



## **ICC Comments on the OECD discussion draft on the scope of the future revision of Chapter VII (intra-group services) of the Transfer Pricing Guidelines**

The International Chamber of Commerce (ICC) welcomes the opportunity to comment on the Organisation for Economic Co-operation and Development (OECD) discussion drafts on the scope of the future revision of Chapter VII (intra-group services) of the Transfer Pricing Guidelines.

### **Chapter VII (intra-group services)**

ICC considers that a revision of Chapter VII represents an important opportunity to enhance clarity and effectiveness in an important area of intra-group transactions, which is of interest to all Tax Authorities and Multinational Enterprises (MNE's). However, it is important that the revised guidance minimises the risk of inconsistent interpretation and implementation, particularly for developing countries and Small and Medium-sized Enterprises (SMEs).

The risk for developing countries is linked to the fact that, traditionally, less well-resourced Tax Authorities tend to disproportionately focus their audits on intra-group services. These services are easier to challenge than some other transactions. In a post-BEPS environment, the risk of double-non-taxation is relatively minimised and the solutions to eliminate double taxation are strengthened. There is therefore a risk that a disproportionate focus on intra-group services may lead to double taxation issues whose ultimate results could be limited in terms of additional tax income for the country revenue and have a negative impact on a country's attractiveness vis-à-vis the global tax community. In general, the provision of intra-group services should be encouraged where it results in an MNE achieving economies of scale etc.

The risk for the increasing number of SME's growing internationally is linked to the fact that they may be less equipped to deal with complex tax environments and would be particularly penalised in the case of revised guidance that either lacks clarity, or is burdensome and requires additional resources to implement.

More generally, MNE's continue to experience double taxation issues in many jurisdictions and this inevitably leads to a significant amount of resources devoted by both Tax Authorities and MNE's to resolving issues which, as far as possible, should be prevented in the first instance.

Given the significant challenges noted above, ICC respectfully calls upon the OECD to develop revised guidance that is both balanced and effective.

As stated in the OECD invitation for public comments, concerns are predominantly related to practical application. ICC's foremost concerns and suggestions in this area are noted below:

- Developing pragmatic and clear solutions to prevent double taxation (as well as double non-taxation) should remain a primary objective of the revision of Chapter VII of the transfer pricing guidelines.
- The revised guidance should strongly encourage tax authorities to apply the same requirements for the documentation of services that are charged to other jurisdictions and services that are acquired from other jurisdictions.
- Simplifications should also be considered for services which do not technically qualify for the simplified approach applicable to low value-adding intra-group services (LVAIGS) but are supplied

on a large scale to the entire MNE group or part of it: typically this type of intra-group service necessitates a simplified framework in order to facilitate testing their benefits, determining their cost and allocating it, etc. Pragmatic, simplified guidance, potentially inspired by the guidance on LVAIGS, would be particularly helpful in this context. In addition, no mark-up scenarios should be considered for those activities which do not represent either relevant amounts or the core business of the MNE (i.e. LVAIGS) as well as services in which the standard market practice is the billing at cost (e.g. oil & gas sector).

- Further simplifications should be considered for SME's.
- The revised guidance should acknowledge the more recent technological evolutions and promote pragmatic approaches to auditing intra-group services provided utilising highly digitalised techniques, which may be almost impossible to document using traditional approaches.
- The cost base of the services should also be considered when applying the Cost Plus method, as costs incurred rendering services in-house are usually much higher than those of outsourced activities. Only considering the mark-up added on total costs may lead to inaccurate comparisons.
- Practical examples would be helpful to address elements which could be more easily subject to controversial interpretations.

ICC further recommends an alignment of Chapter VII with new guidance developed under BEPS Actions 8-10, particularly the updates made to Chapter I, VI and VIII, as well as the ongoing work on profit splits and financial transactions. It is ICC's view that this area in particular presents a high risk to leave room for diverging interpretations and increased complexities, which could have a significant impact, particularly for developing countries and SME's.

The revised guidance should promote simplified approaches, where possible, and acknowledge the fact that in many cases traditional transaction methods or the TNMM may represent more reliable solutions, considering that very complex methods may lead to less reliable results.

ICC respectfully suggests that the OECD considers including two specific points within their scope. In the first instance, we believe that the OECD should make it clear that benefits need to be intended at the point the decision is made to incur costs in providing the service but (as with many product development projects for example) benefits may not arise if the development is not successful.

Secondly, many large multinational enterprises may have different departments with similar names and roles but who do not duplicate services. For example an MNE may have a Group Human Resources (HR) team as well as regional and business specific HR teams. If the taxpayer can document the different roles each plays, the burden of proof should be on the tax authority to prove duplication before any transfer pricing adjustment.

ICC remains available to provide further input and expertise to support the future steps of the process. ICC welcomes and encourages the OECD's continued engagement with the business community in order to address pragmatic and effective approaches.