22 July 2026

OECD Centre for Tax Policy and Administration

Sent by email: taxpublicconsultation@oecd.org

Re: Revisions to Chapter VII of the OECD Transfer Pricing Guidelines: Public Consultation Document Special considerations for Intra-group Services

Ladies and Gentlemen:

Aptis Global is grateful to Working Party No. 6 (WP6) of the Committee on Fiscal Affairs for this opportunity to share our insights and practical recommendations for intra-group services. In brief, we have the following core recommendations, grounded in the common analytical thread of delineation, which are described in the paragraphs that follow:

1. Broader application of Balance Sheet ratios, coupled with the appropriate mix of Income Statement ratios and operational metrics, to derive hybrid allocation keys that drive greater alignment with the benefit test in support of more finely tuned delineation.
2. Pursuing a deeper understanding of the nature, scale, and mix of expenses to inform the delineation process and provide a more economically meaningful basis for assessing expected benefits and selecting an appropriate allocation key.
3. Supplement the examples provided in the Public Consultation Document with a pragmatic list of fact-finding questions and an intercompany relationship map template to assist taxpayers and tax authorities in pursuing the most relevant facts and result in more factually aligned delineation.

Overview

Our comments are intended to bolster the value-added processes of a transfer pricing analysis and encourage the elimination of other elements. Within our responses regarding the Revisions to Chapter VII of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the Guidelines): Public Consultation Document Special Considerations for Intra-group Services (Public Consultation Document), we have integrated the single thread of analytical reasoning that runs through a transfer pricing analysis: delineation.

Delineation has arguably become the most impactful tool used in comparability analysis as multinational operations have become increasingly complex, operating at speeds unimagined at the onset of the original OECD Transfer Pricing Guidelines and even since the release of the Base

Erosion and Profit Shifting (BEPS) framework. Delineation serves to separate the most salient of facts from the distraction of irrelevant information, which can be a complex and intuitive parsing process, to frame the related party relationship and, ultimately, characterize the intercompany transaction.

Indulging in a brief Shakespearean detour, we find a cautionary analogy in the play "Hamlet."[1] As a student of philosophy, Hamlet was trained to look at a myriad of potential interpretations in any idea. His process of continually parsing the facts in his search for the truth surrounding the death of his father, ultimately stymies his ability to know when he had found the truth he had been seeking. Hamlet can be described as a quest for a "black and white" answer: Did Claudius, his uncle and now stepfather, kill his father, the King?[2]

In his continuous manipulation of the facts, Hamlet dilutes his ability to act on the truth, and his perception of the many versions of the truth becomes a dead-end delusion. The analytical process of Hamlet splits each proverbial hair so finely, and in so many directions, that the story ends with no possible scenarios remaining for consideration, and thus no justice to be rendered.

While this is a summary of a complex classic, transfer pricing brings a similar challenge of ambiguity where the parsing of the facts and the assumptions of the comparability analysis, as well as the economic analysis, can lead to a meaningless result. As a strategic step in the analytical process that must be met with robust effort, delineation can also often become a "splitting of hairs" to the extent that the relational lines between parties have blurred and the transaction may have been narrowed beyond relevance, rendering it too narrow to benchmark or reach a conclusion.

[1] Shakespeare, W. (2020). Hamlet (B. A. Mowat & P. Werstine, Eds.). Folger Shakespeare Library. (Original work published 1603)

[2] As a refresher, the plot of Hamlet is straightforward:
1) Hamlet's father dies; on his return home, Hamlet meets the ghost of his father who tells him he has been murdered by his brother.
2) Hamlet knows he is required to enact revenge for his father; however, his only evidence is the word of a ghost.
3) Hamlet seeks truth, by enacting the murder in front of his uncle as part of a play. His uncle reacts and Hamlet has his proof of guilt.
4) Unfortunately, Hamlet's next encounter with his uncle is seeing him praying in the chapel. Assuming repentance, Hamlet stops himself from killing his uncle since he realizes that killing him now would send him to heaven, not hell.
5) The play devolves further, with an ending that offers only a series of unintentional deaths, including Hamlet himself.

We will use the backdrop of delineation to address the following topics:

1. OECD Question posed in Box 2/Question 2: Given Paragraph 7.59 of the OECD 2022 Transfer Pricing Guidelines, what are the allocation keys appropriately applied in practice to specific intra-group services?
2. Aptis Global Perspective: The role of cost pool review in delineation (Public Consultation Document E.2.2. – E.2.3., pages 28-29).
3. Aptis Global Perspective: Delineation of intangible property (Public Consultation Document B.3 7.39, page 16).

Given Paragraph 7.59 of the OECD 2022 Transfer Pricing Guidelines, what are the allocation keys appropriately applied in practice to specific intra-group services?[3]

Current State

The current OECD Transfer Pricing Guidelines require an understanding of the activities performed, responsibilities assumed by each party, and commercial circumstances in which the services are provided. This analysis is intended to identify the nature and extent of the services received by each recipient entity, distinguish chargeable services from activities that primarily benefit the group as a whole and establish a reliable basis for assessing the expected benefits derived by each recipient.

The Guidelines state that a low value-adding service should use the same key across recipients for simplistic reasons,[4] which assumes that benefit is both warranted and received proportionately across the recipients. Accordingly, the determination for the allocation key of the low value-adding services is intended to default to income statement measures (e.g., sales, revenue) or operational metrics (e.g., headcount, usage units, workstations, fleet vehicle count, etc.).[5] However, benefits derived from low value-adding support services may also be driven by operational and/or financial activity, rather than strictly the size of a static financial statement balance. As such, the analysis may not consistently achieve the intended objectives for the benefit test for each recipient. While this could be addressed through a post year-end or annualized third-quarter adjustment, an evaluation of the possible allocation keys can help mitigate the need to do so.

[3] Public Consultation Document - Revisions to Chapter VII of the OECD Transfer Pricing Guidelines: Special Considerations for Intra-group Services, p. 18.
[4] OECD Transfer Pricing Guidelines (2022), Chapter VII: Intra-group services, para. 7.60.
[5] OECD Transfer Pricing Guidelines (2022), Chapter VII: Intra-group services, para. 7.59.

Proposition

The velocity of an asset or activity can affect the reliability of applying an otherwise static financial or operational measure as an allocation key. To that end, the selection of an allocation key should capture the dynamic nature of the functions, risks, and assets involved in both the provision of the service and in the level of benefit received as well as the scale of the financial measure. The integration of operational metrics and financial ratios creates a hybrid ratio that conveys the two-sided story of service provider and recipient more clearly, particularly when there is potential for varying levels of benefit received across the recipient affiliate level.

Applying metrics that reflect the dynamic nature of the transaction (e.g., turnover rates, transaction volumes, and asset or liability rotation) as allocation keys can provide a more accurate measure of benefit received by each respective recipient affiliate. This analytical approach would support the revision in the Public Consultation Document suggesting that taxpayers should provide contemporaneous support that benefit has been considered and measured.[6]

Application

Among the Guidelines' foundational tenets,[7] an understanding of the operational characteristics is essential to the accurate delineation of the controlled transaction by providing important evidence of the nature and intensity of the activities performed by, and for, each recipient as well as the service provider. Accurately delineating the transaction may reveal that the expected benefits are more closely associated with operational metrics specific to the recipient's business activities (e.g., inventory turnover, inventory holding periods, capital investment levels, product mix, or logistics complexity).

Given that efficiency financial ratios (e.g., asset turnover, inventory turnover, receivable turnover, and days sales) are intended to capture asset use and productivity, these ratios can be used as allocation keys in combination with other factors to address operational differences across affiliate recipients, including the impact of extraordinary expenses. There may also be circumstances where a hybrid ratio is appropriate, recognizing the potential connections at three measurement levels (e.g., operational, income statement, and balance sheet).

In a distribution scenario, two affiliates may hold similar inventory balances at year-end, although one may order in larger batches to address lead-time and logistics constraints whereas another affiliate may generate more frequent purchases and would thus require more support in terms of

[6] Public Consultation Document - Revisions to Chapter VII of the OECD Transfer Pricing Guidelines: Special Considerations for Intra-group Services, para. 7.16, 7.22.
[7] OECD Transfer Pricing Guidelines (2022), Chapter VII: Intra-group services, para. 1.36.

purchasing, shipping, inventory planning, and administrative activities from the service provider. A static fiscal year-end inventory balance of the otherwise equal inventory used as an allocation key would not capture the disparity in the level of low value-adding service required for these two affiliate recipients. The use of an efficiency ratio (e.g., asset turnover, inventory turnover, receivable turnover, or days sales) in the allocation key calculations can enhance the alignment of benefit received.

Within a post-merger integration context, centralized human resources ("HR") functions may devote substantial effort to workforce integration, organizational restructuring, talent acquisition, compensation harmonization, employee communications, and change management. The demand for these services may vary significantly among business units depending on the scale and complexity of the integration activities, rather than on the number of employees alone. In such circumstances, annual capital budgeting associated with integration initiatives may provide a more reliable allocation key, as it reflects the level of investment and organizational change requiring HR support in the current cycle. Business units undertaking more significant integration or expansion projects would be expected to require greater HR involvement and, consequently, derive greater benefits from these centralized services than entities with limited or no investment activity.

Using headcount as an allocation key, routine HR benefits would be charged consistently across jurisdictions whereas mature operations with higher headcount would bear a greater proportion of the cost pool. However, this measure would not take into consideration extraordinary efforts that may be necessary for much smaller affiliates with lower headcount to address post-merger integration needs. While this may be a temporary symptom of the factual circumstances of a post-merger integration scenario, it demonstrates the unintended consequence of a mature, larger affiliate in one jurisdiction bearing relatively high charges without receiving the same proportionate level of service compared to a newly integrated and smaller affiliate in a separate jurisdiction. As such, a blended ratio of employee headcount with a measure of current capital allocation, as a reflection of management and service provider attention alike, would be more appropriate to reflect the greater attention being granted to the newly acquired business.

Solution

The selection of an allocation methodology should involve the assessment of whether the expected benefits derived from the intra-group service is reasonably consistent across recipients. Where the accurate delineation of the controlled transaction indicates that the nature, extent, and expected benefits of the services are substantially similar for all recipients, a broad allocation key, such as revenue, headcount, operating expenses, or assets, may provide a reasonable approximation of the benefits received. Conversely, where factual circumstances indicate that the

expected benefits differ across recipients, reliance on a single financial allocation key may not adequately reflect the varied economic substance of the transaction. In such cases, further analysis should be undertaken to identify the operational characteristics that explain the variation in expected benefit.

To be clear, the proposed framework does not advocate replacing traditional allocation keys nor a simplified approach for low value-adding services. Rather, it recognizes that the accurate delineation of the controlled transaction may reveal circumstances in which single allocation keys alone do not adequately capture the varied, expected benefits received by each recipient, regardless of whether it is high or low value-adding services. In those cases, the integration of relevant operational metrics with efficiency financial ratios to form a hybrid allocation methodology may provide a more reliable means of aligning the allocation of costs with the economic substance of the services and support of the arm's length principle. For a newly implemented intercompany transaction, the measurements should be memorialized before, during, and after implementation of the methodology to ensure that the commercial intent of the transaction is reflected in the transfer price.

The Role of Cost Pool Review in Delineation

(Public Consultation Document E.2.2. – E.2.3., pages 28-29).

Current State

The Guidelines currently include a review of detailed line items within a cost pool for documentation purposes.[8] Routine transfer pricing documentation exercises do not consistently evaluate the dynamic nature of a cost pool, thus ignoring the surrounding story of business purpose. By leaving the interpretation of the expense to a future audit defence, burdened by the loss of useful real-time business insights, as well as the inability to recast allocations otherwise made for financial statement purposes, the risk is that cost allocations are deemed to be misaligned with the original characterization of the transaction on audit.

Proposition

The nature, scale, and mix of a service provider and recipient's expenses provide a more economically meaningful basis for accurately delineating a controlled transaction, assessing expected benefits, and supporting appropriate allocation key selection. Further insights in the Guidelines would be helpful to cover the role of cost pool review in delineation more

[8] OECD Transfer Pricing Guidelines (2022), Chapter VII: Intra-group services, para. 7.64.

comprehensively and to provide practical guidance. Although benchmarking is an important element of the economic analysis, an understanding of the inclusion or exclusion of relevant, material and extraordinary expenses, the alignment of each material line item with the business purpose and characterization of the respective related parties, the reasoning for materials trends and the business story for the expansion or reduction of a material expense, the satisfaction of the benefit test through routine and consistent measurement, and the selection of an attuned allocation key could mitigate the risk of a more material adjustment than the mark-up determined by a comparables set.

Application

The nature and composition of the expense base for both related parties can reveal the primary drivers of value creation and the corresponding demand for intra-group services as part of delineation and the benefit test. Outliers for certain allocable expenses, such as global management or treasury arrangements, are not necessarily stewardship, yet there are instances where such expenses should be excluded from allocations to a routine entity, such as a sales or marketing affiliate, to avoid recharacterization risk of the recipient on audit.

Solution

Accurate delineation for both the service provider and the recipient affiliate serves not only to establish whether a service has been provided, but also to identify the drivers of the expected benefit. In this regard, the composition of a recipient entity's cost base can provide useful evidence of its functional profile and the extent to which it relies on centralized services. A structured review of cost pools, significant expense categories, and changes over time may help determine whether a service provider's cost profile is consistent with the characterization and services. Expansion of the Guidelines to include practical tools and examples for evaluating the alignment between cost pools and functional characterization in support of the benefit test will facilitate a more productive exam process for taxpayers and tax administrations in an audit.

Aptis Global Perspective: Delineation of Intangible Property

(Public Consultation Document B.3 7.39, page 16)

Current State

A key delineation in the comparability analysis of an intra-group service transaction, whether it be high or low value-adding, involves whether an intangible asset is present that has added some element of value although it has not been reflected in the transfer price. Current guidance

provides a framework for analysing intangibles through examination, relying on the contractual arrangements and assessment of the alignment of the risk profile with the conduct of the parties.[9]

Proposition

Proper delineation should determine whether an embedded, or closely related, non-routine intangible is associated with the provision of an intra-group service transaction, and if so, how to address it. Expanded fact-finding tools provided by WP6 are recommended to facilitate a more comprehensive understanding of the strategy, assets, and operations of the business as it relates to the intercompany relationship and ensuing transaction(s) under analysis. Normalizing the practice of mapping intercompany relationships and transactions as part of the functional analysis interviews would enhance consistency and understanding through more productive conversations with business process owners. Where appropriate, the maps may be included in the Local file documentation to memorialize the understanding and factual framework.

Deeper knowledge of the business is necessary to ensure that the gaps are covered, the profit potential and any relevant growth in the business is regularly captured when updates are not conducted comprehensively or on an annual basis. To that end, a comprehensive fact-finding questionnaire template by transaction type that anticipates potential inter-related and/or outlier transactions would allow for more discernment in the interview discussions as to what is, and is not, covered by the transaction under analysis.

Application

Given the BEPS framework, contractual arrangements and/or funding do not necessarily entitle an entity to intangibles returns, nor burden it with the associated risks. The functional analysis must seek to apply the Development Enhancement Maintenance Protection Exploitation (DEMPE) framework and affirm the "substance" surrounding control of the related risks and performance of the relevant decision-making functions, including specialized capabilities or other interdependencies[10] and profit potential.

One potential scenario regarding specialized capabilities involves two types of intra-group service transactions, one low-value and one high-value, marketed and sold with original equipment by the local sales and service affiliate in a bundled services package that covers the replacement of aftermarket parts. The low value-adding service and generic aftermarket parts are delivered by local technicians, often alongside the high-value technicians who are from a regional principal in a different jurisdiction that deliver high value-adding service using trademarked aftermarket parts

[9] OECD Transfer Pricing Guidelines (2022), Chapter VI: INTANGIBLES, para. 6.34.
[10] Public Consultation Document - Revisions to Chapter VII of the OECD Transfer Pricing Guidelines: Special Considerations for Intra-group Services, para. 7.9.

that have been sold to the local affiliate. The regional principal charges the local affiliate a service fee for the high-value service and has an embedded a royalty in the price of the trademarked tangible price of the aftermarket part. However, the integrated team is not always necessary nor readily available to quickly solve the customer's problem. In this case, the local technicians may use the trademarked parts for their own installation purposes as they have learned to do in working together with the high-value technicians in the field. The transfer of the high-value tangible good would include an embedded intangible in the transfer price sold to the local affiliate covering the service component, in theory. In this shift in service patterns, the possibility of an unintended transfer of an intangible in the delivery of the high-value service by the low-value service technician has been introduced. Depending on how the trademarked tangible good was originally bundled with the service, it could be determined that the local jurisdiction has implicitly paid for a service for which it did not receive a benefit, and/or it has received a benefit of an intangible found in high-value service training for which it has not paid an arm's length price.

It is important to explore with the business process owners the various scenarios of how these affiliates work together to serve the customer and whether it requires a certain level of proficiency or training to provide the higher level of service using the higher value tangible products, how such training is obtained, where the training was developed, and the risks of operational limitations or other damage caused by faulty installation service versus a defective aftermarket part as well as the details of the existing transfer pricing policy. If the services are integral to the intangible, the two transactions should be aggregated. Otherwise, the expectation is for the two to remain distinct transactions.[11]

Realizing the thread of interdependencies in this example, a DEMPE analysis would be enhanced with a cadre of questions provided by WP6 to guide the process. Using a diagram of intercompany relationship flows would also facilitate the fact-finding discussions to memorialize the many scenarios of the truth in how these related parties work together in practice and how that ultimately impacts the transfer pricing strategy.

With intentional fact-finding discussions, a careful delineation of these interdependent transactions is feasible provided that the necessary financial data is available. In the example above, the financial and management reporting may only be aligned with the delivery of the full suite of bundled products and services, not allowing for the possibility of segmentation for transfer pricing purposes. To that end, creating artificial allocation bases may dilute the benefit and functional alignment in this scenario, providing an example of when it may not be appropriate

[11] Ruge v. Comm'r of Internal Revenue, 26 T.C. 138, 109 U.S.P.Q. 300 (T.C. 1956).

to theoretically parse a transaction further when the financial data would not be able to support such an analysis.

Solution

Creating tools to test the scope of a transaction would facilitate greater consistency in the delineation process; have a higher likelihood that a transaction does not bear any unintended intangible transfers or secondary flows and ensure that any interdependencies have been addressed.

As preparation for fact finding, it is helpful to map the perceived intercompany relationships and then overlay the intercompany transactions to identify both the gaps and/or the degree of overlap when confirming the details of these relationships with the business process owners. While this may seem obvious, using this type of tool in preparing the interviewees for the fact-finding discussion is useful in gathering unfiltered operational insights from the business process owners, rather than relying on these interviewees to second guess the tax department needs.

In addition to the examples provided in the Public Consultation Document, a pragmatic list of fact-finding questions alongside the intercompany relationship map may help guide both taxpayers and tax administrations alike in understanding the relevant facts to pursue, and aid in avoiding superfluous facts that do not augment the understanding of the business purpose nor enhance the economic analysis. Using the Guidelines around substance[12] as a starting point, the nature of the sample questions provided below intend to explore the ownership of an intangible and the allocation of risk among the parties as well as the development timeline in discussions with the business process owners and tax leadership:

- What was the original business purpose of the related party relationship and the resulting intercompany transaction? Is this reflected consistently in the contractual arrangement and the transfer pricing policy?
- Has that business purpose shifted to necessitate a change in the structure or processes that support the related party relationships involved? Have the contractual arrangements and the transfer pricing policy been updated accordingly?
- Did the intangible value exist at the time of the transaction in its current form?
- Has the intangible since been integrated into other organically grown products/solutions/services or those obtained through acquisition?
- Does the form of the contractual arrangements follow the substance and conduct of the related parties, particularly where marketing intangibles exist?

[12] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, January 2022: B.2.5, para. 6.7, p. 269; E.2.4, para. 9.67, p. 380.

- Did the original transfer pricing analysis consider the intangible asset when selecting the most appropriate method and ultimately an arm's length price?
- How were risks allocated within the contractual arrangement and reflected in the economic analysis?
- How are risk mitigation, control, communication of exposure, consequences of risk addressed in the contractual arrangement, and the transfer pricing policy as well as the economic analysis?
- Was the financial capacity of the respective parties and the ability to bear the consequences of these risks anticipated in the transfer pricing policy and reflected in the economic analysis?
- Under what circumstances would the intercompany relationship change in serving the third-party customer? Who bears the costs and risks associated with that shift in roles or activities? How are those costs and risks addressed in the contractual arrangement? How are those costs and risks invoiced between the two related parties relative to the stated transfer pricing strategy in the transfer pricing policy?

These sample questions seek to understand the distinct nature of the transferred intangible relative to other intercompany transactions and serve as a practical tool in understanding the overall context of the intercompany relationships.

One intangible area that is frequently subject to blurred lines between the conduct and the respective contractual arrangement involves the ownership of trademarks and other marketing intangibles alongside a routine service provider, particularly if the marketing intangible is a brand building cost that is subject to capitalization.[13] Although a trademark may be legally owned at the headquarters level, and arguably maintained as well, local tax audits persist around the local marketing spend for advertising and other related expenses when there is payment for a trademark royalty for the intangible. Marketing and other related expenses are typically annual costs that are not considered brand building expenses and thus are not subject to capitalization.[14] Incorporating the balance sheet reality of these expenses into the analysis would assist in telling a complete and defendable story of conduct and risk.

[13] Coca-Cola Co. v. Comm'r, 155 T.C. No. 10, Docket No. 31183-15. (T.C. Nov 18, 2020).

[14] Under the sovereign law of certain jurisdictions, tax administrations will look to the location of the consumer rather than the traditional approach for capitalization.

One Parting Thought

Lastly, the role of transfer pricing within the stability of a corporate tax foundation is not to be underestimated. Staged by the cautionary tale of Hamlet's indecision, as a play within a play, a transfer pricing strategy must also be focused on achieving consistency and predictability in alignment with the tempo of the dynamic business it attempts to capture while remaining flexible in the ability to respond to unexpected economic and geopolitical storylines.

Conclusion

Both multinational enterprises and tax administrations face the issue of accurate delineation, particularly for intra-group services and those intertwined with intangibles transactions. The Aptis Global team congratulates WP6 on a comprehensive Public Consultation Document, robust with clear insights and useful examples for intra-group services. The provision of further expanded tools, templates, and working examples to facilitate consistent application and interpretation of the Guidelines is the core call to action for this discussion surrounding the common thread of delineation. We are honoured to have this opportunity to share our collective insights and are available to discuss this submission at your convenience. Please do not hesitate to contact Kathrine Kimball at kkimball@aptisglobal.com.

Kind regards,

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