

Scoping of the future revision of Chapter VII (intra-group services) of the Transfer Pricing Guidelines

Invitation for Public Comments

09 May-20 June 2018



OECD invites public comments on the scope of the future revision of Chapter VII of the Transfer Pricing Guidelines on Special Considerations for Intra-Group Services

The OECD, as part of its Programme of Work and Budget for 2017-2018, is considering starting a new project to revise the guidance in Chapter VII of the OECD Transfer Pricing Guidelines (“TPG”), “Special Considerations for Intra-Group Services”. Working Party No. 6 on the Taxation of Multinational Enterprises is still at the scoping stage of this possible new project and aims to finalise this scoping exercise by the end of 2018.

At its November 2017 and April 2018 meetings, Working Party No. 6 on the Taxation of Multinational Enterprises discussed the direction this project should take and identified certain specific issues that could potentially be covered as part of this revision.

The original text of Chapter VII was included in the TPG in 1996 and since then it has remained largely unchanged. In 2015, as part of the Base Erosion and Profit Shifting (“BEPS”) Project, Chapter VII was updated to incorporate a simplified approach to determine the arm’s length charges for low value-adding intra-group services (“LVAIGS”). Apart from this, the chapter has not been reviewed to incorporate the guidance developed under BEPS Actions 8-10. Accordingly, the future revision of Chapter VII could be focused on aligning the guidance with Chapter I, in particular, but also Chapters VI and VIII, as well as considering whether and, if so how, to incorporate the ongoing work on the use of profit split methods and financial transactions.

The concern related to the guidance in Chapter VII is its practical application, rather than potential theoretical disagreements on the underlying principles. Many practitioners, academics and tax administrations have identified a number of practical challenges that require further analysis. In particular:

- Demonstrating that a service has been rendered and/or that the service rendered provides benefits to the recipient;
- Drawing a distinction between: (i) activities which do or do not benefit the local affiliates; (ii) benefits that purely arise from group membership and those that arise from a deliberate concerted action; and (iii) shareholder activities and stewardship activities;
- Identifying in practice duplicated activities;
- Finding an appropriate allocation key for charging intra-group services;
- Determining the costs that should or should not be included in the cost base of the remuneration for the provision of services between associated enterprises; and,

- Assessing the arm's length conditions for services provided in connection with the use of intangibles; services that are highly integrated with the value creation of the MNE group; and/or involve significant risks.

For purposes of informing this scoping exercise, the Inclusive Framework would welcome the views of interested parties on how the guidance in Chapter VII could be revised or supplemented to address the issues related to the practical implementation of the TPG in the context of intra-group services, thus increasing tax certainty for taxpayers and preventing double taxation.

Interested parties are invited to send their comments by 20 June 2018 at the latest by e-mail to TransferPricing@oecd.org in Word format (in order to facilitate their distribution to government officials). Comments in excess of ten pages should attach an executive summary limited to two pages.

All comments received will be made publicly available. Comments submitted in the name of a collective "grouping" or "coalition", or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting.