October 1, 2013

Via e-mail
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Organization for Economic Co-operation and Development (OECD)

Subject: Comments on the revised discussion draft on transfer pricing aspects of intangibles.

IFA Mexican Branch (IFA Grupo Mexicano, A.C. and hereinafter referred to as IFA MX) is pleased to comment on the revised discussion draft of the above mentioned subject. Our comments are as follows:

Chapter I-III of the transfer pricing guidelines

Section D7.

IFA MX would like to suggest clarification that any benefit that the transferee may obtain from hiring new employees such as expense savings from training, know how property of the employee, among other benefits that the employee should provide to the new employer should not imply a transfer of an intangible nor require any consideration between the former employer and the new one.

In general, the cost of hiring qualified workforce would be reflected in the wages or bonuses that the new employer would be paying to the qualified workforce.

Usually, know-how developed by an enterprise and used by any assembled work force, in general is property of the enterprise, unless otherwise established between the employer and the employee.

Only in cases when transfer of know how I carried out between entities, a consideration should have to be determined, independently if workforce is or not transferred.

Chapter VI Special considerations for intangibles

Section A.

In paragraph 40 of the revised discussion draft, the word “intangible”, has the purpose to address something that is not a physical asset or financial asset, and is capable of being owned or controlled for use in commercial activities.

IFA MX would like to suggest the expansion of this definition to include that some characteristics (in no way limitative and in addition to paragraph 42. of this revised discussion draft) to determine the existence of an intangible asset are such as being identifiable, subject to a commercial transaction, protected by the local legal framework and subject to be valued.

Section D.

Regarding paragraph 130 of the revised discussion draft, IFA MX believes that from the perspective of the transfer pricing professional, it is uncommon to have enough information to run a deep comparability analysis of all the parties involved in a controlled transaction, as such we would like to suggest the following change to paragraph 130:

"Considering the available options to the parties involved, the perspectives of each of the parties to the transaction should be considered. However, a unilateral comparability analysis ***[COULD NONETHELESS PROVIDE]*** *sufficiently good basis for evaluating a transaction that involves the use or transfer of intangible assets if no additional information is available".*

Moreover, with respect of paragraph 160 of the revised discussion draft, from the perspective of the transfer pricing professional, in some opportunities, the cost approach might prove to be the best methodology to value an intangible asset. We would welcome examples to this regard and would also like to suggest a change in connotation in this paragraph as follows:

"The use of transfer pricing methods that seek to estimate the value of intangibles based on the cost of intangible development is ***generally discourage (to mean it is APPROPIATE ON A PARTICULAR BASIS).****There rarely is any correlation between the cost of developing intangibles and their value or transfer price once developed. Hence, transfer pricing methods based on the cost of intangible development should usually be avoided."*

Regarding paragraph 162 of the revised discussion draft, we consider that the draft discourages the use of rules of thumb; we would welcome the inclusion of examples on which the use of such rules could be allowed or recommended as a complement to a comparability analysis.

Finally, IFA considers that the wording of paragraph 189 of the revised discussion draft might be deemed as unfortunate. We would welcome a phrasing along the following lines:

"There is no single measure for a discount rate that is appropriate for transfer pricing purposes in all instances. The specific conditions and risks associated with the facts of a given case and the particular cash flows in question should be evaluated in determining the appropriate discount rate."

We would also welcome examples of different discount rates used in different scenarios.

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The members of IFA MX are pleased to provide these comments to contribute to the further development of the OECD Transfer Guidelines.

Yours sincerely,

IFA Grupo Mexicano, A.C.
Transfer pricing committee
Mexico City