will give rise to more misuses and controversies (see our further comments on the next page).

B.1.2 Considerations on the concept of benefit

Para. 7.15 and 7.16 of the Discussion Draft refer to "expected economic or commercial value." This should not be interpreted as requiring service providers to quantify the expected benefit ex ante in a manner comparable to intangible transfers or cost contribution arrangements, as such evidence would often exceed what independent service providers could provide.

For limited-risk routine recipients receiving ancillary intragroup services, the final guidance should allow a preliminary benefit test: where the service costs do not prevent the recipient from earning an overall arm's length TNMM return, benefits beyond mere consumption should generally be deemed met.

The final guidance should also ensure that the benefit test is not converted into a retrospective outcome test or into a requirement to prove that the service was cheaper or more successful than alternatives available to the recipient:

- Examples 1 and 2 appropriately illustrate that the benefit may be expected at the time the activity is performed, even if the expected outcome is not fully achieved. This should be stated prominently as a principle, not just as part of examples, as it is central to avoiding hindsight-based audit adjustments. The same point is relevant to loss-making recipients, as illustrated in Example 1, Scenario B; losses should not, by themselves, be taken as evidence that no benefit was received.
- Where an expected benefit is not realized, multiple-year data may be relevant only to test whether the expectation was reasonable at the time of the activity. It should not be used as a hindsight-based denial mechanism.

The final guidance should clarify that reasonable expectation of benefit commands reasonable supporting evidence with such evidence to be provided at the activity level rather than for each task in that activity. Examples of reasonable evidence supporting that reasonable expectation at the activity level are job announcements or job descriptions, service descriptions, project charters, annual plans or targets.

For recurring services, a consumption-based or category-based evidentiary approach should be accepted where the category of services is actually consumed or made available under a documented service or policy framework, unless the facts indicate that the activity did not occur or that the recipient could not reasonably benefit from it.

Furthermore, the final guidance should address cases where the expected benefit fails to materialize because of the recipient's misuse. A service provider should not lose chargeability or arm's length remuneration because of the recipient's shortcomings. Here again, we observe from the field a major difference in treatments between the supply of goods and the supply of services: the price for a drug remains the same even though one patient would fail at following the user instructions; the same logic should apply to services.

Where no benefit is identified, the guidance should clarify whether the provider bears the cost or whether, under indirect allocation methods, the cost may still benefit other recipients for which a benefit is demonstrable.

B.1.3 Benefit test and arm's length remuneration

In an MNE group environment, and especially with vertically centralized value chains, a service may, at face value, be more expensive than a third party alternative for various sound reasons such as: the third party supplier imposing extended liability limitation clauses, scope exclusions, add-on fees, or requiring the service recipient to be fully qualified in the area of services rendered (which will eventually lead the service recipient to seek for technical support from its MNE group's specialized personnel, on top of the third party services paid).

The final guidance should avoid implying that a lower-cost local alternative automatically limits or negates the existence of the service. Such alternatives may potentially be relevant to pricing, but not to transaction delineation or benefit test.

B.1.4 Activities performed for one or several members of the group

For services provided to multiple entities, especially when rendered to a network of recipients whose business activities and functional profiles are the same across various jurisdictions, the final guidance should confirm that the benefit analysis may be performed by service category and recipient group where that approach is consistent with the nature of the services and the allocation method used. A requirement to evidence each activity recipient-by-recipient would be disproportionate for broad shared service arrangements.

B.2 Application of the benefit test

B.2.1 Shareholder activities

Response to questions to public commentators

Question 1 – Understanding and practical application of existing paragraph 7.10 of the 2022 Guidelines.

The distinction between shareholder activities and business services should remain dependent on the group's operating model and on the factual role of the (sub)parent or regional holding companies. The final guidance should avoid a presumption that activities performed by Group HQ personnel, senior management or board members are shareholder activities. Conversely, it should also avoid presuming that all centralized activities are chargeable services.

Question 2 – Other activities that may commonly meet the definition in paragraph 7.9 of the 2022 Guidelines.

Additional activities requiring clearer treatment include group-wide compliance frameworks, ESG and sustainability reporting support, data privacy and cybersecurity governance, global risk management frameworks, centralized whistleblowing systems, and global technology or digital transformation support. Depending on the facts, these activities may be shareholder activities, stewardship activities, low value-adding services, higher value services, or activities connected with intangibles. The final guidance should therefore provide criteria rather than only examples.

Regarding "Costs relating to compliance of the parent company with the relevant tax laws", further criteria or clarifications are required in the final guidance to address the new set of MNE tax compliance requirements whereby Group HQ would undertake filings and disclosures at its level for its Constituent to be exempted from them (e.g. Minimum Tax filings or Country-by-Country Reporting).

Question 3 – Activities potentially captured by "ancillary activities to the corporate governance of the MNE as a whole".

The phrase should be defined narrowly. It should cover activities performed solely because of ownership or governance of the MNE as a whole and that do not provide direct economic or commercial value to specific group members. Operational governance, risk controls, regulatory implementation, crisis management, compliance support and management advice should not be treated as shareholder activities merely because they are coordinated at group level.

For M&A and divestment fact patterns, the final guidance should clarify that post-acquisition integration, or operational improvement support can constitute a service where it provides direct benefit to the relevant subsidiaries

The final guidance should also expressly state that the revised text is not intended to reopen settled positions where taxpayers have applied the existing guidance consistently with the arm's length principle.

B.2.2 Duplication

The final text should confirm that local regulatory requirements, second opinions, transition periods, dual controls and intentional redundancy for risk mitigation should not be treated as duplication merely because similar functions exist locally, centrally or regionally. The presumption should be that services are not duplicative in nature as taxpayers generally have no economic reason to incur the same internal or external cost twice.

Additional examples outside marketing services would be useful, in particular for compliance, regulatory controls, IT, cybersecurity and quality systems, where central and local activities are often complementary, not duplicative.

B.2.3 Incidental benefits

The final guidance should clarify that where deliberate concerted action creates benefits for multiple entities (in opposition to Example 10), the analysis should consider whether a chargeable service, synergy allocation, or other transaction is present. This distinction is important for central procurement, treasury, purchasing power and global technology platforms.

B.2.4 On-call services

The final text should clarify how evidence may be provided in practice. The benefit may lie in availability, not actual use in a particular year. Limited or no use in a single year should not automatically negate the existence of the service where standby availability is commercially valuable.

B.3 Provision of services in connection with other transactions

AI-enabled functionalities or LLMs, depending on the MNE's fact pattern, may be an asset of commercial value for the creation or transfer of intangibles, or may be utilitarian tools for the supply of services (e.g. a Tax advisor using LLMs to perform its tax advisory services). In the latter case, the final guidance should clarify that the use of AI-enabled functionalities should not alter the delineation, qualification or pricing of the service transaction.

Additional criteria should be included for bundled or technology-enabled arrangements, including whether the recipient obtains independent capability to exploit know-how or only receives outputs from a centrally controlled system.

2.2 Comments to Section C – Determining the arm's length charge and other conditions of intragroup services

C.1 Direct-charge and indirect-charge approaches

C.1.1 Direct-charge approaches

The final guidance should emphasize that direct charging should not be treated as superior in all cases. For many shared services, direct charging may increase administrative burden without improving reliability.

C.1.2 Indirect-charge approaches

Indirect-charge approaches should not be rejected merely because a theoretically more precise key could be designed. The test should be whether the selected key reasonably reflects expected benefits and is administrable in the circumstances.

Furthermore, specifically regarding para 7.48 of Discussion Draft, while certain allocation keys may deliver wrong results in a given year does not mean that the allocation key is not adequate and should instead be evaluated the impact of the application of the allocation key over a multi-year analysis – i.e., it should be evaluated whether the allocation key is generally, over a multi-year period, appropriate, or if it is nature that is inadequate. Care should be taken to avoid imposing disproportionate effort on taxpayers.

Response to questions to public commentators

Question 1 – Usefulness of further guidance on allocation keys.

Further guidance would be useful if it preserves flexibility and administrability. The final guidance should include examples of acceptable allocation keys by service category but should avoid mandatory keys. A single reasonable key may be preferable to multiple highly granular keys where the cost base is not material or where data collection would be disproportionate.

Question 2 – Allocation keys appropriately applied in practice.

Common allocation keys include headcount for HR and people-related services; users, licenses, devices, tickets or system access for IT services; number of vehicles for fleet services; relevant transactions or assets for accounting support; spend, purchase orders or procurement volumes for procurement services; sales, turnover or marketing spend for certain commercial support services; and time spent for project-based or high-touch services. Regarding time spent, the final guidance should recognize its inappropriateness where one activity will simultaneously benefit to multiple recipients. The final guidance should also recognize service-category keys, budgeted keys with true-up mechanisms and representative sampling where actual data are burdensome to collect.

Allocation keys should be judged by whether they reasonably approximate service delivery, not by whether they replicate an exact service consumption with precision, bearing in mind that the indirect testing of the service benefit through the service recipient profit return (as previously recommended under Section B.1.2) will complete the analysis.

C.2 Guidance on the application of transfer pricing methods to transactions involving intragroup services

C.2.1 Selection of the most appropriate transfer pricing method

The final guidance should include guardrails to prevent a presumption that profit split or CUP must be considered for broad categories of services merely because services are centralized, senior, technology-enabled or strategically important, or otherwise do not fall under the category of low value-adding services.

For routine service providers not making unique and valuable contributions or not assuming economically significant risks, Cost-Plus or TNMM may remain the most appropriate method. The mere use or ownership of know-how or other non-unique intangibles commonly used by comparable service providers should not exclude those methods where comparables can be identified in public databases. The final guidance should remind, consistent with Chapters I and III, that imperfect comparables do not preclude TNMM where comparability analysis or appropriate adjustments support a reliable arm's length outcome.

C.2.2 CUP method

The final guidance should also clarify that third-party quotes, rate cards, catalogue pricing or broad market data should not be relied upon without considering comparability of service scope, quality, location, risk, timing and contractual terms.

C.2.3 Cost-plus method and transactional net margin method

The final guidance should avoid creating excessive cost-base documentation requirements. Cost pools should be supported by reliable accounting data and reasonable allocation processes. Item-level receipts, timesheets or invoice-by-invoice proof should not be required unless proportionate to the materiality and facts of the case.

Response to questions on stock or share-based compensation

Stock or share-based compensation gives rise to recurring challenges in intragroup services, including timing differences between grant date, vesting, exercise and accounting recognition; differences between accounting expense and economic cost; volatility in valuation; and inconsistent treatment by tax administrations. Additional guidance and flexibility would be beneficial, in particular regarding the invoicing timing and acceptance multi-year analysis.

The final guidance should identify relevant considerations rather than prescribe a single rule: whether the cost is borne by the service provider; whether it relates to employees performing the service; whether independent parties would include comparable compensation costs in the relevant cost base; the accounting standard used consistently by the MNE group (i.e., global principles instead of local); and whether the treatment is applied symmetrically for mark-up and recharge purposes. Consistency, transparency and avoidance of double counting should be the guiding principles.

C.2.3.3 Pass-through costs

The final guidance should clarify that no mark-up should be required on the pass-through cost. A mark-up may be appropriate only on the provider's own truly value-adding functions directly related to the cost in question.

Additional guidance should be considered for the provision of "multi-stage" intragroup services when certain value may be added at each stage of the process, creating potential requirements for mark-up duplication and a false sense of economic disadvantage of intragroup provision of services.

Furthermore, it should be clarified that references to value-adding functions should take precedence over "industry norms and practices", as the latter may be more difficult to substantiate in practice.

C.2.4 Transactional profit split method

The final guidance should expressly reject any presumption that the transactional profit split method is appropriate for routine or one-sided service arrangements merely because the services involve senior or group-level management, digital tools, high-value activities, or support IP DEMPE functions of another affiliate.

A transactional profit split method should be considered appropriate only where the accurate delineation of the transaction, supported by the functional analysis and, where relevant, the DEMPE analysis, demonstrates that the following two conditions are met: (i) the service provider makes unique and valuable contributions, economically owns or controls relevant intangibles or economically significant risks, and (ii) reliable comparables cannot reasonably be identified.

Conversely, the performance of technically complex, senior or high-value services should not, in itself, displace Cost-Plus, TNMM or, where sufficiently reliable comparables are available. A service provider may perform specialized activities, including in support of IP DEMPE functions, on a routine or limited-risk basis without owning the relevant intangibles or controlling the associated risks. Ownership or control of intangibles must be determined by reference to Chapter VI of the OECD Guidelines, not by mere reference of highly qualified staff or staff enjoying “a high degree of autonomy” as currently the case in the Discussion Draft in Example 15. Contract R&D services and IT Architecture services, are two of many practical cases where services are often rendered by highly-qualified staff enjoying a “high degree of autonomy” while the functional analysis will reveal a routine characterization.

Consistent with Sections C.2.1 and C.2.3, the final guidance should confirm that one-sided methods remain appropriate where they provide the most reliable measure of an arm’s length outcome. Profit split should not be used as an audit-driven override of a reliable one-sided method, including in vertically integrated value chains where aggregation principles and comparability requirements can be satisfied.
Finally, the guidance should recognize that arm’s length remuneration for higher-value services may take different forms short of profit split, including value-based remuneration (e.g. sales commissions), milestone-based fees, contingent fees or hybrid pricing mechanisms, where such arrangements are consistent with industry practice and the facts and circumstances of the case.

C.2.5 Consideration on including a profit element

Practical simplification should be encouraged where the tax at stake does not justify extensive benchmarking or detailed pricing analysis.

2.3 Comments to Section D – Documentation

The statement that Section D does not create a mandatory minimum checklist should be strengthened. Without a defined and proportionate documentation standard, the additional examples of contemporaneous evidence may be interpreted by tax administrations as an invitation to request item-level receipts, timesheets, emails, tickets and interview evidence for routine services. An insistence on granular documentation may indeed be regarded as disproportionate to the fiscal revenue concerned and would certainly result in burdensome and costly system requirements in today's complex MNE organizations.

A defined documentation set should be introduced to cap disproportionate audit requests. For non-complex recurring services, sufficient documentation should generally include service agreement or equivalent framework; service category description; provider and recipient identification; expected benefit description; cost pool calculation; allocation key rationale and calculation; mark-up or pricing method support; and representative evidence of service performance where appropriate.

Additional evidence should be requested only where proportionate, relevant and linked to identified issues, such as duplication, non-performance or unclear scope. We recommend the introduction of limits to documentation that can be requested from taxpayers to support an adequate documentation – e.g., resumes of professionals providing summaries should not need to be part of the documentation.

The final guidance should also encourage dispute prevention. Given the risk that more detailed guidance may increase audit scrutiny, the OECD should consider stronger references to bilateral or multilateral APAs, MAP access, and coordinated approaches to services audits, especially for large, centralized service platforms.

2.4 Comments to Section E – Low value-adding intragroup services

E.1 Definition of low value-adding intragroup services

The final guidance should provide strong, conceptual (i.e., not solely based on examples) clarity that failure to qualify for the simplified approach does not imply that a service is high value or that a mark-up above 5% is required.

Additional borderline examples should be provided for technology-enabled services, including IT support for AI or machine-learning systems, cybersecurity monitoring, data governance and automated platforms. The distinction should depend on whether the service is supportive and does not create or transfer unique and valuable intangibles, not merely on whether advanced technology is involved.

E.2 Simplified determination of arm's length charges

The final text should emphasize that the 5% mark-up for non-low value-adding intragroup services (LVAS) should not be used by tax administrations as a floor for other services.

For LVAS, a category-based benefit demonstration and a single annual invoice by service category should be sufficient where the conditions and documentation requirements of the simplified approach are satisfied.

Consideration could be given to safe-harbor margins or ranges for broader categories of routine intragroup services outside LVAS. Such an approach would respond to the practical need for simplification, while preserving consistency with the arm's length principle and the existing guidance on safe harbors.

E.3 Documentation and reporting

The LVAS documentation framework should remain materially lighter than full documentation for non-LVAS services. Requests for correspondence or evidence of individual acts should be discouraged where a category of LVAS has been documented and charged consistently with Section E.

E.4 Withholding tax

The interaction between transfer pricing, deductibility, withholding taxes and domestic limitations on service or management fees remains a significant source of double taxation. The final guidance should more clearly encourage jurisdictions to avoid denying deductions or applying foreign exchange/payment limitations in a manner that frustrates an arm's length outcome.

The final guidance should also provide guidance one situations in which the provider cannot recover costs because of withholding tax imposed on gross service charges, on the arm's length treatment of gross-up mechanisms and on the deductibility of gross-up payments in the service recipient jurisdiction.

2.5 Comments to Annex I to Chapter VII – Examples on intragroup service

The Annex should avoid examples being used as de facto checklists or safe conclusions for superficially similar cases. The final guidance should require any example-based reliance to identify the facts that are economically relevant to the conclusion. Where the examples included in the Discussion Draft raise points that are additional to those addressed in the preceding sections, those additional comments are detailed below.

Example 3

The example should state expressly that internal capability may be relevant to pricing or options realistically available, but not to the existence of a service where the activity provides economic or commercial value.

Example 4

The example should be cross-referenced in the discussion of bundled arrangements and services connected with other transactions, to avoid double charging where another controlled transaction already compensates for the relevant activity.

Example 5

The final wording should ensure that mixed shareholder/service activities can be bifurcated using reasonable methods rather than denied in full.

Example 8

The example should clarify that post-acquisition integration, operational support, systems migration or compliance support may produce direct benefits and should be analyzed separately from shareholder acquisition costs.

Example 9

A parallel example outside marketing would be useful, particularly for regulatory controls, IT, cybersecurity or quality systems, where local and central activities often coexist.

Example 11

The example could be supplemented by clarifying the treatment of rate cards, catalogue prices and third-party quotes where comparability adjustments cannot be reliably made (in line with comments to conceptual guidance of section C.2.2).

Example 13

The example should not be read as implying that all specialized R&D, data analytics or clinical trial support requires profit split. The decisive factors should remain unique and valuable contributions, risk assumption/control and integration; please refer to the comments under section C.2.4 above.

The example does not sufficiently explain why the transactional profit split method would be the most appropriate method and would benefit from a more granular delineation of the transaction. While the example states that both parties own intellectual property and assume economically significant risks, it does not clearly identify the specific risks borne and controlled by Company B that would justify a profit split outcome.

In particular, it remains unclear whether Company B bears development risk, market risk, regulatory risk, financial risk, or any other economically significant risk for which it has both the capacity and authority to exercise control. Absent such analysis, the conclusion that a profit split method is warranted appears insufficiently supported.

Furthermore, the remuneration arrangement described in the example, consisting of a cost-based fee supplemented by milestone-dependent success payments, is broadly consistent with pricing structures commonly agreed between unrelated parties in the pharmaceutical industry. Such remuneration mechanisms may therefore, for certain industry sectors, constitute arm's-length pricing and should be carefully evaluated before concluding that a profit split method is the most appropriate method.

Example 15

The example should emphasize that the distinction between Scenario A and Scenario B depends on autonomy, risk control, specialized intangibles and integration, not simply on the existence of R&D activities; please refer to the comments under section C.2.4 above.

We recommend removing Example 15B or substantially revising its content to realign with Chapter VI of the OECD Guidelines, comprehensively delineate the transactions and explain why a profit split method would be more reliable than other transfer pricing methods. As drafted, references to workforce know-how and specialized expertise could be read as treating routine workforce capabilities as intangible property, contrary to Chapter VI.

For example, in research activities, a "high degree of autonomy" is indissociable from the level of technical expertise or qualification of the personnel to perform limited risk R&D service under the management, control, and risk of a principal that would have functional capability and financial capacity to undertake "important" functions /risks /assets" for the Development, Enhancement, Maintenance, Protection or Exploitation of IP.

Example 16

The example should be refined to clarify when the recipient obtains a service output and when it obtains rights or effective access to know-how or other intangibles. This distinction will be central for SaaS, AI, automated analytics and platform-based services.

Example 17
The example should be cross-referenced in Section C.2.4 as a guardrail against inappropriate use of profit split where a routine service provider uses another entity's platform without making unique and valuable contributions or sharing economically significant risks.

Example 18
The example should be cross-referenced to the guidance on services connected with other transactions and the boundary between services and intangibles.

Example 20
The example should clarify that no mark-up on pass-through costs depends on the provider's limited contribution to those costs and on evidence that independent parties would treat comparable costs as pass-through. The provider should be remunerated for its own coordination functions.

Example 21
Additional evidence requests should be framed as proportionate and linked to identified audit issues, rather than as a general right to request item-level proof.

We would be grateful if our comments and proposals were taken into due consideration.

Yours sincerely,

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Cc:

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