

# COMMENTS RECEIVED ON PUBLIC DISCUSSION DRAFT

## BEPS ACTION 10: PROPOSED MODIFICATIONS TO CHAPTER VII OF THE TRANSFER PRICING GUIDELINES RELATING TO LOW VALUE-ADDING INTRA-GROUP SERVICES

/ - January 2015



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**Date:** 14<sup>th</sup> January 2015

**Kind Attn:**

**Mr. Andrew Hickman,**  
Head of Transfer Pricing Unit,  
Centre for Tax Policy and Administration.

By email

**Subject: Comments to Public Discussion Draft under BEPS Action 10 (Proposed Modifications to Chapter VII of the Transfer Pricing Guidelines Relating to Low Value-Adding Intra-Group Services)**

**Dear Sir,**

I'm grateful for the opportunity to comment and provide suggestions on Public Discussion Draft of the 'Proposed Modifications to Chapter VII of the Transfer Pricing Guidelines Relating to Low Value-Adding Intra-Group Services'.

It is a welcome measure by Working Party No. 6 on the Taxation of Multinational Enterprises to provide guidance on this topic which would help to standardize the approach of tax authorities across the globe notwithstanding that many countries' domestic tax law already contains legislation relating to transfer pricing for such low value-adding intra-group services. Apart from benefiting from its practical application, this topic is of particular interest to me since I have had the opportunity to conduct research in the past on the topic of transfer pricing for intra-group services under the guidance of Mr. T.P.Ostwal [Current Member of United Nations Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing & First Vice President of Executive Committee of IFA- Netherlands].

I am pleased to make the following comments in relation to the aforementioned Public Discussion Draft:

**1. Paragraph 7.46:**

One of the attributes of low value-adding intra-group services is the non-assumption of substantial/significant risk and that the performance of such services does not give rise to creation of significant risk.

It becomes necessary here to qualify the word 'risk' to refer to 'core business risks' since substantial risk could persist even when providing low value-adding intra-group services. (For eg: Risk of accounting misstatements could be significant enough even leading to bankruptcy situations as has been historically witnessed).

## **2. Paragraph 7.50:**

It has been mentioned in this paragraph that providing low value-adding intra-group services may be the principal business activity of group entity providing such services to the MNE group. However, from the perspective of the service recipients, and from the perspective of the MNE group as a whole, the service may not constitute core business activity and may therefore qualify as a low value-adding intra-group service.

A concept borrowed from Taxation Ruling TR 1999/1 issued by Australian Taxation Office could be incorporated here to the effect that a threshold test may be introduced to qualify a service as a low value-adding intra-group service. (For eg: If the total amount charged by the legal entity providing services is less than 15% of the total annual costs in the books of accounts of the MNE group as a whole, then such services could qualify as low value-adding intra-group services). Keeping in mind the documentation & reporting guidelines as prescribed by this discussion draft, verification of the aforesaid threshold test would not pose challenges to the tax authorities.

## **3. Paragraph 7.59 vs. paragraph 7.61:**

The last sentence of paragraph 7.59 states that application of benefits test may be difficult or may require greater effort than the amount of the charge that the low value-adding intra-group services may warrant.

This sentence appears to contradict with the documentation & reporting requirements as contained in the first bullet point of paragraph 7.61 wherein it is stated that a description of the benefits or expected benefits of each category of services is to be maintained even in the case of low value-adding intra-group services payments.

I sincerely hope that the above comments may be useful to the OECD.

**Yours sincerely,**

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**(M.Com., F.C.A., A.D.I.T., Pursuing LLM in International Tax 2014-15 (WU, Wien))**



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