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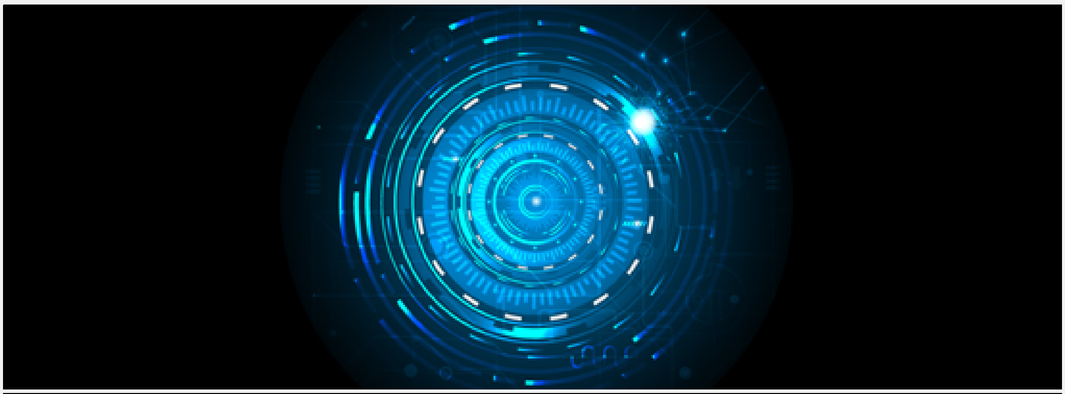

OECD invites comments on revisions to transfer pricing guidelines for intragroup services and dispute resolution

Global Transfer Pricing Alert 2018-013

The OECD is scoping a new project to revise aspects of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in respect of:

- Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes (Chapter IV); and
- Intragroup services (Chapter VII).

Avoiding and resolving transfer pricing disputes

Relevant aspects of the BEPS work in relation to Making Dispute Resolution Mechanisms More Effective (Action 14), including the section on advance pricing arrangements (APAs), have already been incorporated into the guidelines. However, the OECD has determined that additional work could be done in relation to examination practices, mechanisms to prevent and resolve tax disputes, and risk assessment.

Comments are especially welcomed on the following points:

- Additional mechanisms to minimize the risk of transfer pricing disputes. Input is sought on business' experiences of advantages and/or challenges of mechanisms including cooperative compliance, risk assessment, and tax examination practices;
- Additional guidance in relation to corresponding and/or secondary adjustments to minimize the risk of double taxation;

- Any additional guidance that could be provided on APAs or specific initiatives that could minimize transfer pricing disputes, including implementation challenges;
- Other mechanisms or issues relevant to the administration of transfer pricing and/or prevention and resolution of disputes.

The OECD believes there is no need to revise or supplement current guidance on safe harbors and arbitration of disputes, but public comments are also invited on those points.

Special considerations for intragroup services

This chapter of the guidelines was updated in 2015, as part of the G20/OECD BEPS project, to incorporate a simplified approach for the transfer pricing of low-value-adding intragroup services.

Alignment with other updated BEPS guidance on intangibles, risks, and capital has been identified as a potential area of focus, along with any necessary consideration of the OECD's ongoing work on the use of profit split methods and financial transactions.

The scope will focus on the practical application of the existing guidance. The following practical challenges have been identified as requiring further analysis:

- Demonstrating that a service has been rendered and/or that the service rendered provides a benefit to the recipient;
- Drawing a distinction between (i) activities that do or do not benefit group companies; (ii) benefits that arise purely from group membership and those that arise from a deliberate concerted action; and (iii) shareholder activities and stewardship activities;
- Identifying duplicated activities;
- Finding an appropriate allocation key for charging intragroup 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 arm's length pricing of services provided in connection with intangibles; services that are highly integrated with the value creation of the group; and/or involve significant risks.

Comments

It is important both for tax authorities and for businesses that clear guidance be available to prevent and resolve tax disputes. The incorporation of relevant aspects of the G20/OECD BEPS work in relation to *Making Dispute Resolution Mechanisms More Effective* is a helpful start. Further improvements could be made in respect of the conduct of transfer pricing audits, risk assessment, and transfer pricing adjustments.

Guidance on the transfer pricing of intragroup services was updated as part of the BEPS project to include a new approach to low-value-adding intragroup services, but challenges remain in this area. These relate in particular to practical aspects, such as application of the benefit test to service recipients, difficulties with costs (including the level of costs and identification), and challenges to deductions. It is particularly striking that the scoping paper uses the term “stewardship” alongside the narrower “shareholder activities,” as this is a broader concept that has been largely retired from recent versions of the transfer pricing guidelines. This is an area in which double taxation is common despite the broad agreement among countries as to how services should be priced and the relative simplicity of pricing intragroup services (in comparison with, say, intangibles). The work will need to address evidentiary requirements so that they are proportionate and consistent from country to country, and are not so onerous that they lead directly to double taxation. It will be important for businesses that OECD inclusive framework countries reach broad consensus agreement on how to deal with the practical challenges.

Timetable and next steps

Comments are invited by 20 June 2018. The OECD (Working Party 6) aims to finalize their scoping exercise by the end of 2018.

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