July 22, 2026

Organisation for Economic Co-operation and Development
Centre for Tax Policy and Administration
Tax Treaties, Transfer Pricing and Financial Transactions Division
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Re: Comment Letter on the Public Consultation Document: Revisions to Chapter VII of the OECD Transfer Pricing Guidelines, Special Considerations for Intra-Group Services

The National Foreign Trade Council (the "NFTC") is pleased to provide written comments on the Public Consultation Document Revisions to Chapter VII of the OECD Transfer Pricing Guidelines, Special Considerations for Intra-Group Services (the "Consultation Document").

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the OECD and the Inclusive Framework in establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations. A list of the companies comprising the NFTC Board of Directors is attached as an Appendix.

General Comments

The NFTC supports the updating of the transfer pricing guidelines and appreciates the work of the OECD in this vein. The stated purpose of the Consultation Document is to "enhance clarity and provide practical illustrations." Thus, the update is "not intended to change the general principles underlying the transfer pricing analysis of intra-group services." However, several provisions require modification or additional clarification to meet that purpose and not significantly alter the underlying transfer pricing framework as it exists today.

To reinforce this purpose, we recommend that the guidance explicitly confirms that the revisions are clarificatory only, so that tax administrations do not treat them as a basis for re-opening prior years or agreed-upon Advanced Pricing Agreements ("APAs"). The guidance should also caution that the revisions should not provide a basis for reconsidering settled positions on a prospective basis, provided that there is no material change in the facts and circumstances.

The NFTC welcomes the updated language in paragraph 7.3 that expands on the current language in the 2022 Transfer Pricing Guidelines providing that "MNEs are free to organize their business operations as they see fit" to also recognize "with the goals of maximizing their profitability and enhancing their competitiveness in the market." In particular, the NFTC supports the explicit recognition in paragraph 7.4 that tax administrations should not dictate MNE sourcing decisions, including during audit and dispute resolution.

In general, the NFTC appreciates the efforts to provide additional guidance and flexibility on items such as the benefit test and the use of allocation keys for indirect-charge methods. However, in some cases such additional guidance may have the effect of widening the range of positions adopted by tax administrations. Where possible, we encourage clear guidance and examples that reduce the scope for inconsistent application among tax authorities, and we encourage deference to reasonable positions adopted by taxpayers that are applied in a consistent manner. We would encourage the OECD to ensure that any future guidance is developed by reference to both IFRS and U.S. GAAP. Focusing primarily on IFRS can create practical difficulties where U.S. GAAP produces different accounting outcomes.

The NFTC also recommends guidance confirming that, as a practical matter, charging a services transaction to an entity is not necessary where the charge is not relevant to the post-transfer pricing profitability of that entity and/or net profit indicator(s) applied for other transactions where that entity is the tested party. In such a case, charging a services transaction may result in an unnecessary circular transaction in which the services recipient that pays for the service must be reimbursed in some other manner to maintain profitability consistent with arm's length results.

Finally, we note that many transfer pricing disputes related to services transactions are based in part on the perception of tax authorities that documentation is inadequate. In general, the expectations regarding documentation should remain proportionate for the transaction at hand, and any new guidance should facilitate less burdensome documentation requirements. This is particularly salient for routine and low value-adding services. We recommend a tiered documentation framework under which comprehensive documentation applies to complex services (*e.g.*, services bundled with other items), simplified documentation applies to routine services, and compliance with paragraph 7.95 is sufficient for low value-adding services.

Specific Comments

Accurate delineation of Intra-Group Services (Section B, paras. 7.5 – 7.12)

We recommend providing clearer guidance on how the introduction of this section impacts pre-existing intercompany arrangements in terms of documentation, intercompany agreements, etc. Specifically, it would be helpful to clarify that taxpayers are not required to restructure any existing intercompany services arrangements if the general principles around the arm's length standard are met upon accurate delineation. Such guidance would be consistent with the stated purpose of the Consultation Document, which is "not intended to change the general principles underlying the transfer pricing analysis of intra-group services."

Application of the benefit test

We welcome the expanded benefit test in Sections B.1 and B.2 and Examples 1 and 2 of the Annex. This guidance is particularly relevant for sectors where activities such as research & development ("R&D") support and market entry initiatives may not generate immediate returns but are undertaken with a reasonable expectation of future economic benefit. The clarification in 7.23 that the mere fact that an activity is not categorized as a shareholder, duplicative, or incidental "does not imply that such activity profits a benefit" is a welcome revision. This analytical framework strengthens the overall operation of the benefits test, with a focus on discerning whether there is an actual benefit conferred.

We recommend that the OECD clarify the application of the multi-year horizon concept in paragraphs 7.15 and 7.16 to determine whether benefits are reasonably expected at the time of the transaction. In general, the determination of whether benefits are reasonably expected should be made based on information in the year in which the activity is performed. Where expected benefits do not ultimately materialize over a reasonable period of time, then consideration may be given to whether the putative service recipient would be willing to continue to pay for such activities on a going-forward basis. Additional guidance on evaluating the reasonableness of the benefit expectation at the time services were performed would be helpful. Given that benefit realization timelines vary across industries, guidance on appropriate time horizons and the extent of qualitative or quantitative analysis required would reduce uncertainty and support consistent application during audits. Furthermore, consideration of a materiality-based threshold for applying the expanded benefit test would improve administrability and reduce disputes. We recommend a clarification that tax authorities should not use hindsight related to whether benefits ultimately materialized to disallow service charges where the benefit test was satisfied when the services were performed. We also seek clarification for the term “the outset” in paragraph 7.15(d) as the benefit test should be applied annually; consideration should be given to replacing this term with “the time the activities are performed.”

Finally, it would be helpful to provide guidance on acceptable contemporaneous documentation related to the expectation of a benefit, including examples of evidence that may support a reasonable expectation or factual possibility of benefit (*e.g.*, business plans, budgets, project documentation, and internal memoranda). Permissible documentation should include formal and informal communication. It should also include centralized documents outlining and explaining the services provided and demonstrating an entity’s access to certain tools, online portals, and training materials is sufficient evidence of a reasonable expectation of a benefit (without the need for specific email or other communication between the service provider and the recipient). This additional documentation should only be required for transactions where a benefit is not immediately observed, and it has sufficient materiality to merit additional support. A reasonable, well-documented, consistently applied methodology should generally be respected absent a material change in facts, and tax authorities should not require additional evidence beyond documentation generated in the ordinary course of business.

Shareholder activities (Section B, paras. 7.24 – 7.31)

The NFTC appreciates the additional guidance provided related to shareholder activities. In general, we support the distinction between shareholder activities, which are performed for the benefit of the shareholder and therefore are not services provided to group members, and stewardship and other activities that may provide a benefit to group members and therefore may constitute services transactions.

We support the principle in current paragraph 7.10, and new paragraph 7.26, that shareholder costs should not be charged to group members where the activity is performed solely in the shareholder’s own interest. However, this concept should be applied narrowly and based on a facts-and-circumstances analysis. If parent-level activities are treated too broadly as non-chargeable shareholder activities, legitimate intra-group services may be misclassified, particularly in multinational groups that centralize headquarters, governance, compliance, management, or support functions for commercial and operational reasons. Such an approach could distort the application of the arm’s length principle, increase disputes, and create risks of double taxation.

The examples in current paragraph 7.10, and new paragraph 7.26, should not be treated as automatic exclusions for all parent-level or group-level activities. Activities should not be classified as shareholder activities solely because they are performed by the parent, involve senior management, relate to governance or oversight, or support group-wide consistency. This point is reiterated in paragraph 7.27. We recommend providing additional examples of activities performed by parent company senior management that fall outside the shareholder activity definition would improve consistency and reduce interpretive uncertainty. Shareholder activities are those performed solely by reason of ownership interest and should be distinguished from broader stewardship, management, or oversight activities that may provide benefits to group members. Guidance confirming the narrow scope of shareholder activities would avoid ex-post challenges based on outcomes rather than expected benefit. The key question should remain whether the activity provides economic or commercial value to another group member, consistent with the benefit test. This assessment should be based on the reasonable expectation of benefit at the time the activity is performed, rather than actual outcomes.

Regarding the examples of shareholder activities in paragraph 7.26, we support the clarification that consolidation/reporting and mergers & acquisitions/divestiture activities are generally shareholder activities, while recommendations that directly support a subsidiary's business objectives may satisfy the benefit test and justify an intra-group service charge. 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 derive value from the support provided.

We do not recommend expanding the list of specific examples of shareholder activities in paragraph 7.26. Given that the OECD explicitly notes that categorization is not determinative and the focus remains on whether the benefit test is satisfied, further examples of activities may undermine the intended fact-based analysis. Instead, we recommend that the OECD provide practical guidance on evidentiary expectations, including examples of documentation demonstrating expected benefit evidence supporting delineation between shareholder and service activities.

That said, in response to the questions in Box 1, we further note that legal or regulatory activities to protect the renderer's capital investment or that are specifically applicable to the renderer would commonly meet the definition of "shareholder" activities as defined in paragraph 7.9 of the OECD 2022 Transfer Pricing Guidelines. However, these activities are not directly reflected in current 7.10 (or new 7.26).

Box 1 also requested examples of items that are *"ancillary activities to the corporate governance of the MNE as a whole"*. In this context, "ancillary activities" can be interpreted broadly if not clearly linked to the benefit test. The OECD should make it clear that the benefit test should still be assessed, and certain ancillary activities should not automatically be treated as shareholder activities. For example, the following types of activities may have a corporate governance dimension, but may also provide direct or indirect benefits to local operating entities depending on the facts and circumstances. This could include**:** IT governance and controls**,** compliance frameworks implemented by local entities, finance controls or management reporting used by subsidiaries, regulatory, legal and tax support to operating entities, and Board material or local governance support required by local regulation.

Treating these activities automatically as "ancillary" to corporate governance and therefore as shareholder activities could be inconsistent with the benefit test in cases where the subsidiary receives economic or commercial value from the activity. Accordingly, we recommend that the final guidance clarify that item 7.26(e) does not create a categorical rule for "ancillary activities to the corporate governance of the MNE as a whole." The guidance should confirm that such activities should only be treated as shareholder activities where they do not provide economic or commercial value to subsidiaries under the benefit test. Rather than providing a bright-line list of activities that are always ancillary, the OECD should include examples illustrating how the benefit test applies to activities with mixed governance and operating purposes.

We recommend that the OECD clarify that costs should be treated as shareholder costs only to the extent they relate to activities performed solely in the shareholder's interest. We recognize that the OECD is aware that, in practice, identifying and isolating specific shareholder costs can be disproportionately onerous. This point is acknowledged in current paragraph 7.10(b) (and draft paragraph 7.26(b)), recognizing that locally incurred costs may not need to be passed on where it would be disproportionately onerous to identify and isolate them. However, the Consultation Document gives limited practical guidance on applying it or on the documentation needed to distinguish shareholder costs from chargeable service costs, especially where activities have mixed purposes and costs are commingled. We further request clarification providing that where precise segregation is disproportionately burdensome, a reasonable and consistently applied allocation is acceptable.

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

We welcome the new guidance on services provided in connection with transfers of goods or intangibles and the interaction with the aggregation and segregation principles in Chapter III. We recommend additional examples addressing situations where service provision and transfers of intangibles cannot be practically separated, beyond Example 16. As technology development and services become increasingly integrated, further guidance on the treatment of such bundled arrangements would reduce ambiguity and support consistent application. The final guidance should also confirm the converse: that using proprietary tools, software, models, data, or know-how to perform a service, and delivering the outputs of that service, does not constitute a transfer or license of the underlying intangible unless the recipient obtains enforceable rights to exploit that intangible itself on the market, so that intangible-enabled services are not recharacterized as intangible transfers.

While the Consultation Document includes an example supporting disaggregation, a corresponding example where aggregation is appropriate would provide better balance. Paragraph 7.41 and Example 16 may be intended to do this, but additional detail is needed to ensure clarity. Any aggregation example should not imply that the use of intangibles to perform a service converts the arrangement into a transfer of intangibles; aggregation should be reserved for cases in which a service and a genuine transfer or license of intangible rights are so interlinked that they cannot be reliably priced separately.

Allocation keys (Section C.1, paras. 7.45-7.51)

The OECD should confirm that indirect-charge approaches are not inferior to direct charging where direct charging is impractical or disproportionate, particularly where services are provided to multiple entities and detailed tracking would impose excessive operational burden. We request explicit confirmation that neither the direct-charge nor indirect-charge approach is presumptively preferred, and that the choice depends on the facts and circumstances. The guidance should also reaffirm that a reasonable indirect-charge approach is consistent with the arm's length principle where direct charging would be impractical, avoiding unnecessary pressure to switch to direct charging without good reason.

In response to the questions in Section C.1, further practical guidance on allocation keys would be useful. Flexible guidance which is principle-based, rather than prescriptive, is ideal. The OECD should make clear that allocation keys are intended to be reasonable proxies for expected benefit, not exact measurements of actual benefit. Where a key reasonably reflects expected benefits and is consistently applied, it should be respected even if alternative approaches could produce different results. This is particularly applicable for indirect-charge arrangements where a single key is applied across heterogeneous services, supplementing the principles in current paragraph 7.59.

We recommend the guidance: (i) confirm that a reasonable, consistently-applied key need not be reconsidered annually absent a material change; (ii) accept (without prescribing) a small number of standard keys (headcount, revenue, asset base, transaction volume) as presumptively reliable for common services; and (iii) avoid mandating service-by-service keys in recognition that facts, circumstances and industries vary widely and that the cost/benefit may not justify the granularity. Further, we recommend the guidance specify the materiality needed for an annual reconsideration of allocation keys.

Appropriate allocation keys vary depending on the nature of the service, expected benefit, available data, and industry context. The OECD should therefore avoid prescribing specific allocation keys for particular service categories. Allocation keys should be accepted where they are reasonable proxies for expected benefit, based on available data, consistently applied, and proportionate to the services provided.

We recommend that the guidance recognize that industry-specific metrics may be more appropriate than generic measures. For example, for insurance and financial services groups, this could include gross written premium or net earned premium where aligned with business performance; reserves for actuarial or risk-related services; and business unit or product alignment where services are managed at that level.

Time-based allocation should not be expected where such data is not tracked in the ordinary course of business. Tax authorities should not reject a reasonable and consistently applied allocation key solely because alternative approaches may produce different outcomes.

Furthermore, if a taxpayer has established an allocation methodology accepted by tax administrations, including through MAPs or APAs, that methodology should not need to be re-justified annually unless there are material changes.

Pricing methodology (paras. 7.52–7.70)

We welcome the clarification that there is no automatic preference for cost-based methods. Other methods may be appropriate when parties make unique and valuable contributions or share economically significant risks. Additional examples involving services supported by proprietary technology, data, or specialized know-how would be helpful. The guidance should also clarify that cost-based methods remain appropriate where the value of relevant intangibles is adequately reflected in the remuneration. Technology-focused examples would be particularly useful.

That said, in practice cost-based methods will remain appropriate for the vast majority of services transactions, in particular routine services, support services, and low-value added services. We strongly recommend that language be added to paragraph 7.52 to balance the draft language and note that cost-based methods are likely to be 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.

Further guidance would be helpful where a central entity performs both agency and value-adding functions within the same cost category. Beyond the example in paragraph 7.65, additional examples would improve the practical application of pass-through cost analyses.

We welcome the dedicated guidance on the transactional profit split method ("TPSM") for intra-group services in Section C.2.4. Any further guidance in this area should confirm that a profit split, and in particular a residual profit split, remains the exception for intra-group services and applies only where each party makes unique and valuable contributions and shares economically significant risks. Cost-based and other one-sided methods remain appropriate for the vast majority of services, including those supported by proprietary technology, data, or know-how, and the treatment of milestone-based fee arrangements should not be read to favor a profit split.

Additionally, in paragraph 7.69**,** we recommend including examples of incidental or non-recurring services that may justify arm's-length pricing below cost.

Documentation (Section D)

Documentation and, more importantly, the detail required in that documentation, is at the core of many transfer pricing disputes. In order to reduce the documentation burden, we strongly recommend qualifying and softening the language surrounding the documentation list. We appreciate the disclaimer in paragraph 7.71 that the recommendations do not provide a minimum checklist or documentation standard; however, there is a significant risk that tax authorities will interpret the list as a minimum documentation requirement. While the information listed may be appropriate as supporting evidence in the context of an audit of material or high-risk transactions, it is overly burdensome as a standard expectation for ongoing documentation and annual compliance purposes.

Proportionality is key for documentation. Where the potential tax impact is not material, or the transaction is routine or involves general support low-value added services, tax authorities should adopt a practical and risk-based approach to documentation requirements. We recommend a tiered documentation framework. MNEs would be expected to provide comprehensive documentation for high-value or complex services and then simplified documentation for routine services, and compliance with paragraph 7.95 is sufficient for low value-adding services. We further recommend revisiting penalties arising solely from procedural documentation deficiencies, as they may be disproportionate to the significance of the issue and the value of the information sought. To the greatest extent possible, evidentiary expectations for routine or low-value-adding services should be limited to documents maintained in the ordinary course of business.

Low Value-Adding intra-group services (LVAIGS) (Section E)

We recommend clarifying the distinction between qualifying IT services and excluded R&D activities under the LVAIGS definition, particularly for maintenance and enhancement activities. As services increasingly combine support, maintenance, and development functions, additional guidance would reduce uncertainty and support consistent application. The threshold in Section E. 2.6 for applying the simplified LVAIGS approach needs clarification, as the current standard remains open to interpretation and may be applied inconsistently across industries and jurisdictions. Finally, the guidance should reinforce that the existence of the safe harbor does not create a 5% floor for ordinary support services.

Examples

The provision of examples in the guidance provides useful clarification as to the expected application of the Chapter VII principles. For instance, we greatly appreciate the clarification in Example 19 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. However, not all examples are as clear and helpful as intended.

In particular, in Example 13 the risk profile of Company B is unclear. The remuneration appears to provide upside without corresponding downside exposure. The conclusion that TPSM is the most appropriate method also appears premature, as CUPs or other one-sided methods may be available.

Example 15, Scenario B appears to imply that TPSM is the appropriate method, rather than simply demonstrating why cost-plus or TNMM with a cost-based PLI may not be suitable. Scenario B does not lay out any information about risks borne by the service provider, Company C, or the remuneration method. It is important to note that all three aspects - functions, assets and risks - play a role in determining the arm's length pricing. The example provides details on functions performed by Company C, but it is silent on risks. The example should further specify whether Company C bears the economic risk of failure for its R&D, which will impact the analysis of the appropriate treatment of the transaction.

Example 16 does not clearly identify the economically significant risks borne by Company A, making it difficult to assess why TNMM or cost-plus would be inappropriate. Further, the example presupposes that machine learning modeling cannot be routine (*i.e.*, is unlikely to be appropriately benchmarked under a cost-plus or TNMM), which is a strong assumption without providing any justification or evidence for such an assumption. More fundamentally, the example should be clarified so that Company A's provision of AI-enabled service outputs is not characterized as a transfer of intangibles where the recipient obtains no rights in the underlying model, data, or software. As drafted, the example may lead to confusion, as it appears to us to be the provision of a service by using intangibles, rather than a transfer of the intangibles.

Safeguarding Taxpayers Against Coercive Enforcement

Transfer pricing is complex and experts often disagree on the appropriate return, leading to audits. Increasingly, routine audits of transfer pricing positions (as well as non-transfer pricing issues) are becoming more contentious in several jurisdictions. At times, these audits even escalate into criminal investigations and criminal tax charges for company directors or employees. This is entirely inappropriate. The NFTC urges the OECD to develop guidelines that reinforce the notion that legitimate tax positions should not result in criminal charges. That is, if there is no fraudulent intent or other indicators of fraud, criminal charges should not be brought against company directors or employees.

Conclusion

The NFTC appreciates the opportunity to comment on the proposals outlined in the Consultation Document. We support the OECD's objective to enhance clarity while maintaining consistency with the existing principles of Chapter VII. We urge the OECD to ensure that the final guidance preserves the facts-and-circumstances-based application of the benefit test, and ensures that documentation and evidentiary standards remain reasonable and administrable. Providing these essential elements will aid in achieving the goals of reducing disputes and ensuring consistent application across jurisdictions. We look forward to continuing opportunities for constructive engagement as the feedback from the business community is incorporated into the Transfer Pricing Guidelines.

Sincerely,

Anne Gordon
Vice President, International Tax Policy

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