

PUBLIC COMMENTS RECEIVED ON THE DISCUSSION DRAFT ON THE ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENTS – PART I (GENERAL CONSIDERATIONS)¹

IFA Korea

Comments on the Discussion Draft on the Attribution of Profits to Permanent Establishments

1. We noted and agree that the first step of establishing a consensus position on the profit attribution is to develop a working hypothesis. We will be watching the testing process of the working hypothesis, and will provide you with our input, whenever it seems necessary or is requested. Here are our comments on the portion of discussion draft where comments were requested from the public. We first reiterated the request portion, followed by our comments.

1. Para 121 (p. 29): The application of the working hypothesis to use of intangible property within an enterprise is in the process of being tested. One difficulty that needs to be explored further is how to ensure that the analysis applied in this section for intangibles is consistent with the analysis applied to other “internal” conditions of the PE as a hypothetical distinct and separate enterprise. . . .

The internal and external conditions of a PE seem to relate to economic conditions, and more importantly, origins of the subject intangibles and contributions devoted to the furtherance of the original intangibles. In the ever-changing technology environment, we think key elements to be used in determining the conditions of the PE, which will eventually be reduced to the working hypothesis, should be developed. Three distinctive circumstances may be taken into consideration in these regards: (1) a building site or construction or installation project, (2) a marketing office that is engaged in selling tangible products, and (3) a consulting firm as the place for services or other intangible products such as solutions and business strategy consultation. We think that weight should be given to the fact elements: e.g., where customers reside, from where the source of information from customers, user, or owner that eventually contributes to the furnishing of skill, talent, or technical expertise is derived, factual elements that are essential to determine core business contribution elements.

2. Para 127 (p. 30): Internal services - Some steering group members have expressed reservations about the desirability and practicability of the outcome described above.

We concur with the view that the intragroup and cost contribution arrangement chapters of the Guideline, by analogy, apply to the internal services between PEs or between a head office and a PE. As to the desirability and practicability of the possible cheaper service and the stewardship issues, we suggest that the guidelines set forth principles, and a set of examples should simultaneously be developed.

1. Please note that comments received on the “Discussion Draft on the Attribution of Profit to a Permanent Establishment Involved in Electronic Commerce Transactions” are *also* included in this document, as these comments may also be of interest when examining Part I of the Discussion Draft on the Attribution of Profit to a Permanent Establishment.

3. Para 145 (p. 34): Comment on the valuation issues and the possibilities for risk-weighting assets of non-financial institutions.

We think that three options exist, namely: book value, market value, and original purchase price or cost of assets. In addition, a non-financial institution may use a cash discounting method over expected future cash flows at appropriated rate.

4. Para 161 (p. 36): No firm conclusions have yet been drawn, beyond agreeing not to impute “interest” on internal movements of funds in a non-institution. Comment from the public is requested.

We concur with the tentative conclusion that, in principle, there should be no imputation of interest on movement of funds in a non-financial institution.