

Rotterdam, 27 September 2013

From: Wiecher Munting/Rob Huisman
On behalf of: Otterspeer Haasnoot & Partners
To: Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA

Subject: Comment on the REVISED DISCUSSION DRAFT ON TRANSFER PRICING ASPECTS OF INTANGIBLES

Specific comments:

1. *Paragraph 33, page 11* (Example 5 regarding group synergies): include corresponding adjustment
2. *Paragraph 80, page 23*: the relative importance of maintenance- and protection functioning

Dear Madam, Sir,

After reading the above mentioned discussion draft, we like to provide you with our comments on the above mentioned points. However, before doing so we want to complement the OECD for writing a report which in our opinion gives a very good overview on the role of group synergies and intangible property use in the field of international taxation. Also the report gives clear guidance on possible solutions. We therefore believe that tax practitioners in the field of transfer pricing must reasonably be able to use this guidance (once finalized) as a basis to find answers on the different complicated questions in this area.

1. *Paragraph 33, page 11* (Example 5 regarding group synergies): include corresponding adjustment

In this paragraph it is concluded that Country B would be entitled to make a transfer pricing adjustment due to the misallocation of benefit of group synergies. However, the paragraph does not mention that *Country C* should be obliged to make a corresponding adjustment (follow par. 4.32 of the guidelines) to eliminate double taxation. In our opinion, to avoid misunderstanding, this should be added to paragraph 33.

2. *Paragraph 80, page 23*: the relative importance of maintenance- and protection functioning.

This paragraph addresses which activities form important activities in determining the appropriate profit allocation of IP revenues or IP transfer results.

It appears to us that the draft suggests that maintenance and protection functions must, together with development and enhancement, be considered as important functions for which a company may claim a material part of the return attributable to a given IP. According to our knowledge and experience, maintenance and protection should not be qualified as unique functions. The profit from these functions will not contribute to the residual profit. In other words, we believe that in all circumstances, maintenance and protection related activities should be considered as routine (the important decisions included).

We therefore suggest to remove the wording *maintenance* and *protection* from paragraph 79, 80, etc.

We hope that you will find our comments useful.

Best regards,

Wiecher Munting

Rob Huisman