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Dear Mr VanderWolk

***Discussion Draft: Conforming Amendments to Chapter IX of the Transfer Pricing Guidelines***

PricewaterhouseCoopers International Limited on behalf of its network of member firms (PwC) welcomes the opportunity to comment on the conforming changes to Chapter IX of the OECD Transfer Pricing Guidelines, *Transfer Pricing Aspects of Business Restructurings*.

We recognise the conforming nature of most of the changes proposed by Working Party No. 6 and commend them on the broad approach. However, given the aims to reflect the changes in the rest of the Guidelines resulting from the October 2015 BEPS Reports and, in particular, to reflect the new risk and recognition approach in revised Chapter I, we believe some of the changes are unnecessary or even counterproductive.

**General concepts**

1. There are a number of instances in which the revised wording suggests the need for, or likelihood of, a transfer pricing compensation for any restructuring. We submit that the premise should be that on an arm's length basis an objective view needs to be taken of the related party transactions involved and this should be reflected throughout the Guidelines.
2. We have a concern about interaction between new Chapter IX and new Chapter VII on low-value intra-group services. It may be that some services really don't have profit potential and that shifting those activities should not be subject to the restructuring guidance or, perhaps more accurately, the guidance should clarify that the profit potential may be minimal for those situations. It would be helpful if Chapter IX provided cross-references to Chapter VII as well as additional guidance on the treatment of low-value services under Chapter IX.



### **Unhelpful deletions**

3. In paragraph 9.34 of the discussion draft, apparently based on paragraph 9.163 of the current Guidelines, the following sentences have been deleted: “MNE groups cannot be forced to have or maintain any particular level of business presence in a country. They are free to act in their own best commercial and economic interests in this regard.” Those reflected a generally held international standard which is being weakened as a result of more countries requiring local operations as part of unilateral provisions and could helpfully be retained.
4. Revised wording in paragraph 9.38, apparently based on paragraphs 9.181 and 9.182 of the current Guidelines, omits the sentence “Provided functions, assets and risks are actually transferred, it can be commercially rational from an Article 9 perspective for an MNE group to restructure in order to obtain tax savings.” The clarification in this wording is generally considered helpful, while its removal would be a retrograde step. It is though welcome that it is intended to retain the statement that makes it clear that domestic anti-abuse rules are not within the scope of Chapter IX, so that domestic rules that require a non-tax business purpose for a restructuring are not implicated by the guidance.
5. In the current Guidelines there is an illustration (Example C in paragraph 9.193) which helps create certainty regarding the legitimacy of transactions that are rational on a post-tax rather than pre-tax basis and it would be helpful if the example would be retained. This is even more so because of the insertion of specific reference in new paragraph 9.37 to restructurings that make commercial sense on a pre-tax basis. A wide number of factors would generally be considered in such transactions, including but not limited to both pre-tax income and post-tax income.

### **Confusing amended wording**

6. Revised paragraph 9.2 reads: “Business restructuring may often involve the centralisation of intangibles, risk, or functions with the profit potential attached to them. They may typically consist of ... The concentration of functions in a regional or central entity, with a corresponding reduction in scope or scale of functions carried out locally; examples may include procurement, sales support, supply chain logistics.” The language on functions is not in the current version of Chapter IX and we suggest it be changed as it might otherwise be taken out of context to support some form of exit taxation regime whenever production decreases in one country and increases in another.
7. In paragraph 9.65, the additions and, in particular, the reference to “legal ownership” of local marketing intangibles raises questions regarding the OECD’s “something of value” approach to defining an intangible asset. Clarification of this wording would improve consistency of the Guidelines.



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.

Yours faithfully,

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