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Dear Mr. VanderWolk,

PwC's Comments on the Organisation for Economic Co-operation and Development (OECD) Public Discussion Draft on BEPS Actions 8 – 10 – Revised Guidance on Profit Splits

PricewaterhouseCoopers International Limited, on behalf of the Network Member Firms of PwC ('PwC'), thanks the OECD for the opportunity to provide comments on the Public Discussion Draft on BEPS Actions 8 -10 *Revised Guidance on Profit Splits*.

The Discussion Draft sets out to explain and open up a dialogue on the OECD's revised guidance on transactional profit split methods. This Discussion Draft makes a distinction between profit split methods based upon projected profits and actual profits. It also addresses issues related to the integration of business activities, global value chains analysis and cases where the profit split methodology could be the most appropriate transfer pricing method under particular circumstances. The analysis in the Discussion Draft attempts to connect the use of the Profit Split Method ('PSM') to the new guidance developed under the Revised Chapter I (in particular Risk) and Chapter VI (Intangibles).

PwC welcomes the Discussion Draft, which appears to have achieved an appropriate tone and balance, in most instances. However, some concerns arise with regard to the use of unclear or subjective wording or concepts without further explanation. For example, the Discussion Draft still uses concepts, such as 'integration' and 'global value chain', which may make it easier for tax administrations to apply the PSM rather than improving the guidance on the selection of the most appropriate transfer pricing method applied to the circumstances of the case. The guidance would not reach its aim if a PSM were used to overrule one-sided methodologies that are appropriately selected and applied. Emphasizing the use of PSMs may encourage tax administrations to use a profit split approach in cases where it does not assist in applying the Arm' s Length Standard ('ALS') and, hence, not achieve tax parity between associated and independent enterprises, while at the same time leading to more controversy between the tax authorities.

There are a number of concepts raised in the Discussion Draft which cause a specific concern, particularly when taken together. In a number of territories there is a recurring concern that a profit split arrangement could give rise to a deemed partnership between the parties with a range of complex and adverse consequences for all concerned. Consequently, we believe it is very important that the OECD emphasises the fact that the transfer pricing method called the Transactional Profit Split Method is a method of arriving at a price for a transaction and is not an actual distribution of profits amongst a group of participants.

The areas in the Discussion Draft that add weight to this concern include those of 'risk sharing' and 'parallel integration' together with the sense the draft seems to convey at times that what is intended is simply a general splitting of profits rather than an exercise in setting a price.

In the Discussion Draft, the 'Risk' element receives a great deal of attention. It should be noted that risk is just one element of the functional analysis and, although the importance of risk should be recognised, the Discussion Draft must ensure that a balanced discussion on the three factors (functions, assets and risks) is maintained. It is important to stress, in the guidance, that simply because (important and/ or significant) risks are identified in a transaction this should not automatically lead to the adoption of the PSM as the most appropriate method.

In the following pages, PwC has identified various approaches to many of the questions raised in the Discussion Draft. Our detailed comments are presented in a format that parallels the Discussion Draft's structure.

1. Comments are invited on the usefulness of the explanation of and of the guidance on transactional profit splits of anticipated profits. In particular:

> **1. Is the distinction between transactional profit splits of anticipated profits and transactional profit splits of actual profits clear?**
>
> **2. Is the distinction between the two profit split approaches described useful?**

The formal difference between the PSM on anticipated profits and on actual profits is clear. However, businesses do not usually use a PSM in their arrangements, except under the terms of an Advance Pricing Agreement ('APA'). Applying a PSM between multiple entities of a Multinational Enterprise ('MNE') may come close to Global Formulary Apportionment methodology ('GFA') and the PSM should be clearly distinguished from a GFA. Care should be taken such that the PSM does not become a default or fall-back method whenever a tax administration does not like the transfer pricing outcome.

The distinction in practice between the two approaches may be rather confusing. Its application should be the same, in theory, regardless of whether it is based on actual or anticipated profits. PwC notes that in practice a split of anticipated profits is a prospective basis for setting a price (for example a royalty rate) while a split of actual profits is more likely to involve retrospective adjustments to the price of a transaction.

PwC would like to reinforce that a PSM is a 'transactional' transfer pricing method which means it is a methodology to arrive at a price for a specific intra-group transaction (or transactions that are appropriately aggregated in accordance with the Guidance in the OECD Transfer Pricing Guidelines ('TPG')). It is not an actual distribution of profits amongst a group of participants.

2. Comments are also invited on the link between integration of business activities (and thus the sharing of risks) and the appropriate application of a transactional profit split of actual profits.

A lot of emphasis is placed on the sharing of risk. It must be recognised that risk is an important factor, but not the only factor. The link between the integration of business activities and the appropriate application of a PSM (be it on actual or anticipated profits) lies in the functional analysis (functions, assets and risks) and not in the risk alone.

PwC considers it would be helpful to provide additional clarity on what exactly the OECD means by risk sharing. For example, many companies within a group may be exposed to the same or similar business risks. That does not mean they are 'sharing' them. Many other independent companies in the industry are likely to be exposed to the same risks and this fact will not hinder them in doing business with each other without resorting to a PSM. Similarly, the effect of using a PSM is that the parties share in the relevant risks, but this is a consequence and cannot be a reason to use that method.

The discussion in paras 9 and 10 of the Discussion Draft is helpful in referring to the revised Chapters I-III by saying that two or more parties must jointly control the risk(s) in question and provide the financial capacity to bear the risk(s). The guidance could be made more explicit by indicating that the joint control of the risk and the financial capacity to bear the risk is one of the indicators pointing towards use of the PSM. It would be helpful to clarify that this is what is meant by 'risk sharing'. This section of the Discussion Draft also provides examples of different ways in which such situations are handled by independent parties. This demonstrates that risk 'sharing' of this type is a necessary but not a sufficient condition. In other words it will not always result in a PSM and cannot be conclusive in and of itself. The Discussion Draft could be clarified in that respect.

3. Examples of scenarios where each approach to splitting profits would be the most appropriate (together with a brief explanation as to why) are also requested.

One example on the use of the PSM on anticipated profits is royalty rate setting. This approach considers the contributions of both (or more) parties to the transactions and uses the residual profit to determine the value of the intangible(s) concerned and set the appropriate royalty rate.

A useful reference can also be made to paragraph 6.141 (reference to residual value) and section D.2.6.2 of the revised Chapter VI of the OECD TPG.

4. Are the strengths and weaknesses of the transactional profit split method appropriately captured and summarised?

The draft guidance in this section is mostly based on the existing guidance in the 2010 version of the OECD TPG. However, given the other developments in the Discussion Draft and the issues outlined elsewhere in these comments (see the introduction/ general comments and the response to Question 1), it would be helpful to stress that in the situations described in paras 12 and 13 of the Discussion Draft the goal is still to determine the price for a controlled transaction (or transactions) and that the PSM may be a way of determining that price albeit not a methodology that unrelated parties would necessarily have used.

A weakness of the PSM which should be noted here is that in the absence of reliable comparables or industry data it will often rely on subjective judgement and can be sensitive to changes in the factors used or the relative weightings given to them. Where the method is appropriately used it would be helpful if the OECD were to:

- reiterate that the absence of reliable comparables or industry data should not in itself be a factor that triggers the application of the PSM, and
- state that a reasonable selection of factors and weightings should be respected by a tax authority.

This is one reason why APAs are often sought where this method is to be used.

5. Do transactional profit splits of anticipated profits and transactional profit splits of actual profits have different strengths and weaknesses? If so, what are they?

The Discussion Draft seems to suggest that a PSM based on anticipated profits and actual profits are different methodologies, while in principle they should be the same. Arguably there is a bigger difference between:

- a split of anticipated profits to fix a price for the medium to long term (say 5-10 or more years) versus one year, and
- using anticipated profit to (re)set a price one year at a time versus splitting actual profits.

One additional weakness of using a PSM of anticipated profits (for the medium to long term) lies in its reliance on the accurateness of the financial projections (reference can be made to Chapter VI on the valuation methods).

6. The discussion draft introduces the sharing of economically significant risks as a factor which may indicate that a transactional profit split of actual profits may be the most appropriate method.

> **1. Do commentators have any suggestions for clarifying the notion of risk sharing in this context?**
>
> **2. Do commentators find the draft helps to clarify the circumstances where the transactional profit split method is the most appropriate method? Please provide explanations and/or examples supporting your views.**

Sharing of economically significant risk may be an important factor in the selection of the PSM as the most appropriate method, but it is not the only factor. As indicated in paragraph 16, the use of the PSM will depend on the accurately delineated transaction, based upon a functional analysis. Notably, the other paragraphs of the section only discuss risk, which is one factor of the functional analysis. This risk factor should be put in its right and balanced context.

In light of the emphasis on (the sharing of) risk, it would seem that the other situations in which a PSM may be appropriate are left unilluminated. It may be useful to introduce the discussion of (the sharing of) risk in a separate subsection.

7. The discussion draft notes that a transactional profit split of anticipated profits can be used in conjunction with certain valuation techniques. Examples showing the application of a transactional profit split of anticipated profits are sought.

In most, but not all, instances this will be in an APA context.

Royalty-rate setting for future years (where the issues of Hard to Value Intangibles must also be considered), may be another area.

8. Is the distinction between parallel and sequential integration of business operations a useful refinement in determining when the transactional profit split method is likely to be the most appropriate method?

PwC agrees it is helpful to make the point that sequential integration is not a basis for use of the PSM. An industry supply chain of independent parties may well be sequentially integrated (for example suppliers of parts to original equipment manufacturers which may co-operate extensively) without inhibiting them from setting prices or giving rise to a split of profits.

However, the concept of parallel integration is more difficult. If the reference to parallel integration is simply for the purposes of inserting a description of circumstances which are not sequential, then it is straightforward. If such is not the case, parallel integration is not, of itself, a reason to apply the PSM and it is not clear that a separate discussion thereon is strictly necessary.

If, as it seems, it is intended to mean something specific, this should be clarified. For example, two group companies may make different parts which are included in a product at a later stage of production by a third group company. They operate in parallel in the supply chain, perform similar functions and are exposed to (and assume) the same or similar risks (the Discussion Draft refers to commonality in functions and risks) but there is no reason why this fact pattern would lend itself to the use of PSM as most appropriate method. They may not even transact with each other. The 'commonality' the draft refers to must mean more than 'similar and at the same time'.

9. If so, how should the concept of parallel integration be further defined?

When read together with the text in the Discussion Draft on the sharing of risk, the meaning the OECD appears to intend for parallel integration in a situation where two or more parties are extensively co-operating in a specific business process. For example, in a global financial trading business where the 'book' is passed from location to location as exchanges in one country close and others open, it is easier to see how this applies. Outside the financial services sector it is harder to envisage what this entails and instances where it applies are likely to be less common. Nevertheless, this may be a good example to use. However, PwC understands that work on financial transactions is currently under preparation.

If the OECD intends that parallel integration of this sort should be a determinative factor i.e., that where it is found the PSM is likely to be the most appropriate method then it will be necessary to provide much more explanatory detail and examples (including exceptions) because PSM is unlikely to be appropriate in all such cases unless the definition provided is specific and tightly drawn. This would also mean a move away from the nine-step approach under paragraph 3.4 OECD TPG and the case-by-case analysis.

10. Comments are invited on the relationship between the making of unique and valuable contributions by both (all) parties to a transaction, and the sharing of economically significant risks.

The sharing of economically significant risk is one, and only one, factor that should be considered in determining whether unique and valuable contributions are or have been made. The control over risk, as identified in the new Section D.1.2.1. of Chapter I, shared between the parties may be a relevant factor. The key lies in the functional analysis and the correct delineation of the actual transaction.

11. Are there situations where all the parties make unique and valuable contributions to a transaction, but they do not share the economically significant risks associated with the outcomes of that transaction? If so, what guidance on the appropriate use of profit splits in such a situation should be provided?

Perhaps the best examples of situations where parties may make such contributions and not 'share' risk is already covered by the treatment of sequential integration (see above responses to Q 8). For example, components suppliers may be entirely independent of the original equipment manufacturer they supply without 'sharing' profits despite the fact that the parties co-operate extensively, often for the long term, and are therefore exposed to many of the same business risks.

With regard to the term 'unique and valuable contribution', it should be noted that the broader the interpretation of this term, the less likely it becomes that what is mentioned in the Discussion Draft is appropriate. There is a concern that some tax authorities may interpret the concept much more broadly than others.

Another example relates to the joint development of intellectual property ('IP') which may be one of the biggest risks involved in a business. In practice both the development of the IP and the risk related to such development (and assets that result from that activity) may be 'shared'. Yet a perfectly adequate way of reflecting this in the transfer price would be through cost sharing and would not require the use of PSM.

PwC considers that the guidance which should be provided is to reiterate the importance of the accurate delineation of the actual transaction between the parties including the functional analysis (functions performed taking account of assets used in risks assumed), and, where available, evidence on the behaviour of independent parties.

12. The Final BEPS Report on Actions 8-10 noted that group synergies were to be addressed in the guidance on profit splits. The approach taken in this discussion draft is to make reference to the incremental or marginal system profits arising from the group synergy, which would then be shared amongst the relevant associated enterprises. The analytical framework suggested in the draft, based on an accurate delineation of the actual transaction, would not support the combining and splitting of total system profits on the basis of group synergies alone. Comments on this point are invited.

PwC agrees that the use of a PSM should be based on the accurate delineation of the actual transaction. Further it should remain very clear (and may perhaps be emphasised in this section) that a PSM is used at a transactional level and it is not a 'split' of aggregate system profit.

However, we do not believe that a discussion of 'synergies' is in any way useful in determining whether a profit split is the most appropriate transfer pricing method. The Final BEPS Report on Actions 8-10 makes no attempt to provide an objective definition of the term 'synergy'. Synergies can exist any time one organisation interacts with another (even among unrelated parties). It would be hard to think of a situation when synergies would not be present in some form (especially since paragraph 1.157 notes that synergies can be either positive or negative).

Consequently, if the presence of synergies could be asserted as the basis for determining that a profit split was the most appropriate transfer pricing method we are concerned that the profit split could become a default transfer pricing method. Further, there is no guidance provided on measuring synergies, which would be necessary if they are to be somehow shared by members of the group in proportion to their contribution to the creation of synergies. With no practical definition of the term synergies and no guidance as how purported synergies should be measured and priced, it is difficult to see the usefulness of this concept in determining whether profit split is the best method.

13. Does this section properly describe a value chain analysis as a tool in helping to delineate the actual transaction and in identifying features relevant in determining whether the transactional profit split method is appropriate?

The OECD should be clear that VCA should not be required as a part of any transfer pricing analysis. Transactional PSMs are not inherently any more useful for dealing with particular aspects of value chains. We are concerned that the approach may be used to treat an MNE as a 'single firm', and that too much reliance on transactional PSMs in complex factual scenarios will lead to an inappropriate 'rebuttable presumption' that a transactional profit split is the best method in such circumstances.

The term 'value chain analysis' should be defined. It should also be distinguished from a functional analysis on the one hand and the PSM itself on the other. It is not clear from the Discussion Draft whether value chain analysis and functional analysis are intended to be used interchangeably. Value chain analysis seems to be focused on "consideration of the economically significant functions, assets and risks" - the same items considered in a traditional functional analysis. In its original form, 'value chain analysis' means little more than identifying the different processes that are involved in delivering a product or service to a customer. In many transfer pricing cases the functional analysis (including risks and assets) will be sufficient. VCA can be quite detailed, for example going well beyond the 'supply chain' referred to in the requirements for a Master file, from which it should also be distinguished. However, the minutiae of individual processes and sub-processes may add little or

nothing to any transfer pricing analysis. The original purpose of VCA, in a commercial context, was to provide a framework to identify those processes that can be improved (e.g., to add more customer value) or made more efficient (e.g., to reduce costs). Thus VCA does not divide up the profits of a business between individual processes and there is no reason to expect that it would do so when used for transfer pricing purposes. In other words, the name 'value chain analysis' does not mean that it reveals per se where all the value added (i.e., profit) lies and it is important that any discussion of this term makes that clear. We would also welcome clarification as to whether value chain analysis is intended to be relevant only to PSM, as its placement in Section C of Chapter II might imply.

There is a welcome distinction between a PSM, as a specific transfer pricing method, and a VCA, which is better construed as a useful way to evaluate the business. Thus, VCA may help determine what an appropriate transfer pricing method is, but, it is not, itself, such a method. We believe that it would be helpful to stress the fact that VCA does not replace functional analysis, industry analysis or comparables analysis any more than it replaces the need to choose an appropriate method. It supplements or helps interpret these elements, but is certainly not a substitute.

We also believe that the OECD has reason to be cautious about recommending the use of VCA, which is not a precisely defined set of processes: it can take different forms and be applied to a greater or lesser level of detail. In common usage it is likely to be internally focused – looking at the relative contribution of different business processes – but may not, in those circumstances, help answer questions, such as whether there are, in fact, unique and valuable contributions being made.

Taking the example of unique and valuable contributions, to address this question any internally focussed VCA would often need to be supplemented by third party data or interpreted in conjunction with the industry or a comparability analysis.

14. If commentators see a value chain analysis as serving a greater purpose in relation to profit splits, then please provide an explanation for that view together with examples.

It is implicit in the Discussion Draft that the transactional PSM is not simply a high-level split of a group's entire aggregate profit (this is also implicit in the word 'transactional' at the beginning of the name). VCA is not a proper application of the arm's length principle nor is it an appropriate application of the PSM. What it can do is provide supporting evidence for the selection of method and results obtained (which may be true of any method, not just PSM) and, when PSM is the most appropriate method, it can assist with the question of which parts of the overall business might properly be included in a PSM and, if third party data is used, provide corroborative evidence for the calculation of the relevant profits for this purpose.

We note that the TPG has always stated that once the relevant profit has been determined, it should be split as independent parties would do. This has always been a particular challenge in relation to the use of this method. A VCA which does not use independent party data does not therefore assist with resolving this problem.

Where appropriate use of independent company data is used in performing VCA, it can provide valuable evidence of how profits are, in practice, divided by independent companies even where they use traditional methods of pricing (as almost all will do). This will usually involve looking at the value chains of other participants in an industry for the purposes of comparison.

For example, by looking at the relative profitability of businesses operating in different parts of the value chain, it will often be possible to identify both value drivers and the level of profits associated with each part. A specific example would be for a vertically integrated taxpayer with some competitors that are not so integrated. Those competitors may themselves be successful multinational groups having intellectual property and/ or significant risks. As such, they are unlikely to be used as traditional comparables in the normal way. But they may provide very valuable evidence in determining two things: first, whether one part of the industry supply chain is more or less profitable than another; second, and if independent parties can transact at market prices while owning different types of IP or where both parties carry significant business risks, delineating the relevant transactions and providing an indication that a more transactional TP method may be appropriate.

Similarly, looking horizontally rather than vertically across an industry will often help identify whether apparently valuable IP or other contributions meet the definition of 'unique and valuable' and, if so, provide useful evidence of just how 'unique' or how 'valuable' they may be. For example, in an industry where several successful competitors have equivalent products, similar kinds of IP, including brand names, and assume similar risks then a comparison of their profitability should identify whether one (or more) has (have) anything unique and valuable. Again, such companies are unlikely to be used as traditional comparables in the normal way if only because they have such IP or assume such risk.

15. What further guidance or clarification of existing guidance would be helpful in these sections? Please provide practical examples in support of the response.

As mentioned in the opening comments, there is a sense in the draft that seems to convey at times that what is intended is simply a general splitting of profits rather than an exercise in setting a price. The PSM as discussed in the TPG is a price-setting method rather than the sharing or allocation of non-transactional aggregate profit.

16. The discussion of profit splitting factors sets a requirement that the factors must be capable of being measured in a reliable and verifiable manner. Do commentators believe that useful ways of splitting profits have been excluded? If so, please describe these factors and explain how they meet the requirement of reliable and verifiable measurement.

Paragraph 47 – based upon para 2.13 of the 2010 OECD TPG – indicates also the following potential split factors besides the ones listed in section C.4.5.1: incremental sales and headcounts. It would be useful to add illustrations on these split factors. With regard to headcounts, the reference relates to actual full-time employees ('FTE'), whereas the importance of the contribution may also be found in the actual payroll, or in a combination of the two.

17. What further guidance would be useful in this section relating to identifying and measuring profit splitting factors? Please illustrate your response with examples.

Further guidance on identifying and measuring splitting factors would be welcomed. A list of splitting factors may be useful, but the guidance would need to recognise that not all splitting factors will be appropriate under all circumstances. Rather it would be useful that the guidance indicates and stresses that actual splitting factors should be rooted, or find its basis, in the functional, industry and/ or value chain analysis.

It is also appropriate to re-emphasise that a functional analysis must be performed. A thorough functional analysis may lead to the conclusion that the PSM is the most appropriate transfer pricing methodology. In addition, the functional analysis will indicate what factors are the value drivers and what factors can be used – and how they can be used - as the splitting factors. For example, the functional, industry and/ or value chain analysis may identify R&D, marketing or the sharing of risk as the main element generating the result of the transaction.

It can be usefully repeated that the risk sharing factor – appropriately addressed in the functional analysis – is an important element, but not the only element, that should be addressed in the guidance and should be part of the transfer pricing analysis. For example, an entity that has no control over risk in a certain transaction should not be awarded a higher profit than its functional profile effectively allows, because tax authorities might wrongly consider under certain circumstances that various economically significant risks are automatically shared between the parties.

18. More generally, examples are requested of scenarios where a transactional profit split of actual profits or of anticipated profits are applied, together with a brief explanation as to why the method and the approach to applying the method, is considered to be the most appropriate in the circumstances of the case.

As the current draft seems to show, it is easier to conceive of examples where PSM is not appropriate than examples of where it is. Our experience is that selection of PSM as the most appropriate method is usually highly specific as to the facts and circumstances of a particular case and may actually be inappropriate in the circumstances of an equivalent business which operates in a different way.

One further example the OECD should consider illustrates the fact that two businesses may be highly dependent on each other without being 'integrated' (in the sense of sharing or needing to share profits). This example below[1] is widely cited in economic literature and is of the dependency created by asset specificity i.e., when one (or both) parties to a transaction invest in assets (and therefore assume risks) that are highly specific to the business of the other.

Assume Company A is engaged in the extraction industry and is contemplating a coal mine. Further assume Company B operates in the power industry and is contemplating an electricity plant nearby. If there are not many competing coal mines close to the plant or several plants close to the mine then each is dependent on the other and, without some solution, involves a significant and very risky investment. The economics, developed by Oliver Williamson[2] as part of the work for which he was awarded his Nobel prize, is that the solution will often be a long term contract determining the volumes of coal to be sold but specifying a basis for setting a coal price (e.g. annually) without fixing such a price. This is, in fact, what was observed in the real world.

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[1] The Coal Mine example is inspired by the article: Contract Duration and Relationship Specific Investments: Empirical Evidence form Coal Markets, Paul L. Joskow – The American Economic Review, Vol. 77, No. 1 (March 1987). This approach is not necessarily isolated to coal-mines and power stations.

[2] See Transaction-Costs Economics: The Governance of Contractual Relations, Oliver E Williamson – Journal of Law and Economics, Vol 22, No. 2 (October 1979) – p 233 – 261.

An alternative identified in the same work is vertical integration (i.e., the power company builds the mine or the mining company builds the power plant). This, of course, becomes the related party situation to which the arm's length principle then applies. The proper application of that principle does not need to be a PSM but, depending on the circumstances, is more likely to be a long term contract with terms similar to those described above. This has the effect of allocating the profits (and risks) associated with the coal business to the mine and those associated with the power business to the plant.

In other words, the high degree of dependency between the two businesses does not imply a sharing of the relevant profits or risks, it creates an additional risk (that Williamson called 'asset specificity') which can be managed by both parties either by executing a long term contract or by taking joint ownership under common control.

PwC believes that this is another reason why the accurate delineation of the transaction is important.

Comments on individual paragraphs

Paragraph 9 makes a reference to a single, cohesive business. PwC points out that such reference could be useful to indicate that 'single cohesive businesses' in the sense there is only one profit pool are very rare. Further PwC wonders whether such reference is useful in light of the application of the arm's length principle and the separate entity approach.

Paragraph 11: Is it useful to refer to the AOA in the OECD TPG as the AOA applies the OECD TPG by analogy (making the referencing a circular reasoning)?

Paragraph 22: Example at the end of the paragraph: The emphasis of the example should lie on the uniqueness of the contribution of both parties (in this case the development of the key component and the development of the rest of the product); the actual production can be outsourced, depending on the facts and circumstances, and may not constitute a unique contribution.

Paragraph 23: Please explain 'negative costs' – it is clear the synergies sought may not always be realised and may lead, under certain circumstances, to additional costs or other negative effects, rather than those intended under the deliberate concerted group action.

Paragraph 35: In using the term 'pool of profit,' it should be made clear that it does not envisage the use of aggregate group profit (except in some very limited circumstances) but the combined profits arising from the specific activities for which the conditions for applying a profit split exist. By using the term 'pool of profits' there also seems to be an inconsistency with the term 'combined profits to be split' in the following paragraphs. It is therefore suggested to change paragraph 35 as follows – words to be removed ~~struck through~~ and additions **in bold** – "35. Irrespective of the type of transactional profit split approach that might be applied in a given case, the first step in performing any transactional profit split is to determine the ~~pool of~~ **combined** profit**s** to be divided amongst the parties of the transaction."

For any clarification of this response, please contact the undersigned or any of the contacts below. We look forward to discussing any questions you have on the points we raise above or on other specific matters raised by respondents to the Discussion Draft and would welcome the opportunity to contribute to the discussion as part of the public consultation meeting in October.

Yours faithfully,

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